

STATE OF TEXAS §
 §
COUNTY OF BELL §

**TAX INCREMENT REIMBURSEMENT AGREEMENT BETWEEN
THE CITY OF KILLEEN, TEXAS,
TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, KILLEEN, TEXAS,
AND MGC PURE CHEMICALS AMERICA, INC.**

THIS REIMBURSEMENT AGREEMENT, regarding the reimbursement of certain public infrastructure construction costs (“**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**”); TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, KILLEEN, TEXAS, a reinvestment zone and legal entity created by the City pursuant to Chapter 311, Texas Tax Code (“**Zone**”); and MGC PURE CHEMICALS AMERICA, INC., an Arizona Corporation (“**Company**”); collectively the “**Parties**.”

RECITALS

WHEREAS, pursuant to Chapter 311 of the Texas Tax Code, a city may designate a contiguous geographic area within such city as a reinvestment zone if the area satisfies the requirements of certain sections of the Act;

WHEREAS, the Act authorizes the expenditure of funds derived within a reinvestment zone for the payment of expenditures made, or estimated to be made, and monetary obligations incurred, or estimated to be incurred, by a municipality consistent with the plan of the reinvestment zone for “Project Costs,” as defined in the Act;

WHEREAS, the Killeen City Council (“**Council**”), pursuant to Ordinance No. 08-089, established the Zone on November 4, 2008, for the purpose of dedicating the increase in tax revenue generated within the Zone to provide funds for public infrastructure and to encourage accelerated development and redevelopment in several areas of the City;

WHEREAS, pursuant to Ordinance No. 09-050, Council approved a project plan and reinvestment zone financing plan (“**TIRZ Plan**”) for the Zone on August 25, 2009;

WHEREAS, pursuant to Ordinance Nos. 15-077, 17-012, and 22-097, Council amended the TIRZ Plan and boundary for the Zone on December 8, 2015, February 28, 2017, and December 13, 2022, respectively;

WHEREAS, the Board of Directors of the Zone (“**Board**”) approved and adopted the TIRZ Plan, as amended;

WHEREAS, Company owns and controls Property located within the boundaries of the Zone and intends to construct, or cause to be constructed, certain Improvements on the Property;

WHEREAS, Company has requested reimbursement for certain public infrastructure pursuant to the TIRZ Plan;

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 upon Completion of Construction;

WHEREAS, the Parties desire to provide for the development and financing of certain Projects set forth below to implement the TIRZ Plan; and

WHEREAS, the Parties have determined that it is in their best interests to contract with each other with regard to the Project to provide for the efficient and effective implementation of certain aspects of the TIRZ Plan.

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:

“Act” shall mean the Tax Increment Finance Act as codified in Chapter 311, Texas Tax Code, as amended.

“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.

“Available TIRZ Funds” shall mean 100% of the real property ad valorem Tax Increment of the Property.

“Commencement of Construction” shall mean that (i) the Construction Plans have been prepared and all approvals thereof required by applicable governmental authorities have been obtained for construction of the Project on the Property; (ii) all necessary permits for the construction of the Project on the Property pursuant to the plans have been issued by all applicable governmental authorities and/or private entities; (iii) Company has issued a notice to proceed to a contractor to commence construction of the Project and has provided a copy to the Director; and (iv) grading of the land for construction of the Project has commenced.

“Completion of Construction” shall mean that (i) all construction on the Project has been finalized and (ii) any governmental agency or private entity that is required to approve the Project has done so.

“Director” shall mean the Executive Director for Development Services, or designee.

“Force Majeure” shall mean circumstances which are beyond the reasonable control of the applicable party, including, but not limited to, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions (including, but not limited to, severe rainstorms, below freezing temperatures, or tornadoes), pandemic or epidemic, labor action, strikes, or similar acts.

“Maximum Reimbursement Amount” shall mean Six-Hundred Thousand Dollars (\$600,000.00).

