

RESOLUTION NO. 21-315

A RESOLUTION APPROVING AN ECONOMIC INCENTIVE CONTRACT AND LOAN AGREEMENT BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC DEVELOPMENT CORPORATION AND DEZTEX INDUSTRIAL SERVICES, LLC D/B/A RAMTEX IN AN AMOUNT OF \$49,500.00; FUNDING AVAILABLE IN PAEDC ACCOUNT NO. 120-80-625-5478-00-000

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 Deztex Industrial Services, LLC d/b/a Ramtex ("Deztex"); and

WHEREAS, Deztex 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, Deztex is a Texas limited liability company locally owned and operated and is a provider of concrete and asphalt services, earthwork/ site work services and specialty services; and

WHEREAS, Deztex plans to purchase the current location it is operating out of in the Spur 93 Port Arthur Business Park in Port Arthur, TX; and

WHEREAS, PAEDC has reviewed Deztex's application and accompanying financial statements; and

WHEREAS, at a regular board meeting of July 12, 2021, the PAEDC Board of Directors approved entering into an Economic Incentive and Loan Agreement with Deztex offering an incentive of \$49,500.00 for its purchase of the facility they are currently operating out of; and

WHEREAS, Deztex will utilize the incentive funds to go toward the renovation costs for the facility; and

WHEREAS, Deztex has agreed to continue conducting its business operations in the Spur 93 Business Park during the term of the Agreement and provide PAEDC documentation of payment of property taxes for a period of no less than three (3) years as detailed in the Agreement attached hereto as **Exhibit "A"**; and

WHEREAS, Deztex 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 Deztex, 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 3rd day of August A.D., 2021, at a Meeting of the City Council of the City of Port Arthur, Texas, by the following vote: AYES:

Mayor Pro Tem Frank;

Councilmembers Bolmes, Jones, Kirlan,
Marks and Moses.

NOES: None.

Donald Frank, Sr.
DONALD FRANK, SR. MAYOR PRO TEM


ATTEST:


Sherri Bellard, City Secretary

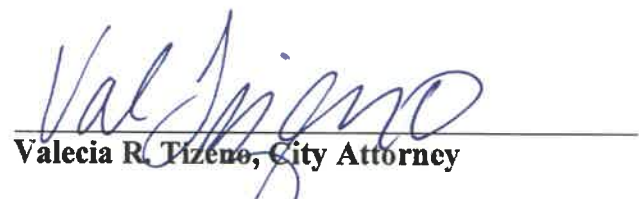
APPROVED:


Floyd Batiste, PAEDC CEO

APPROVED AS TO FORM:


Guy N. Goodson, PAEDC Attorney

APPROVED AS TO FORM:


Valecia R. Tizeno, 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
&
DEZTEX INDUSTRIAL SERVICES, LLC D/B/A RAMTEX**

Executive Summary

DezTex Industrial Services, LLC d/b/a ("Incentive Recipient") is a Texas limited liability company located in Port Arthur, Texas. Incentive Recipient is locally owned and operated and is a provider of concrete and asphalt services, earthwork/site work services and specialty services. Incentive Recipient proposes to utilize incentive funds acquired through the Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to assist in purchasing the current location it is operation out of in the Spur 93 Business Park. Incentive Recipient has been advised that as a condition of the Economic Incentive by PAEDC, Incentive Recipient must continue conducting its business operations in Port Arthur during the term of the Incentive Contract and provide PAEDC documentation of payment of property tax to the City of Port Arthur for a period of no less than three (3) years. Incentive Recipient has agreed to obtain a letter of credit from Third Coast Bank to securitize the loan provided by PAEDC.

PAEDC and Incentive Recipient have agreed that the incentive shall be for an amount not to exceed \$49,500.00 and Incentive Recipient shall have the period outlined in the Performance Milestone Schedule attached to the Agreement to meet its promised performance under the Agreement, and to provide all reports and other affirmative commitments as outlined in the Agreement.

