

THE STATE OF TEXAS §

COUNTY OF BRAZORIA §

**TAX ABATEMENT AGREEMENT FOR PROPERTY LOCATED IN  
\_\_\_\_\_ REINVESTMENT ZONE NO. \_\_\_\_\_**

This Tax Abatement Agreement (hereinafter referred to as the (“Agreement”)) is made and entered into by and between **VELASCO DRAINAGE DISTRICT (“District”)** and \_\_\_\_\_ (“Owner”), the owner of taxable real property in Velasco Drainage District in Brazoria County, Texas, located in the \_\_\_\_\_ **REINVESTMENT ZONE NO. \_\_\_\_\_** (“Reinvestment Zone”).

**I. AUTHORIZATION**

This Agreement is authorized by the Texas Property Redevelopment and Tax Abatement Act, V.A.T.S. Tax Code, Chapter 312, as amended, and by Resolution of the Board of Supervisors of the District, providing for the designation of the subject reinvestment zone.

**II. DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below:

- a. Certified Appraised Value means the January 1<sup>st</sup> appraised value of the property within the Reinvestment Zone as certified by the Brazoria County Appraisal District as of the January 1<sup>st</sup> valuation date.
- b. Abatement means the full or partial exemption from ad valorem taxes of certain property in a reinvestment zone designated for economic development purposes.
- c. Eligible Property means the buildings, structures, fixed machinery, equipment and process units, site improvements, and that office space and related fixed improvements necessary to the operation and administration of the facility. New Eligible Property means Eligible Property construction of which commences subsequent to the date of execution of this Agreement. A list of the New Eligible Property is set forth in Owner’s Application for Tax Abatement in Brazoria County, which is attached hereto as **Exhibit A** and made a part hereof. During the Construction Phase of the New Eligible Property, the Owner may make such change orders to the New Eligible Property as are reasonable necessary to accomplish its intended use.
- d. Ineligible property means land, inventories, supplies, tools, furnishings and other forms of movable personal property, vehicles, vessels, aircraft, housing, hotel accommodations, retail facilities, and deferred maintenance investments.
- e. The phrase “actual productive life” in this Agreement means the actual period of time the improvements were in active service and operation as part of a facility operating in a producing capacity, and this definition supersedes any other definition stated elsewhere.

The Tax Abatement Resolution Velasco Drainage District, adopting guidelines and criteria for granting tax abatement in a reinvestment zone in Velasco Drainage District, adopted by the Velasco Drainage District Board of Supervisors, has been adopted by the District and is attached hereto as **Exhibit B** and made a part hereof. All definitions set forth therein are applicable to this Agreement.

### III. SUBJECT PROPERTY

The \_\_\_\_\_ **REINVESTMENT ZONE NO.** \_\_\_\_\_  
(the "Reinvestment Zone") is an area within Velasco Drainage District generally described as follows:

\_\_\_\_\_.

A map of the Reinvestment Zone is attached hereto as **Exhibit C**.

The legal description of the Reinvestment Zone is attached hereto as **Exhibit D**.

The Brazoria County Appraisal District has established the following values for land, personal property and improvements of various owners in the subject property or of certain tracts of land from which the subject tract of land is derived as of \_\_\_\_\_, **20**\_\_\_\_\_:

Land

Appraised Value

See attached **Exhibit E** – Certification of Appraised Values of Properties

### IV. VALUE AND TERM OF ABATEMENT

This Tax Abatement shall be effective \_\_\_\_\_, **20**\_\_\_\_. \_\_\_\_\_ percent (\_\_\_\_%) of the value of New Eligible Properties shall be abated **for seven (7) years** or one-half (1/2) the productive life of the improvement, whichever is less.

Pursuant to the provisions of this agreement, the term of abatement under this agreement shall commence \_\_\_\_\_, **20**\_\_\_\_ and continue through \_\_\_\_\_, **20**\_\_\_\_. The benefits of abatement shall continue throughout the last year in which abatement is applied as long as the property and property owner continue to qualify for abatement throughout the last year.

If pursuant to the above provisions, it is determined upon completion of improvements, or at any time thereafter that one-half (1/2) the estimated productive life of improvements is less than the term of years of abatement under this agreement, the term of abatement shall be reduced to one-half (1/2) the productive life of the improvements and Owner shall pay to District the full amount of taxes otherwise abated in each year in which the term of abatement exceeded one-half (1/2) of the actual productive life of the improvements. Any recapture hereunder shall be payable within sixty (60) days of written notice. Owner shall certify by statement to District and the Brazoria County Appraisal District the predicted estimated productive life of improvements upon completion of the construction; provided, however, Owner's estimate of productive life shall not control the operation of this subsection.

