

Industrial District Agreement

This Industrial District Agreement (“Agreement”) is made and entered into between the City of Baytown, Texas, a municipal corporation in Harris and Chambers Counties, Texas, hereinafter also referred to as "Baytown" or "City," and _____, a _____ corporation, hereinafter referred to as "Property Owner." In consideration of the promises and of the mutual covenants and agreements herein contained, it is agreed by and between the City and Property Owner as follows:

I. Parties

This Agreement is made under the authority of Texas Local Government Code Annotated §42.044 (Vernon 1993), article XI, §5 of the Texas Constitution and other applicable law. The parties to the Agreement and their addresses are:

1. The “City”

City of Baytown
Attn: City Manager
P.O. Box 424
Baytown, TX 77522

Copy to:

City of Baytown
Attn: City Attorney
P.O. Box 424
Baytown, TX 77522

2. The “Property Owner”

Tax Statement Address:

II. Identification of Property and Industrial District

This Agreement includes provisions concerning certain real estate and tangible personal property owned or leased by the Property Owner. Real estate located outside the corporate limits of the City is sometimes referred to herein as the “affected area,” and it is described in Exhibit A, which is attached to this Agreement and made a part hereof. Acting pursuant to the above mentioned authority, the City Council of the City has by ordinance, designated the affected area as an industrial district, the same to be known as Baytown Industrial District No. ___ (the “Industrial District”).

III.
Term

The term of this Agreement is seven years, from _____, 20____, through _____, 20____, unless it is sooner terminated under the provisions hereof. This Agreement shall be effective and binding on the parties hereto upon execution hereof on behalf of the parties to this Agreement.

IV.
Limited Immunity from Annexation by the City

In consideration of the obligations of the Property Owner herein set forth, the City hereby guarantees for the term of this Agreement the immunity of the affected area from annexation of any type by the City except for such parts of the affected area as may be necessary to annex property owned by third parties within the Industrial District that the City may decide to annex. Additionally, this Agreement shall not affect the continuation of any limited purpose annexation status to which the affected area is now subject.

V.
Industrial District Payment

As part of the consideration for the City's undertakings as set forth above, the Property Owner agrees to pay to the City on or before December 31st of each year during the term hereof a sum of money equal to the Base Value Industrial District Payment plus the Added Value Industrial District Payment. The sum of the Base Value Industrial District Payment plus the Added Value Industrial District Payment shall be referred to as the Industrial District Payment.

A.
Base Value Industrial District Payment

The Base Value Industrial District Payment shall be calculated as follows:

- (1) the fair market value as determined by the City, of all of the Property Owner's land and all other tangible property, real, personal or mixed, within the affected area:
 - on January 1, 2002, or
 - as most recently certified by the chief appraiser of the appraisal district and/or approved by the Industrial Appraisal Review Board established and appointed by the City Council, as of the date of this Agreement, whichever is greater, hereinafter referred to as the "Base Year," less the fair market value in the Base Year as determined by the City of that portion of the Property Owner's property, real, personal and mixed, which was located within the industrial district on the effective date of this agreement and subsequently annexed by the City, the difference of which is hereinafter referred to as the "Base Year Value," multiplied by

- (2) the property tax rate per \$100.00 of assessed valuation adopted by the City Council for the City, multiplied by the applicable industrial district payment rate as detailed below.

The applicable Base Value Industrial District Payment Rate shall be determined using the applicable chart hereinbelow:

- (1) if the Property Owner purchased Property from an owner having an industrial district agreement with the City, which:
- a. was entered into on or after July 27, 2002,
 - b. included all or any portion of the Property,
 - c. is in effect on the first day of the term hereof, and
 - d. is fully paid for the year prior to the first payment becoming due hereunder,
- then the following chart shall be used and the rate shall be based upon the payment year of the prior owner's industrial district agreement:

PAYMENT YEAR OF FORMER OWNER'S AGREEMENT	BASE VALUE INDUSTRIAL DISTRICT PAYMENT RATE
1	.50
2	.55
3	.55
4	.55
5	.60
6	.60
7	.60

The Base Value Industrial District Payment Rate shall be .60 for each year which extends beyond the industrial district agreement of the previous owner.

