

## ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the “Agreement”) is made and entered into as of this \_\_\_\_\_ day of April 2022, by and among the City of Muncie Redevelopment Commission (the “Commission”), Delaware Advancement Corporation (“DAC”), and Accutech Systems Corp., an Indiana Corporation (the “Company”).

### WITNESSETH:

WHEREAS, the Commission and DAC desire to foster economic development and redevelopment within Muncie; and

WHEREAS, the Company is contemplating the redevelopment and reconstruction of property located at 115 S. Walnut Street and 125 S. Walnut Street in Muncie, as more particularly described in Exhibit A attached hereto (the “Project”); and

WHEREAS, as part of the Project, the Company intends to make a total capital investment of approximately Four Million Seven Hundred Fifty Thousand Dollars (\$4,750,000.00); and

WHEREAS, the Project is expected to provide significant economic development and redevelopment activity in the City of Muncie (the “City”), including the eventual creation of approximately seventyone hundred sixty-one (70161) new full-time-equivalent jobs at an average annualized wage of Fifty-Four Thousand Dollars (\$54,000) associated with the expansion of the Company’s business, and additional development and redevelopment throughout the City; and

WHEREAS, the Commission and DAC have determined that the completion of the Project is in the best interests of the citizens of Muncie, and, therefore, the Commission and DAC desire to take certain steps in order to induce the Company to complete the Project; and

WHEREAS, pursuant to Indiana Code §36-7-14-1 *et. seq.* as amended (the “Redevelopment Act”), the Commission may provide financial assistance (including grants and loans) to neighborhood development corporations to permit them to construct, rehabilitate, or repair commercial property within the district; and

WHEREAS, DAC is an Indiana nonprofit corporation and, for purposes of the Redevelopment Act (defined below) a neighborhood development corporation formed, among other things, for the purpose of constructing, rehabilitating, and/or repairing commercial property within the City; and

WHEREAS, to stimulate and further induce the development and completion of the Project, the Commission and DAC have agreed, subject to further proceedings as required by

law, to use their best efforts to provide infrastructure grants and take such other actions as described herein;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as follows:

## **ARTICLE I.**

### **RECITALS**

Section 1.01. Recitals Part of Agreement. The representations, covenants and recitations set forth in the foregoing recitals are material to this Agreement and are hereby incorporated into and made a part of this Agreement as though they were fully set forth in this Section 1.01.

## **ARTICLE II.**

### **MUTUAL ASSISTANCE**

Section 2.01. Mutual Assistance. The parties agree, subject to further proceedings required by law, to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications (and, in the case of the Commission, its best efforts to hold certain public hearings and adopt certain ordinances and resolutions), as may be necessary or appropriate, from time to time, to carry out the terms, provisions and intent of this Agreement and to aid and assist each other in carrying out said terms, provisions and intent.

## **ARTICLE III.**

### **PROJECT DEVELOPMENT**

Section 3.01. Property. Subject to the performance by the Commission and DAC of their respective obligations under this Agreement, the Company will improve the Project Site (as described in Exhibit A) and shall construct the Project as more particularly described in Section 3.02 hereof.

Section 3.02. Project Description and Development. The Project shall consist of the architectural redesign of the Project Site to accommodate the current and future employees of the Company and the design and construction of two restaurants on the first floor of 125 S. Walnut Street, all as more particularly described in Exhibit A attached hereto. The Company shall commence construction of the Project not later than ninety (90) days following the execution of this Agreement and the completion of the items set forth in Article IV hereof, and shall use its best efforts to substantially complete the construction and equipping of the Project on or before the date that is 24 months after the date on which construction commences ("Completion Date"),

subject to permitted delays provided for in Section 3.03 hereof.

Section 3.03. Permitted Delays. Whenever performance is required of any party hereunder, such party shall use all due diligence and take all necessary measures in good faith to perform; provided, however, that, notwithstanding anything to the contrary set forth in this Agreement, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of any cause not within the reasonable control of such party (including, without limitation, acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, epidemics, pandemics, or other public health emergencies, unavailability of labor, materials, equipment, or services, unusually inclement weather, inability to obtain the required permits, economic recession or depression, damage to work in progress by reason of fire or other casualty, utility or energy shortages or acts or omissions of public utility providers, or similar causes beyond the reasonable control of a party (other than the ability of a party to pay any amount hereunder when due), then the time for observance, performance, and/or satisfaction as herein specified shall be extended day-for day by the number of days that such observation, performance, and/or satisfaction actually is delayed by such circumstances.

