

STATE OF TEXAS §
 §
COUNTY OF BELL §

**ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN
THE CITY OF KILLEEN, TEXAS AND
MGC PURE CHEMICALS AMERICA, INC.**

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT, regarding the reimbursement of personal property taxes (“**Agreement**”), is made and entered into by and between the CITY OF KILLEEN, TEXAS, a home-rule municipal corporation organized under the laws of Texas (“**City**”) and MGC PURE CHEMICALS AMERICA, INC., an Arizona Corporation (“**Company**”); collectively the “**Parties**.”

RECITALS

WHEREAS, this Agreement is authorized by Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code;

WHEREAS, Company owns real and personal property within the City in which it conducts commercial operations and, commencing on or after the Effective Date, Company intends to expand its commercial operations in Killeen, Texas, subject to the granting of economic development incentives;

WHEREAS, promoting expansion of such operations within the City will promote economic development, stimulate commercial activity, create employment opportunities, and will enhance the property tax base and economic vitality of the City;

WHEREAS, Company intends to add approximately Eighty-Nine Million, Two-Hundred Thirteen Thousand, Three-Hundred Eighty-Eight Dollars (\$89,213,388) in real property ad valorem tax value and Forty Million, Six-Hundred Eighty Thousand, Five-Hundred Eleven Dollars (\$40,680,511) in personal property ad valorem tax value upon Commencement of Operations; and

WHEREAS, for the reasons stated in these Recitals, which are incorporated into and made a part of this Agreement, and in consideration of the mutual benefits and obligations set forth herein, the Parties enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements herein contained, the Parties agree as follows:

I. Definitions

In addition to any terms defined elsewhere in this Agreement, the following terms shall have the meanings set out below:

"Affiliate" shall mean any person or entity which directly or indirectly controls, is controlled by or is under common control with Company, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise, (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"Commencement of Operations" shall mean January 1 of the first year following the date on which the City issues a Certificate of Occupancy for the Facilities required herein.

"Facilities" shall mean the building and other Improvements that Company is required to build on the Property in accordance with the performance agreement with the Killeen Economic Development Corporation.

"Improvements" shall mean Company's investments in both real and personal property at the Property; specifically, the construction of (i) an ammonium hydroxide manufacturing plant, (ii) a hydrogen peroxide manufacturing facility, and (iii) an ISO container maintenance building.

"Maximum Reimbursement Amount" shall mean One-Million, Two-Hundred Sixty-Two Thousand, Seven-Hundred Twenty-Three Dollars (\$1,262,723.00).

"Personal Property" shall mean all furniture, fixtures, equipment, and other tangible personal property that is attributable to the new facilities and expansion of the Company's business operation on the Property, as described herein, that is taxable within the City of Killeen, Texas, and for which business Personal Property Taxes are paid by Company.

"Personal Property Taxes" shall mean the City's share of the ad valorem taxes received by the City from the Bell County Tax Assessor-Collector on the value of all Personal Property on the Property, less the Tax Base.

"Personal Property Tax Reimbursement" shall mean the City's reimbursement of a portion of Personal Property Taxes to Company once per calendar year during the Term of an amount equal to 50 percent (50%) of incremental Personal Property Taxes paid as a result of the expansion of the Company's facilities and operation of the Business at the Property during the full calendar year immediately preceding the year in which the reimbursement is requested.

"Property" shall mean, collectively, an approximate 7-acre lot legally described as MPCA Addition, Block 1, Lot 1, locally addressed as 4000 Roy J Smith Drive, Killeen, Texas, and approximately 21.235 acres legally described as Lot 2, Block 1, MPCA Addition, being a

replat of Lots 1 and 2, Block 5 amended final plat, Killeen Business Park subdivision, a subdivision in Bell County Texas and the remaining portion of Lot 4, Block 5, Killeen Business Park Subdivision, Phase II, a subdivision in Bell County, Texas, and part of Lot 2, in Block 1, of MPCA Addition, Amended Plat, being a replat of Lots 1 and 2, Block 1, MPCA Addition in the City of Killeen, Bell County, Texas, locally addressed as 4500 Roy J Smith Drive, Killeen, Texas.