The Economic Incentive Contract & Loan Agreement (the "Agreement") shall be for a period from its Effective Date through August 30, 2024.

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 CONTRACT & LOAN AGREEMENT
BETWEEN THE CITY OF PORT ARTHUR SECTION 4A ECONOMIC
DEVELOPMENT CORPORATION
&
DEZTEX INDUSTRIAL SERVICES, LLC D/B/A RAMTEX**

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Exhibit “A”	Commercial Promissory Note for Conditional Grant
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Exhibit “C”	Letter of Credit
Exhibit “D”	General Warranty Deed
Exhibit “E”	Certification Regarding Lobbying
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**ECONOMIC INCENTIVE CONTRACT & LOAN AGREEMENT BETWEEN
THE CITY OF PORT ARTHUR SECTION 4A
ECONOMIC DEVELOPMENT CORPORATION
AND
DEZTEX INDUSTRIAL SERVICES, LLC D/B/A RAMTEX
("INCENTIVE RECIPIENT")**

INTRODUCTION

DezTex Industrial Services, LLC d/b/a ("Incentive Recipient") is a Texas limited liability company located in Port Arthur, Texas. Incentive Recipient is locally owned and operated and is a provider of concrete and asphalt services, earthwork/site work services and specialty services. Incentive Recipient proposes to utilize incentive funds acquired through the Port Arthur Section 4A Economic Development Corporation (the "PAEDC") to assist in its business expansion. PAEDC shall assist Incentive Recipient in this business expansion by providing a conditional loan to be utilized by Incentive Recipient for the purchase of the property located at 905 Jade Avenue in the Spur 93 Business Park. Incentive Recipient must continue conducting its business operations in Port Arthur during the term of the Incentive Contract. Incentive Recipient has agreed to obtain a letter of credit from Third Coast Bank securitize the loan provided by PAEDC.

AGREEMENT TERM

EFFECTIVE DATE

1. This Economic Incentive Contract and Loan Agreement ("Agreement") is entered into with an Effective Date as of the approval of the Agreement by the City Council for the City of Port Arthur, Texas (the "City").

TERMINATION DATE

2. This Agreement expires the earlier of August 30, 2024, or 30 days after Incentive Recipient either performs fully or breaches the Agreement, subject to earlier termination or extension, voluntary or involuntary, as provided herein. The period from the effective date of this Agreement through and including the expiration 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") and duly authorized by Resolution of the City Council of the City of Port Arthur 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. DEZTEX Industrial Services, LLC d/b/a RAMTEX is a limited liability company located at 560 Highway 365, Port Arthur, Texas 77640.

PROMISED PERFORMANCE

5. The parties agree to perform as follows.

(a) PERFORMANCE BY PAEDC

- (1) PAEDC shall conditionally grant Incentive Recipient an amount of \$49,500 to be utilized for a portion of the purchase price of the property located at 905 Jade Avenue in the Spur 93 Business Park. subject to the conditions and limitations herein, which Incentive Recipient shall not be required to repay unless Incentive Recipient breaches this Agreement.

HOWEVER, PAEDC WILL ONLY RELEASE FUNDS IN AN AMOUNT EQUAL TO THE AMOUNT PAID FOR THE EQUIPMENT. PAEDC WILL ONLY RELEASE FUNDS UPON RECEIPT OF REQUIRED DOCUMENTATION OF THE PURCHASE, BY INCENTIVE RECIPIENT OF SUCH EQUIPMENT FREE OF ANY LIEN OR ENCUMBRANCE. REQUIRED DOCUMENTATION INCLUDED BUT IS NOT LIMITED TO AN INVOICE EVIDENCING THE PURCHASE OF THE EQUIPMENT.

These payments are PAEDC's only obligations.