“Project” shall mean the extension of the existing Burlington Northern & Santa Fe Railroad, located immediately to the south of the Property, to the Company’s facility located on the Property. Company has not yet contracted for construction of the Project, but is evaluating proposals, including three options depicted in Exhibit A hereto, and anticipates that the costs of the Project will be at least those shown in Exhibit A.

“Project Costs” shall mean those actual costs incurred and paid by Company in completion of Project in which payment can be made pursuant to the Act and that are identified in the TIRZ Plan and as further identified herein.

“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.

“Tax Increment” shall mean the ad valorem real property Tax Value of the Property in any given year as calculated by the Bell County Appraisal District, to include both any improvements and the underlying land, less the Tax Increment Base.

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

“Tax Value” shall mean the taxable value as calculated by the Bell County Appraisal District in its assessment for the previous calendar year. For example, the Parties will utilize Bell

County Appraisal District's 2023 assessment for reimbursement requests made by Company in 2024.

II. Company Obligations

A. Company agrees to design and construct the Project on the Property in accordance with construction plans approved by the City to the extent that such approval is required by city ordinance, state law, or federal law, as may be amended from time to time.

B. As good and valuable consideration for this Agreement, Company agrees, subject to events of Force Majeure, to cause Commencement of Construction on the Project promptly after entering into the contract for construction of the Project.

C. Company agrees to construct the Project in accordance with all applicable state and local laws, codes, and regulations (or valid waiver thereof).

D. Company agrees to obtain and abide by all required agreements and permits that may be required by any third party in connection with construction of the Project.

E. Construction plans for the Project constructed on the Property will be filed with the City, which shall be deemed to be incorporated by reference herein and made a part hereof for all purposes.

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

G. Upon reasonable request by the Board (but not more often than quarterly), Company shall report to the Board to provide updates on the status of any Project underway. The Company agrees that it shall design and construct or cause to be designed and constructed the Project subject to the terms of the TIRZ Plan and this Agreement.

III. City's Obligations

A. The duty of the City to make reimbursement payments to Company for any purpose under this Agreement is limited in its entirety by the provision of this Agreement and Available TIRZ Funds and is expressly conditioned on both the timely payment of the 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. Reimbursement of Project Costs

A. Payments by the City shall be paid to Company as a reimbursement of the Project Costs incurred in the construction of the approved Project by Company in an amount not to exceed the Maximum Reimbursement Amount.

B. Upon completion of the Project, Company shall submit all paid invoices for reimbursement of Project Costs to the Director. The City shall, within ninety (90) calendar days, render a reimbursement payment in the lesser amount of (i) total reimbursable Project Costs or (ii) Available TIRZ Funds.

C. In the event that the Available TIRZ Funds are inadequate to reimburse Company for its Project Costs, the unreimbursed amount shall be carried forward to the following year and shall be reimbursed no later than May 31 in the lesser amount of (i) total reimbursable Project Costs or (ii) Available TIRZ Funds. The Parties understand that this process shall continue until City reimburses Company the entirety of its Project Costs or the Maximum Reimbursement Amount; whichever is less.

D. 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.

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, the Zone, and Company and shall automatically terminate on December 31, 2048, or upon the occurrence of one or more of the following:

- (1) by written agreement of the Parties;
- (2) upon reimbursement to Company for all eligible Project Costs up to the Maximum Reimbursement Amount;
- (3) 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
- (4) 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

With required copy to:

City of Killeen, Texas
101 N. College Street
Killeen, Texas 76541
Attn: City Attorney

If to the Zone:

Reinvestment Zone Number Two,
City of Killeen, Texas
c/o City of Killeen, Texas
101 N. College Street
Killeen, Texas 76541
Attn: Chairman, Board of Directors

If to the Company:

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

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

**TAX INCREMENT REINVESTMENT
ZONE NUMBER TWO**

 12/14/2023
Fok Bobby Whitson Date
Chair, Board of Directors

Thompson A. Dorroh
Vice Chair

**MGC PURE CHEMICALS
AMERICA, INC.**

 12/8/2023
Toru Harada Date
President & CEO