

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

This Economic Development Agreement (“**Agreement**”) is made and entered into by and between the MANSFIELD ECONOMIC DEVELOPMENT CORPORATION (“**Corporation**”), a nonprofit corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code (“**Act**”), and UTEX INDUSTRIES, INC., a Texas Corporation (“**Company**”). Company and the Corporation may sometimes hereafter be referred to individually as a “party” or collectively as the “parties.”

RECITALS:

WHEREAS, Company desires to relocate and operate its business in the City of Mansfield, Texas; and

WHEREAS, before operating its business it is necessary to make certain site and building improvements; and

WHEREAS, Company has requested financial assistance from the Corporation for the construction of the improvements, and the Corporation has determined and found that the requested grant will be used to fund a “project” as defined in Section 501.101 of the Act; specifically, that the expenditure of the Corporation is required or suitable for manufacturing, industrial or warehouse use, or other qualifying use under Section 501.101 of the Act; and

NOW THEREFORE, in consideration 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:

ARTICLE 1 DEFINITIONS

“**Act**,” “**Agreement**,” “**Corporation**,” and “**Company**,” have the meanings set forth above.

“**Capital Investment**” means the actual costs attributable to the purchasing and construction of the Improvements including the actual construction costs of all buildings, site preparation, structures, infrastructure, utilities, landscaping and on-site improvements, including labor and materials, engineering costs, surveying costs, fees of consultants, permit and inspection fees. It does not include insurance costs, marketing costs or any interest paid to finance the cost of Capital Investment.

“**Certificate of Occupancy**” means the document issued by the City of Mansfield certifying a building’s compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupying.

“Director” means the Corporation’s Economic Development Director.

“Effective Date” means the date this Agreement is fully executed by both the Corporation and Company.

“Expiration Date” shall mean six years after the Effective Date, unless sooner terminated as provided herein.

“Facility” means the existing industrial building comprised of approximately 135,000 square feet on an approximate 9-acre tract located at 102 Sentry Drive, Mansfield, Texas.

“Grants” means the full payment to be made by the Corporation to Company pursuant to this Agreement as a reimbursement for the cost of the Improvements and upon the terms, conditions and provisions set forth herein, such payment to a sum calculated as follows: the lesser of: (i) 100% of the actual costs of the Improvements, or (ii) \$350,000. The Grant will be paid in three payments as described in Article 4, and each payment is referred to as a “Grant.”

“Impositions” mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees, and other charges by public or governmental authority, general and special, ordinary and extraordinary, foreseen and unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority on Company or any property or any business owned by Company within the City of Mansfield.

“Improvements” mean those improvements and equipment, and other work and cost items described on Exhibit A attached hereto.

“Payment One” and **“Payment Two”** have the meanings set forth in Article 4 of this Agreement.

“Payment Request” means a written request from Company to Corporation for payment of a Grant, which request shall be accompanied by evidence reasonably satisfactory to Corporation to establish that Company is in compliance with this Agreement, including documentation of purchasing and construction costs of the Improvements, expenditure of the Capital Investment, and the number of Primary Jobs at the Facility.

“Primary Jobs” means any employee on a forty (40) hour or more per week schedule or the combination of two (2) or more employees on part-time schedules equaling at least forty (40) hours and falling under the definition of primary jobs in Section 501.002(12) of the Act.

“Required Use” means the continuous operation of the Facility as a business performing steel fabrication supply, manufacturing of special metal coating in high pressure pumping applications, including welding, fabrication, machining and general assembly.

“Term” means the term of this Agreement as described in Article 2 of this Agreement.

ARTICLE 2 TERM

The Term of this Agreement will begin on the Effective Date and continue thereafter until the Expiration Date, unless terminated earlier under the terms of this Agreement.

