

July 8, 2019

RESOLUTION NO. 19-292

A RESOLUTION APPROVING AN ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND MOTION INDUSTRIES, INC.; FUNDING AVAILABLE IN PAEDC ACCOUNT NO. 120-1429-582.59-10

WHEREAS, the Port Arthur City Council deems it is in the public interest to authorize the City of Port Arthur Section 4A Economic Development Corporation ("PAEDC") to enter into an Economic Incentive Contract and Loan Agreement (the "Agreement") with Motion Industries, Inc.; and

WHEREAS, Motion Industries, Inc. has presented an application qualifying as a Section 4A project as set forth in the Executive Summary of the Agreement attached hereto as **Exhibit "A"**; and

WHEREAS, Motion Industries, Inc. is headquartered in Birmingham, Alabama, and authorized to do business in Texas as a distributor of industrial parts; and

WHEREAS, Motion Industries, Inc. currently has two locations in the Southeast Texas region, one location in Groves, Texas and the other in Port Arthur, Texas; and

WHEREAS, Motion Industries, Inc. plans to relocate its entire Southeast Texas distribution center to the Port Arthur Business Park; and

WHEREAS, Motion Industries, Inc. plans to enter into a 10-year lease agreement for the lease of a 59,600 square foot building located at 90 South Business Park Drive in Port Arthur, Texas; and

WHEREAS, the relocation of the Southeast Texas distribution center will increase the amount of sales tax generated and collected in the City of Port Arthur; and

WHEREAS, PAEDC has reviewed Motion Industries, Inc.'s application and accompanying financial statements; and

WHEREAS, at a regular Board meeting on July 1, 2019, the PAEDC Board of Directors approved entering into the Agreement with Motion Industries, Inc. offering an incentive of \$304,794.91 for its relocation and investment in its distribution center; and

WHEREAS, Motion Industries, Inc. will utilize the incentive funds to go towards lease payments resulting in reduced lease payments for the building located in the Port Arthur Business Park; and

WHEREAS, Motion Industries, Inc. has agreed to continually conduct business for a period of 5 years from the date of this Agreement and shall generate \$304,794.91 in total sales revenue and provide PAEDC evidence of same as detailed in the Agreement attached hereto as **Exhibit "A"**; and

WHEREAS, Motion Industries, Inc. has reviewed and approved the Agreement.

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

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

Section 2. That PAEDC is herein authorized to enter into the Agreement with Motion Industries, Inc., and the President and Secretary of PAEDC are authorized to sign the Agreement in substantially the same form attached hereto as **Exhibit "A"**.

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

READ, ADOPTED AND APPROVED on this 16th day of July A.D., 2019,
at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Bartie;

Councilmembers Scott, Jones and Frank.

NOES:

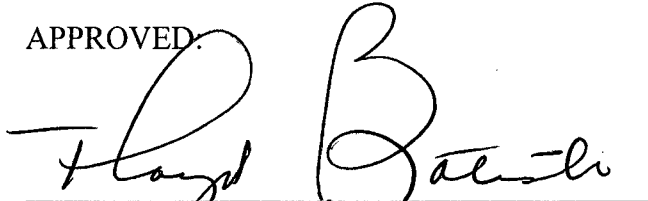
None.


Thurman Bartie, Mayor

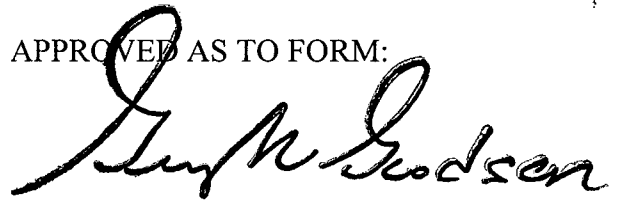
ATTEST:


Sherri Bellard, City Secretary

APPROVED:


Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:


Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:


Valecia R. Tizeng, City Attorney

APPROVED AS TO AVAILABILITY OF FUNDS:

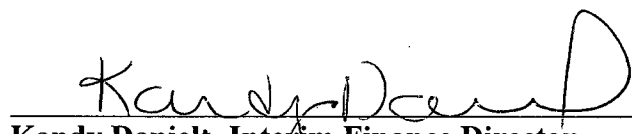

Kandy Daniels, Interim Finance Director

Exhibit "A"

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION
&
MOTION INDUSTRIES, INC.**

Executive Summary

Motion Industries, Inc. (the "Incentive Recipient") headquartered in Birmingham, Alabama, and authorized to do business in Texas is a distributor of industrial parts and has 300,000 customers nationwide. Incentive Recipient currently has two locations in the Southeast Texas region. One location is located in Groves, Texas and the other location is located in Port Arthur, Texas. Incentive Recipient plans to relocate its entire Southeast Texas distribution center to the Port Arthur Business Park. Incentive Recipient plans to enter into a ten (10) year lease agreement with [Landlord Entity] for the lease of a 59,600 square foot building located at 900 South Business Park Drive in Port Arthur, Texas. The relocation of the Southeast Texas distribution center will increase the amount of sales tax generated and collected in the City of Port Arthur.

PAEDC has agreed as consideration for the promise and performance of Incentive Recipient to conditionally grant Incentive Recipient \$304,794.91 in accordance with an Economic Incentive Contract & Loan Agreement (the "Agreement") to go towards the purchase price resulting in reduced lease payments for the building located in the Port Arthur Business Park. PAEDC and Incentive Recipient have agreed that incentive credits shall be in an amount not to exceed \$304,794.91.

