

Location: 3315 E Division St
Property Owner: Demilec USA, Inc
 3315 E Division St
 Arlington TX 76011

About the Project

Demilec USA, LLC purchased an existing, unoccupied facility at 3315 E Division Street in order to expand its existing spray foam insulation manufacturing operation. The fact of significant improvements, which were accomplished, and now houses the development and production of the environmentally safe spray foam insulation, but also train ancillary offices, and a small manufacturing area for the production of equipment designed to transport the product.

Goals of the Project

Expansion of existing business; job creation

Current Status

The values for BPP have not been met as yet. The sales threshold was met during the first year, but has not been met since. The company did not respond to requests to correct nor FY16.

Benefit to City

60 Jobs created; 52 Jobs retained; Approximately \$150,000 in additional revenue associated with added value of business personal property over a 10 year period

Year Approved by Council	2011
Base Year	2010
Beginning Year	2012
Ending Year	2020
Duration	Property Tax 10 years (2012 - 2021) Sales Tax 5 years (2012 - 2016)
Base Year Value	\$ 2,271,835 real property
Property Tax Account Number(s)	04985036 (RE), 10807969 (BPP) and 13821520 (BPP)
Total Rebate Allowed	90% of Eligible BPP value, and 50% of City sales taxes generated
Total Estimated Investment by Company	\$ 5,000,000

Criteria Evaluated	Property Tax	Jobs	Sales Tax
	Added RE Value of at least \$2m over Base Year Value by Jan 1, 2012		
	Added BPP Value of at least \$1.5m over Base Year Value for tax year beginning Jan 1, 2012		
	Additional BPP Value to total at least \$3m over Base Year Value by Jan 1, 2013		
	BPP must remain at \$3m over Base Year Value by Jan 1, 2014 and remain at \$3m for duration of agreement		
	No tax delinquencies (all tax levies of all tax accounts must be paid no later than January 31 of each year)		
		50 Jobs from date of execution of agreement and for life of agreement	
		20 new FTEs by Dec 31, 2012	
		20 add'l FTEs by Dec 31, 2013	
		20 add'l FTEs by Dec 31, 2014	
		No fewer than 110 FTEs from Dec 31, 2014 and for duration of the remainder of the agreement	
		No undocumented workers	
			Owner must provide sales tax certificates monthly proving taxes paid
			Must occupy premises no later than Dec 31, 2011 and continuously occupy
			Taxable sales at premises of \$10m or more for years 1 and 2 (2012 and 2013) resulting in a minimum of \$100k sales tax revenue received
			sales at premises of \$11.025m or more for years 3-5 (2014, 2015, 2016) resulting in a minimum of \$110,250 sales tax revenue received

Incentives Allowed

Equivalent of 90% of business personal property taxes collected by the City in the previous year on the Added Taxable Value (first payment on/before June 1, 2022).

Equivalent of 50% of sales taxes collected by the City for the period beginning January 1, 2012 and ending December 31, 2016. Sales tax grant paid on or within 30 days of date of filing of the Tax Certificates and proof of sales taxes paid for each filing period by Demilec to the City, provided that the City has sales tax receipts from the State of Texas Comptroller's Office.

Year	Rebate Percentage Allowed on Eligible Property	Appraised Value	Percentage of Total Value Abated	Eligible Value	Rebated Levy	Jobs Reported	Average Salary	Rebate as % of Total Tax Liability
2012 (FY13)	0%	-	0%	-	-	56	\$ 44,860	0%
2013 (FY14)	0%	-	0%	-	-	not reported	not reported	0%
2014 (FY15)	0%	-	0%	-	-	67	65,827	0%
2015 (FY16)	0%	-	0%	-	-	not reported	not reported	0%
2016 (FY17)	-	-	-	-	-	-	-	-
2017 (FY18)	-	-	-	-	-	-	-	-
2018 (FY19)	-	-	-	-	-	-	-	-
2019 (FY20)	-	-	-	-	-	-	-	-
2020 (FY21)	-	-	-	-	-	-	-	-
2021 (FY22)	-	-	-	-	-	-	-	-
TOTAL					\$	-		