“Real Property” shall mean the Property and any improvements made thereon.

“Tax Base” shall mean the personal property ad valorem tax value of the Property as calculated by the Bell County Appraisal District’s 2023 assessment.

II. Company Obligations

A. Company agrees to design and construct the Improvements on the Property in accordance with construction plans approved by the City. Such approval is limited to those approvals required by city ordinance, state law, or federal law, as may be amended from time to time.

B. Company agrees to make capital investments at the Property, devoted to both acquisition and installation of Personal Property and Real Property acquisition and improvement, and promptly to begin the construction contemplated by this Agreement and thereafter actively and continuously prosecute the work to completion in a commercially reasonable and diligent manner.

C. Company agrees to create at least ten (10) additional full-time positions at the Property for a total of thirty-eight (38) full-time positions by the first anniversary of Commencement of Operations and to maintain those positions until the tenth anniversary of Commencement of Operations. Any employee transferring from another business owned or operated by Company or an Affiliate may not be considered a new position.

D. Company agrees, for at least ten (10) years following Commencement of Operations, to pay an annual average salary of at least Forty-Four Thousand Dollars (\$44,000.00) to workers employed by Company at the Property.

E. Company shall make timely payment of ad valorem taxes owed by Company to the City, including, but not limited to real and personal property ad valorem taxes owed on the Property, during the term of this Agreement.

F. Upon demand by City, Company agrees to repay any incentive received hereunder in error or in excess of the incentives to which Company is entitled under this Agreement.

G. Company agrees to adopt and follow employment policies, rules and procedures intended to ensure that no discrimination will occur in the creation of full-time positions on the basis of race, religion, color, national origin, sex, sexual orientation, age, disability, or any other

characteristics for which protection is available under applicable local, state, and federal anti-discrimination laws. In performing its obligations under this Article, Company shall comply with all applicable laws, regulations, and ordinances.

III. City's Obligations

A. The duty of the City to make reimbursement payments to Company under Article IV of this Agreement is limited in its entirety by the provisions of this Agreement and is expressly conditioned on both the timely payment of the personal and real property taxes owed by Company, or its Affiliates, during the term of this Agreement and Company's satisfaction of obligations contained within this Agreement.

IV. Economic Development Incentive

A. Upon request by Company under Article IV(B), the City will reimburse Company in an amount equal to fifty percent (50%) of incremental Personal Property Taxes paid in connection with the Property during the calendar year immediately preceding the Personal Property Tax reimbursement request (as set forth below). Notwithstanding anything to the contrary, the total reimbursement under this Agreement shall not exceed the Maximum Reimbursement Amount.

B. Beginning the year following Commencement of Operations, and once each calendar year thereafter for a total of ten years, Company may submit a request for Personal Property Tax Reimbursement in writing to the Executive Director of Development Services, or designee, for the calendar year immediately preceding the year in which the reimbursement is requested. The City shall not be required to make a Personal Property Tax Reimbursement for any applicable calendar year unless and until:

(1) Company has submitted a compliance certificate by November 15 for the previous year's Personal Property Taxes together with all information the City may request to verify Company's compliance with the terms of this Agreement;

(2) Personal Property Taxes for the prior calendar year are received by the City from the Bell County Tax Assessor-Collector; and

(3) Funds are appropriated by the Killeen City Council for the specific purpose of making a Reimbursement under this Agreement as part of the City's ordinary budget and appropriations approval process.

Provided the foregoing conditions have been satisfied, and Company is otherwise in compliance with this Agreement, the City shall pay to Company any reimbursement due within 30 days after the last to occur of the events in subsections (1), (2), and (3) of this section.

C. City shall have no obligation to make a payment during the occurrence of an uncured breach on the part of Company. However, the City may do so at its discretion and such

an election shall not be deemed a waiver of any remedies the City may have in respect to such default.