- (2) otherwise, the following chart shall be used:

PAYMENT YEAR	BASE VALUE INDUSTRIAL DISTRICT PAYMENT RATE
1	.50
2	.55
3	.55
4	.55
5	.60
6	.60
7	.60

B.
Added Value Industrial District Payment

The Added Value Industrial District Payment shall be calculated as follows:

- (1) the fair market value as determined by the City, of all of the Property Owner's land and all other tangible property, real, personal or mixed, within the affected area on January 1 of each year in which an Industrial District Payment is due hereunder minus the Base Year Value, hereinafter referred to as the "Added Value," multiplied by
- (2) the property tax rate per \$100.00 of assessed valuation adopted by the City Council for the City for each year of the term of this Agreement, multiplied by the applicable added value industrial district payment rate detailed below.

The applicable Added Value Industrial District Payment Rate shall be determined using the following chart:

PAYMENT YEAR	ADDED VALUE INDUSTRIAL DISTRICT PAYMENT RATE
1	0
2	0
3	0
4	0
5	.20
6	.40
7	.60

If the formula used in calculating the Added Value Industrial District Payment produces a negative number, then the Added Value Industrial District Payment shall be \$0.00.

VI.
Valuations

For the purpose of providing a procedure for determining and collecting the amounts payable by the Property Owner hereunder, there are hereby adopted and made a part hereof all provisions of the Constitution and statutes of the State of Texas pertaining to ad valorem taxation as amended throughout the term of this Agreement (including, in particular, the Texas Property Tax Code), except, however, that (i) to the extent that any of such provisions would require the assessment of the Property Owner's property on an equal and uniform basis with property in the general corporate limits of the City, the provisions of this Agreement will control where in conflict with the provisions of such laws and (ii) the income method of appraisal as described in Section 23.012 of the Texas Property Tax Code shall not be limited to only properties for which a rental market exists. Specifically, nothing contained herein shall limit the income method of

appraisal specified in Section 23.012 of the Texas Property Tax Code to only properties for which a rental market exists, instead if such method is used, the chief appraiser shall:

1. use income and expense data pertaining to the property, if possible and applicable
2. make any projections of future income and expenses only from clear and appropriate evidence;
3. use data from generally accepted sources in determining an appropriate capitalization rate;
4. determine a capitalization rate for income-producing property that includes a reasonable return on investment, taking into account the risk associated with the investment.

A.

Valuation of Property Inside the Corporate Limits

The appraised value of the Property Owner's property, real, personal and mixed, which was located within the industrial district on the effective date of this agreement and subsequently annexed by the City shall be finally determined by the _____ County Appraisal District or its legal successor (or through administrative or judicial appeal of the Chambers County Appraisal District's determination) in accordance with state law.

B.

Valuation of Property Outside the Corporate Limits

The parties hereto recognize that the _____ Appraisal District is not required to appraise the land, improvements, and tangible property, real or mixed, in the affected area, which is not within the corporate limits of the City, for the purpose of computing the payments hereunder. Therefore, the parties agree that to determine the fair market value of all of the Property Owner's land, improvements, and tangible property located outside the corporate limits of the City in accordance with the market value computation contemplated in the Texas Property Tax Code for the purpose of calculating the Property Owner's payment in the manner described above, the City may choose to use the appraised value for each year in which an Industrial District Payment is due hereunder, as finally determined by the _____ Appraisal District (or through administrative or judicial appeal of the _____ Appraisal District's determination), or by appraisal conducted by the City and/or by an independent appraiser of the City's selection, and at the City's expense. Nothing contained herein shall ever be construed as in derogation of the authority of an appraisal district to establish the appraised value of land, improvements, and tangible personal property in the annexed portion for ad valorem tax purposes.

C.