Incentive Recipient shall comply with the Performance Milestone Schedule in the Agreement to meet its promised performance under the Agreement, and to provide all reports and other affirmative commitments as outlined in the Agreement.

Incentive Recipient shall secure the conditional loan by having [Landlord Entity] sign the Owner's Consent to Pledge wherein [Landlord Entity] will provide a Letter of Credit from Oakworth Bank the full incentive amount.

Incentive Recipient has further agreed to execute the First Source Referral Agreement and to utilize the services of the PAEDC on a non-exclusive basis to find qualified applicants for employment at the Project.

**ECONOMIC INCENTIVE & LOAN AGREEMENT BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
MOTION INDUSTRIES, INC.
("INCENTIVE RECIPIENT")**

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(B) PERFORMANCE BY INCENTIVE RECIPIENT	_____
(C) CREDITS – SUBSTITUTE PERFORMANCE.....	_____
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CONDITIONS PRECEDENT.....	_____
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Exhibit "A"	Conditional Commercial Promissory Note
Exhibit "B"	Letter of Credit
Exhibit "C"	Owner's Inducement Agreement
Exhibit "D"	Certification Regarding Lobbying
Exhibit "E"	Compliance Statement
Exhibit "F"	First Source Referral Agreement
Exhibit "G"	Incentive Recipient Application to PAEDC
Exhibit "H"	Lease between Graham & Company & Motion Industries, LLC

**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
MOTION INDUSTRIES, INC.
("INCENTIVE RECIPIENT")**

INTRODUCTION

Motion Industries, Inc. (the "Incentive Recipient") headquartered in Birmingham, Alabama, and authorized to do business in Texas is a distributor of industrial parts and has 300,000 customers nationwide. Incentive Recipient currently has two locations in the Southeast Texas region. One location is located in Groves, Texas and the other location is located in Port Arthur, Texas. Incentive Recipient plans to relocate its entire Southeast Texas distribution center to the Port Arthur Business Park. Incentive Recipient plans to enter into a ten (10) year lease agreement with [Landlord Entity] for the lease of a 59,600 square foot building located at 900 South Business Park Drive in Port Arthur, Texas. The relocation of the Southeast Texas distribution center will increase the amount of sales tax generated and collected in the City of Port Arthur.

AGREEMENT TERM

EFFECTIVE DATE

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an effective date of _____, 2019 (the "Effective Date"), by and between the PAEDC and Incentive Recipient.

TERMINATION DATE

2. This Agreement expires on the earlier of March 30, 2025 or thirty (30) days after Incentive Recipient becomes entitled to credits equal to \$304,794.91 or the date upon which Incentive Recipient breaches the Agreement, subject to earlier termination or extension, voluntary or involuntary, as provided herein (the "Termination Date"). The period from the Effective Date of this Agreement through and including the Termination Date of this Agreement as provided in the previous sentence hereof, is sometimes referred to in this Agreement as the "Term" of this Agreement.

PARTIES

3. City of Port Arthur Section 4A Economic Development Corporation ("PAEDC"), located at 501 Procter Street, Port Arthur, Texas, 77640, is a corporation. It is duly authorized to do business in the State of Texas under Chapter 504, Local Government Code (the "Development Corporation Act of 1979" as amended) and duly authorized by Resolution of the City Council of the City of Port Arthur (the "City") to enter into this Agreement. As so authorized and as provided by the PAEDC bylaws, the President and Secretary of the PAEDC Board have the authority to execute this Agreement.

4. Motion Industries, Inc. ("Incentive Recipient") is an Alabama corporation registered to do business in Texas. Incentive Recipient's corporate address is 1605 Alton Road, Birmingham, Alabama 35210-3770 and registered agent is CT Corporation System and address for the registered agent is 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136.

PROMISED PERFORMANCE

5. The parties agree to perform as follows.

(a) PERFORMANCE BY PAEDC

- i. PAEDC shall conditionally grant Incentive Recipient an incentive of \$304,794.91, subject to the conditions and limitations herein, which Incentive Recipient is not required to repay unless Incentive Recipient breaches this Agreement.
- ii. The conditional grant to Incentive Recipient shall be for the lease payments to Graham & Company for the lease of a commercial building in the PAEDC Business Park as more fully described in the Lease attached hereto as **Exhibit "H"** to this Agreement (the "Property").

(b) PERFORMANCE BY INCENTIVE RECIPIENT

- (1) Incentive Recipient, subject to the terms and conditions of the Lease Agreement, shall provide PAEDC a status report regarding its move to the property no later than the deadline as shown in the Performance Milestone Schedule in this Agreement.
- (2) Incentive Recipient shall begin business operations out of its Port Arthur Facility by March 30, 2020.
- (3) Incentive Recipient shall continually conduct business operations during normal business hours for a period of five (5) years from the date of this Agreement unless earlier terminated in accordance with Section 2 of this Agreement.
- (4) Incentive Recipient shall generate \$304,794.91 in total sales tax revenue and provide PAEDC evidence of same; provided that such amount may be reduced by credits applied in accordance with Section 5(c), below.
- (5) Incentive Recipient shall provide PAEDC an Owner's Inducement Agreement from [Landlord Entity] as set forth in **Exhibit "C"** and deliver to PAEDC a letter of credit securing such Owner Inducement Agreement .
- (6) Incentive Recipient will be required to meet the conditions and agreements set forth in the First Source Referral Agreement attached hereto as **Exhibit "F"** and made a part hereof for all purposes.
- (7) On demand by PAEDC and in response to Incentive Recipient's failure to achieve a performance milestone, Incentive Recipient shall provide PAEDC with reasonable assurances, proposed by Incentive Recipient and reasonably acceptable to PAEDC, that it has both the intention and the capabilities to perform fully its contractual obligations.