Levy Paid by Taxing Entity

Year	City of Arlington (024)	Tarrant County (220)	Tarrant County Hospital District (224)	Tarrant County College District (225)	Arlington ISD (901)	Total Annual Tax Bill	Amount of Sales Tax Rebate
2012 (FY13)	129,293	52,675	45,471	29,723	259,584	516,746	55,536.33
2013 (FY14)	58,194	23,708	20,466	13,426	116,043	231,837	-
2014 (FY15)	91,733	37,373	32,262	21,164	190,842	373,373	-
2015 (FY16)	65,278	26,595	22,958	15,060	142,337	272,228	-
2016 (FY17)	-	-	-	-	-	-	-
2017 (FY18)	-	-	-	-	-	-	-
2018 (FY19)	-	-	-	-	-	-	-
2019 (FY20)	-	-	-	-	-	-	-
2020 (FY21)	-	-	-	-	-	-	-
2021 (FY22)	-	-	-	-	-	-	-
	\$ 344,497	\$ 140,351	\$ 121,157	\$ 79,373	\$ 708,806	\$ 1,394,184	\$ 55,536

Resolution No. 11-194

A resolution authorizing the execution of a Chapter 380 Program Agreement for Economic Development Incentives by and between Demilec USA, LLC and the City of Arlington, Texas relative to the expansion of spray foam insulation operations to 3315 E. Division Street, Arlington, Texas

WHEREAS, CITY has found that providing a program consisting of a grant of funds to Demilec USA, LLC (hereinafter referred to as "OWNER") in exchange for OWNER'S completion of the project proposed by OWNER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as "PROGRAM"); and

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the PROGRAM provided herein; and,

WHEREAS, the Arlington City Council has elected to participate in economic development incentives in accordance with V.T.C.A. Local Government Code, Chapter 380, and has adopted policy statements, guidelines, criteria and procedures for evaluating and considering applications and agreements for such incentives; NOW THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARLINGTON, TEXAS:

I.

That all of the recitals contained in the preamble of this resolution are found to be true and are adopted as findings of fact by this governing body and as part of its official record.

II.

That the City Manager or his designee is authorized to execute a Chapter 380 Program Agreement for Economic Development Incentives with OWNER to provide certain economic incentives associated with the expansion of OWNER's spray foam insulation operations to 3315 E. Division Street, Arlington, Texas.

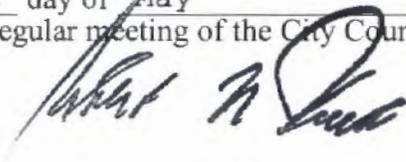
III.

In authorizing the execution of and in executing the referenced agreement, the City of Arlington, Texas, through its City Council and City officials, hereby exercises a governmental function in accordance with but not limited to Section 101.0215 of the Texas Civil Practices and Remedies Code.

IV.

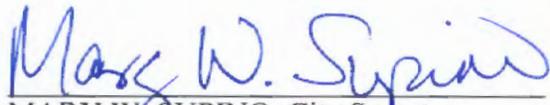
A substantial copy of the Chapter 380 Program Agreement for Economic Development Incentives is attached hereto as Exhibit "A" and incorporated herein for all intents and purposes.

PRESENTED AND PASSED on this the 24th day of May, 2011, by a vote of 7 ayes and 1 nays at a regular meeting of the City Council of the City of Arlington, Texas.

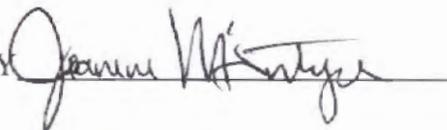


ROBERT N. CLUCK, Mayor

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

BY 

THE STATE OF TEXAS § **CHAPTER 380 PROGRAM AGREEMENT**
 § **FOR ECONOMIC DEVELOPMENT**
COUNTY OF TARRANT § **INCENTIVES**

THIS AGREEMENT is executed by and between **DEMILEC USA, LLC**, a limited liability company authorized to do business in Texas (hereafter referred to as “OWNER”), its address being 3315 E. Division Street, Arlington, Texas, and the **CITY OF ARLINGTON, TEXAS**, a home-rule city and municipal corporation of Tarrant County, Texas, acting by and through its City Manager or his designee, (hereafter referred to as “CITY”).

WITNESSETH:

WHEREAS, CITY has found that providing a program consisting of a grant of funds to OWNER in exchange for OWNER’S completion of the project proposed by OWNER will promote local economic development and stimulate business and commercial activity and create jobs within the City of Arlington (hereafter referred to as “PROGRAM”);

WHEREAS, CITY has determined that the PROGRAM will directly establish a public purpose and that all transactions involving the use of public funds and resources in the establishment and administration of the PROGRAM contain controls likely to ensure that the public purpose is accomplished;

WHEREAS, CITY has agreed that if the conditions set forth in this Agreement are met on an annual basis, then CITY will pay OWNER grants based on the business personal property tax and sales tax generated, as set forth herein; and

WHEREAS, Chapter 380 of the Local Government Code provides statutory authority for establishing and administering the program provided herein; NOW THEREFORE,

The CITY and OWNER, for and in consideration of the mutual covenants and promises contained herein, do hereby agree, covenant and contract as set forth below:

I.
Recitals

The City Council hereby finds, and the CITY and OWNER hereby agree, that the recitals set forth above are true and correct and form the basis upon which the parties have entered into this Agreement.

