

AGREEMENT

THE STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF HARRIS §

This Agreement (the “Agreement”) is made and entered into by and between the **Tomball Economic Development Corporation**, an industrial development corporation created pursuant to Tex. Rev. Civ. Stat. Ann. Art. 5190.6, Section 4B, located in Harris County, Texas (the “TEDC”), and [**PROJECT HANKS**] (the “Company”), [ADDRESS].

WITNESSETH:

WHEREAS, it is the established policy of the TEDC to adopt such reasonable measures from time-to-time as are permitted by law to endeavor to attract industry, create and retain primary jobs, expand the growth of the City of Tomball (the “City”), and thereby enhance the economic stability and growth of the City; and

WHEREAS, the Company proposes to enter into a build-to-suit lease agreement for the construction of an approximately 900,000 square foot distribution facility to be located at 14000 Boudreaux Road, Tomball, Texas 77377, as described in Exhibit “A,” attached hereto and made a part hereof (the “Property”); and

WHEREAS, the Company intends to make an investment of at least Thirty-five million dollars (\$35,000,000.00) in building improvements, equipment, and inventory necessary to develop and operate a distribution facility on the Property, and

WHEREAS, material handling equipment and systems, including conveyors, forklifts and cranes will be purchased and utilized to handle and store bulk material at the distribution facility; and

WHEREAS, the TEDC agrees to provide to the Company the sum of up to Five Hundred Eighty Thousand Eight Hundred Sixty-Four Dollars (\$580,864.00) in the form of a sales tax reimbursement on the purchase of material handling equipment; and

WHEREAS, the Company has agreed, in exchange and as consideration for the funding, to satisfy and comply with certain terms and conditions; and

WHEREAS, this expenditure is found by the Board of Directors of the TEDC to be suitable for the relocation of the corporate headquarters, to promote and develop new business enterprises, and in furtherance of creation and retention of primary jobs on the Property;

NOW, THEREFORE, in consideration of the premises and the mutual benefits and obligations set forth herein, including the recitals set forth above, the TEDC and the Company agree as follows:

1. Company Obligations.

a. The Company covenants and agrees that it will operate and maintain its business as set forth in this Agreement for a term of at least five (5) years and will create a minimum of one hundred and three (103) full-time jobs at the facility.

b. The Company further covenants and agrees that it does not and will not knowingly employ an undocumented worker. An “undocumented worker” shall mean an individual who, at the time of employment, is not (a) lawfully admitted for permanent residence to the United States; or (b) authorized by law to be employed in that manner in the United States.

c. The construction and occupancy of the distribution facility shall occur within two (2) years of the Effective Date. Extensions of these deadlines may be granted by the Board of Directors of the TEDC due to any extenuating circumstance or uncontrollable delay.

d. The Company shall retain and provide records of all equipment handling purchases related to the development of the distribution facility, including proof of payment and verification of sales tax paid.

e. Reporting Requirement. While this Agreement is in effect, annually within 60 days following the anniversary date of the Effective Date of this Agreement, the Company, or an affiliated entity, will certify to the TEDC that it has complied with the terms of this Agreement and provide sufficient written information, records, and documents, to support its certification of compliance.

f. Company Reimbursement. If the TEDC terminates this Agreement because of the Company's breach of any provision as permitted by this Agreement, the Company will reimburse the TEDC for all payments the TEDC has made to the Company hereunder excluding any reimbursement payments previously made by the Company. Reimbursement shall be in accordance with the provisions set forth in Section 3 below relating to default.

2. TEDC Obligations.

a. Incentive Payment. In consideration of the Company's representations, promises, and covenants, TEDC agrees to grant to the Company the sum of up to Five Hundred Eighty Thousand Eight Hundred Sixty-Four Dollars (\$580,864.00) in the form of a sales tax reimbursement on the purchase of material handling equipment for the facility.

b. Reimbursement shall be based on Eighty Percent (80%) of the local Two Percent (2%) sales tax collections on eligible equipment purchases.

c. Incentive payments shall be made in annual installments over the term of the agreement. The TEDC agrees to distribute such funds to the Company within thirty (30) days of receipt of a letter from the Company requesting such payment, which letter shall also include:

- (1) a copy of the City's Occupancy Permit for the Property;
- (2) proof that the Company has added the number of employees indicated above to the Property as evidenced by copies of Texas Workforce Commission form C-3 or Internal Revenue Service form 941;
- (3) records of all equipment handling purchases related to the Property, including proof of payment and verification of sales tax paid;
- (4) an affidavit stating that all contractors and subcontractors providing work and/or materials in the construction of the Improvements have been paid, and any and all liens and claims regarding such work have been released.