D. The Reimbursements made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each applicable fiscal year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Reimbursements or other payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such Reimbursement(s) or other payments are payable under this Agreement. City staff will take all reasonable steps to seek appropriations and submit budget requests each year that are sufficient to cover the City's obligations under this Agreement for the following fiscal year.

If the City fails to appropriate funds for a payment, Company may, at its option, terminate this Agreement effective upon written notice to the City, whereby Company is excused from its obligations thereunder in any given year the City fails to approve the expenditure, subject to any unpaid payment properly due to Company for which a lawful appropriation of funds has occurred. Company shall have no other recourse against the City for the City's failure to budget and appropriate funds during any fiscal year.

V. Default

A. A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to materially perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or materially breaches or violates any of its representations contained in this Agreement.

B. Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced within thirty (30) days of the receipt of such notice and thereafter diligently pursued until completion. Upon a breach of this Agreement, the non-defaulting party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a party pursuant to the provisions of this Article or pursuant to the provisions of any other Article of this Agreement shall be deemed to constitute an election of remedies, and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any party at law or in equity. Each of the parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other party.

C. Notwithstanding anything in this Agreement which is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed hereunder by any party

is delayed as a result of Force Majeure, the time for such performance shall be extended by the amount of time of such delay.

VI. Term and Termination

A. This Agreement shall become effective upon full execution by the City and Company ("Effective Date") and shall automatically terminate after ten (10) years from Commencement of Operations, or upon the occurrence of one or more of the following:

- (1) by written agreement of the Parties;
- (2) by any party in the event a party breaches any of the terms or conditions of this Agreement and such breach is not cured within the time periods specified; or
- (3) by City if Company suffers an event of bankruptcy or insolvency.

VII. Insurance

A. Prior to construction of a Project, Company shall require its general contractor, at its expense, to maintain in full force and effect, the following insurance under the following terms:

(1) A policy of insurance for bodily injury, death, and property damage insuring against all claims, demands, or actions relating to the general contractor's performance of its obligations pursuant to this Agreement with (a) a policy of comprehensive general liability (public) insurance with a minimum combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage with an aggregate of not less than \$2,000,000; (b) policy of automobile liability insurance covering any vehicles owned and/or operated by the general contractor, its officers, agents, and employees, and used in the performance of its obligations hereunder with a minimum of \$1,000,000; and (c) statutory Workers' Compensation Insurance covering all employees involved in the performance of its obligations hereunder.

(2) All insurance and certificate(s) of insurance shall contain the following provisions: (a) name the City, its officers, agents, and employees as additional insureds as to all applicable coverage with the exception of Workers' Compensation Insurance; (b) provide for at least thirty (30) days prior written notice to the City for cancellation, non-renewal, or material change of the insurance; and (c) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(3) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service and must be acceptable to the City.

(4) A certificate of insurance evidencing the required insurance shall be submitted prior to beginning construction of a Project.

(5) The City shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements to existing insurance coverage consistent with the terms of this Article.

VIII. Miscellaneous Provisions

A. Recitals. All the above recitals are hereby found to be true and are hereby incorporated into this Agreement as if fully set forth in their entirety.

B. Time of the Essence. Time is of the essence for this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

C. Assignability. This Agreement shall be binding on and inure to the benefits the Parties to it and their respective heirs, executors, administrators, successors, and permitted assigns. This Agreement may not be assigned by Company without the prior written consent of City. Consent to assignment to an Affiliate shall not be unreasonably withheld, conditioned, or delayed.