Owners payment obligation under the preceding paragraph is a continuing obligation of Owner. Owner understands and agrees that this agreement mandates that Owner's abated improvements be in active service and operation as part of a facility operating in a producing capacity for a period of **fourteen (14) years** from the effective commencement date of this agreement (to \_\_\_\_\_, **20**\_\_\_\_\_) in order for Owner to receive **seven (7) full years** of abatement that are not subject to the term reduction and recapture/payment obligation provisions of the preceding paragraph of this agreement.

#### V. TAXABILITY

During the period that this Tax Abatement is effective, taxes shall be payable as follows:

- (1) The value of Ineligible Property shall be fully taxable;
- (2) the Certified Appraised Value of existing Eligible Property as determined each year shall be fully taxable; and
- (3) the full value of New Eligible Property shall be abated as set forth in Part IV. herein.

#### VI. CONTEMPLATED IMPROVEMENTS AND EMPLOYMENT

As set forth in the Application attached as Exhibit A, the Owner represents that it will construct the following facilities: \_\_\_\_\_.  
The estimated value of eligible improvements at the end of this abatement agreement indicated in the Application is \_\_\_\_\_ **Dollars (\$**\_\_\_\_\_).

Owner represents and warrants that this project will create \_\_\_\_\_ **full-time plant jobs**. In addition, the owner represents and warrants that the level of employment stated in the abatement application (including the projected creation or retention of employment) will be maintained for the duration of the abatement period. Owner further represents that this project will provide an estimated \_\_\_\_\_ **construction jobs at the beginning of construction**, with a **peak load of** \_\_\_\_\_ **construction jobs** during the course of construction.

All improvements shall be completed in accordance with all applicable law.

Owner shall not make any use of the property that is inconsistent with the general purpose of encouraging development or redevelopment of the reinvestment zone during the period that the property tax exemptions are in effect.

The Owner estimates that construction of the improvements will begin on \_\_\_\_\_, **20**\_\_\_\_\_ with completion estimated by \_\_\_\_\_, **20**\_\_\_\_\_.

#### VII. EVENT OF DEFAULT

During the abatement period covered by this Agreement, the District may declare a default hereunder by the Owner if the Owner:

- (a) fails to commence construction of the New Facility described in Part VI., above, and the Application attached hereto as Exhibit A within two (2) years from the date this Agreement is executed;
- (b) fails to construct the New Facility described in Part VI., above;
- (c) refuses or neglects to comply with any of the terms of this Agreement;
- (d) if any representation made by the Owner in this Agreement is false or misleading in any material respect; or
- (e) the constructed facility fails to meet the economic qualifications of Section 2(h) of the Velasco Drainage District Guidelines & Criteria for granting tax abatement. The economic qualifications of Section 2(h) of the Brazoria County Guidelines and Criteria For Granting Tax Abatement expressly include the requirement that the level of employment stated in the abatement application for the property that is the subject of the tax abatement agreement be maintained for the duration of the abatement period.

Should the District determine the Owner to be in default of this Agreement, the District shall notify the Owner in writing prior to the end of the abatement period, and if such default is not cured within sixty (60) days from the date of such notice (“Cure Period”), then this Agreement may be terminated; provided, however, that in the case of a default that for causes beyond Owner’s reasonable control cannot with due diligence be cured within such sixty-day period, the Cure Period shall be deemed extended if Owner (i) shall immediately, upon the receipt of such notice, advise the District of Owner’s intention to institute all steps necessary to cure such default and (ii) shall institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same. In the event the Owner allows its ad valorem taxes owed the District to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest, or if the Owner violates any of the terms and conditions of this Agreement and fails to cure during the Cure Period, this Agreement may then be terminated and all taxes previously abated by virtue of this Agreement will be recaptured and paid within sixty (60) days of termination.

In the event the facility contemplated herein is completed and begins producing product or service, but the company fails to maintain the level of employment (including the projected creation or retention of employment) stated in the abatement application for the property that is the subject of the abatement agreement, the district may elect to: 1. Declare a default and terminate the abatement agreement without recapturing prior years’ abated taxes; 2. Declare a default, terminate the agreement and order a recapture of all or part of the previous years; abated taxes; or 3. Set specific terms and conditions for the continuation of the abatement exemption for the duration of the term of the agreement under its present terms or alter the amount of the abatement for the remaining term of the agreement.