(b) PERFORMANCE BY INCENTIVE RECIPIENT

- (1) By the end of the Agreement term, Incentive Recipient must have a facility that has been in business operations in the Spur 93 Business Park for no less than three (3) years and provide PAEDC evidence of property taxes paid to the City of Port Arthur.
- (2) Incentive Recipient will utilize the incentive to acquire the property located at 905 Jade Avenue in the Spur 93 Business Park more specifically described in **Exhibit "B"**.
- (3) As the conditional grant provided by PAEDC to Incentive Recipient is to be secured by Letter of Credit contained in **Exhibit "C"** from _____.
- (4) 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.

PERFORMANCE MILESTONE SCHEDULE

6. Although failure to achieve a performance milestone is not a breach of contract, a failure is grounds for PAEDC to withhold further payments to Incentive Recipient and/or 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.

¹ Examples of reasonable assurances are copies of pending contracts and customer commitment letters.

PERFORMANCE MILESTONE SCHEDULE

	<u>Due Date</u>	<u>Milestone</u>
(a)	August 30, 2021	Close on property purchase at 905 Jade Ave. in the Spur 93 Business Park in Port Arthur, TX
(b)	December 30, 2021	Begin renovations on the facility at 905 Jade Ave.
(c)	March 30, 2022	Issue a <i>Status report to the PAEDC</i> on construction/ renovations progress
(d)	September 30, 2022	Renovations to the property complete. Issue a <i>Status report</i> to the PAEDC on construction/ business operations.
(e)	Three (3) years of business operations	Incentive recipient will maintain its business operations in the Spur 93 Business Park for no less than three (3) years from the date of the Agreement.
(f)	Semiannually by each January and July 31st	Incentive recipient will provide the PAEDC with operational reports every six months during the (3) three year term.
(g)	Annually	Incentive Recipient will provide the PAEDC with a copy of its annual property taxes.
(h)	August 30, 2024	Close out report for presentation to the PAEDC Board

PAEDC'S CONDITIONAL OBLIGATIONS AND LIMITED LIABILITY

8. It is expressly understood and agreed by the parties hereto that the PAEDC funding obligations herein are contingent upon the actual receipt of adequate sales tax revenue funds to meet the PAEDC's liabilities under this Agreement. If adequate funds are not available to make payments under this Agreement, the PAEDC shall notify Incentive Recipient in writing within a reasonable time after such fact is reasonably determined by the PAEDC Board of Directors. Should PAEDC fail to fully fund its obligations hereunder, this Agreement shall terminate and both parties shall be relieve of any further liability hereunder. In the event of such termination, the PAEDC may, at its sole option, immediately cease all further funding, if any, required by this Agreement and the PAEDC shall not be liable to Incentive Recipient or to any third parties for failure to make payments to Incentive Recipient under the terms and conditions of this Agreement.

9. The PAEDC shall not be liable, in Agreement or otherwise, to Incentive Recipient, or to any person or entity claiming by or through Incentive Recipient, for any expense, expenditure or cost incurred by or on behalf of Incentive Recipient related to the project made the basis of this Agreement. The PAEDC's sole liability/obligations, if any, shall be to Incentive Recipient and shall be limited to the obligations detailed in Section 5(a) of this Agreement.

Incentive Recipient shall not use the funds herein for any purpose(s) other than that specifically disclosed herein and as further disclosed within that certain application made by or on behalf of Incentive Recipient, which application is incorporated herein for all purposes to the extent Incentive Recipient has advanced funds to pay for equipment it will be deemed to satisfy this requirement.

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 thirty-day (30-day) opportunity to cure the same, the PAEDC grant, minus any credits earned pursuant to section 5(c) of this Agreement, will automatically convert to a loan (liquidated damages), effective on the day of breach, as agreed by Incentive Recipient in the executed Note attached as **Exhibit "A."** Following such conversion to a loan as aforesaid, the PAEDC, at its sole option, may terminate its remaining funding obligations, if any, detailed in Section 5 herein. 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 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 must establish and maintain reasonably sufficient records, as reasonably determined by the PAEDC, to account for the expenditure and utilization of funds received by Incentive Recipient from PAEDC under the terms and conditions of this Agreement. 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.