ARTICLE 3 COVENANTS OF COMPANY

3.01 Company Obligations. In consideration of Corporation agreeing to pay Company the Grant in accordance with the terms and conditions of this Agreement, Company, agrees to:

- (a) Do the following no later than December 31, 2019:
 - (i) Make a Capital Investment in an amount no less than \$10,000,000;
 - (ii) Complete the Improvements; and
 - (iii) Obtain a Certificate of Occupancy for the Facility;
- (b) After receipt of a Certificate of Occupancy, continuously operate and occupy the Facility for the purpose of the Required Use (operation and occupancy must not cease for more than 30 days, except in connection with and to the extent of Force Majeure); and
- (c) Create and maintain minimum of 130 Primary Jobs at the Facility within five (5) years of the Effective Date.

3.02 Undocumented Workers. Company covenants and certifies that it does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Company is convicted of a violation under 8 U.S.C. Section 1324a (f), Company shall repay to the Corporation the full amount of all payments made under this Agreement, plus ten percent (10%) interest per annum from the date such payment was made until the date of full repayment. Repayment shall be paid within one hundred twenty (120) days after the date Company receives a notice of violation from the Corporation.

ARTICLE 4 GRANT BY CORPORATION

4.01 Grants. Provided Company is in compliance with each term of this Agreement, the Corporation shall make the Grants, not to exceed the aggregate of \$350,000, to be paid to Company as follows:

- (a) After Company has satisfied the conditions set forth above in Section 3.01(a), make a Grant to Company in the amount of \$150,000 (“**Payment One**”) within 30 days after receiving a Payment Request;

(b) Within 30 days after receiving a Payment Request, but no earlier than one year after Company's receipt of Payment One, make a Grant to Company in the amount of \$100,000 ("**Payment Two**"); and

(c) Within 30 days after receiving a Payment Request, but no earlier than one year after Company's receipt of Payment Two, make a Grant to Company in the amount of \$100,000.

ARTICLE 5 IMPROVEMENTS

Company shall be solely responsible for the design of the Improvements and shall comply with all building codes and other ordinances of the City of Mansfield applicable to the construction of the Improvements.

ARTICLE 6 TERMINATION, OFFSET, AND REPAYMENT

6.01 Termination. This Agreement may be terminated upon any one or more of the following:

- (a) by mutual written agreement of the parties;
- (b) upon written notice by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- (c) upon written notice by Corporation, if Company suffers an event of bankruptcy or insolvency;
- (d) upon written notice by Corporation, if any Impositions owed to the City of Mansfield by Company become delinquent; or
- (e) upon written notice by either party if any subsequent federal or state legislation or any decision of a court of competent jurisdiction renders this Agreement invalid, illegal, or unenforceable.

6.02 Offset. Corporation may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City of Mansfield by Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, or otherwise, and regardless of whether or not the debt due to the City of Mansfield has been reduced to judgment by a court.

6.03 Repayment. In the event the Agreement is terminated by Corporation pursuant to Section 6.01(b)-(d), Company shall immediately refund to Corporation an amount equal to the amount of the Grants that has been provided by Corporation to Company prior to the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime

or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by Corporation) as its prime or base commercial lending rate, from the Effective Date until paid.

ARTICLE 7 INDEMNIFICATION

COMPANY, IN PERFORMING THE OBLIGATIONS UNDER THIS AGREEMENT, IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE IMPROVEMENTS OR THE FACILITY. COMPANY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CORPORATION, ITS DIRECTORS, OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR OFFICIAL AND INDIVIDUAL 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 BY COMPANY OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF COMPANY, OR ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS.

ARTICLE 8 ACCESS TO INFORMATION

Upon the Corporation's request, Company agrees to provide the Corporation access to information, documents, invoices, receipts or other records to verify Company's compliance with this Agreement.

ARTICLE 9 GENERAL PROVISIONS

9.01 Mutual Assistance. Company and the Corporation shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

9.02 Representations and Warranties. Company represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Company 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.

9.03 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.

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

9.05 Amendment. This Agreement may only be amended, altered, or revoked by written instrument signed by Company and the Corporation.

