

RESOLUTION 2019-16-CL

A RESOLUTION FOR REPAYMENT OF TAX SAVINGS WHEN DEDUCTIONS FOR CERTAIN PERSONAL PROPERTY IS TERMINATED

WHEREAS, Indiana Code 6-1.1-12 *et. seq.* authorizes the County Council of Tippecanoe County ("Council") to create Economic Revitalization Areas at its discretion, and

WHEREAS, Economic Revitalization Areas provide tax savings and benefits for stated periods of time to recipients that commit to make certain investments, create or retain jobs, or provide housing, and

WHEREAS, Indiana Code 6-1.1-12.1-5.9 authorizes the Council to terminate tax deductions in Economic Revitalization Areas where the recipient of such deduction has not substantially complied with all the stated commitments, and where the failure to substantially comply was not due to factors beyond its control, and

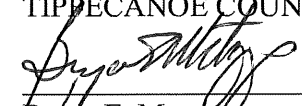
WHEREAS, the Council desires to seek repayment of all or a portion of tax savings realized by a recipient in the event that an Economic Revitalization Area for new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment is terminated as stated above.

BE IT NOW RESOLVED, that from this date forward, as a condition of receiving tax deductions in an Economic Revitalization Area designated by the Council for new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment, a recipient must enter into a Memorandum of Understanding that shall provide for the repayment to the County of all or a portion of the tax savings realized through said designation in the event that said property is removed from the County and the Council determines that the deduction should be terminated because the recipient is not in substantial compliance with the recipient's stated commitments.

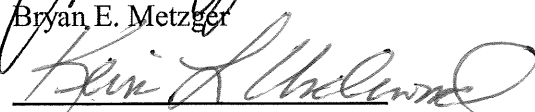
The form of Memorandum of Understanding attached hereto as Exhibit A is illustrative of the Council's intent with respect to this resolution, but modifications to the Memorandum may be approved by the Council as circumstances dictate.

Adopted this 9th day of July 2019.

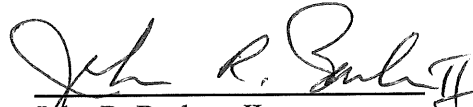
TIPPECANOE COUNTY COUNCIL



Bryan E. Metzger



Kevin L. Underwood



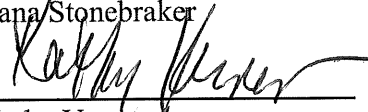
John R. Basham II

Absent

Lisa Dullum

~~Ilana~~

Ilana Stonebraker



Kathy Vernon

Absent

Roland K. Winger

ATTEST:


Robert Plantenga, Tippecanoe County Auditor

EXHIBIT A

SAMPLE MEMORANDUM OF AGREEMENT CONCERNING STATEMENT OF BENEFITS AND TAX ABATEMENTS

This Memorandum of Agreement ("Agreement") is dated this ____ day of _____, 20____, and serves as the confirmation of the commitment by _____ (the "Applicant"), to comply with the project description and job creation and retention (and associated wage rates and salaries) figures contained in its designation application; Statement of Benefits; Resolution No, _____, a resolution of the Tippecanoe County Council ("Council"); and this Agreement ("Commitments"),

Section 1, Grant of Abatement.

Subject to the adoption of the deduction approval resolution by the Council, Tippecanoe County, Indiana ("County") commits to providing a _____ year personal property tax abatement for the Applicant's capital expenditures of approximately \$ _____ for new manufacturing equipment, new research and development equipment, new logistical distribution equipment, or new information technology equipment approved as part of the Commitments. The Applicant shall assume responsibility for the redevelopment and the installation of the new equipment and for compliance with the Statement of Benefits. The project will create [DESCRIPTION OF JOBS PROMISED], aside from those created or retained through the construction phase of the project. The capital expenditures for the Project shall occur no later than the estimated completion dates of _____ for equipment installation as contained in the Statement of Benefits Form ("Completion Date").

Section 2. Annual Information.

During the term of the tax abatement and for a period of two (2) years thereafter, the County or its authorized agent may annually request information from the Applicant concerning the nature of the Project and the approved capital expenditures for the Project and the Applicant shall provide the County with adequate written evidence thereof within 45 days of such request ("Annual Survey"). The County shall utilize this information and the information required to be filed by the Applicant in the CF -1 Compliance with the Statement of Benefits form to verify that the Applicant has complied with the commitments contained in the Commitments at all times after the Commitment Date and during the duration of the tax abatement. The applicant further agrees to provide the County with such additional information requested by the County related to the information provided in the Annual Survey and the CF -1 form within a reasonable time following any such request.

Section 3. Termination.

A. Right to Terminate. The County, by and through the Council, reserves the right to terminate the personal property tax abatement deduction if it determines that the Applicant has not made reasonable efforts to substantially comply with all of the Commitments and that Applicant's failure to substantially comply with the Commitments was not due to factors beyond its control.