(c) CREDITS – SUBSTITUTE PERFORMANCE

Incentive Recipient may earn credits according to the following terms, to satisfy its performance of this Agreement or either reduce the duration of this Agreement or reduce the amount of liquidated damages in the event Incentive Recipient breaches the Agreement.

- (1) Total credits cannot exceed \$304,794.91.
- (2) Incentive Recipient will forfeit any credits it earned during a period for which a report is scheduled but Incentive Recipient fails to issue the report despite notice of need for such report from PAEDC.
- (3) Incentive Recipient will receive a \$1.00 credit for each \$1.00 of payroll paid to residents of Port Arthur during the term of the incentive agreement. PAYROLL TO NON-RESIDENTS CANNOT BE CREDITED.
- (4) Incentive Recipient will receive a \$1.00 credit for each \$1.00 of sales tax generated during the term of this Agreement.
- (5) If Incentive Recipient has not logged credits equal to the \$304,794.91 as committed, but has operated its facilities and paid all property taxes and other city taxes, fees and assessments associated with the Project through and including March 30, 2025. Incentive Recipient may (i) cancel its remaining obligations of this Agreement or (ii) request an extension of the term of this Agreement.

(d) FIRST SOURCE REFERRAL AGREEMENT

PAEDC has adopted policies and procedures to assist Incentive Recipient in locating a qualified workforce within the City. The First Source Referral Agreement is incorporated into this Agreement in **Exhibit "F"** ("First Source"). Incentive Recipient has agreed to the policies and procedures within First Source as a resource and referral for all appropriate new job openings of Incentive Recipient.

PERFORMANCE MILESTONE SCHEDULE

6. Upon failure to achieve a performance milestone and after Incentive Recipient has been given an opportunity of no less than thirty (30) days to cure a default, PAEDC may demand reasonable assurances¹ from Incentive Recipient that it can and will fully perform its contractual obligations. Failure to provide such reasonable assurances following demand of PAEDC is a breach of contract.

7. Incentive Recipient's performance milestones are contained in the following table. Upon receipt of any status report listed below, PAEDC shall, as requested by Incentive Recipient, issue documentation to the Incentive Recipient setting forth the total uncredited/unpaid amount remaining.

¹ Examples of reasonable assurances are copies of pending contracts and customer commitment letters and/or payment of an agreed amount showing commitment to contractual obligations.

PERFORMANCE MILESTONE SCHEDULE

	<u>Deadline</u>	<u>Milestone</u>
(a)	JULY 31, 2019	MOTION INDUSTRIES will issue a <i>status report</i> on their move into the lease space in the Spur 93 Business Park to PAEDC
(b)	MARCH 30, 2020	MOTION INDUSTRIES will provide PAEDC with their Sales Tax Report for 3 rd and 4 th quarter of year ending 2019
(c)	MARCH 30, 2020	MOTION INDUSTRIES will provide PAEDC with W-2's for all Port Arthur Residents hired during the 3 rd and 4 th quarters of 2019.
(d)	MARCH 30, 2021	MOTION INDUSTRIES will provide PAEDC with their Sales Tax Report for 1 st , 2 nd , 3 rd and 4 th quarters of year ending 2020
(e)	MARCH 30, 2021	MOTION INDUSTRIES will provide PAEDC with W-2's for all Port Arthur Residents hired during year 2020
(f)	MARCH 30, 2022	MOTION INDUSTRIES will provide PAEDC with their Sales Tax Report for 1 st , 2 nd , 3 rd and 4 th quarters of year ending 2021
(g)	MARCH 30, 2022	MOTION INDUSTRIES will provide PAEDC with W-2's for all Port Arthur Residents hired during year 2021
(h)	MARCH 30, 2023	MOTION INDUSTRIES will provide PAEDC with their Sales Tax Report for 1 st , 2 nd , 3 rd and 4 th quarters of year ending 2022
(i)	MARCH 30, 2023	MOTION INDUSTRIES will provide PAEDC with W-2's for all Port Arthur Residents hired during year 2022
(j)	MARCH 30, 2024	MOTION INDUSTRIES will provide PAEDC with their Sales Tax Report for 1 st , 2 nd , 3 rd and 4 th quarters of year ending 2023
(k)	MARCH 30, 2024	MOTION INDUSTRIES will provide PAEDC with W-2's for all Port Arthur Residents hired during year 2023
(l)	MARCH 30, 2025	MOTION INDUSTRIES will provide PAEDC with their Sales Tax Report for 1 st , 2 nd , 3 rd and 4 th quarters of year ending 2024
(m)	MARCH 30, 2025	MOTION INDUSTRIES will provide PAEDC with W-2's for all Port Arthur Residents hired during year 2024
(m)	MARCH 30, 2025	Once all contractual obligations are met, PAEDC closes file.

PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY

8. Incentive Recipient shall not use the Property for any purpose(s) other than that specifically disclosed herein and as further disclosed within its Application made by or on behalf of Incentive Recipient, which is incorporated herein for all purposes.

9. Incentive Recipient may not assign any of its rights under this Agreement without the prior written consent of the PAEDC and the City, except for Permitted Affiliates as defined herein, nor may Incentive Recipient make any collateral security agreements as to the personal property located on the Property without the prior written consent of PAEDC which consent shall not unreasonably be withheld, delayed or conditioned.