3. Default

a. It is understood and agreed by the parties that in the event of a default by the Company on any of its obligations under this Agreement, the Company shall reimburse the TEDC any amounts paid to the Company by the TEDC for jobs created but not thereafter maintained in accordance with the terms of this Agreement along with interest at the rate equal to the 90 day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the default.

b. It is further understood and agreed by the parties that if the Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the Company will reimburse the TEDC the full amount paid to the Company, with interest at the rate equal to the 90 day Treasury Bill plus ½% per annum, within 120 days after the TEDC notifies the Company of the violation.

c. The Company shall also reimburse the TEDC for any and all reasonable attorney's fees and costs incurred by the TEDC as a result of any action required to obtain reimbursement of such

funds. Such reimbursement shall be due and payable 120 days after the Company receives written notice of default accompanied by copies of all applicable invoices.

d. The Company's obligation to reimburse the TEDC payments made to Company if the Company breaches this Agreement survives termination of this Agreement.

e. It is understood and agreed by the parties that, in the event of a default by the TEDC on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either i) the termination of this Agreement, or ii) a suit for specific performance.

4. Termination.

a. Unless terminated earlier as allowed in this Agreement, this Agreement terminates five (5) years from the Effective Date.

b. This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Company will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Company is convicted of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Agreement and the TEDC will send the Company written notice that the Company has violated this paragraph and that the Agreement terminates 30 days from the date of the notice. An "undocumented worker" shall mean an individual who, at the time of employment, is not (i) lawfully admitted for permanent residence to the United States; or (ii) authorized under the law to be employed in that manner in the United States.

c. Either party may terminate this Agreement during its term as provided in this paragraph if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing. If the party in default fails to cure the default within 60 days

of the date of the notice, the party giving the notice may terminate this Agreement by written notice to the other party, specifying the date of termination.

d. No party may be deemed to be in default of this Agreement if performance of this Agreement is delayed, disrupted, or becomes impossible because of any act of God, war, earthquake, fire, strike, accident, civil commotion, epidemic, act of government, its agencies or offices, or any other cause beyond the control of the parties during the time, but only for so long as the event of force majeure reasonable prevents performance.

5. Liability.

Personal Liability of Public Officials: To the extent permitted by law, no director, officer, employee or agent of the TEDC, and no officer, employee or agent of the City of Tomball, shall be personally responsible for any liability arising under or growing out of this Agreement.

6. Assignability.

This Agreement may not be assigned by the Company to any other person or entity unless the TEDC consents in writing to the assignment.

7. Notice.

Any notice provided or permitted to be given under this Agreement must be in writing and may be served by (i) depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, registered or certified mail, return receipt requested; or (ii) by delivering the same in person to such party; or (iii) by overnight or messenger delivery service that retains regular records of delivery and receipt; or (iv) by facsimile or other electronic transmission; provided a copy of such notice is sent within one (1) day thereafter by another method provided

above. The initial addresses of the parties for the purpose of notice under this Agreement shall be as follows:

If to TEDC: Tomball Economic Development Corporation
401 W. Market Street
Tomball, Texas 77375
Attn: President, Board of Directors

If to Company: [COMPANY NAME]

8. Miscellaneous.

a. Jurisdiction and Venue. This Agreement shall be performable and enforceable in Harris County, Texas, and shall be construed in accordance with the laws of the State of Texas.

b. Amendment. Except as otherwise provided in this Agreement, this Agreement shall be subject to change, amendment or modification only in writing, and by the signatures and mutual consent of the parties hereto.

c. No waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

d. Severability. In the event any one or more words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement, or the application thereof to any person, firm, corporation, or circumstance, shall be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of such words, phrases, clauses, sentences, paragraphs, sections, or other parts of this Agreement shall be deemed to be independent of and severable from the remainder of this Agreement, and the validity of the remaining parts of this Agreement shall not be affected thereby.

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by both parties on this _____ day of _____ 2022 (the “Effective Date”).

[COMPANY NAME]

By: _____

Name:

Title:

ATTEST:

By: _____

Name: _____

Title: _____

TOMBALL ECONOMIC DEVELOPMENT CORPORATION

By: _____

Name: Gretchen Fagan

Title: President, Board of Directors

ATTEST:

By: _____

Name: William E. Sumner Jr.