Binding Effect

Determination of the Base Year Value and the Added Value shall be made by the City and approved by the Industrial Appraisal Review Board. Such final fair market value as approved by the Industrial Appraisal Review Board shall be final and binding unless either party within thirty (30) days after receipt of the Board's determination petitions for a Declaratory Judgment to the Civil District Court of Harris County, Texas, as provided for by Section XIII hereof. In determining the fair market value of property and improvements as used herein, the

Industrial District Appraisal Board shall base its determination on the fair market value as defined in Section VI herein, giving due consideration to comparable present day facilities considering and giving effect to sound engineering valuation practices relative to service life, life expectancy, process and functional obsolescence.

D.
Statements

The City shall mail one statement to the Property Owner on or about December 1 of each year showing the total amount due on December 31 of such year pursuant to this Agreement. Such statement shall be mailed to the "Tax Statement Address" noted in this Agreement. Any amounts due on December 31 that are not paid when due shall become delinquent on January 1 of the following year. Provided, however, if the tax statement is mailed after December 10, the delinquency date is postponed to the first day of the next month that will provide a period of at least 21 days after the date of mailing for payment of the amount due. Delinquent amounts shall be immediately subject to the same penalties, interest, attorneys' fees and costs of collection as recoverable by the City in the case of delinquent ad valorem taxes. The City shall have a lien upon the Property Owner's land within the affected area upon any delinquency in the Industrial District Payment.

E.
Valuation Contests

If any differences concerning the appraised values shall not have been finally determined by the due date of the Property Owner's payment hereunder and the Property Owner desires to pursue any additional available remedies, the Property Owner shall, without prejudice to such remedies, pay to the City by December 31 of each year (subject to the exception in the preceding paragraph for statements mailed after December 10), such amount as is provided in the Texas Property Tax Code, as amended throughout the term of this Agreement, for payments made under such conditions by owners of property within the general corporate limits of the City subject to ad valorem taxation. Any refund payable by the City to the Property Owner hereunder shall be paid within 60 days after receipt by the City of both the appraisal district's form notification that the appraised value of the property has been reduced and a written refund request by the Property Owner; if not paid timely, the refund amount shall bear interest at eight percent per annum beginning 60 days after the City received both the Property Owner's written refund request and the appraisal district's formal notification that the appraised value of the property has been reduced.

VII.
Compliance with Law

The City and the Property Owner mutually recognize that the health and welfare of Baytown residents require adherence to high standards of quality in the air emissions, water effluents and noise, vibration and toxic levels of those industries located in the Industrial District, and that development within the District may have an impact on the drainage of surrounding areas. To this end, the Property Owner and the City agree that the same standards and criteria relative to noise, vibration and toxic levels and drainage and flood control which are adopted by the City and made applicable to portions of the City adjacent to the Industrial District shall also

be applicable to the affected area. The Property Owner agrees that any industrial or other activity carried on within the affected area will be constructed in strict compliance with all applicable valid state and federal air and water pollution control standards. If the Property Owner's property within the affected area is subject to the Occupational Safety and Health Act, 29 U.S.C. 65, et seq., as amended, then the Property Owner shall undertake to ensure that its facilities and improvements in the affected area comply with the applicable fire safety standards of such act and the resolutions from time to time promulgated hereunder (the "OSHA Standards"), but there shall be no obligation to obtain any permits of any kind from the City in connection with the construction, operation or maintenance of improvements and facilities in the affected area not located within the corporate limits of the City. Nonetheless, for construction which commences after the execution of this Agreement, the Property Owner agrees that any structure built within the affected area shall be built in accordance with the building code adopted by the City in effect at the time of construction.

The City and the Property Owner recognize that activities in the City's industrial districts are subject to regulation by other governmental entities, including the state and federal governments and their various departments and agencies. The City and the Property Owner also recognize that the City may have an interest in activities in the City's industrial districts that are regulated by other governmental entities. Nothing in this Agreement is intended to limit the City's right and authority to communicate its interest in, or opposition to, those activities to the applicable regulatory agencies or to participate, to the extent allowed by law, in any related administrative or judicial proceeding.

