

Tax Abatement Agreement

2/11

This Abatement Agreement is made and entered into as of this ____ day of _____, _____, by and between _____ (the Granting Authority), and _____ (the Company), its successors and assigns.

WHEREAS, the Company's North American Industry Classification System (NAICS) Code, _____ meets the qualifications of an industrial or research enterprise in accordance with Section 40-9B-3(10), *Code of Alabama 1975*, as amended.

WHEREAS, the Company has announced plans for a (check one):

new project or major addition to their existing facility (the Project), located within the jurisdiction of the Granting Authority; and

WHEREAS, the Project is estimated to be completed by the ____ day of _____, _____; and

WHEREAS, the Project will be located in the County of _____ (check only one)

inside the city limits of _____.

inside the police jurisdiction of _____.

outside the city limits and police jurisdiction of the City of _____; and

WHEREAS, pursuant to the Tax Incentive Reform Act of 1992 (Section 40-9B1 et seq., *Code of Alabama 1975*) (the Act), the Company has requested from the Granting Authority an Abatement of: (check all that apply)

all state and local noneducational property taxes

all construction related transaction taxes, except those local construction related transactions taxes levied for educational purposes or for capital improvements for education, and/or

all mortgage and recording taxes; and

WHEREAS, the Granting Authority has considered the request of the Company and the completed applications filed with the Granting Authority by the Company, in connection with its request; and

WHEREAS, the Granting Authority has found the information contained in the Company's application to be sufficient to permit the Granting Authority to make a reasonable cost/benefit analysis of the proposed project and to determine the economic benefits to the community; and

WHEREAS, at its meeting held on the ____ day of _____, _____ (the Meeting), the Granting Authority approved the Company's application for abatement of (check all that apply):

all state and local noneducational property taxes,

- all construction related transaction taxes, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or
- all mortgage and recording taxes; and

WHEREAS, the Project will consist of private use industrial development property, which is composed of all real and related personal property to be acquired, constructed, and installed thereon, as described in Attachment One hereto; and

WHEREAS, the private use industrial development property for which the abatement is applied shall be (check whichever is applicable):

- owned by the entity applying for the abatement,
- leased from a public authority, municipal, or county government; and

WHEREAS, in the event that the private use industrial development property is leased from a public authority, municipal, or county government, the lessee shall be treated as the owner of such property for federal income tax purposes; and

WHEREAS, it shall be indicated whether the Granting Authority intends to issue bonds in connection with the private use industrial development property herein described, and, if so intends, shall attach a copy of the inducement agreement; and

WHEREAS, for the purposes of abatement of all noneducational property taxes (if applicable), it has been determined that no portion of the Project has been placed in service or operation by the Company or by a related party, as defined in 26 U.S.C. §267, with respect to the Company prior to the Effective Date of this Agreement; and

WHEREAS, for the purposes of the abatement of construction related transaction taxes (if applicable), no portion of the Project which has been requested for abatement has been purchased prior to the Effective Date of this Agreement; and

WHEREAS, the Project conducts trade or business as described in the 2007 North American Industry Classification System, promulgated by the Executive Office of the President of the United States, Office of Management and Budget, Sectors 31 (other than National Industry 311811), 32, 33; Subsectors 423, 424, 511, and 927; Industry Groups 5417, 5415, and 5182 (without regard to the premise that data processing and related services be performed in conjunction with a third party); Industries 11331 and 48691; and National Industries 115111, 517110, 541380, and 561422 (other than establishments that originate telephone calls) and includes such trades and businesses as may be hereafter reclassified in any subsequent publication of the North American Industry Classification System or other industry classification system developed in conjunction with the United States Department of Commerce, or any process or treatment facility which recycles, reclaims, or converts any materials, which include solids, liquids, or gases, to a reusable product; and

WHEREAS, if the Project is a major addition to an existing facility, the request for abatement of all state and local noneducational property taxes (if applicable) and/or construction related transaction taxes (if applicable) does not include any capitalized repairs, rebuilds, maintenance, replacement equipment, or costs associated with the renovating or remodeling of existing facilities of industrial development property previously placed in service by the Company; and

WHEREAS, if the Project is a major addition to an existing facility the addition equals the lessor of (i) thirty (30) percent of the original cost of the industrial development property, or (ii) \$2,000,000; and

WHEREAS, the Company is duly qualified to do business in the State of Alabama, and has powers to enter into, and to perform and observe the agreements and covenants on its part contained in this Agreement; and