LIQUIDATED DAMAGES FOR BREACH OF AGREEMENT

10. In the event Incentive Recipient fails to perform its obligations under this Agreement, following notice thereof from PAEDC and following a thirty (30) day opportunity to cure the default, Recipient shall pay to PAEDC within thirty (30) days after written demand therefor an amount equal to the original PAEDC grant, minus any credits earned. Further, the PAEDC shall be entitled to recover its reasonable and customary attorney's fees and court costs incurred in collection of said obligation and such remedies as are provided at law or in equity.

11. It is expressly understood and agreed by the parties that the exercise of any right or remedy shall not preclude the exercise of any other right or remedy under this Agreement or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

RECORDS / INSPECTION / PAEDC AUDIT

12. Incentive Recipient acknowledges that while it does not have an affirmative obligation to create additional payroll for the hiring of Port Arthur residents, as employment at the Project in the Business Park expands, Incentive Recipient shall utilize the First Source Referral Agreement to locate qualified employment applicants for its business requirements.

13. Incentive Recipient shall maintain employment records as necessary to allow the PAEDC to audit and verify proper utilization of First Source and to verify any and all other covenants, representations and warranties contained herein and in Incentive Recipient's Application.

14. Upon ten-day (10-day) advance notice, Incentive Recipient shall give the PAEDC, or any of its duly authorized representatives, access to and right to examine all books, accounts, records, reports, files and other papers, things or property directly related to this Agreement and belonging to or in use by Incentive Recipient. Such rights to access shall continue as long as the records related to this Agreement are retained by Incentive Recipient. Incentive Recipient agrees to maintain such records in an accessible location. All information obtained by the PAEDC, or its duly authorized representatives, shall be regarded as the confidential business information of Incentive Recipient and the PAEDC shall take reasonable measures to protect such information from disclosure to third parties; however, PAEDC is subject to the requirements of the Texas Open Meetings Act and Open Records Act (Tex. Gov. Code, 551 & 552). Incentive Recipient agrees that disclosures to the public required by the Texas Open Meetings Act, Texas Open Records Act, or any other legal requirement

will not expose PAEDC (or any party acting by, through or under PAEDC) to any claim, liability or action by Incentive Recipient (or any party working by, through or under).

15. All records pertinent to this Agreement shall be retained by Incentive Recipient at least three years following the date of termination of this Agreement, whether said termination is a result of default or whether said termination is a result of final submission of a close out report by Incentive Recipient detailing its compliance with its obligations provided herein. Further, in the event any litigation, claim or audit arising out of or related to this Agreement is instituted before the expiration of the three (3) year period and extends beyond the three year period, the records will be maintained until all litigation, claims or audit findings involving this Agreement and the records made the basis of same have been resolved.

16. Incentive Recipient shall provide PAEDC with all reports necessary for PAEDC compliance with the Chapters 501, 504, Texas Local Government Code, as amended.

17. It is expressly understood and agreed by the parties hereto that if Incentive Recipient fails to submit to PAEDC in a timely and satisfactory manner any report required by this Agreement, PAEDC may, at its sole discretion, demand assurances that Incentive Recipient can and will fully perform its contractual obligations. If Incentive Recipient fails to provide adequate assurances then Incentive Recipient is in breach, and PAEDC shall have the rights and remedies set forth in Section 32, below.

18. The PAEDC reserves the right, from time to time, to carry out field inspections/audits to ensure compliance with the requirements of this Agreement. After completion of any such audit, the PAEDC may provide Incentive Recipient with a written report of the audit findings. If the audit report details deficiencies in its performance under the terms and conditions of this Agreement, the PAEDC may establish requirements for the timely correction of any such deficiencies by Incentive Recipient.

HOLD HARMLESS

19. INCENTIVE RECIPIENT AGREES TO HOLD HARMLESS THE PAEDC AND THE CITY OF PORT ARTHUR FROM ANY AND ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION OF ANY KIND OR CHARACTER WHICH MAY BE ASSERTED BY ANY THIRD PARTY OCCURRING, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE PROJECT MADE THE BASIS OF THIS AGREEMENT, AND THE UTILIZATION OF GRANT FUNDS PROVIDED BY THIS AGREEMENT, PROVIDED THAT SUCH CLAIM, DEMAND OR CAUSE OF ACTION DOES NOT ARISE FROM ANY FRAUD OR MISCONDUCT ON THE PART OF THE PAEDC OR THE CITY OF PORT ARTHUR, OR ANY AGENT, EMPLOYEE OR REPRESENTATIVE OF EITHER.

SUBCONTRACTS

20. Incentive Recipient may not subcontract for performance credits described in this Agreement without obtaining PAEDC's written approval, which may be withheld for any reason. Incentive Recipient shall only subcontract for performance credits described in this Agreement after Incentive Recipient has submitted a Subcontractor Eligibility Request, as specified by PAEDC, for each proposed subcontract, and Incentive Recipient has obtained PAEDC's prior written approval.

Incentive Recipient, in subcontracting for any performances described in this Agreement, expressly understands that in entering into such subcontracts, PAEDC is in no way liable to Incentive Recipient's subcontractor(s).

21. In no event shall PAEDC's prior written approval of a subcontractor's eligibility, be construed as relieving Incentive Recipient of the responsibility for ensuring that the performances rendered under all subcontracts are rendered so as to comply with all terms of this Agreement, as if such performances rendered were rendered by Incentive Recipient. PAEDC's approval does not constitute adoption, ratification, or acceptance of Incentive Recipient's or subcontractor's performance hereunder. PAEDC maintains the right to insist upon Incentive Recipient's full compliance with the terms of this Agreement, and by the act of subcontractor approval, PAEDC does not waive any right of action which may exist or which may subsequently accrue to PAEDC under this Agreement.