D. Notice. Any notice sent under this Agreement (except as otherwise expressly required) shall be written and mailed or sent by rapid transmission confirmed by mailing written confirmation at substantially the same time as such rapid transmission, or personally delivered to an officer of the receiving party at the following addresses:

If to the City:
City of Killeen, Texas
101 N. College Street
Killeen, Texas 76541
Attn: City Manager

If to the Company:
MGC Pure Chemicals America, Inc.
6560 S. Mountain Road
Mesa, Arizona 85212
Attn: Jim Barnhouse

With Required Copy to:
City of Killeen, Texas
101 N. College Street
Killeen, Texas 76541
Attn: City Attorney

With Required Copy to:

Each party may change its address by written notice in accordance with this Section. Any communication addressed and mailed in accordance with this section shall be deemed to be given when so mailed, any notice so sent by rapid transmission shall be deemed to be given when receipt of such transmission is acknowledged, and any communication so delivered in person shall be deemed to be given when received for, or actually received by, an authorized officer of the City, the Zone, or Company, as the case may be.

E. Entire Agreement. This Agreement contains the complete and entire agreement between the Parties respecting the matters addressed herein. There is no other collateral oral or written agreement among the Parties that in any manner related to the subject matter of this

Agreement. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of each party. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

F. Severability. The provisions of this Agreement are severable and, in the event that any portion of this Agreement is found to be invalid or unconstitutional for any reason, the remainder of this Agreement will not be affected, and this Agreement will be construed as if it had never contained such invalid or unconstitutional provision.

G. Governing Law. This Agreement is a contract made under, and shall be construed in accordance with, and governed by the laws of the United States of America and the State of Texas. Any actions concerning this Agreement shall be brought in either the Texas State Courts of Bell County, Texas or the United States District Court for the Western District of Texas.

H. Exhibits. The exhibits attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein. In the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail. All titles or headings are only for the convenience of the parties and shall not be construed to have any effect or meaning as to the agreement between the parties hereto.

I. Right of Offset. City may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due to City has been reduced to judgment by a court; provided, however (i) City shall provide Company notice within thirty (30) days of determining that any debt is believed lawfully due to City from Company; (ii) Company shall have an opportunity to resolve or pay such debt to City within thirty (30) days after receipt of notice before any offset to amounts payable under this Agreement may occur; and (iii) Company retains all rights to timely and properly contest whether or in what amount any debt is owed to City. The City may not offset any asserted amount of debt owed by Company against amounts due and owing under this Agreement during any period during which Company is timely and properly contesting whether such amount of debt is due and owing.

J. Independent Contractor. It is expressly understood and agreed by the Parties that in performing its services hereunder, Company shall at no time be acting as an agent of the City or the Zone, and that all consultants or contractors engaged by Company shall be independent contractors of Company. The Parties understand and agree that the City and the Zone shall not be liable for any claims that may be asserted by any third party occurring in connection with services performed by Company under this Agreement unless such claims are due to the fault of the City or the Zone.

K. Authority to Contract. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this

Agreement hereby represent that they have authorization to sign on behalf of their respective entities.

L. Waiver. Failure of any party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on, and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

No party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, officers, employees, students, and agents as a result of its execution of this Agreement and performance of the covenants contained herein

M. Personal Liability of Public Officials. To the extent permitted by State law, no public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

N. Approval by the Parties. Whenever this Agreement requires or permits approval or consent to be hereafter given by any of the parties, the Parties agree that such approval or consent shall not be unreasonably withheld or delayed.

O. Employment of Undocumented Workers. During the term of this Agreement, the Company agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 USC Section 1324a(f), Company shall repay the amount of the reimbursements received by the Company as of the date of such violation within one-hundred twenty (120) business days after the date the Company is notified by the City of such violation.

P. Construction. This Agreement has been jointly negotiated by the Parties and shall not be construed against a party because that party may have primarily assumed responsibility for the drafting of this Agreement.

[Signature page follows]

IN WITNESS THEREOF, the Parties have caused this Agreement to be signed on the date of each signature below. This Agreement shall be **EFFECTIVE** on the date of the last required signature.

CITY OF KILLEEN

ATTEST

Kent Cagle
City Manager

Date

Laura Calcote
City Secretary

Date

**MGC PURE CHEMICALS
AMERICA, INC.**



Toru Harada
President & CEO

12/8/2023

Date