VIII.
Inspections

The Chief Appraiser of the _____ Appraisal District and the City or its independent appraiser shall have the same right to enter and inspect the Property Owner's premises and the same right to examine the Property Owner's books and records to determine the value of the Property Owner's properties as provided in the Texas Property Tax Code as amended.

IX.
Default

A.
Default by Property Owner

In the event of default by the Property Owner in the performance of any of the terms of this Agreement, including the obligation to make the payments above provided for, the City shall have the option, if such default is not fully corrected within sixty (60) days from the giving of written notice of such default to the Property Owner to either (i) declare this Agreement terminated or (ii) continue the term of this Agreement and collect the payments required hereunder. Notwithstanding any to the contrary contained herein, should the City determine the Property Owner is in default according to the terms and conditions of Section VII hereof, the City shall notify the Property Owner in writing by U.S. Mail, certified return receipt requested, at the address stated in this Agreement, and if such default is not cured within sixty (60) days from the date of such notice (the "Cure Period") then such failure to cure shall constitute a material

breach of this Agreement; provided that, in the case of a default under Section VII for causes beyond the Property Owner's control that cannot with due diligence be cured within such sixty (60) day period or in the event that the failure to cure results from ongoing negotiations with federal or state officials, administrative proceedings or litigation regarding the necessary cure steps, then the cure period shall be extended until such negotiations, administrative proceedings or litigation are concluded.

B.
Default by City

In the event of default by the City, the Property Owner may, if such default is not fully corrected within 60 days from giving written notice of such default to the City, terminate this Agreement. Upon such termination, both the Property Owner and the City shall be relieved of all further obligations hereunder, but the Property Owner shall not be relieved of the obligation to pay any amounts that accrued prior to such termination. In the event of termination, the City shall have the right to repeal the ordinance designated the affected area as an industrial district. Provided, however, if the termination occurs as a result of the City's exercising its option to terminate (as provided in the first sentence of this Section IX), the City shall not have the right to annex the affected area into the general corporate limits of the City so as to subject the affected area to ad valorem taxes for any part of the period covered by the Property Owner's last payment hereunder.

X.
Notice

Any notice to the Property Owner or the City concerning the matters to which the Agreement relates may be given in writing by registered or certified mail addressed to the Property Owner or the City at the appropriate respective addresses set forth on the cover page of this Agreement. Any such notice in writing may be given in any other manner. If given by registered or certified mail, the notice shall be effective when mailed. With the exception of annual bills for payments due herein, notice given in any other manner shall be effective when received by the Property Owner or the City, as the case may be.

XI.
No Further Expansion of Taxing Jurisdiction

Nothing herein contained shall be construed to change or enlarge the jurisdiction, power or authority of the City over or with respect to the affected area as prescribed by applicable law, except as specifically provided in this Agreement. The Property Owner shall not be obligated by virtue of this Agreement, or the establishment of the industrial district covering the affected area not within the corporate limits of the City, to make any payments to the City in the nature of a tax or assessment based upon the value of the Property Owner's property in the affected area during the term of this Agreement other than the payments specified herein. Specifically, the Property Owner shall not be liable for any City taxes within the affected area, including, without limitation, City ad valorem taxes on taxable property within the affected area.

XII.

Reimbursement for Services

If the Property Owner requests and receives mutual aid firefighting assistance and is a member of Channel Industries Mutual Aid organization (“CIMA”) or similar organization, the Property Owner shall reimburse the City for costs incurred by the City in providing fire protection services to the Property Owner as shall be provided in the charter, bylaws and agreements pursuant to which CIMA or such similar organization is organized and operates. If the Property Owner requests and receives mutual aid firefighting assistance and is not a member of CIMA or a similar organization, then the Property Owner shall be required to reimburse the City for costs actually expended by the City in providing any firefighting assistance to the Property Owner, including chemical and personnel costs.

XIII.