#### **ARTICLE IV.**

##### **PUBLIC PARTICIPATION**

Section 4.01. Neighborhood Development Grants. The Commission shall make a grant to DAC in a total amount equal to \$1,250,000.00 (the “Grant”) as follows:

- (a) The sum of \$250,000.00 upon the execution of this Agreement.
- (b) The sum of \$1,000,000.00 shall be held in escrow with the Controller for the City for distribution to DAC upon request as set forth in Section 4.02(b) hereof.

Section 4.02. Distribution to Company and Use of Grant Funds.

- (a) DAC shall utilize the proceeds of the Grant solely and only for the purposes of paying or reimbursing the Company as provided in this Section.
- (b) The sum of \$250,000.00 shall be distributed to Company by DAC upon the execution of this Agreement and DAC’s receipt of Grant funds from the Commission. Grant funds from this distribution shall be used for engineering, architecture, and/or other expenses reasonably necessary in connection with the development, design, construction, equipping, and/or completion of the Project. Additionally, Company may use a portion of this distribution for a purpose other than described in this paragraph upon the written approval of Commission President and the Mayor of the City.
- (c) The sum of \$1,000,000.00 shall be distributed to Company by DAC in the form of reimbursement(s) for expenses reasonably necessary to develop, design, construct, equip, and/or otherwise complete the Project. In order to receive a reimbursement

- payment as described in this paragraph, Company shall issue a written request for approval and provide a receipt for the expense(s) to the Commission President and the Mayor of the City. Such request shall be approved or objected to in writing delivered to Company by the Commission President and/or the Mayor within 14 days after receipt, and if no written approval or objection is received, then such request shall be deemed to be approved. Upon the written approval (or deemed approval) by the Commission President and the Mayor, the City Controller shall issue payment of the approved Grant proceeds to DAC, from the escrow account described in Section 4.01. DAC shall then issue payment of the approved Grant proceeds to the Company.
- (d) DAC acknowledges that Grant proceeds are being made available to DAC for the purposes described herein in reliance upon the Company's representations and intentions with respect to job creation and economic development as herein described.

## ARTICLE V.

### ECONOMIC INCENTIVE RECONCILIATION AND REPAYMENT

Section 5.01. Economic Objectives. In connection with the Grant outlined herein, the Company expects to meet or exceed the employment objectives outlined in this Section. For the purposes of this Section, ("New FTEEmployee") shall mean ~~a full-time (or full-time equivalent)an~~ employee of the Company, ~~or of any third party occupying any portion of the Project, that is~~ hired after the Effective Date. The ~~Company expects the~~ aggregate number of New FTEsEmployees is to be no less than 70161 by December 31, 2025, with an average annualized salary of ~~\$40,000.00~~54,000.00, subject to the following year-end objectives:

- (a) For the period ending on December 31, 2022:
1. Maintain ~~thirtyfourty-five~~ (3045) New FTEsEmployees; and
  2. An average annualized salary of ~~New FTEs of not~~ less than ~~\$40,000.00~~54,000.00.
- (b) For the period ending on December 31, 2023:
1. Maintain ~~fortyeighty-one~~ (4081) New FTEsEmployees; and
  2. An average annualized salary of ~~New FTEs of not~~ less than ~~\$40,000.00~~54,000.00.
- (c) For the period ending on December 31, 2024:
1. Maintain ~~fiftyone hundred twenty-six~~ (50126) New FTEsEmployees; and
  2. An average annualized salary of ~~New FTEs of not~~ less than ~~\$40,000.00~~54,000.00.
- (d) For the period ending on December 31, 2025:
1. Maintain ~~seventyone hundred sixty-one~~ (70161) New FTEsEmployees; and
  2. An average annualized salary of ~~New FTEs of not~~ less than ~~\$40,000.00~~54,000.00.