22. Incentive Recipient, as well as all of its approved subcontractors, shall comply with all applicable federal, state, and local laws, regulations, and ordinances for making procurement under this Agreement.

CONFLICT OF INTEREST / DISCLOSURE OBLIGATION

23. Conflict of Interest: No employee, agent, officer or elected or appointed official of the City of Port Arthur or the PAEDC who has participated in a decision making process related to this Agreement (without recusing him/herself and executing a conflict affidavit) may obtain a personal or financial interest or benefit from an PAEDC assisted activity, or have an interest in any contract, subcontract, or agreement (or proceeds thereof) with respect to an PAEDC assisted activity, during their tenure or for one (1) year thereafter. Insofar as relates to the conduct hereunder of Incentive Recipient, its agents, employees or representatives, Incentive Recipient shall ensure compliance with applicable provisions under Chapters 501, 504, Texas Local Government Code and Chapter 171, Texas Local Government Code.

24. Disclosure: In conjunction with execution of this Agreement, Incentive Recipient has fully disclosed to PAEDC all known and potential owners of interests in Incentive Recipient (whether shareholder, partner, limited partner, manager, member or otherwise). In the event of any change in ownership or control of Incentive Recipient of five percent (5%) or greater, except involving Permitted Affiliates, Incentive Recipient shall notify PAEDC in writing. Further, Incentive Recipient shall be obligated to notify in writing the PAEDC in the event any time prior to, during or one (1) year after the term of this Agreement, any City or PAEDC employee or representative or any third party with a conflict of interest obtains or proposes to obtain a financial benefit, direct or indirect, from Incentive Recipient. Failure to provide said notice immediately or no later than five (5) business days after receipt of information shall constitute a default herein. Notwithstanding the foregoing, this Section 24 shall not apply so long as Incentive Recipient is a publicly traded company.

NONDISCRIMINATION / EMPLOYMENT / REPORTING

25. Incentive Recipient shall ensure that no person shall on the grounds of race, color, religion, sex, handicap, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds

provided under this Agreement. Additionally, funds shall be used in accordance with the following requirements:

- (a) Opportunities for training and employment arising in connection with the planning and carrying out of any project assisted with PAEDC funds provided under this Agreement be given in Incentive Recipient's discretion, reasonably exercised, to Port Arthur residents; and
- (b) Agreements for work to be performed in connection with the Project shall be awarded in Incentive Recipient's discretion, reasonably exercised, to Port Arthur residents and businesses, including, but not limited to, individuals or firms doing business in the field of planning, consulting, design, architecture, building construction, rehabilitation, maintenance, or repair, which are located in or owned in substantial part by persons residing in the City.
- (c) If Incentive Recipient advertises for employment then it shall among any other advertising that it chooses to undertake covenants that it will advertise as required in **Exhibit "F"**. Incentive Recipient acknowledges that PAEDC does not intend to restrain any advertising in additional publications or media nor direct any others than that stated.

LEGAL AUTHORITY

26. Incentive Recipient assures and guarantees it possesses legal and/or corporate authority (i) to enter into this Agreement, receive the conditional grant authorized by this Agreement, and (ii) to perform the obligations hereunder. Incentive Recipient has provided, or shall provide, as requested by the PAEDC, such resolutions or other required authorizations necessary to evidence this authority.

27. The person or persons signing and executing this Agreement on behalf of Incentive Recipient, or representing themselves as signing and executing this Agreement on behalf of Incentive Recipient, do hereby warrant and guarantee that he, she, or they have been duly authorized by Incentive Recipient to execute this Agreement on behalf of Incentive Recipient and to validly and legally bind Incentive Recipient to all terms, performances, and provisions herein set forth.

NOTICE OF LEGAL OR REGULATORY CLAIMS

28. Incentive Recipient shall give PAEDC immediate notice in writing of 1) any material legal or regulatory action, including any material proceeding before an administrative agency filed against Incentive Recipient involving the Property; and 2) any material claim against Incentive Recipient, which may impede continued operations at the Property. Except as otherwise directed by PAEDC, Incentive Recipient shall furnish immediately to PAEDC copies of all pertinent documentation of any kind received by Incentive Recipient with respect to such action or claim.

CHANGES AND AMENDMENTS

29. Except as specifically provided otherwise in this Agreement, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by all parties to this Agreement. Such amendments must be approved by the PAEDC Board of Directors and, by the City Council.

30. It is understood and agreed by the parties hereto that performances under this Agreement must be rendered in accordance with the regulations promulgated under the Development Corporation Act, the written assurances and certifications made to PAEDC by Incentive Recipient, and the written assurances and certifications made to the City with regard to the operation of the PAEDC's Projects.

31. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal, state law or local law are automatically incorporated into this Agreement without written amendment hereto, and shall become effective on the date designated by such law or regulation.

DEFAULT / TERMINATION

32. In the event of default of any of the obligations of Incentive Recipient detailed herein or in the event of breach of any of the representations of or warranties of Incentive Recipient either detailed herein or in its application to the PAEDC, and following any notice and opportunity to cure provided for in this Agreement, the PAEDC may, at its sole option, terminate this Agreement, in whole or in part. In the event of such termination, the PAEDC may, at its sole option, utilize one or more of the following actions to resolve or otherwise remedy said default:

- (a) (iii) Recover liquidated damages from Recipient in accordance with Section 10, above.
- (b) Disallow all or a part of the incentives which are not in compliance with the terms and conditions of this Agreement or in compliance with the representations and warranties contained within this Agreement and Incentive Recipient's application to the PAEDC.
- (c) Withhold and/or disallow further PAEDC incentives to Incentive Recipient.
- (d) Exercise any and all other remedies that may be legally available to the PAEDC, under the laws of the State of Texas and as authorized by the terms and conditions of this Agreement.