B. Factors Beyond Control. As used in this Agreement, "factors beyond the control of the Applicant" shall include only factors not reasonably foreseeable at the time of the designation application and

submission of Statement of Benefits which are not caused by any act or omission of the Applicant and which materially and adversely affect the ability of the Applicant to substantially comply with the Agreement. New technological developments and process improvements may also be included as factors beyond of the control of the applicant.

C. Repayment Upon Termination: Pursuant to Resolution 2019-____-CL, if the new equipment is removed from Tippecanoe County, and the County terminates the personal property tax abatement, the County may require the Applicant to repay all of the personal property tax abatement savings received through the date of such termination.

D. Notice of Termination and Repayment. In the event that the County determines that the tax abatement deductions should be terminated and/or that all of the tax abatement savings should be repaid, it will give the Applicant notice of such determination, including a written statement calculating the amount due from the Applicant, and will provide the Applicant with an opportunity to meet with the County's designated representatives to show cause why the abatement should not be terminated and/or the tax benefits repaid. Such notice shall state the names of the person with whom the Applicant may meet and will provide that the Applicant shall have ninety (90) days from the date of such notice to arrange such meeting and to provide its evidence concerning why the abatement termination should not or tax benefits repayment should not occur. If, after giving such notice and receiving such evidence, if any, the County determines that the abatement termination and/or tax benefits repayment action is proper, the Applicant shall be provided with written notice and a hearing before the Council before any final action shall be taken terminating the abatement and/or requiring repayment of tax benefits. If the Council adopts a Resolution terminating the tax abatement and/or requiring repayment of tax benefits, the Applicant shall be entitled to appeal that determination to a Tippecanoe County Superior or Circuit Court.

E. Time of Repayment. In the event that the County requires repayment of the tax abatement benefits as provided hereunder, it shall provide Applicant with a written statement calculating the amount due ("Statement"), and the Applicant shall make such repayment to the County within ninety (90) days of the date of delivery of the Statement, unless such repayment has been stayed pending an appeal. If the Applicant does not make timely repayment, the County shall be entitled to all reasonable costs and attorneys fees incurred in the enforcement and collection of the tax abatement savings required to be repaid hereunder.

Section 4. Use of Local Suppliers and Contractors for Project and Local Persons to Fill Positions Created by Project.

The Applicant agrees to make a meaningful, good-faith effort to use local suppliers, and local contractors for the Project. Local suppliers and local contractors are defined as contractors and suppliers that are primarily engaged, reside in or have their principal office in Tippecanoe County or employ a significant number of residents of Tippecanoe County. Additionally, applicant agrees to make a meaningful, good-faith effort to hire qualified individuals who are residents of Tippecanoe County for the new positions that will be created by the Project.

Section 5. General Provisions.

A. This Agreement contains the entire understanding between the County and the Applicant with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, and conditions, expressed or implied, oral or written, except as herein

contained. This Agreement may not be modified or amended other than by an agreement in writing signed by the County and Applicant. The Applicant understands that any and all filings required to be made or actions required to be taken to initiate or maintain the tax abatement are solely the responsibility of the Applicant.

B. Neither the failure nor any delay on the part of the County to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by the party asserted to have granted such waiver.

C. This Agreement and all questions relating to its validity, interpretation, performance and enforcement shall be governed by the laws and decisions of the courts of the State of Indiana, without regard to conflict of law principles.

D. The Applicant hereby irrevocably consents to the jurisdiction of the Courts of the State of Indiana and of the Tippecanoe County Circuit or Superior Court in connection with any action or proceeding arising out of or relating to this Agreement or any documents or instrument delivered with respect to any of the obligations hereunder, and any action relating to this Agreement or any documents or installments delivered with respect to any of the obligations hereunder, and any action related to this Agreement shall be brought in such County and in such Court.

E. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been received when delivered by hand or by facsimile (with confirmation by registered or certified mail) or on the third business day following the mailing, by registered or certified mail, postage prepaid, return receipt requested, thereof, addressed as set forth below:

If to Applicant:

If to County:

F. This Agreement shall be binding upon and inure to the benefit of the County and the Applicant and their successors and assigns, except that no party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld.

G. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which together shall constitute one and the same instrument. By executing this Agreement, each person so executing affirms that he or she has been duly authorized to execute this Agreement on behalf of such party and that this Agreement constitutes a valid and binding obligation of such party.

H. The provisions of this Agreement and of each section or other subdivision herein are independent

of and separable from each other, and no provisions shall be effected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part unless this Agreement is rendered totally unenforceable thereby.

I. No official, director, officer, employee or agent of the County shall be charged personally by the Applicant, its employees or agents with any liabilities or expenses of defense or be held personally liable to the Applicant under any term or provision of this Agreement or because of the execution by such party of this Agreement or because of any default by such party hereunder.

[SIGNATURE BLOCK]