9.06 Successors and Assigns.

(a) Assignment. This Agreement shall be binding on and insure to the benefit of the parties, their respective successors and assigns. Company may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation.

(b) Collateral Assignment. Notwithstanding Section 9.06(a), Company shall have the right to collaterally assign, pledge, or encumber, in whole or in part, to any lender as security for any loan in connection with construction of the Improvements, all rights, title, and interests of Company to receive the Grant under this Agreement. Such collateral assignments: (i) shall require the prior written consent of the Corporation, which shall not be unreasonably delayed or withheld, and Corporation agrees to execute such reasonable consent forms as may be required to evidence such consent, (ii) shall require notice to the Corporation together with full contact information for such lenders, (iii) shall not create any liability for any lender under this Agreement by reason of such collateral assignment unless the lender agrees, in writing, to be bound by this Agreement; and (iv) may give lenders the right, but not the obligation, to cure any failure of Company to perform under this Agreement. No collateral assignment may relieve Company from any obligations or liabilities under this Agreement. The Director has the authority to give the written consent under this subsection after review and consultation with the Corporation's legal counsel; provided, however, the Director may, in his or her sole discretion, present the assignment request to the Corporation's board of directors for approval.

9.07 Notice. Any notice required or permitted to be delivered by this Agreement 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:

COMPANY: Utex Industries Inc.
 10810 Katy FWY, Suite 100
 Houston, TX 77043
 Attn: Pete T. Sanchez - CFO

CORPORATION: Mansfield Economic Development Corporation
 301 South Main Street

Mansfield, Texas 76063
Attn: Director

With a copy to:

Mansfield Economic Development Corporation Attorney
Taylor, Olson, Adkins, Sralla & Elam, LLP
6000 Western Place, Suite 200
Fort Worth, Texas 76107

9.08 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.

9.09 Applicable Law/Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas; exclusive venue for any legal action regarding this Agreement shall lie in Tarrant County, Texas.

9.10 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.

9.11 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.

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

9.13 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, provided that the foregoing shall not be applicable to any payment obligation of either party under this Agreement.

9.14 Attorney's Fees. In the event it should become necessary to take legal action to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable attorney's fees and costs of court.

9.15 Limitation of Liability. The parties further agree that neither party will be liable to the other under this Agreement for consequential damages (including lost profits) or exemplary damages.

**MANSFIELD ECONOMIC
DEVELOPMENT CORPORATION**

By: _____
Larry Klos, Board President

Date: _____

ATTEST:

Board Secretary

UTEX INDUSTRIES, INC.,
a Texas corporation

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT “A”
The Improvements

Appendix I

Description of Work for Tenant Improvements - 102 Sentry

Interior Office Improvements, w/Lighting	\$0.00
MEP - Engineering	\$25,000.00
Lighting - Warehouse	\$122,650.00
Flooring Epoxy / Columns - Warehouse	\$285,420.00
Insulation / Doors - TEC	\$414,765.75
HVAC	\$573,480.00
Electrical Improvements	\$60,000.00
Airline piping	\$45,000.00
Crane and Material Handling	\$85,000.00
Paving / Pot Hole Repair	\$0.00
Automatic Gate to secure area	\$18,000.00
Cameras and Security	\$30,000.00
IT and Networking	\$15,000.00
Additional Ventilation	\$25,000.00
Sub-Total	\$1,699,315.75

Current Capital Equipment to relocate to Mansfield

As of April 1, 2016	\$1,438,600.00
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New Capital Equipment planned to Purchase and Install in Mansfield

6 - LB4000, Line 2.1	\$1,188,000.00
6 - LB4000, Line 2.2	\$1,188,000.00
2 - Horz Bore Mill	\$3,200,000.00
2 - Multus, Components 1.0	\$1,300,000.00
3 - LB4000, Components 1.1	\$594,000.00
	\$7,470,000.00

Total Facility Upgrades/Capital Equipment	\$10,607,915.75
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