33. In addition to the foregoing, the parties agree that this Agreement may be terminated at any time when both parties agree, in writing, to the terms and conditions of any such voluntary termination.

COMPLIANCE AUDITS

34. If directed by PAEDC Board, and in no case more than once per year, Incentive Recipient shall arrange for the performance of a compliance audit, by a certified public accountant, of performances rendered under this Agreement, subject to the following conditions and limitations:

- (a) Incentive Recipient shall have a compliance audit which may be limited to use of funds or discount received from the PAEDC, made for any of its fiscal years included within the Term of this Agreement in which Incentive Recipient receives more than \$50,000 in PAEDC financial assistance provided by PAEDC in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, or direct

appropriations. Said audit must be received and accepted by the Chief Executive Officer of PAEDC and/or the PAEDC Board.

- (b) Unless otherwise specifically authorized by PAEDC in writing, Incentive Recipient shall submit the report of such audit to PAEDC within thirty (30) days after completion of the audit, but no later than one hundred twenty (120) days after the end of each fiscal period included within the Term of this Agreement.

35. Incentive Recipient understands and agrees that it shall be liable to reimburse immediately PAEDC for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Agreement.

36. Incentive Recipient shall take all necessary actions to facilitate the performance of any and all such audits, whether annual, mandatory or otherwise requested under this Agreement.

37. Subject to financial privacy requirements of Incentive Recipient and properly designated requests for non-disclosure due to proprietary reasons, all approved audit reports may be made available for public inspection.

SUPPLEMENTAL COVENANT

38. Incentive Recipient and any branch, division or department of Incentive Recipient certifies that they have not and will not knowingly employ an “undocumented worker” which means “an individual who, at the time of employment, is not lawfully admitted for permanent residence to the United States or authorized under law to be employed in that manner in the United States.”

39. Incentive Recipient acknowledges that it has reviewed Chapter 2264, Texas Government Code and hereby affirmatively agrees by execution of this Agreement to repay the amount of any incentive not later than the 120th day after the date PAEDC notifies Incentive Recipient of a violation.

40. Incentive Recipient acknowledges PAEDC may bring a civil action or cover any amounts owed under this Chapter and further acknowledges that PAEDC may recover court costs and reasonable attorneys’ fees incurred in an action brought under §2264.101(a). Incentive Recipient is not liable for a violation of this Chapter by a subsidiary, affiliate or franchisee of the Incentive Recipient or by a person with whom the Incentive Recipient contracts.

ENVIRONMENTAL REQUIREMENTS

41. Incentive Recipient acknowledges that there are certain covenants and restrictions as to the operation of facilities within the Business Park as stated in the filed and recorded Covenants and Restrictions. As the Project will be located on the Property within the Business Park, Incentive Recipient not only agrees to meet the covenants and restrictions of the Business Park, but also to operate and maintain the Project in conformance with all local, state and federal regulations and to maintain the Property in a condition that will not be a nuisance either to the PAEDC or other business operations within the Business Park. During the Term of this Agreement, Incentive Recipient also agrees to allow PAEDC or its duly authorized officers, agents, employees, contractors or subcontractors access to the Property and the Project for environmental review and compliance monitoring upon reasonable advance written notice of at least 72 hours with Incentive Recipient

allowed to monitor such access and to obtain split samples all subject to PAEDC agreeing to restore the Property to the condition prior to its investigation and to indemnify Incentive Recipient for any damage or harm to the extent caused by or arising from PAEDC or its duly authorized officers, agents, employees, contractors or subcontractors' subject actions upon the Property. Incentive Recipient further agrees that Incentive Recipient shall make all reasonable efforts to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews, audits, notices of violation or other administrative proceedings covered by appropriate permits or certifications as to the Property and/or the Project.

ORAL AND WRITTEN AGREEMENTS / PRIOR AGREEMENTS

42. All oral and written contracts between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

43. The documents required below are hereby made a part of this Agreement, and constitute promised performances by Incentive Recipient in accordance with this Agreement:

Required

_____	Exhibit "A"	Intentionally Omitted
_____	Exhibit "B"	Letter of Credit
_____	Exhibit "C"	Owner's Inducement Agreement
_____	Exhibit "D"	Certification Regarding Lobbying
_____	Exhibit "E"	Compliance Statement
_____	Exhibit "F"	First Source Referral Agreement
_____	Exhibit "G"	Incentive Recipient Application to PAEDC
_____	Exhibit "H"	Lease between Graham & Company & Motion Industries, Inc.

VENUE

44. For purposes of litigation that may accrue under this Agreement, venue shall lie in Jefferson County, Texas, where substantially all the performance will occur.

ADDRESS OF NOTICE AND COMMUNICATIONS

City of Port Arthur Section 4A Economic Development Corporation
501 Procter Street
Port Arthur, Texas 77640
ATTN: Floyd Batiste, Chief Executive Officer

Motion Industries, Inc.

ATTN: _____
Telephone: _____
E-mail: _____

All notice requirements set forth herein shall be made in writing by national overnight delivery service or certified mail.

CAPTIONS

45. This Agreement has been supplied with captions to serve only as a guide to the contents. The caption does not control the meaning of any paragraph or in any way determine its interpretation or application.

COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

46. Incentive Recipient shall comply with all Federal, State and local laws, statutes, ordinances, resolutions, rules, regulations, orders and decrees of any court or administrative body or tribunal, including those related to the activities and performances of Incentive Recipient under this Agreement. Upon request by PAEDC and by the City, Incentive Recipient shall furnish satisfactory proof of its compliance herewith.

CONDITIONS PRECEDENT

47. This agreement has no legal consequences, and neither party shall rely on the agreement, unless and until

- a. Both the PAEDC Board and the Port Arthur City Council approve the Agreement in its final executed form.
- b. The Lease Agreement is executed between Motion Industries, Inc. and [Landlord Entity]
- c. _____.
- d. _____.

MISCELLANEOUS

48. Permitted Affiliates. For purposes of this Section, "Permitted Affiliates" shall mean (i) a subsidiary of Buyer, (ii) a corporation or other entity into or with which Buyer has merged or consolidated, or to which substantially all of Buyer's stock or assets are transferred, (iii) any corporation or other entity which controls, is controlled by, or is under common control with Buyer, (iv) a limited liability company in which Buyer is a member, or (v) any corporation or other entity with which Buyer is otherwise affiliated.

49. Force Majeure. No Party shall be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or communication service, and no other Party will have a right to terminate this Agreement in such circumstances.

Any Party asserting Force Majeure as an excuse shall have the burden of proving that reasonable steps were taken (under the circumstances) to minimize delay or damages caused by foreseeable events, that all non-excused obligations were substantially fulfilled, and that the other Party was timely notified of the likelihood or actual occurrence which would justify such an assertion, so that other prudent precautions could be contemplated.

50. PAEDC Approval Pursuant to Covenants and Restrictions. PAEDC shall not unreasonably withhold, delay or condition its approval to any consent or approval it retains the right to grant pursuant to the Covenants and Restrictions of record at the Closing of the Lease Agreement.

ATTORNEY APPROVALS

APPROVED AS TO FORM:

Guy Goodson, General Counsel for PAEDC

VERIFIED BY
CITY COUNCIL RESOLUTION:

Resolution Number: _____

Valecia R. Tizeno, City Attorney

AGREEMENT EXECUTION

CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION

SIGNED AND AGREED TO on the _____ day of _____, 2019.

By: _____
President

By: _____
Secretary

EDC Representative

EDC Representative

MOTION INDUSTRIES, INC.

SIGNED AND AGREED TO on the _____ day of _____, 2019.

By: _____

Title

Acknowledgment

EXHIBIT "A"
INTENTIONALLY OMITTED

EXHIBIT “B”

FORM OF LETTER OF CREDIT

[Attached]

EXHIBIT "C"

OWNER INDUCEMENT AGREEMENT

THIS INDUCEMENT AGREEMENT is made as of June __, 2019, by _____, a _____ ("Landlord"), having an address _____, to CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION ("PAEDC"), having an address at 501 Procter Street, Port Arthur, Texas.

WHEREAS, PAEDC and Motion Industries, Inc. ("**Incentive Recipient**") (or their respective predecessors in interest) entered into that certain Economic Incentive Contract dated _____, whereby Incentive Recipient agreed to perform certain actions in exchange for payment of \$304,794.91 (the "**Incentive**");

Whereas, Incentive Recipient is a tenant of Landlord, and Landlord's executing this Inducement Agreement is a material inducement to PAEDC to enter into the Economic Incentive Contract;

WHEREAS, each capitalized term in this Inducement Agreement shall have the same meaning ascribed to such term in the Economic Incentive Contract, unless otherwise defined herein.

NOW THEREFORE, in consideration of the premises, and of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Landlord agrees with PAEDC as follows:

1. Landlord covenants and agrees to deliver to PAEDC an irrevocable letter of Credit (the "L/C") in the form of, and upon all of the terms and conditions contained in, Exhibit B attached to the Economic Incentive Contract. The L/C shall provide for one (1) or more draws by PAEDC up to the aggregate amount of US \$304,794.91 (the "**Original Aggregate Draw**"). PAEDC may elect from time to time to draw upon all or any part of the remaining proceeds of the L/C if Incentive Recipient fails to perform its payment obligations under Section 10 of the Economic Incentive Contract when due; provided that PAEDC shall not (a) draw upon the L/C in excess of the amount then owed by Incentive Recipient under Section 10 of the Economic Incentive Contract or (b) draw upon the L/C if Landlord, in its sole discretion and without obligation to do so, pays the deficiency within thirty (30) days after written notice from PAEDC of the amount owed. At any time during the term of the Economic Incentive Contract, Landlord may elect to replace the existing L/C with a new L/C providing for a maximum aggregate draw equal to the Original Aggregate Draw reduced by all credits to which Incentive Recipient is then entitled under the Economic Incentive Contract.
2. The parties agree that this Inducement Agreement shall terminate upon the later to occur of (a) the satisfaction of all Incentive Recipient's payment obligations under the Economic Incentive Contract or (b) the expiration of the Economic Incentive Contract.

Upon such termination, PAEDC shall promptly surrender the L/C to Landlord and Landlord may cancel the L/C.

3. Capitalized terms not otherwise defined in this Guaranty shall have the same meaning as set forth in the Economic Incentive Contract.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Inducement Agreement to be executed effective as of the date first above written.

LANDLORD:

, a _____

By: _____

Name: _____

Title: _____

EXHIBIT "D"

CERTIFICATION REGARDING LOBBYING

For Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his knowledge and belief, that:

1. No funds have been paid or will be paid, by or on behalf of the undersigned, to any person for wrongfully influencing or wrongfully attempting to influence an officer or employee of any agency, a member of the City or of the PAEDC in connection with the awarding of any contract, the making of any grant, the making of any loan, the entering into of any cooperative agreement, or modification of any contract, grant, loan, or cooperative agreement.
2. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements), and that all Subs shall certify and disclose accordingly.

