

RESOLUTION NO. 10-111

**A RESOLUTION APPROVING A FIRST AMENDMENT TO
THE ECONOMIC INCENTIVE CONTRACT & LOAN
AGREEMENT BETWEEN CITY OF PORT ARTHUR
SECTION 4A ECONOMIC DEVELOPMENT
CORPORATION AND MC-OO, INC. D/B/A MC-O
CONSTRUCTION**

WHEREAS, Mc-OO, Inc. d/b/a Mc-O Construction ("Mc-O"), a Texas corporation, has received an Economic Incentive Contract & Loan Agreement (the "Contract") from the City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to expand its Port Arthur shop and field fabrication and assembly operations ("Mc-O Facility"); and

WHEREAS, under the Contract, Mc-O was to add additional staff to generate payroll to expand business opportunities in the City of Port Arthur, Texas (the "City"); and

WHEREAS, Mc-O has received a \$1 credit for each \$5 of additional payroll distributed to its employees who are City residents which credit has been applied against the \$300,000 grant which was provided by PAEDC to Mc-O for the purchase of real property improvements and fixtures at the Mc-O Facility; and

WHEREAS, due to the regional slow down in petrochemical and marine industries, Mc-O has not reached the payroll of City residents required under the Contract and has requested an extension of the Contract to allow it the opportunity to continue to employ City residents and achieve the credits for the unsatisfied grant obligation of \$96,931.64; and

WHEREAS, Mc-O has agreed to an amended Performance Milestone Schedule under the Contract, all as specified in the First Amendment to the Contract (the "First Amendment");

WHEREAS, on the 22nd day of February, 2010, the Board of Directors of the PAEDC approved the First Amendment.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ARTHUR:

Section 1. That the facts and opinions in the preamble are true and correct.

Section 2. That the PAEDC is authorized to enter into the First Amendment to Economic Incentive Contract & Loan Agreement with Mc-OO, Inc. d/b/a Mc-O Construction.

Section 3. That a copy of this Resolution shall be spread upon the Minutes of the City Council.

READ, ADOPTED AND APPROVED on this 6th day of April A.D., 2010, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote:

AYES:

Mayor Prince; Mayor Pro Tem Segler;
Councilmembers Chatman, Albright, Hood,
Beard, Wise and Henderson.

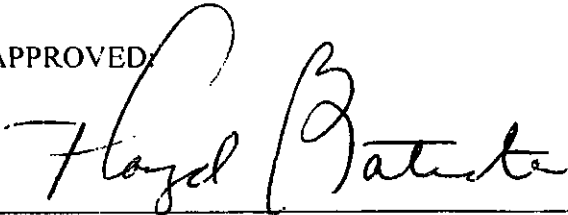
NOES: None.

Deloris Prince
DELORIS "BOBBIE" PRINCE, MAYOR

ATTEST:

Terrí Hanks
TERRI HANKS, CITY SECRETARY

APPROVED:



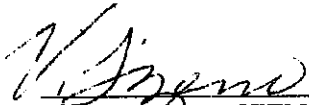
FLOYD BATISTE, PAEDC CEO

APPROVED AS TO FORM:



GUY N. GOODSON, PAEDC ATTORNEY

APPROVED AS TO FORM:



VALECIA R. TIZENO, CITY ATTORNEY

**FIRST AMENDMENT
ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION AND
MC-OO, INC. D/B/A MC-O CONSTRUCTION**

The Economic Incentive Contract and Loan Agreement between City of Port Arthur Section 4A Economic Development Corporation (the "PAEDC") and Mc-OO, Inc. d/b/a Mc-O Construction (hereinafter "Mc-O") approved by Resolution No. 06-376 (the "Original Agreement") is hereby amended to revise the promised performance by Mc-O and to revise the Performance Milestone Schedule.

Except as specified herein, all terms, conditions, performance, obligations, covenants and agreements of Mc-O or the PAEDC as specified in the Original Agreement are ratified and affirmed, and each party covenants and represents that there are no defaults in the Original Agreement except as may be specified herein.