Title: Secretary, Board of Directors

Exhibit A

Description of Property

A TRACT OR PARCEL CONTAINING 231.641 ACRES OR 10,090,281 SQUARE FEET OF LAND SITUATED IN THE AUGUSTE SENERCHAL SURVEY, ABSTRACT NO. 722, HARRIS COUNTY, TEXAS, BEING A RESIDUE OF A CALLED 314.8179 ACRES DESCRIBED IN DEED TO EXXON MOBILE CORPORATION, AS RECORDED UNDER HARRIS COUNTY CLERK'S FILE (H.C.C.F.) NO. W883345

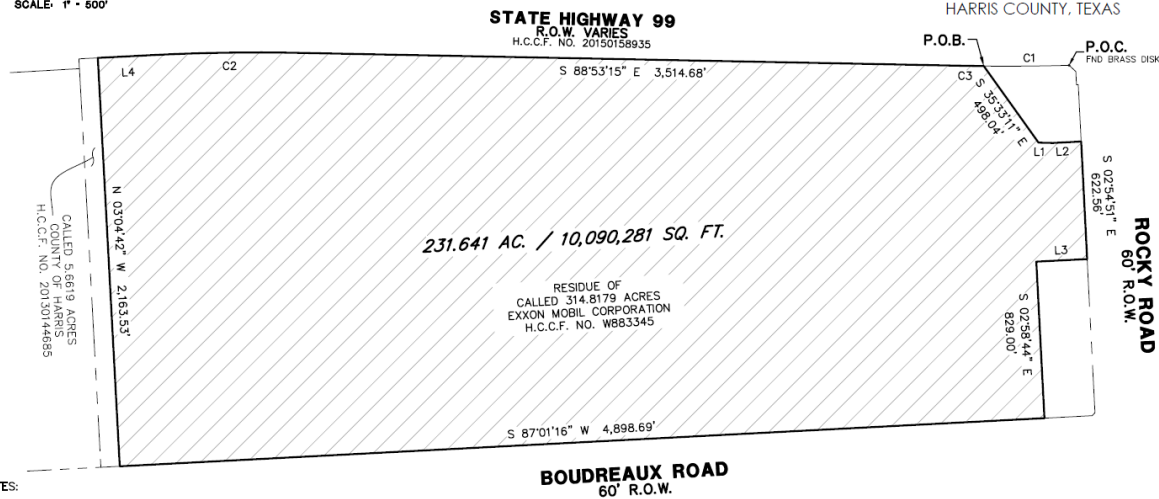


NORTH
SCALE: 1" = 600'

LINE	BEARING	DISTANCE
L1	S 88°53'15" E	76.59'
L2	N 87°08'21" E	149.05'
L3	S 87°05'09" W	269.36'
L4	N 87°03'20" E	269.34'

CURVE	RADIUS	DELTA	LENGTH	BEARING	CHORD
C1	11,659.16'	21°3'03"	451.26'	S 89°28'31" W	451.23'
C2	11,259.16'	4°03'25"	797.23'	N 89°05'02" E	797.06'
C3	11,659.16'	0°31'43"	107.55'	N 89°09'06" W	107.55'

EXHIBIT OF
LIGHT INDUSTRIAL ANNEXATION AREA
231.641 AC. / 10,090,281 SQ. FT.
SITUATED IN THE
AUGUSTE SENERCHAL SURVEY, A-722
HARRIS COUNTY, TEXAS



NOTES:

- BEARINGS WERE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 1983.
- THIS MAP AND THE LEGAL DESCRIPTIONS ATTACHED ARE A COMPILATION OF EXISTING DOCUMENTS AND R.O.W. MAPS, PREPARED UNDER 22 TAC 663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY, AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTERESTS IN REAL PROPERTY EXCEPT THOSE RIGHTS IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBMISSION FOR WHICH IT WAS PREPARED.
- A METES AND BOUNDS DESCRIPTION OF THIS POLITICAL BOUNDARY WAS PREPARED ALONG WITH THIS POLITICAL BOUNDARY MAP.

FIELD BY:	-	DATE:	10/12/21
DRAWN BY:	RK	REV:	
CHECKED BY:	RK	REV:	
JOB NO.	56941-CONFLICT AREA	REV:	
SHEET 2 OF 2		REV:	



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