13. Incentive Recipient shall maintain records of the receipt and disposition of all funds provided hereunder as necessary to allow the PAEDC to audit and verify proper utilization of said funds in compliance with this Agreement and the representations and warranties contained herein and in Incentive Recipient's application. Incentive Recipient shall provide reports of utilization of said funds, as reasonably requested by the PAEDC, and upon termination of this Agreement.

14. Upon ten-day (10-day) advance written notice given not later than the 90th day after the end of the calendar year in which such transactions being audited occurred, 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 belonging to or in use by Incentive Recipient so that PAEDC can ensure the Incentive Recipient is meeting the Performance Milestone Schedule. 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 one year 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. Further, records relating to real property acquisition, including any long-term lease, shall be retained for a period equal to the useful life of any asset purchased with PAEDC funds.

16. Incentive Recipient shall provide PAEDC with all reports reasonably necessary for PAEDC compliance with the Development Corporation Act.

17. It is expressly understood and agreed by the parties hereto that if Incentive Recipient fails to submit to PAEDC in a timely and reasonably satisfactory manner any report reasonably required by this Agreement, PAEDC may, at its sole discretion, withhold further payments to Incentive Recipient and/or 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 any monies advanced by PAEDC automatically become a loan. If PAEDC withholds such payments, it shall notify Incentive Recipient in writing of its decision and the reasons therefore. Payments withheld pursuant to this paragraph may be held by PAEDC until such time as the delinquent obligations for which funds are withheld are fulfilled by Incentive Recipient.

18. The PAEDC reserves the right, from time to time, prior to the termination of this agreement 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 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, such approval not to be unreasonably withheld. 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 Chapter 504, Local Government Code and Chapter 171 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, 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.

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) To the greatest extent feasible 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 to Port Arthur residents; and
- (b) To the greatest extent feasible, agreements for work to be performed in connection with any such project be awarded 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 of Port Arthur, Texas.

LEGAL AUTHORITY

26. Incentive Recipient assures and guarantees it possesses legal and/or corporate authority (i) to enter into this Agreement, receive funds 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 legal or regulatory action, including any proceeding before an administrative agency filed against Incentive Recipient, directly or indirectly; and 2) any material claim against Incentive Recipient, which may

impact continued operations. For purposes herein, "material" claims shall mean claims in excess of \$50,000. 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, in many cases, by the City Council for City of Port Arthur.

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 assurances and certifications made to PAEDC by Incentive Recipient, and the assurances and certifications made to the City of Port Arthur with regard to the operation of the PAEDC's Projects. Based on these considerations, and in order to ensure the legal and effective performance of this Agreement by all parties, it is agreed by the parties hereto that the performances under this Agreement are by the provisions of the PAEDC Program and any amendments thereto and may further be amended in the following manner: PAEDC may from time to time during the period of performance of this Agreement issue policy directives which serve to interpret, or clarify performance requirements under this Agreement. Such policy directives shall be promulgated by the PAEDC Board of Directors in the form of PAEDC issuances, shall be approved by the City Council and shall have the effect of qualifying the terms of this Agreement and shall be binding upon Incentive Recipient, as if written herein.