Under the Original Agreement, Mc-O was to expand its Port Arthur shop and field fabrication and assembly operations ("Mc-O Facility") requiring the addition of staff that would generate payroll to expand business opportunities in the City of Port Arthur, Texas. Mc-O has received a \$1 credit for each \$5 of additional payroll distributed to its employees who reside in Port Arthur which credits have been applied against the \$300,000 grant which was provided by PAEDC to Mc-O for the purchase of real property improvement and fixtures at the Mc-O Facility.

Due to the regional slow down in projects in the petrochemical and marine industries, Mc-O had not achieved the creation of payroll for Port Arthur residents by the end of its initial term of the Original Agreement on January 1, 2010 to satisfy the grant obligations. Mc-O has requested an extension of the Performance Milestone Schedule to allow additional time to create payroll for Port Arthur residents at its Port Arthur Facility to achieve credits to offset the balance of the grant provided by the PAEDC to Mc-O. After giving credit for all payroll earned on or before January 1, 2010, Mc-O still had an unsatisfied grant obligation of \$96,931.64.

Upon approval of this First Amendment, Mc-O will be given additional time to receive credits for payroll distributed to its employees who reside in Port Arthur to satisfy the grant, or the grant shall (as required in the Original Agreement) convert to a loan (liquidated damages).

Executive Summary

Mc-OO, Inc. d/b/a Mc-O Construction (hereinafter "Mc-O") is a local company which expanded their Port Arthur shop and field fabrication and assembly operations ("Mc-O Facility"). Currently, Mc-O expanded its customer base in order to bring new dollars into the Port Arthur economy. Mc-O builds or fabricates at the Mc-O Facility forms, cages, structural steel and pipe for installation at its customer facilities. The City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") assisted Mc-O with expansion of the Mc-O Facility.

PAEDC provided a \$300,000 grant to Mc-O for the purchase of real property improvements and fixtures at the Mc-O Facility as part of its business expansion. In return, Mc-O promised to increase its annual payroll by \$650,000, bringing its annual payroll to \$1,750,000 and retain said payroll through December 31, 2009, as measured by the Internal Revenue Service (IRS) W-2 and W-3 forms. In addition, Mc-O promised at least half of its employees would be Port Arthur residents. Finally, Mc-O agreed to pay all of PAEDC's attorney fees and expenses incurred for any modification of or amendment to the Original Agreement, including any legal documents supporting the Original Agreement.

Additionally, in order to obtain first lien status, PAEDC loan Mc-O the sum of \$88,795.18 payable to Texas State Bank to payoff the current lien against the Mc-O Facility, to be paid back over ten years at prime rate plus one percent, with the first of the 120 payments due three months after the Original Agreement was executed. Prime interest rate was calculated as of the date the Agreement was executed. The \$88,795.18 paid off the existing mortgage and granted PAEDC a deed of trust on the Mc-O Facility. In this way, PAEDC attained first lien priority status.

If Mc-O breached the Original Agreement, PAEDC's grant of \$300,000, minus any credits earned, would automatically convert to a loan (liquidated damages). Any resulting loan would have a three-year term, starting on the date of Mc-O's breach, an interest rate of ten percent (10%), and will be secured by a Second Deed of Trust on the Property.

Mc-O earned credits to reduce the duration of the Original Agreement or to reduce liquidated damages in the event of a breach. Starting on the effective date of the Original Agreement, Mc-O received a \$1.00 credit for each \$5.00 of additional payroll distributed to its employees who reside in Port Arthur.

Mc-O agreed to send PAEDC status reports on its physical expansion and its annualized payroll, quarterly for the first year and twice per year, thereafter, for the life of the Original Agreement.

Mc-O forfeits its credits for any reporting period for which it does not issue a report.

AMENDMENT REQUESTED

Mc-O has advised the PAEDC that due to businesses within the petrochemical and marine industries delaying plant expansions, Mc-O was not able to increase its business operations at the Mc-O Facility by December 31, 2009 to meet the grant obligations. However, with plant expansions now underway, Mc-O has requested an extension of its Performance Milestone Schedule under the Original Agreement and has committed to employing Port Arthur residents in order to create credits against the balance of \$93,931.64 of grant obligations that remain outstanding to PAEDC.

