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FIRST AMENDED AND RESTATED PROGRAM PROJECT AGREEMENT BETWEEN WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION, CAPSTONE MECHANICAL, L.P., AND RSWB PARTNERS, LLC

THIS **FIRST AMENDED AND RESTATED PROGRAM PROJECT AGREEMENT** (hereinafter "Agreement") is entered into to be effective as of the 20th day of December 2024 (the "Effective Date") by and between **CAPSTONE MECHANICAL, L.P.** (hereinafter "Capstone"), **RSWB PARTNERS, LLC** (hereinafter "RSWB"), and the **WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION**, a Texas non-profit corporation (hereinafter "WMCEDC"), on the date set forth below.

RECITALS:

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

WHEREAS, COMPANIES and WMCEDC entered into a Program Project Agreement ("Original Agreement") on April 1, 2022; and

WHEREAS, pursuant to the Original Agreement, CAPSTONE and RSWB (collectively, the "COMPANIES") agreed to expand their business in Waco, Texas that provides engineering, contracting, and service for mechanical, plumbing, and automation systems, make significant equipment and facility upgrades to support a sheet metal manufacturing facility and the business located on 6.001 acres at Lot 1, Block 1, Capstone Addition, and otherwise known as 7100 Imperial Drive, Waco, Waco, McLennan County, Texas, (the "Facility"), and to create and retain jobs at the Facility in McLennan County, Texas; and

WHEREAS, RSWB owns the Facility and the land on which it sits, and CAPSTONE owns the business personal property and serves as the employer for the jobs created and/or maintained at the Facility; and

WHEREAS, COMPANIES and WMCEDC now desire to amend the terms of the Original Agreement by entering into the Agreement,

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

I.
WACO McLENNAN COUNTY ECONOMIC DEVELOPMENT CORPORATION ECONOMIC INCENTIVE COMMITMENTS

1.1 WMCEDC agrees to provide grant funds of an amount not to exceed **Three Hundred Thousand Dollars ($300,000.00)** (hereinafter "Incentive Funds") to RSWB to offset the following costs of the COMPANIES:

1.1.1 Costs to expand COMPANIES' business in Waco, Texas that provides

"SCANNED"

engineering, contracting, and service for mechanical, plumbing, and automation systems, make significant equipment and facility upgrades to support a sheet metal manufacturing facility and the business at the Facility (the "Project"); and

1.1.2 Costs associated with new employee recruitment and hiring (Sections 1.1.1 through 1.1.2 shall be referred to as "Start Up Costs").

1.2 The Incentive Funds will be disbursed as follows:

1.2.1 Upon completion of the requirements in Sections 2.1.;

1.2.2 In an amount not to exceed $5,454.54 per new job created as described in Sections 2.1; and

1.2.3 Upon certification by the COMPANIES that COMPANIES have met the annual investment and job creation/retention in the applicable year.

1.3 **PAYMENT**: Payment will be made within forty-five (45) days of receipt of each draw request from RSWB for such disbursement subject to verification of compliance with the above requirements.

1.3.1 COMPANIES have agreed that any Incentive Funds shall be paid to RSWB.

1.3.2 COMPANIES will provide invoices, payment receipts, or any other proof of expenditures that the WMCEDC administrator deems necessary to verify the Facility Investment and Start Up Costs. The WMCEDC administrator will be the final determiner of the actual costs/grant-eligible costs for the Facility Investment and Start Up Costs.

1.3.3 Failure to meet any of the requirements in Sections 2.1 will prevent RSWB from receiving the Incentive Funds.

II.
COMPANIES COMMITMENTS AND RECOVERY OF INCENTIVE FUNDS

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

2.1.1 **Equipment and Facility Investments** – COMPANIES shall cause to be invested real and personal property improvements at the Facility for the expansion ("Facility Investment") as follows:

2.1.1.1 On or before March 1, 2022, RSWB shall cause to be invested no less than **Four Million, Three Hundred Thousand Dollars** ($4,300,000.00) in real property investment;

2.1.1.2 On or before March 1, 2022, CAPSTONE shall cause to be invested no less than an additional **One Million, Five Hundred Thousand Dollars** ($1,500,000.00) in personal property investment;

2.1.1.3 The Facility Investment shall be determined pursuant to Section 1.3.2; and

2.1.1.4 The applicable level of Facility Investment shall be maintained at the Facility throughout the Term of the Agreement;

2.1.2 **Job Creation Phase** - CAPSTONE shall create, fill, and retain at least 55 new full-time jobs that are WMCEDC eligible at the Facility on or before December 31, 2024, as follows:

2.1.2.1 A "WMCEDC-eligible Job" or "New Jobs" means a job that requires full-time year-round employment (2080 hours of work per year), with a minimum of forty (40) hours of work per week or eighty (80) hours of work per two weeks, provides health insurance benefits comparable to that provided by the City or the County to their own employees, and provides the wages described in Section 2.1.4;

2.1.2.2 WMCEDC and COMPANIES agree that as of the execution date of the Original Agreement, CAPSTONE has one hundred, sixty-seven (167) full-time jobs at the Facility ("Existing Jobs"); and

2.1.2.3 New Jobs plus Existing Jobs shall hereafter be referred to as "Total Jobs."

2.1.3 **Job Retention Phase** – CAPSTONE shall retain the existing 167 Existing Jobs throughout the Term of the Agreement. Job retention also is a basic requirement for all New Jobs from the time the Job is created (i.e. filled for the first time) and throughout the Term of the Agreement. CAPSTONE shall retain the minimum number of New Jobs referred to in Section 2.1.2 that are WMCEDC eligible and maintain said New Jobs at the Facility in McLennan County, Texas, throughout the Term of this Agreement;

2.1.4 **Employee Compensation and Benefits** - CAPSTONE shall pay its employees in the New Jobs and Existing Jobs a minimum wage as follows:

2.1.4.1 For 48 of the New Jobs, the minimum base wage shall be no less than fifteen dollars ($15.00) per hour;

2.1.4.2 For 7 of the New Jobs, the minimum base wage shall be no less than twelve dollars ($12.00) per hour, provided that CAPSTONE hires these employees from a community partner organization, including but not limited to, Greater Waco Advanced Manufacturing Academy, Mission Waco, Mercy House, Christian Men's Job Corp., House Where Jesus Shines, or other McLennan County high school career and technology education (CTE) programs;

2.1.4.3 Additionally, the average annual wage for the Total Jobs (excluding the two (2) highest paid executives) shall be no less than $44,000.00.

2.1.4.4 For the Existing Jobs, the average hourly wage shall be no less 2.than twenty-one dollars ($21.00) per hour (excluding the two highest paid executives); and

2.1.4.5 CAPSTONE also shall provide, at employer expense, health insurance and benefits at a level submitted to and approved by WMCEDC, provided, however, that such health insurance and benefits may be changed so long as they do not fall below a level comparable to those provided by the City and the County to their respective employees at the time of the execution of the Agreement.

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

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

unless otherwise determined by the applicable court. The provisions of this Section 2.1.5.1 shall survive the termination of this Agreement.

2.1.6 **Certificate of Occupancy** - On or before March 1, 2022, CAPSTONE or RSWB shall obtain a certificate of occupancy for the expansion of the Facility for the Project.

2.1.7 **Facility Remain Open and Operational** - COMPANIES shall maintain the Facility at the Property as open and operational through the Term of the Agreement.

2.2 **TEMPORARY FAILURE TO MEET TOTAL JOB RETENTION** – In the event that permanent employment at the Facility falls below 85%, WMCEDC may terminate this Agreement pursuant to this Section 2.5, and COMPANIES shall make a repayment of all of the Incentive Funds actually received upon sixty (60) days written demand by WMCEDC. If the failure to maintain a permanent employment rate of 85%, is due to normal attrition, that event will not be used as a basis for terminating this Agreement unless CAPSTONE does not reasonably attempt to fill the vacant positions through its normal hiring processes. CAPSTONE will provide documentation reasonably required by WMCEDC to verify CAPSTONE's reasonable attempt to fill those vacant positions. In the event that permanent employment at the Facility falls below 100%, but remains at 85% or more, COMPANIES shall reimburse WMCEDC proportionally based on the percentage of non-compliance on the annual payment of Incentive Funds. For instance, after December 31, 2024, CAPSTONE is required to retain 222 Total Jobs (55 New Jobs plus 167 Existing Jobs). If during that period, permanent employment at the Facility falls below 85%, or 188 Total Jobs, then WMCEDC may terminate this Agreement. If during that period, permanent employment at the Facility is at 85%, then COMPANIES shall reimburse WMCEDC 15% of any Incentive Funds actually received upon sixty (60) days written demand by WMCEDC.

2.3 **RESIDENCY REQUIREMENT** – At least sixty-five percent (65%) of the employees who fill the WMCEDC-Eligible Jobs must reside in McLennan County and at least Forty percent (40%) of those employees in the New Jobs must reside in the City of Waco.

