

ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND USUS, INC.

This Economic Development Agreement (“Agreement”) is made and entered into by and between U.S. Underwater Services, L.P. (“USUS”), a Delaware limited partnership, by and through its Chief Financial Officer, Michael Hale, and the Mansfield Economic Development Corporation (the “Corporation”), a nonprofit corporation organized under the Development Corporation Act of 1979, Article 5190.6 V.A.T.C.S., Section 4A (the “Act”), for the purposes and considerations stated below:

RECITALS:

1. USUS intends to lease and make improvements to a facility located at 103 Sentry Drive within the corporate limits of the City of Mansfield and hereafter referred to as the “Property.” The Property is more particularly described on Exhibit A attached hereto.
2. The Corporation has determined and found that the Project and Improvements, as defined herein, will create jobs as defined by the Act, and that the expenditure of the Corporation to assist in the development of an industrial facility as set forth in this Agreement is suitable or required for the development of a new business enterprise, and falls within the definition of a “project” as defined in Section 2(11) (A) of the Act.
3. The Corporation, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to City as a result of USUS’s development and operation of the Improvements (as hereinafter described), desires to have USUS construct the Improvements on the Property. This development will increase the taxable value of the Property and will directly and indirectly result in the creation of additional jobs throughout the City and the value of the benefits of the Project will outweigh the amount of expenditures required of the Corporation under this Agreement.
4. The Corporation, to encourage the development and operation of the Property, desires to participate in the funding of the cost to construct certain infrastructure to the Property which is necessary in order for USUS to locate its facility in Mansfield and operate as hereinafter set forth, to aid and promote economic development in the City.

NOW THEREFORE, inconsideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Authorization.**

This Agreement is authorized by Texas Civil Statutes Annotated art. 5190.6, Section 4A.

2. **Definitions.**

CAPITAL INVESTMENT means the costs of improvements to the Facility, to include equipment, structures, infrastructure and other onsite improvements.

CITY means the City of Mansfield, Texas.

FACILITY means the property located at 103 Sentry Drive in Mansfield.

IMPROVEMENTS means the improvements to be constructed on the Property by USUS.

PROJECT means the expenditure by the Corporation of up to One Hundred Fifty Thousand Dollars (\$150,000) to assist USUS with the construction of Improvements.

3. **Term.**

This Agreement shall be effective as of the date of execution of all parties. This Agreement will terminate five (5) years after the date the certificate of occupancy is issued by the City for the Facility.

Subject to section 10(g) this agreement may be assigned, transferred or otherwise assumed by a third party providing that such third party agrees in writing to assume all liabilities, responsibilities, and obligations of USUS. Upon written approval by Corporation of such assumption, assignment or transfer USUS shall thereafter be released from its obligations hereunder. Corporation shall not unreasonably refuse its approval.

4. **Covenants of USUS.**

a. In consideration of Corporation agreeing to pay USUS monies in accordance with the terms and conditions of this Agreement, USUS agrees to:

(1) Make a Capital Investment in the Facility in an amount equal to at least Five Hundred Thousand (\$500,000) in improvements to the Facility and equipment affixed to the Property and obtain a Certificate of Occupancy by March 31, 2010;

(2) Create and retain a minimum of 62 permanent jobs for a period of five years;

(3) Operate the Facility for the term of this Agreement, after receiving a certificate of occupancy from the City; and

(4) Render the Property to the Tarrant County Appraisal District and remain current on all property taxes for the term of this Agreement.

b. Should USUS fail to comply with any term of this Agreement, USUS shall have thirty (30) days after written notice from Corporation to come into compliance. If the noncompliance is not cured within that period, USUS agrees to remit to the Corporation a sum equal to payments made by the Corporation to USUS pursuant to this Agreement.

c. USUS Covenants and certifies that it does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01 (4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if USUS or its branch, division, or department is convicted of a violation under 8 U.S.D. Section 1324a (f), USUS shall repay to the MEDC the full amount of the Payment made under Section 5 of this Agreement, plus ten percent (10%) per annum from the date the Payment was made. Repayment shall be paid within one hundred twenty (120) days after the date USUS receives notice of violation from the Corporation.