II. **Definitions**

“Added Taxable Value” is defined as the value of the OWNER’s Eligible Personal Property above the base year value as of January 1, 2010, as determined by the Tarrant Appraisal District.

“Base Year Value” is defined as the taxable value of the OWNER’s real property located at the Premises on January 1, 2010, as determined by the Tarrant Appraisal District.

“CITY” shall mean the City of Arlington, Texas.

“Eligible Personal Property” means all tangible personal property (except inventory or supplies) delivered to, installed or located on the Premises under OWNER’s name as reported by the Tarrant County Appraisal District.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of a party’s existence as a going business, insolvency, appointment of receiver for any part of a party’s property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party and in the event such proceeding is not voluntarily commenced by the party, such proceeding is not dismissed within ninety (90) business days after the filing thereof.

“Event of Force Majeure” shall mean any contingency or cause beyond the reasonable control of a party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action (unless caused by the intentionally wrongful acts or omissions of the party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Sales Tax Grant(s)” shall mean the economic development grants related to “Sales and Use Taxes” to be paid to the OWNER from lawful available funds in accordance with the terms of this Agreement.

“Grant Period” shall mean a full calendar year for those grants related to “Sales and Use Tax.”

“Impositions” shall 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 a public or governmental authority on the OWNER or any property or any business owned by the OWNER within the CITY.

“Job” is defined as a permanent, full-time equivalent employment position that results in employment of an employee (not independent contractor) of OWNER within the City of Arlington of at least one thousand eight hundred and twenty (1,820) hours per position in a year.

“OWNER” shall mean Demilec USA, LLC.

“Premises” are defined as the real property located at 3315 E. Division Street, Arlington, Texas, as described in **Exhibit “A”**, which existed on January 1, 2010, and shall mean OWNER’s local office in the CITY at which OWNER operates a business of the development, commercialization, and the sale of environmentally safe spray-foam insulation generating the sale of Taxable Items consummated in the CITY.

“Required Use” shall mean OWNER’s continuous occupancy of the Premises and OWNER’s continuous operation in the CITY of the business of development, commercialization, and the sale of environmentally safe spray-foam insulation.

“Sales and Use Tax” shall mean the one percent (1%) sales and use tax imposed by the CITY pursuant to Chapter 321 of the Texas Tax Code, as amended on the sale of Taxable Items by the OWNER consummated at the Premises.

“Sales Tax Certificate” shall mean a certificate or other statement in a form reasonably acceptable to the CITY setting forth the OWNER’s collection of Sales and Use Tax received by the CITY from the State of Texas, for the sale of Taxable Items by OWNER at the Premises consummated in the CITY for the applicable Grant Period which are to be used to determine OWNER’s eligibility for a Grant, together with such supporting documentation required herein, and as CITY may reasonably request.

“Sales Tax Receipts” shall mean the CITY’s receipts from the State of Texas from the collection of Sales and Use Tax by the OWNER as a result of the sale of Taxable Items by OWNER at the Premises consummated in the CITY during a period from January 1, 2012 to December 31, 2016 (it being expressly understood that the sales and use tax receipts are being used only as a measurement for calculation of the amount of CITY’s Sales Tax Grant payment to be made from any legally available, permissible, unencumbered funds).

“State of Texas” shall mean the office of the Texas Comptroller, or its successor.

“Taxable Items” shall have the same meaning assigned by Chapter 151, TEX. TAX CODE ANN., as amended.

“Term” shall mean the initial term as set forth in the description of each incentive herein, and any renewal thereof.

III.
Term

This Agreement shall be effective as of the date of execution by all parties. This Agreement will terminate on the date CITY makes to OWNER the last grant payment as detailed in section VII below, unless sooner terminated in accordance with section IX of this Agreement.

IV.
General Provisions

- A. The Premises are not in an improvement project financed by tax increment bonds.
- B. The Premises are not owned or leased by any member of the City Council or any member of the Planning and Zoning Commission of CITY.