Section 5.02. Compliance and Repayment. In the event that the Company fails to meet the employment objectives outlined in Section 5.01 hereof, the following formula shall be used to determine the amount of the Grant to be repaid to DAC by the Company (“Incentive Recovery”).

- (a) There are two employment objectives of equal weight: the number of New ~~FTEs~~Employees and the average annualized salary of the New ~~FTEs~~Employees.
- (b) At the end of each period as outlined in Section 5.01 hereof, a performance percentage shall be determined for each employment objective as follows:
  1. The performance percentage for New ~~FTEs~~Employees shall be calculated by dividing the actual number of New ~~FTEs~~Employees by the applicable period-end target number for New ~~FTEs~~Employees, with the quotient thereof being rounded to the nearest hundredth of one percent and then divided by 2.
  2. The performance percentage for average annualized salary shall be calculated by dividing the actual average annualized salary for New ~~FTEs~~Employees by ~~\$40,000.00~~\$54,000.00, with the quotient thereof being rounded to the nearest hundredth of one percent and then divided by 2.
- (c) The sum of the performance percentages calculated in (b)(1) and (b)(2) above shall constitute the “Total Weighted Performance Factor”.
- (d) For ~~the each~~ period ~~ending December 31, 2022~~outlined in Section 5.01 hereof, Incentive Recovery is required if the Total Weighted Performance Factor is not equal to or greater than ~~95~~85%
- ~~(e) For the periods ending December 31, 2023, December 31, 2024, and December 31, 2025, Incentive Recovery is required if the Total Weighted Performance Factor is not equal to or greater than 90%.~~
- (e) ~~(f)~~ If Incentive Recovery is required, the Total Weighted Performance Factor shall be multiplied by \$1,250,000.00 and the product thereof subtracted from \$1,250,000.00 to determine the amount of Incentive Recovery.
- (f) ~~(g)~~ Before payment of the Incentive Recovery is made, Company shall receive a credit for any previous Incentive Recovery amounts paid from prior periods. The credit shall reduce the Incentive Recovery then due by an amount equal to the aggregate amount of all prior Incentive Recovery payments.

Section 5.03. Annual Reporting Requirements. Commencing with the year ending December 31, 2022, and continuing through the year ending December 31, 2025, the Company shall provide a report to the Commission on an annual basis (the “Annual Report”). Each Annual Report shall cover the period of January 1 through December 31 of the most recent year shall be submitted to the Commission no later than the following January 31<sup>st</sup> and shall include the following:

- (a) The total number of New ~~FTEs~~Employees;
- (b) The average ~~annual~~annualized salary for all New ~~FTEs~~Employees; and
- (c) A general summary of the Company’s business operations including any anticipated

additions or reductions in the number of New ~~FTEs~~Employees employed by the Company (and, to the extent that the information is reasonably available, additions or reductions in the number of New ~~FTEs~~Employees employed by any third-party occupying any portion of the Project) for the upcoming year and any other information the Company desires or deems pertinent.

## ARTICLE VI.

### **ADDITIONAL REPRESENTATIONS, WARRANTIES COVENANTS, AND CONSENTS OF THE COMPANY**

Section 6.01. Authority. The Company represents and warrants that it has all requisite authority to enter into this Agreement.

Section 6.02. Compliance with Law. The Company agrees to comply in all material respects with all applicable laws related to the construction, development and use of the Project Site and the Project.

## ARTICLE VII.

### **AUTHORITY**

Section 7.01. Actions. The Commission and DAC represent and warrant that they have taken or will use best efforts to take (subject to the Company's performance of its agreements and obligations hereunder) such action(s) as may be required and necessary to enable the Commission and DAC to execute this Agreement and to carry out fully and perform the terms, covenants, duties and obligations on its part to be kept and performed as provided by the terms and provisions hereof.

Section 7.02. Powers. The Commission represents and warrants that it has full constitutional and lawful right, power and authority, under currently applicable law, to execute and deliver and perform its respective obligations under this Agreement. DAC represents and warrants that it has full right, power, and authority under currently applicable law to execute and deliver, and perform its obligations under, this Agreement.