Declaratory Judgment Action

If any disagreement arises between the parties concerning the interpretation of this Agreement, it is agreed that either of the said parties may petition any Civil District Court of Harris County, Texas, for a Declaratory Judgment determining said controversy and the cause shall be tried as other civil causes. If the controversy affects an Industrial District Payment, the Property Owner shall, pending final determination of said controversy, pay to the City on the due date the same amount which was paid to the City for the last preceding period as to which there was no controversy concerning the amount owed by the Property Owner to the City. The Property Owner agrees to tender any additional amount of disputed Industrial District Payment into the registry of the Civil District Court, Harris County, Texas, pending final determination of the controversy beyond any further appeal.

XIV.

No Assignment

This Agreement shall not bestow any rights upon any third party, but rather, shall bind and benefit the Property Owner and the City only. If the Property Owner conveys all or any part of the property then covered hereby, the Property Owner shall notify the City within 30 days of the conveyance.

- If such notice is given and the grantee in such transaction enters into an Industrial District Agreement with the City with respect to the property involved, the Property Owner shall cease to be obligated with respect to the property so conveyed and the Base Year Value plus the Added Value shall be apportioned between the Property Owner and the grantee based upon the property conveyed.
- If such notice is given and the grantee in such transaction is the State of Texas (the “State”), the Property Owner shall remain obligated for the Base Year Value plus the Added Value, including the leasehold estate and personalty retained by the Property Owner.

No right or obligation under this agreement may be sold, assigned or transferred.

XV.
Authority

The Property Owner covenants that it has the authority to enter into this agreement by virtue of being either the legal or equitable owner of a possessory estate (including a leasehold estate) in the land comprising the affected area. Additionally, the officers executing this Agreement on behalf of the parties hereby represent that such officers have full authority to execute this Agreement and to bind the party he represents.

XVI.
No Municipal Services

It is agreed that during the term of this Agreement, the City is under no obligation to provide any governmental, proprietary or other municipal services to the affected area. Specifically, but without limitation, it is agreed that the City shall not be required to furnish (1) sewer or water service, (2) police protection, (3) fire protection (4) road or street repairs, and (5) garbage pickup service.

XVII.
Severability

If any provision of this Agreement, or any covenant, obligation or agreement contained herein, including, without limitation, that term hereof, is determined by a court to be invalidated or unenforceable, such provision, covenant, obligation or agreement shall be reformed so as to comply with applicable law. If it is not possible to so reform such provision, covenant obligation or agreement, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. Provided, further that such invalidity or unenforceability shall not affect any valid and enforceable provision thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law. Notwithstanding the above, if the application of this Section XVII requires the reformation or revision of any term that removes or materially diminishes the obligation of the Property Owner to make the payments to the City described herein (except in the event of a reformation that shortens the term of this Agreement), the City shall have the option to declare this Agreement terminated.

XVIII.
Complete Agreement

This Agreement contains all the agreements of the parties relating to the subject matter hereof and is the full and final expression of the agreement between the parties.

XIX.
Non-waiver

Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing thereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by an

appropriate remedy, strict compliance with any other obligation hereunder to exercise any right or remedy occurring as a result of any future default or failure of performance.

XX.
Ambiguities

In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

XXI.
Headings

The headings appearing at the first of each numbered section in this Agreement are inserted and included solely for convenience and shall never be considered or given any effect in construing this Agreement or any provision hereof, or in connection with the duties, obligations or liabilities of the respective parties hereto or in ascertaining intent, if any question of intent should arise.

XXII.
Choice of Law; Venue

This Agreement shall in all respects be interpreted and construed in accordance with and governed by the laws of the State of Texas and the City, regardless of the place of its execution or performance. The place of making and the place of performance of this Agreement for all purposes shall be Harris County, Texas.

XXIII.
Agreement Read

The parties acknowledge that they have read, understand and intend to be bound by the terms and conditions of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed in multiple counterparts on behalf of the Property Owner this __ day of _____, _____, and on behalf of the City this ____ day of _____, _____.

PROPERTY OWNER

By _____

Printed Name

Title

ATTEST:

Secretary

CITY OF BAYTOWN

STEPHEN H. DONCARLOS, Mayor

ATTEST:

LORRI COODY, City Clerk

APPROVED AS TO FORM:

IGNACIO RAMIREZ, SR., City Attorney

RHONDA YOUNG, Director of Finance