V.
Conditions to Grant Related to Business Personal Property Tax

In consideration of the CITY paying to OWNER the incentives described in Article VII below, OWNER shall meet the following conditions:

- A. Anticipated Date of Deadline for Operation: OWNER shall expand its business operations in Arlington by operating a portion of its spray-foam insulation business on the Premises by December 31, 2011.
- B. Added Taxable Value Required: OWNER's operation on the Premises will result in the following added taxable values:
 - (1) As of January 1, 2012, Added Taxable Real Property Value of at least two million dollars (\$2,000,000) above the Base Year Value; and ✓
 - (2) Added Business Personal Property Value of at least one million five hundred thousand dollars (\$1,500,000) for the tax year beginning January 1, 2012 and an additional Added Taxable Value for the tax year beginning January 1, 2013, to total three million dollars (\$3,000,000) or more above the Base Year Value. ✓
 - (3) For the tax year beginning January 1, 2014, and any tax year thereafter through the remainder of the agreement, in order to qualify for a grant based on Business Personal Property, the added Business Personal Property must result in Added Taxable Value of at least three million dollars (\$3,000,000) for each year a grant is sought. ✓

C. Jobs:

- (1) OWNER will retain a minimum of 50 jobs in Arlington at the Premises or in combination with OWNER's other existing Arlington locations (2901 Galleria Drive or 2925 Galleria Drive) from the date of execution for the life of the agreement. ✓
- (2) OWNER will provide and fill a minimum of 20 new full-time equivalent jobs at the Premises or in combination with OWNER's other existing Arlington locations (2901 Galleria Drive or 2925 Galleria Drive) by no later than December 31, 2012. ✓
- (3) OWNER will provide and fill a total of at least 20 additional full-time equivalent jobs at the Premises or in combination with OWNER's other existing Arlington locations (2901 Galleria Drive or 2925 Galleria Drive) by no later than December 31, 2013. ✓
- (4) OWNER will provide and fill a total of at least 20 additional full-time equivalent jobs at the Premises or in combination with OWNER's other existing Arlington locations (2901 Galleria Drive or 2925 Galleria Drive) by no later than December 31, 2014. ✓
- (5) OWNER will maintain no fewer than 110 full-time equivalent jobs from December 31, 2014 through the remainder of the term of the Agreement. ✓

D. No Tax Delinquencies: OWNER shall not allow the ad valorem taxes owed to CITY on any property owned by OWNER and located within the City of Arlington to become delinquent.

E. No Undocumented Workers: OWNER covenants and certifies that OWNER 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 OWNER is convicted of a violation under 8 U.S.C. Section 1324a(f), OWNER shall repay to the CITY the full amount of the Grant made under section VI of this Agreement, plus 10% per annum from the date the Grant was made. Repayment shall be paid within 120 days after the date OWNER be convicted of a violation.

VI.

Conditions to Grant Related to Sales Tax

The CITY's obligation to pay the Sales Tax Grant shall be conditioned upon the OWNER's compliance with and satisfaction of each of the conditions set forth below:

6.1 Sales Tax Certificate. During the term of this Agreement, the OWNER shall within 30 days after the end of each calendar month, provide the CITY with a Sales

Tax Certificate. The CITY shall have no duty to calculate the Sales Tax Receipts or determine OWNER's entitlement to any Grant, or pay any Grant during the term of this Agreement until such time as OWNER has provided the CITY a Sales Tax Certificate for the applicable Grant Period. The CITY may but is not required to provide OWNER with a form for the Sales Tax Certificate required herein. At the request of the CITY, the OWNER shall provide such additional documentation as may be reasonably requested by CITY to evidence, support and establish the Sales and Use Tax paid and collected (including Sales and Use Tax paid directly to the State of Texas pursuant to a direct payment permit) by OWNER for the sale of Taxable Items consummated at the Premises and received by CITY from the State of Texas. The Sales Tax Certificate shall at a minimum contain, include or be accompanied by the following:

- a. A schedule detailing the amount of Sales and Use Tax collected by the OWNER, and paid to the State of Texas as a result of the sale of Taxable Items by the OWNER consummated in the CITY at the Premises for the applicable Grant Period;
- b. A copy of all Sales and Use Tax returns and reports, direct payment and self-assessment returns, Sales and Use Tax prepayment returns, direct payment permits and reports, sales and use tax audit assessments, including amended sales and use tax returns or reports, filed by OWNER for the previous calendar quarter, showing Sales and Use Tax collected (including Sales and Use tax paid directly to the State of Texas pursuant to a direct payment certificate) by the OWNER for the sale of Taxable Items consummated in the CITY at the Premises for the applicable Grant Period.