## **VIII. ADMINISTRATION**

This Agreement shall be administered on behalf of the District by the District Superintendent of the District pursuant to the direction of the Board of Supervisors of the District and/or other persons appointed by the Board of Supervisors of the District. The Owner shall allow authorized employees and/or representatives of the District who have been designated and approved by the Board of Supervisors of the District to have access to this Reinvestment Zone during the term of this Agreement to inspect the facility to determine compliance with the terms and conditions of this Agreement. All inspections will be made at a mutually agreeable time after the giving of forty-eight (48) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the facility. All inspections will be made with one or more

representatives of the Owner and in accordance with Owner's safety standards. Owner shall fully cooperate in answering questions and furnishing information relative to facility compliance and production status to Velasco Drainage District's representatives during the inspection process.

Upon completion of the contemplated construction, the District Superintendent and/or other persons appointed by the Board of Supervisors shall annually evaluate the facility to ensure compliance with the terms and provisions of this Agreement and shall report possible defaults to the Board of Supervisors of the District.

The Chief Appraiser of the Brazoria County Appraisal District annually shall determine (i) the taxable value pursuant to the terms of this abatement of the real and personal property comprising this Reinvestment Zone and (ii) the full taxable value without abatement of the real and personal property comprising this Reinvestment Zone. The Chief Appraiser shall record both the abated taxable value and the full taxable value in the appraisal records. The full taxable value figure listed in the appraisal records shall be used to compute the amount of abated taxes that are required to be captured and paid in the event this Agreement is terminated in a manner that results in recapture. Each year the Owner shall furnish the Chief Appraiser with such information outlined in Chapter 22, V.A.T.S. Tax Code, as may be necessary for the administration of the abatement specified herein.

If the District terminates this Agreement, it shall provide Owner written notice of such termination. If Owner believes that such termination was improper, the Owner may file suit in the Brazoria County District Courts appealing such termination within ninety (90) days after receipt from the District of written notice of the termination. If an appeal suit is filed, Owner shall remit to the District, within sixty (60) days after receipt of the notice of termination, any additional and/or recaptured taxes as may be payable during the pendency of the litigation pursuant to the payment provisions of Section 42.08 V.A.T.S. Tax Code. If the final determination of the appeal increases Owner's tax liability above the amount of tax paid, Owner shall remit the additional tax to the District pursuant to Section 42.42, V.A.T.S. Tax Code. If the final determination of the appeal decreases Owner's tax liability, the District shall refund to Owner the difference between the amount of tax paid and the amount of tax for which Owner is liable pursuant to Section 42.43, V.A.T.S. Tax Code.

## **IX. INFORMATION PROVIDED BY OWNER**

Pursuant to Section 5(a)(7) of the Velasco Drainage District Guidelines and Criteria for granting tax abatement, Owner shall annually furnish information necessary for District's evaluation of Owner's compliance with the terms and conditions of this tax abatement agreement and the Velasco Drainage District Guidelines and Criteria (in the form of an annual report/statement of compliance to be mailed to the District on or within sixty (60) days of each January 1 of each year of the tax abatement contract term).

Additionally, Owner shall furnish the following information or written statements to District upon request annually or bi-annually, (at District's election) during the term of this agreement:

- (1) Statement by Owner certifying the commencement and/or completion date of the contemplated improvements described in paragraph VI. herein and in owner's application;
- (2) Statement by Owner of the number of permanent employees, contract employees and construction employees actually employed at the facility location;

- (3) Statement by Owner describing the status of construction of contemplated improvements, percentage of construction completed, construction schedule and Owner's estimate of taxable value of constructed improvements on the date of the statement; or
- (4) In lieu of the above statements, Owner may furnish documents and records verifying the above requested information.
- (5) Any information, documents or records of any kind reasonably necessary for District's evaluation of Owner's compliance with the terms and conditions of this agreement and Velasco Drainage District guidelines, provided that Owner shall not be required to furnish any information, documents or records which a reasonably prudent Owner under the same or similar circumstances would consider to be harmful to its business operations.
- (6) Copies of all statements, reports, and representations from Owner to Brazoria County concerning or pursuant to the tax abatement agreement between Owner and Brazoria County for this reinvestment zone.