5. **Payments by Corporation.**

Corporation shall participate with USUS in the cost of the Project not to exceed One Hundred Fifty Thousand Dollars (\$150,000) to be paid within 30 days after the Facility receives a certificate of occupancy from the City of Mansfield and submission to the Corporation of satisfactory documentation evidencing the expenditures for the Capital Investment and the expenditures required by Section 4(a) (3) herein, provided USUS is in compliance with Section 4 of the Agreement.

6. **Improvements.**

USUS shall be solely responsible for the design and construction of the Improvements and shall comply with all subdivision regulations, building codes and other ordinances of the City applicable to the Improvements. The design of the Improvements must be approved by the EDC Board (and such approval shall not be unreasonably withheld or delayed) prior to commencement of construction.

7. **Sign.**

USUS agrees to permit Corporation to erect a sign on the Property (in a location reasonably approved by USUS) which may state that the Corporation has provided funding for the Project, and to allow the Mansfield EDC to use the name "USUS", and representation of the Improvements and the Project in promotion of the City of Mansfield and the Corporation.

8. **Indemnification.**

USUS IN PERFORMING ITS OBLIGATIONS UNDER THIS AGREEMENT IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PROPERTY OR IMPROVEMENTS. USUS AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CORPORATION, ITS OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE OF THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF USUS, ITS OFFICERS, AGENTS OR EMPLOYEES.

9. **Access to Information.**

USUS agrees to provide the Corporation access to information related to the construction of the Improvements and Project during regular business hours upon reasonable notice. The Corporation shall have the right to require USUS to submit any necessary information, documents, invoices, receipts or other records to verify costs of the Improvements and capital expenditures related to the Property.

10. **General Provisions.**

a. **Mutual Assistance.** USUS and the Corporation shall do all things necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in terms and provisions.

b. **Representations and Warranties.** USUS represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. USUS represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the business, that all proposed Improvements shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.

c. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

d. **Attorneys Fees.** In the event any legal action or process is commenced to enforce or interpret provisions of this Agreement, the prevailing party in any such legal action shall be entitled to recover its necessary and reasonable attorney's fees and expenses incurred by reason of such action, in accordance with Section 271.159 of the Texas Local Government Code. Provided, however, all reasonable attorneys fees incurred by the Corporation for preparation or review of any revision, modification or amendment of this Agreement proposed by USUS following the original execution of this Agreement, and all reasonable attorneys fees incurred for preparation or review of other proposed additional or related documents shall be at USUS's sole cost.

e. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

f. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by USUS and the Corporation.

g. **Successors and Assigns.** This Agreement shall be binding on and insure to the benefit of the parties, their respective successors and assigns. USUS may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation.

h. **Notice.** Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

USUS: Michael Hale, CFO
US Underwater Services, L. P.
101 NE Haskew Street
Burleson, Texas 76028

With a copy to: Cindy K. Krauss, Esq.
Porter & Hedges, L.L.P.
1000 Main Street, 36th Floor
Houston, Texas 77002

CORPORATION: Director
Mansfield Economic Development Corporation
301 South Main Street
Mansfield, Texas 76063

With a copy to: Craig Magnuson
City of Mansfield
1305 East Broad Street
Mansfield, Texas 76063

i. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

j. **Applicable Law.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Tarrant County, Texas

k. **Severability.** In the event any provision of this Agreement is ruled illegal, invalid, or unenforceable by any court of proper jurisdiction, under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

l. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

m. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

n. **Default.** If a party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of written notice of such default from another party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its damages and/or specific performance for such default.

o. **Covenant Running with the Land.** All rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement shall exist at all times as long as this Agreement is in effect, among all parties having any right, title or interest in any portion of all of the Property.

p. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of strikes, lockouts, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, terrorist attacks, riots, insurrection,

war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
_____, President

Date: _____

ATTEST:

APPROVED AS TO FORM AND LEGALITY:

City Attorney

US Underwater Services L.P.

By: _____
(Michael Hale, CFO)

Date: _____