CITY agrees to the extent allowed by law to maintain the confidentiality of the Sales Tax Certificate, it being agreed that the Sales Tax Certificate shall be deemed a part of the Confidential Tax Information.

6.2 As a condition to the payment of any Sales Tax Grant hereunder, CITY shall have received a Sales Tax Certificate for the applicable Grant Period for which payment of a Grant is requested.

6.3 OWNER shall continuously occupy and operate the Premises in accordance with this Agreement no later December 31, 2011.

6.4 The OWNER, subject to events of Force Majeure or Casualty, shall use good faith efforts to continuously operate the Premises in the CITY in a manner that the sale of Taxable Items by OWNER at the Premises are consummated in the CITY generating Sales and Use Tax received by the CITY from the State of Texas.

6.5 OWNER shall not have an uncured breach or default of this Agreement.

6.6 OWNER agrees to occupy the Premises not later than December 31, 2011, and to maintain the Required Use during the duration of this Agreement. The OWNER

shall use good faith efforts to not allow the Required Use to cease for more than 30 days except in connection with an event of Force Majeure, Casualty, or termination as provided in this Agreement.

6.7 Performance standards. OWNER shall accomplish the following:

- a. taxable sales at the Premises of \$10,000,000 or more for each of the first and second years of the agreement (2012 and 2013) so that the sales result in a minimum of \$100,000 annually in Sales and Use tax received by the City.
- b. taxable sales at the Premises of eleven million and twenty-five thousand dollars (\$11,025,000) or more per year by the third year and for each year for the remainder of the agreed duration of the Sales Tax Grant (2014, 2015, 2016), so that the sales result in a minimum of one hundred ten thousand two hundred fifty dollars (\$110,250) Sales and Use Tax received per year by the City.

VII. **Grants**

- A. Grant Related to Ad Valorem Taxes on New Business Personal Property. In exchange for OWNER's completion and compliance with the Conditions and Requirements set forth in section V above, CITY shall, on an annual basis, beginning with taxes collected for the tax year beginning January 1, 2012, and ending with taxes collected for the tax year beginning January 1, 2021, pay to OWNER a grant payment calculated as follows: the amount of each annual grant related to business personal property taxes shall be equal to 90% of the business personal property taxes collected by CITY ("Business Personal Property Grant"), relating to the business personal property described in Section V.B(2) herein, as reported by the Tarrant Appraisal District, on the Added Taxable Value. The Business Personal Property Tax Grant payments will be paid by CITY to OWNER on or before June 1 of each year, beginning with the first payment on or before June 1, 2013, and ending with the last payment on or before June 1, 2022.
- B. Grants Related to Sales Tax. In exchange for OWNER's completion and compliance with the Conditions and Requirements set forth in section VI above, CITY shall, on an annual basis subject to the OWNER's Required Use, provide OWNER with Sales Tax Grants from lawful available funds payable as provided herein in an amount equal to 50% of the Sales Tax Receipts for taxes collected for the period beginning January 1, 2012, and ending December 31, 2016. The Sales Tax Grants shall be paid within 30 days after the later to occur of: (i) CITY receipt of the annual Sales Tax Certificate submitted by OWNER for the Grant Period and (ii) the CITY receipt of all Sales Tax Receipts for the Grant Period covered by the Sales Tax Certificate.

VIII.

Further Conditions on Payment of Grants

8.1 Grant Limitations. The CITY shall not be required to pay the Sales Tax Grants until such time as the CITY has received Sales Tax Receipts from the State relating to the annual period for which a grant is requested. Under no circumstances shall CITY obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The CITY shall have an obligation to pay the Sales Tax Grants only to the extent the Sales Tax Receipts are collected from OWNER. Further, CITY shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by the OWNER. None of the CITY's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution. The Grants made hereunder shall be paid solely from lawfully available funds and shall not be construed as a pledge or encumbrance on any Sales and Use Tax collected.

8.2. Grant Funds. Under no circumstances shall any Sales Tax Grant or any Sales Tax Grant Payment be calculated to include any receipts from the CITY's imposition and collection of Sales and Use Tax for the sale of Taxable Items at any location, business, establishment, or entity, consummated in the CITY other than from the sale of Taxable Items by OWNER at the Premises. Any Sales Tax Grant payable hereunder is limited to the extent that the CITY has received Sales Tax Receipts for the respective Grant Period. The CITY shall not be required to provide any Sales Tax Grant during the term of this Agreement for any Sales Tax Grant Period for which the CITY has not received the Sales Tax Receipts.