Owner's statements described above shall be verified by Owner's project manager or other appropriate official. Failure to provide any requested statement or information without just cause within sixty (60) days of the request or presentation of any false or misleading statement may at the District's option, be construed as a default by Owner under this agreement and cause for immediate termination of this agreement without recapture of taxes, if after written notice of default, Owner has not cured such default prior to the expiration of thirty (30) days from such written notice. The Cure Period provisions of Paragraph VII. are not applicable to a default and termination under this paragraph.

Owner has a continuing obligation for a period of **fourteen (14) years** from the effective commencement date of this agreement (to \_\_\_\_\_, **20**\_\_\_\_) to report to the District any plant closure or permanent cessation of production at the abated facility and to furnish to District upon request a written confirmation as to whether or not the abated improvements are in service as part of a producing facility or, if applicable, a statement of the beginning and ending dates of production from and/or the beginning and ending dates of operation of the abated facility improvements; or to provide other similar information necessary to determine the actual or estimated productive life of the abated improvements.

## **X. INDEMNIFICATION**

Owner agrees to indemnify and hold harmless District, its District Superintendent, Board of Supervisors, officers, attorneys, and employees from and against all obligations, claims, demands and causes of action of every kind and character (including the amounts of judgments, penalties, interest, court costs and legal fees incurred in defense of same) arising in favor or other governmental entities and agencies or third parties (including employees of Owner) as a result of or arising out of, the covenants to be performed by Owner under this agreement, or any rights and provisions granted in this agreement.

## **XI. ASSIGNMENT**

Owner may assign this agreement to a new owner or lessee of the same facility upon the approval by resolution of the of the Board of Supervisors of the District, subject to the financial

capacity of the assignee and provided that all conditions and obligations in the abatement agreement are guaranteed by the execution of a new contractual agreement with the District. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessees are liable to the District or any affected jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

**XII. ANNUAL PAYMENT TO ECONOMIC DEVELOPMENT FUND**

In accordance with Section 2(h)(7) of the Velasco Drainage District Guidelines and Criteria for granting tax abatement, Owner agrees to pay to Brazoria County the annual contributions described in that provision.

**XIII. MODIFICATION OR TERMINATION**

At any time before the expiration of this agreement the parties may, upon mutual consent, modify or terminate the original agreement. Such modification or termination shall be done in accordance with Property Redevelopment and Tax Abatement Act, V.A.T.S., Chapter 312, Section 312.208 of Subchapter B.

**XIV. AUTHORITY OF AGENT**

By acceptance of this Agreement and/or any benefits conferred hereunder, Owner represents that its undersigned agent has complete and unrestricted authority to enter into this Tax Abatement Agreement and to obligate and bind Owner to all of the terms, covenants and conditions contained in this Agreement.

**XV. NOTICE**

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to the District or Owner at the following addresses. If mailed, any notice or communications shall be deemed to be received three days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

To the Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To the District:

Velasco Drainage District  
Attn: District Superintendent  
Post Office Box 7  
Clute, Texas 77531

Either party may designate a different address by giving the other party ten days written notice.

**XVI. LIST OF EXHIBITS**

The following documents are attached hereto and incorporated herein in full:

**Exhibit A**-Owner’s Application for Tax Abatement

**Exhibit B**-Tax Abatement Resolution Velasco Drainage District, adopting guidelines and criteria for granting tax abatement in a reinvestment zone in Velasco Drainage District

**Exhibit C**-Map of the Reinvestment Zone

**Exhibit D**-Legal Description of the Property in the Reinvestment Zone

**Exhibit E**-Certification of Appraised Values of Properties

**XVII. DATE**

The District executes this Agreement by and through the Chairman or Vice-Chairman of the Board of Supervisors of the District, acting pursuant to Order of said Board, so authorizing, and the effective execution date of this Agreement is the date of the countersignature of the Chairman of said Board.

This Agreement has been executed by the parties in multiple originals, each having full force and effect.

**VELASCO DRAINAGE DISTRICT**

**OWNER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Signature  
Title: \_\_\_\_\_  
Date signed: \_\_\_\_\_

By: \_\_\_\_\_  
Signature  
Title: \_\_\_\_\_  
Date signed: \_\_\_\_\_

By: \_\_\_\_\_  
Signature  
Title: \_\_\_\_\_  
Date signed: \_\_\_\_\_