WHEREAS, the Granting Authority represents and warrants to the Company (a) that it has power under that constitution and laws of the State of Alabama (including particularly the provisions of the Act) to carry out the provisions of this Agreement, (b) that the execution of this Agreement on its behalf has been duly authorized by resolution adopted by the governing body of the Granting Authority;

NOW, THEREFORE, the Granting Authority and the company, in consideration of the mutual promises and benefits specified herein, hereby agree as follows:

In accordance with the Act, the Granting Authority hereby grants to the Company an abatement from liability for the following taxes as permitted by the Act (check all that apply):

- (a) Noneducational Property Taxes: all property taxes that are not required to be used for educational purposes or for capital improvements for education;
- (b) Construction Related Transaction Taxes: the transaction taxes imposed by Chapter 23 of Title 40 *Code of Alabama 1975* on the tangible personal property and taxable services to be incorporated into the Project, the cost of which may be added to capital account with respect to the Project, except for those local construction related transaction taxes levied for educational purposes or for capital improvements for education;
- (c) Mortgage and Recording Taxes: all taxes imposed by Chapter 22 of Title 40 *Code of Alabama 1975* relating to mortgages, deeds, and documents relating to issuing or securing obligations and conveying title into or out of the Granting Authority with respect to the Project.

2. An estimate of the amount of tax abated pursuant to this Agreement is set forth below. The Granting Authority and the Company hereby acknowledge that this estimate reflects the amount of tax abated for the period stated, under current law, and that the actual abatement for such taxes may be for a greater or lesser amount depending upon the actual amount of such taxes levied during the abatement periods stated. (Check all that apply):

- (a) If no bonds are to be issued, noneducational property taxes are expected to be approximately \$_____ per year and the maximum period for such abatement shall be valid for a period of _____ years, beginning with the October 1 lien date next proceeding the acquisition date of abated property.
- (b) If bonds are issued, noneducational property taxes are expected to be approximately \$_____ per year and the maximum period for such abatement shall be valid for a period of _____ years, beginning the initial date bonds are issued to finance the project.
- (c) Construction related transaction taxes, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, are expected to be approximately \$_____ and such abatement shall not extend beyond the date the Project is placed in service.

(d) Mortgage and recording taxes are expected to be approximately \$_____.

3. The Company hereby makes the following good faith projections:

(a) Amount to be invested in the Project: \$_____.

(b) Number of individuals to be employed initially at the Project and in each of the succeeding three years:

Initially _____ Year 1 _____ Year 2 _____ Year 3 _____;

(c) Annual payroll initially at the Project and in each of the succeeding three years:

Initially \$_____ Year 1 \$_____ Year 2 \$_____ Year 3 \$_____;

4. The Company shall file with the Alabama Department of Revenue within 90 days after the date of the Meeting a copy of this agreement as required by Section 40-9B-6(c) of the Act.

GENERALLY

5. Compliance. If the Company fails to comply with any provision in this Agreement or if any of the material statements contained herein or in Attachment Two (*Note: This attachment shall include the application for abatement*), are determined to have been misrepresented whether intentionally, negligently, or otherwise, the Granting Authority shall terminate this Agreement and take such equitable action available to it as if this Agreement had never existed. If it is determined that certain items, which are identified on the application form for abatement of taxes, are not in compliance with the Act or governing regulations, these items may be subject to taxation for all local and state taxing authorities.

6. Binding Agreement. Each party to this Agreement hereby represents and warrants that the person executing this Agreement on behalf of the party is authorized to do so and that this Agreement shall be binding and enforceable when duly executed and delivered by each party. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective successors.

7. Limitations. Notwithstanding any provision contained herein to the contrary, this Agreement is limited solely to the abatement of (check all that apply):

all state and local noneducational property taxes,

all construction related transaction taxes, except those local construction related transaction taxes levied for educational purposes or for capital improvements for education, and/or

all mortgage and recording taxes for the periods specified herein. Nothing in this Agreement shall be construed as a waiver by the Company of any greater benefits that the Project or any portion thereof may have available under the provisions of the law other than the Act.

8. Severability. This Agreement may be amended or terminated upon mutual consent of the Company and the Granting Authority. Any such amendment or termination shall not in any manner affect the rights and duties by and between the Company and the Granting Authority.

This Agreement is executed as of the dates specified below.

(the Company)

(the Granting Authority)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____