8.3. Amended. In the event the OWNER files an amended Sales and Use Tax return, or report, or if additional Sales and Use Tax is due and owing by OWNER to the State of Texas, as determined by or as approved by the State of Texas affecting Sales Tax Receipts for a previous Grant Period, then the Sales Tax Grant payment for the Grant Period immediately following the CITY's receipt of Sales Tax Receipts from the State of Texas shall be recalculated and adjusted accordingly. As a condition precedent to payment of such adjustment, OWNER shall provide CITY with a copy of any such amended Sales and Use Tax report or return, and the approval thereof by the State of Texas. This section 8.3 shall survive termination or expiration of this Agreement.

8.4. Refunds. The OWNER shall promptly, but in no case later than 30 days following an adjustment, notify the CITY in writing of any adjustments found, determined or made by OWNER, the State of Texas or by an outside audit that results or will result in either a refund or the payment of additional Sales and Use Tax. Such notification shall also include the amount of any such adjustment in Sales and Use Tax Receipts. In the event the State of Texas determines that the CITY erroneously received Sales Tax Receipts, or that the amount of Sales and Use Tax paid to the CITY exceeds the correct amount of Sales and Use Tax for a previous Grant Period, for which the OWNER has received a Grant, the OWNER shall, within 30 days after receipt of notification thereof from the CITY specifying the amount by which such Grant exceeded

the amount to which the OWNER was entitled pursuant to such State of Texas determination, pay such amount to the CITY. Alternatively, the CITY may at its option adjust the Grant payment(s) for the Grant Period(s) immediately following such State of Texas determination for such incorrect amount. As a condition precedent to payment of such refund or adjustment, the CITY shall provide OWNER with a copy of such determination by the State of Texas. This section 8.4 shall survive termination or expiration of this Agreement.

8.5. Waiver of Sales Tax Confidentiality. The OWNER shall provide the CITY and maintain during the term of this Agreement a Waiver of Sales Tax Confidentiality that authorizes the State of Texas to release to the CITY Sales and Use Tax information pertaining to the OWNER during the Term. The OWNER will continue to maintain an effective Waiver of Sales Tax Confidentiality during the Term. The Waiver of Sales Tax Confidentiality shall include but not be limited to the following documentation:

- a. Information regarding the amount of Sales and Use Tax collected and paid to the State by the OWNER as a result of the sale of Taxable Items by the OWNER at the Premises for any period of time covered by this Agreement;
- b. A copy of all Sales and Use Tax returns and reports, direct payment and self-assessment returns, Sales and Use Tax prepayment returns, direct payment permits and reports, including amended Sales and Use Tax returns or reports, filed by OWNER during the Term showing Sales and Use Tax collected (including Sales and Use Tax paid directly to the State pursuant to direct payment certificate) by the OWNER for the sale of Taxable Items consummated at the Premises for the applicable Grant Period.

8.6. Confidentiality. The CITY agrees, to the extent allowed by law, to keep all information and documentation received from the State of Texas pursuant to this Agreement hereof (“Confidential Tax Information”) confidential. The CITY will only provide access to the Confidential Tax Information to its governing officials, employees, independent contractors or agents on a “need-to-know” basis. The CITY will use the Confidential Tax information solely for the purposes of determining the OWNER’s entitlement to a Grant, a refund or to determine if any additional prior written authorization, directly or indirectly, intentionally or inadvertently; (a) disclose to any other person (other than as expressly permitted above) the Confidential Tax Information; (b) copy, photograph, photocopy, reduce to writing or otherwise reproduce or duplicate the Confidential Tax Information in any form or medium, electronic or otherwise except in connection with purposes provided herein. The OWNER’s Waiver of Sales Tax Confidentiality is solely for the limited purpose of allowing the CITY to confirm the OWNER’s entitlement to Grants, CITY’s entitlement to refunds, or the OWNER’s obligation to pay additional Sales and Use Tax during the term of this Agreement. In the event the CITY is requested or becomes legally compelled (by deposition, interrogatory,

request for documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Tax Information, the CITY shall provide the OWNER with prompt written notice of such request or requirement so that the OWNER may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section.