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 a material default of any of the material obligations of Incentive Recipient detailed herein or in the event of a material breach of any of the representations 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) Declare the Commercial Promissory Note executed in conjunction with this Agreement immediately effective;
- (b) Exercise any remedies provided herein and/or within any Collateral Security Documents;

- (c) Withhold, whether temporarily or otherwise, disbursement of grant proceeds pending correction of the deficiency(s) by Incentive Recipient;
- (d) 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;
- (e) Withhold and/or disallow further PAEDC incentives to Incentive Recipient; and
- (f) 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 not more than once each 12 month period, Incentive Recipient shall arrange for the performance of a compliance audit performed by a certified public accountant, of funds received and 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 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. Backup documentation regarding actual expenditures shall be provided by Incentive Recipient. Said audit must be received and accepted by the Chief Executive Officer of PAEDC and/or the PAEDC Board.
- (b) At the option of Incentive Recipient, each audit required by this section may cover either its entire operations or each department, agency, or establishment of Incentive Recipient which received, expended, or otherwise administered PAEDC funds;
- (c) 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.
- (d) As a part of its audit, Incentive Recipient shall verify that the expenditures were exclusively for the assets listed in **Exhibit "B"**. Any discrepancies in excess of \$5000 shall be specifically documented in writing.

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 and it may be required to submit formal audits at its expense.

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.

38. PAEDC shall not release any funds for costs incurred by Incentive Recipient under this Agreement until PAEDC has received certification from Incentive Recipient that its fiscal control and fund accounting procedures are adequate to assure proper disbursement of and accounting for funds provided under this Agreement. PAEDC shall specify the content and form of such certification.

SUPPLEMENTAL COVENANT

39. **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."**

40. 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 (less any credits given as set forth in Paragraph 5(C)) with interest at the rate of ten (10%) percent per annum not later than the 120th day after the date PAEDC notifies Incentive Recipient of a violation.

41. 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

42. Incentive Recipient understands and agrees that by execution of this Agreement, Incentive Recipient shall be responsible for providing to PAEDC all information, concerning this PAEDC funded project, reasonably required for PAEDC to meet its responsibilities for environmental review, decision making, and other action which applies to PAEDC in accordance

with and to the extent specified in Federal, State and Local Law. Incentive Recipient further understands and agrees that Incentive Recipient shall make all reasonable efforts, but shall not be required to expend any funds in doing so, to assist PAEDC in handling inquiries and complaints from persons and agencies seeking redress in relation to environmental reviews covered by approved certifications.

ORAL AND WRITTEN AGREEMENTS / PRIOR AGREEMENTS

43. 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.

44. 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

 X [INTENTIONALLY DELETED]

Exhibit "B" Description of Property X

Exhibit "C" Letter of Credit

Exhibit "D" General Warranty Deed X

Exhibit "E" Certification Regarding

Lobbying

 X Exhibit "F" Compliance Statement

 X Incentive Recipient Application to PAEDC

VENUE

45. 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

Incentive Recipient
DEZTEX Industrial Services, LLC d/b/a RAMTEX
~~560 Highway 365~~ 905 JADE AVENUE
Port Arthur, Texas 77640
Phone: (409) 344-2279
Fax: (409) _____
ATTN: Jordan Robbins

CAPTIONS

46. 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

47. 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

48. 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.

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: _____ By: _____
President Secretary

EDC Representative EDC Representative

DEZTEX INDUSTRIAL SERVICES, LLC D/B/A RAMTEX

SIGNED AND AGREED TO on the 1 day of September, 2019.

DEZTEX Industrial Services, LLC

By: 
BUSINESS MANAGER, ____ (Title)

Acknowledgment

EXHIBIT "A"

[INTENTIONALLY DELETED]

EXHIBIT "B"
PROPERTY DESCRIPTION

EXHIBIT "C"

LETTER OF CREDIT

EXHIBIT "D"
GENERAL WARRANTY DEED

EXHIBIT "E"
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 influencing or 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.

DEZTEX Industrial Services, LLC

Date: _____

By: _____
Signature

Its: _____
Title

EXHIBIT "F"
COMPLIANCE STATEMENT

DEZTEX Industrial Services, LLC hereby certifies that it has fully complied with Local Government Code §176.006, as amended, which mandates the disclosure requirements for persons who contract or seek to contract with a local governmental entity.

DEZTEX Industrial Services, LLC

Date: _____

By: _____
Signature

Its: _____
Title