This certification is material representation of fact which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction.

By: _____
Signature

Its: _____
Title

EXHIBIT “E”

COMPLIANCE STATEMENT

Motion Industries, Inc. hereby certifies that it has fully complied with Local Government Code §176.006, effective June 18, 2005, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

**Motion Industries, Inc.,
An Alabama corporation**

By: _____
Signature

Its: _____
Title

EXHIBIT "F"
FIRST SOURCE REFERRAL AGREEMENT

Resolution Number: _____

Project Name: MOTION INDUSTRIES, INC.

Project Address: _____

Project Contact Person: _____

Project Contact Person Phone Number: _____

This First Source Referral Agreement (the "Agreement"), for recruitment, referral, and placement of **City of Port Arthur Section 4A Economic Development Corporation** (the "PAEDC"), hereinafter, and **Motion Industries, Inc.** (the "EMPLOYER"). Under this Agreement, the EMPLOYER will use PAEDC as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by their project and will hire the number of Port Arthur residents specified for new jobs created by the Project in that certain Economic Incentive Contract & Loan Agreement (the "Incentive Agreement") between PAEDC and the EMPLOYER.

I. GENERAL TERMS

A. The EMPLOYER will use PAEDC as its first source for the recruitment, referral and placement of employees.

B. PAEDC participation in this Agreement will be carried out by its Chief Executive Officer which is responsible for referral and placement of employees, designated by PAEDC.

C. PAEDC will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement.

D. This Agreement shall take effect when signed by the parties below and shall be

fully effective for the duration of the incentive contract and any extensions or modifications to the contract.

E. PAEDC and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created include all EMPLOYER'S job openings and vacancies in the Port Arthur Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project.

II. RECRUITMENT

A. The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, and hiring dates. The EMPLOYER will notify PAEDC of its specific need for new employees as soon as that need is identified.

B. Notification of specific needs, as set forth in Section II.A. must be given to PAEDC at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed.

C. Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to PAEDC for placement and referral.

D. The EMPLOYER will submit to PAEDC, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project.

III. REFERRAL

PAEDC will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

IV. PLACEMENT

A. PAEDC will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants PAEDC will refer. PAEDC will make every reasonable effort to refer at least two qualified applicants for each job opening.

B. The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by PAEDC.

C. In the event PAEDC is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred.

Notwithstanding, the EMPLOYER will still be required to hire Port Arthur residents in the percentage specified for new jobs created by the Project in that certain Economic Incentive Contract & Loan Agreement (the "Incentive Agreement") between PAEDC and the EMPLOYER.

D. After the EMPLOYER has selected its employees, PAEDC will not be responsible for the employees' actions and the EMPLOYER hereby releases PAEDC, from any liability for employees' actions.

V. TRAINING

PAEDC and the EMPLOYER may agree to develop skills training and on-the-job training programs; the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and PAEDC and set forth in a separate Training Agreement.

VI. CONTROLLING REGULATIONS AND LAWS

A. To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail.

B. PAEDC will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party.

C. The EMPLOYER will provide PAEDC with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to PAEDC.

VII. EXEMPTIONS

A. Employment openings the contractor will fill with individuals already employed by the company.

B. Job openings to be filled by laid-off workers according to formally established recall procedures and rosters.

C. Suppliers located outside of the Port Arthur Area and who will perform no work in the Port Arthur Area.

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

A. If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall:

1. Notify the party taking possession of the existence of the EMPLOYER'S Agreement.
2. Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project.
3. EMPLOYER shall, additionally, advise PAEDC within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.

B. PAEDC shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in PAEDC' monitoring effort and will submit a Contract Compliance Form to PAEDC quarterly.

C. To assist PAEDC in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.

D. If additional information is needed during the review, the EMPLOYER will provide the requested information to PAEDC.

E. With the EMPLOYER submission of the final request for closure of Agreement from the Board, the EMPLOYER shall:

1. Document in a report to the Compliance Officer compliance with the hiring requirements specified in the Incentive Agreement to be Port Arthur residents; or
2. Submit a request to the Compliance Officer for a waiver of compliance with the hiring requirement at the project to be Port Arthur residents and include the following documentations:
 - a. Material supporting a good faith effort to comply;
 - b. Referrals provided by PAEDC and other referral sources; and
 - c. Advertisement of job openings listed with PAEDC and other referral sources.

F. Willful breach of the First Source Referral Agreement by the EMPLOYER, or failure to submit the Compliance Report may be enforced by the Compliance Officer through notification and possible termination of the Incentive Agreement.

G. The EMPLOYER and PAEDC, or such other agent as PAEDC may designate, may mutually agree to modify this Agreement.

H. The project may be terminated because of the EMPLOYER'S noncompliance with

the provisions of this Agreement.

**CITY OF PORT ARTHUR SECTION
4A ECONOMIC DEVELOPMENT CORPORATION**

SIGNED AND AGREED TO on the ____ day of _____, 2019.

By: _____ By: _____
Ingrid Holmes, President _____, **Secretary**

EDC Representative _____
EDC Representative

MOTION INDUSTRIES, INC.

SIGNED AND AGREED TO on the ____ day of _____, 2019.

By: _____

Acknowledgment

EXHIBIT "G"
INCENTIVE RECIPIENT APPLICATION TO PAEDC

EXHIBIT "H"

**LEASE BETWEEN GRAHAM & COMPANY
AND MOTION INDUSTRIES, INC.**