IX.
Termination

- 9.1 This Agreement terminates upon any one or more of the following:
- a. by mutual written agreement of the parties;
 - b. on expiration of the Term;
 - c. by CITY, if any Impositions owed to the CITY or the State of Texas by OWNER shall have become delinquent (provided, however, OWNER retains the right to timely and properly protest and contest any such taxes or Impositions);
 - d. by CITY, if OWNER suffers an Event of Bankruptcy or Insolvency;
 - e. by either party if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; and

9.2 In the event of termination (other than pursuant to section 9.1(d) or (e) above), the CITY shall be obligated to provide any Grant(s) for Sales Tax Receipts for the sale of Taxable Items by OWNER consummated in the CITY at the Premises prior to the effective date of such termination but unpaid. The rights, responsibilities and liabilities of the Parties under this Agreement shall be extinguished upon the termination of this Agreement except for any obligations that accrue but are unpaid prior to such termination except as otherwise provided herein.

X.
Non-Performance

The parties acknowledge that the Owner is obligated to use good faith efforts to meet the conditions set forth in Sections V and VI. If the Owner fails to meet the conditions in Section V and VI in a certain year, then Owner waives its right to receive any grants for the year for which the conditions were not met. However, the failure to meet any or all of the conditions in any given year or month shall not be a breach of this Agreement, nor be grounds to terminate this Agreement and Owner shall be entitled to the Grants as defined in Section VII in any of the following years in which Owner meets the conditions in Section V and VI.

XI.
Notice

Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

OWNER: Demilec USA, LLC
3315 E. Division Street
Arlington, Texas 76011
Attn: Michael Boatwright, Controller

CITY: City of Arlington
City Manager's Office
P.O. Box 90231
Arlington, Texas 76004-3231
Attn: Economic Development Manager

XII.
City Council Authorization

This Agreement was authorized by resolution of the City Council authorizing the City Manager or his designee to execute this Chapter 380 Program Agreement for Economic Development Incentives on behalf of the CITY.

XIII.
Severability

In the event any section, subsection, paragraph, sentence, phrase or word is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

XIV.
Estoppel Certificate

Any party hereto may request an estoppel certificate from another party hereto, so long as the certificate is requested in connection with a bona fide business purpose. The certificate, which if requested, will be addressed to a subsequent purchaser or assignee of OWNER, shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default (or if default exists the nature of same), the remaining term of this Agreement, the levels and remaining term of the incentives in

effect and such other matters reasonably requested by the party(ies) to receive the certificates.

XV.
OWNER's Standing

OWNER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions or City Council actions authorizing same, and OWNER shall be entitled to intervene in said litigation.

XVI.
Applicable Law

The laws of the State of Texas shall govern the Agreement without giving effect to any conflict of law rule or principle that might result in the application of the laws of another jurisdiction; and venue for any action concerning this Agreement shall be in the State District Court of Tarrant County, Texas. The parties agree to submit to the jurisdiction of said court.

XVII.
Indemnification

It is understood and agreed between the parties that OWNER, in performing its obligations hereunder, is acting independently, and CITY assumes no responsibility or liability to third parties in connection therewith, and OWNER agrees to indemnify and hold harmless CITY from any claims, damages, verdicts or judgments arising out of actions or omissions by OWNER or caused by OWNER in breach of this agreement. It is further understood and agreed among the parties that CITY, in performing its obligations hereunder, is acting independently, and OWNER assumes no responsibility or liability to third parties in connection therewith, and CITY agrees to the extent allowed by law to indemnify and hold harmless OWNER from any such responsibility or liability.

XVIII.
Force Majeure

It is expressly understood and agreed by the parties to this Agreement that the parties shall not be found in default of this Agreement if any party's failure to meet the requirements of this Agreement is delayed by reason of war, Act of God, fire or other casualty of a similar nature.

XIX.
No Other Agreement

This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement, except as provided in any Exhibits attached hereto.

XX.
Signatories

This Agreement is effective and binding on those parties that have duly signed below.

XXI.
**Procurement of Goods and Services from Arlington Businesses
and/or Historically Underutilized Businesses**

In performing this Agreement, OWNER agrees to use diligent efforts to purchase all goods and services from Arlington or Tarrant County businesses whenever such goods and services are comparable in availability, quality and price.

As a matter of policy with respect to CITY projects and procurements, CITY also encourages the use, if applicable, of qualified contractors, subcontractors and suppliers where at least fifty-one percent (51%) of the ownership of such contractor, subcontractor or supplier is vested in racial or ethnic minorities or women. In the selection of subcontractors, suppliers or other persons or organizations proposed for work on this Agreement, OWNER agrees to consider this policy and to use their reasonable and best efforts to select and employ such companies and persons for work on this Agreement.

XXII.
Headings

The headings of this Agreement are for the convenience of reference only and shall not affect in any manner any of the terms and conditions hereof.