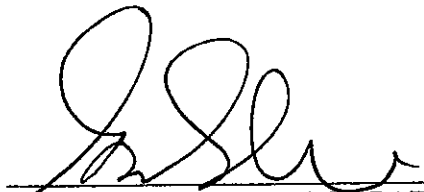
Mc-O has agreed to increase its current performance payroll of \$1,550,000 to a total performance wage of \$2,240,000. Additionally, Mc-O has agreed that 28% of its total annual payroll or \$490,000 annually for the period beginning January 1, 2010 through December 31, 2010 shall be payroll payable to Port Arthur residents. PAEDC has agreed to amend the credit specified in the original grant to provide Mc-O with a credit of \$1.00 for every \$5.06 of payroll distributed to its employees who reside in Port Arthur under the new annual total performance

(g)	October 31, 2011	Status report through September 30, 2011 on (i) projects underway at the Mc-O Facility, (ii) number of permanent employees together with number of Port Arthur employees and (iii) documentation of total annual payroll per amended annual payroll requirements of the First Amendment.
(h)	January 31, 2012	Issue a <u>close out report</u> to the PAEDC Board and CEO detailing actual performance versus promised performance. After presentation by Mc-O, the Board will take action to determine if performance is complete, thereby, ending the Contract.

Paragraph 44 of the Original Incentive Agreement is modified to include a reference to the EXECUTIVE SUMMARY as a part of the Original Incentive Agreement for all purposes and constitutes promise performance by Mc-O and/or PAEDC as the case may be in accordance with the Original Incentive Agreement.

ATTORNEY APPROVALS

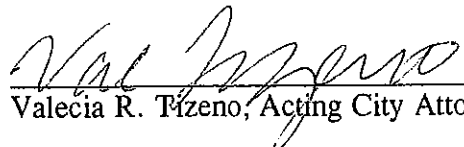
APPROVED AS TO FORM:



 Guy Goodson, General Counsel for PAEDC

VERIFIED AS CONSISTENT

WITH CITY COUNCIL RESOLUTION: Resolution Number: 10-111

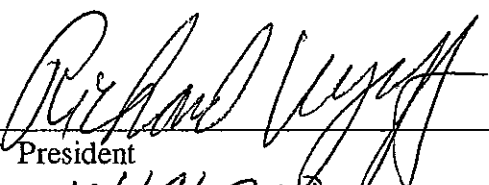


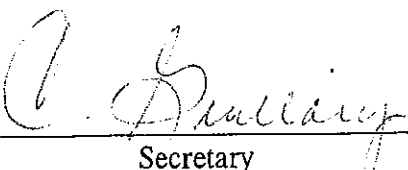
 Valecia R. Tizeno, Acting City Attorney

CONTRACT EXECUTION

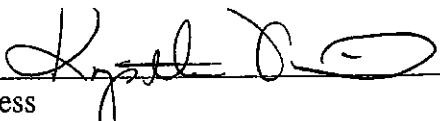
CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION

SIGNED AND AGREED TO:

By: 
President
Date: 4/19/2010

By: 
Secretary
Date: 4/13/2010

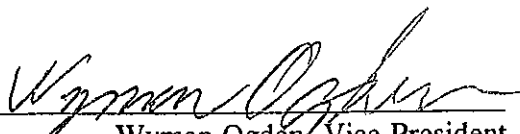

Witness


Witness

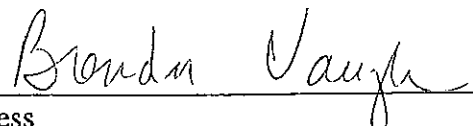
MC-OO, INC. D/B/A MC-O CONSTRUCTION

SIGNED AND AGREED TO:

By: _____
Eric J. McGuire, Vice President
Date: _____

By: 
Wyman Ogden, Vice President
Date: April 30, 2010

Witness


Witness