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

2.5 **PENALTY PROVISIONS** – If COMPANIES fail to certify their compliance and/or fail to comply with Section 2.1.1.4, but maintain the Facility Investment at 85% of the requirement, RSWB shall reimburse WMCEDC proportionally based on the percentage of non-compliance and shall be entitled to only that percentage of Incentive Funds going forward. For instance, on or before March 1, 2022, COMPANIES are required to cause to be invested no less than $5,800,000.00 in Facility Investment and maintain that amount through the Term of the Agreement. If after March 1, 2022, COMPANIES maintained only $4,930,000.00 in Facility Investment, then RSWB shall reimburse WMCEDC 15% of any Incentive Funds actually received upon sixty (60) days written demand by WMCEDC and shall only be entitled to 85% of Incentive Funds going forward ($4,636.36 per New Job). If however, COMPANIES had invested less than 85% of the Facility Investment on or before March 1, 2022, then WMCEDC

may terminate this Agreement, and COMPANIES shall make a repayment of all of the Incentive Funds actually received upon sixty (60) days written demand by WMCEDC.

2.5.1 If COMPANIES fail to certify its compliance and/or fail to comply with any other provisions of the terms of this Agreement, except as is provided in Section 2.2 and 2.5, WMCEDC may cancel and/or modify this Agreement following WMCEDC'S written notice to COMPANIES of COMPANIES' deficiencies. In the event that the WMCEDC terminates this Agreement pursuant to this Section, COMPANIES shall make a repayment of all of the Incentive Funds actually received upon sixty (60) days written demand by WMCEDC.

2.5.2 RSWB and CAPSTONE are co-obligors, such that each company is liable for compliance with each and every provision of the Agreement. Should there be a breach of or non-compliance with this Agreement and should WMCEDC seek to recapture Incentive Funds, RSWB and CAPSTONE, each, are liable for repayment of all Incentive Funds paid by WMCEDC, regardless of which company actually received the funds or which company caused the breach or non-compliance.

III.
APPRAISAL DISPUTES

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

3.2 **PROPERTY IMPROVEMENTS VALUATION:** COMPANIES agree that after completion and installation of the Facility Investment required by this Agreement, COMPANIES will report the fair market value of the improvements, the subject of this Agreement, to MCAD at a valuation of not less that the values listed in Section 2.1.1. If during the Term of this Agreement an appraisal dispute initiated by COMPANIES or an agent of COMPANIES results in the reduction of the appraised value of the real and/or personal property improvements to an amount below the values listed in Section 2.1.1, less depreciation, then the total amount of the WMCEDC Incentive Funds shall be proportionally reduced. For example, if COMPANIES or an agent of COMPANIES, initiates an appraisal dispute that results in a personal property improvements appraisal value of $1,350,000.00 (90% of the estimated personal property fair market value as represented by CAPSTONE), less depreciation, then RSWB will only be eligible for 90% of the WMCEDC Incentive Funds provided for in this Agreement. In that event, then within sixty (60) days written demand from WMCEDC, COMPANIES shall repay the portion of the WMCEDC Incentive Funds for which it is no longer eligible. This provision will remain in effect even if the appraisal dispute of the property is initiated by a subsequent third-party purchaser.

IV.

MISCELLANEOUS

4.1 **TERM.** This Agreement shall be effective from Effective Date until December 31, 2028,

or if CAPSTONE achieves the creation of all New Jobs required by Sections 2.1.2 and 2.3 sooner than December 31, 2024, then the Agreement shall be effective for three years after creation of the last required New Job.

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

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

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

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

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

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

Notice to **CAPSTONE** and **RSWB** shall be sent to:

Capstone Mechanical, L.P.
Attention: Dustin Uptmore, General Manager
7100 Imperial Dr.
Waco, TX 76712 (254) 399-8090
duptmore@capstonemechanical.com

RSWB Partners LLC
Attn: Rick Tullis
8004 Woodway Dr, Ste 100

Woodway, TX 76712, (254) 379-4422
rickltullis@outlook.com

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

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

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

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

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

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

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

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

EXECUTED this 20th day of December, 2024.

[Signatures on next page]

CAPSTONE MECHANICAL, L.P.

By: _____
Dustin Upmore, General Manager

RSWB PARTNERS, LLC

By: _____
Rick Tullis, CEO and President

WACO MCLENNAN COUNTY
ECONOMIC DEVELOPMENT CORPORATION

By: _____
Scott M. Felton, President

CITY OF WACO

By: _____
Bradley Ford
City Manager

ATTEST:

By: _____
Esmeralda Hudson
City Secretary

McLENNAN COUNTY

By: _____
Honorable Scott M. Felton
County Judge

ATTEST:

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

APPROVED AS TO FORM & LEGALITY:

CITY OF WACO

By: _____
Bradley Ford
City Manager

ATTEST:

By: _____
Michelle Hicks
City Secretary

McLENNAN COUNTY

By: _____
Honorable Scott M. Felton
County Judge

12/17/24

APPROVED AS TO FORM & LEGALITY:

By: _____
Kathleen Perdon
Acting City Attorney, City of Waco