XXIII.
Successors and Assigns

This Agreement may not be assigned without the express written consent of CITY, provided however the OWNER may assign this Agreement at any time without consent of the CITY to any person or entity that directly or indirectly acquires, through merger, sale of stock, purchase or otherwise, all or substantially all of the assets of the OWNER, provided that the OWNER gives 30 days prior written notice to the CITY of such assignment and the assignee agrees in writing to be bound by the term and conditions of this Agreement and assumes the obligations, duties and liabilities of the

OWNER. Upon such assignment, the OWNER shall be released from all obligations, duties and liabilities with respect to this Agreement.

XXIV.
Fiscal Funding

OWNER and CITY recognize that the continuation of this Agreement after the close of any given fiscal year of the City of Arlington, which fiscal year ends on September 30th of each year, shall be subject to the Arlington City Council budget approval providing for or covering such item as an expenditure therein. In the event such budget approval is not given, this Agreement shall immediately terminate without penalty.

XXV.
Miscellaneous

25.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

25.2 Limitations on Liability. It is understood and agreed between the parties that the OWNER and CITY, in satisfying the conditions of this Agreement, have acted independently, and the CITY assumes no responsibilities or liabilities to third parties in connection with these actions. The OWNER agrees to indemnify and hold harmless the CITY from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of the OWNER's performance of the conditions under this Agreement.

25.3 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

25.4 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

25.5 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

25.6 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision shall 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.

25.7 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

25.8 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

25.9 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

25.10 Conditions Precedent. This Agreement is subject to and conditioned on the OWNER providing satisfactory proof of the existence of the OWNER, authorized to transact business in the State of Texas.

25.11 No Waiver. The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder shall not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

XXVI.
Execution of Agreement

This Agreement must be executed within 60 days after the date this Agreement is authorized by the City of Arlington City Council and presented to OWNER for signature or further authorization of the City Council shall be required. This Agreement has been authorized by City Council on _____, 2011.

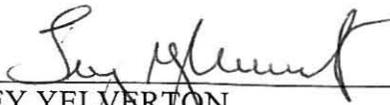
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the ____ day of _____, 2011.

DEMILEC USA, LLC

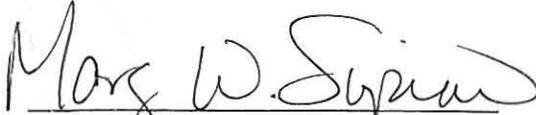
BY 
Signature
AWAL LAL
Typed or Printed Name
CEO
Typed or Printed Title

WITNESS:

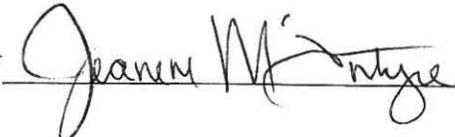
CITY OF ARLINGTON, TEXAS

BY 
TREY YELVERTON
Deputy City Manager

ATTEST:


MARY W. SUPINO, City Secretary

APPROVED AS TO FORM:
JAY DOEGEY, City Attorney

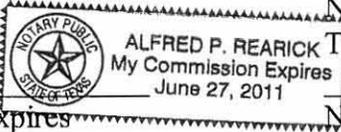
BY 

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

DEMILEC USA, LLC
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared Angela Lall, who is known to me or who was proved to me on the oath of _____ (name of person identifying the acknowledging person) or who was proved to me through _____ (description of identity card or other document issued by the federal or state government containing the picture and signature of the acknowledging person) to be the person whose name is subscribed to the forgoing instrument, and acknowledged to me that he/she executed same for and as the act and deed of **DEMILEC USA, LLC**, and as the CEO thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 8th day of June, 2011.

6/27/11 My Commission Expires

Notary Public in and for
The State of Texas
Alfred P. Rearick
Notary's Printed Name

THE STATE OF TEXAS §
§
COUNTY OF TARRANT §

CITY OF ARLINGTON, TEXAS
Acknowledgment

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared **TREY YELVERTON** known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed same for and as the act and deed of the **CITY OF ARLINGTON**, a municipal corporation of Tarrant County, Texas, and as the **Deputy City Manager** thereof, and for the purposes and consideration therein expressed, and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this the 1st day of July, 2011.

7/1/14
My Commission Expires

Ann C. Riney
Notary Public in and for
The State of Texas
ANN C. RINEY
Notary's Printed Name

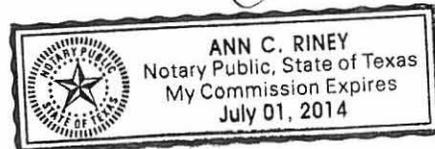


Exhibit "A"

Premises