## ARTICLE VIII.

### **GENERAL PROVISIONS**

Section 8.01. Time of Essence. Time is of the essence of this Agreement. The parties shall make every reasonable effort to expedite the subject matters hereof (subject to any time limitations described herein) and acknowledge that the successful performance of this Agreement requires their continued cooperation.

Section 8.02. No Joint Venture of Partnership. Nothing contained in this Agreement shall be construed as creating either a joint venture or partnership relationship among any of the Commission, DAC and the Company or any affiliate thereof.

Section 8.03. Breach. Before any failure of any party to this Agreement to perform its obligations hereunder shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform such obligation and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such notice. If after said thirty (30) days, the breaching party fails to cure the breach, the non-breaching party may seek any remedy available at law or equity.

Section 8.04. Amendment. This Agreement, and any exhibits attached hereto, may be amended only by the mutual written consent of the parties, duly executed by the duly authorized representatives of the parties or their successors in interest.

Section 8.05. No Other Agreement. Except as otherwise expressly provided herein, this Agreement supersedes all prior agreements, negotiations and discussions relative to the subject matter hereof and is a full integration of the agreement of the parties.

Section 8.06. Severability. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants, agreements or portions of this Agreement and, to that end, any provisions, covenants, agreements or portions of this Agreement are declared to be severable.

Section 8.07. Indiana Law. This Agreement shall be construed in accordance with the laws of the State of Indiana.

Section 8.08. Notices. All notices and requests required pursuant to this Agreement shall be deemed sufficiently made if delivered, as follows:

To the Company:  
Accutech Systems Corp.  
115 S. Walnut St.,  
Muncie, IN 47305  
Attention: Adam Unger

With a copy to:  
Hall, Render, Killian, Heath & Lyman, P.C.  
500 N. Meridian Street, Suite 400  
Indianapolis, IN 46204

Attention: Jerimi J. Ullom, Esq.

To the Commission:

City of Muncie Redevelopment Commission 300 North High Street  
Muncie, IN 47305  
Attention: Mayor Dan Ridenour

With a copy to:

Beasley & Gilkison LLP  
110 East Charles Street, Suite 200  
Muncie, IN 47305  
Attention: Benjamin J. Freeman, Esq.

To DAC:

Delaware Advancement Corporation  
401 South High Street  
Muncie, IN 47305  
Attention: Elizabeth Rowray

With a copy to:

DeFur Voran LLP  
400 S. Walnut Street, Suite 200  
Muncie, IN 47305  
Attention: Nicholas M. Tokar, Esq.

or at such other addresses as the parties may indicate in writing to the other either by personal delivery, courier, or by registered mail, return receipt requested, with proof of delivery thereof. Mailed notices shall be deemed effective on the third day after mailing; all other notices shall be effective when delivered.

Section 8.09. Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

Section 8.10. Assignment. With prior written consent of the Commission, the rights and obligations contained in this Agreement may be assigned by the Company to any affiliate thereof or successor thereto or to any other entity or person who agrees to undertake the Company's obligations hereunder including the development and construction of the Project.

Section 8.11. No Third-Party Beneficiaries. This Agreement shall be deemed to be for the benefit solely of the parties hereto and shall not be deemed to be for the benefit of any third party.



Section 8.12. Effective Date. Notwithstanding anything herein to the contrary, this Agreement shall not be effective until all parties hereto have executed this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

CITY OF MUNCIE REDEVELOPMENT COMMISSION

By: \_\_\_\_\_  
Jeff Howe, President

DELAWARE ADVANCEMENT CORPORATION

By: \_\_\_\_\_  
Elizabeth Rowray, President

ACCUTECH SYSTEMS CORP.

By: \_\_\_\_\_  
Adam Unger, President

## EXHIBIT A

### **Project Site:**

### **Project Description:**

Renovation and construction of a building of: (a) approximately 8,500 square feet of lower level and first floor restaurant and entertainment space; and (b) above the restaurant and entertainment space, approximately 10,000 square feet of office space.

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Document comparison by Workshare Compare on Tuesday, June 28, 2022  
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Document 2 ID	netdocuments://4871-9297-3341/5
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Moved cell	
Split/Merged cell	
Padding cell	

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