

Industrial Facilities Exemption Certificate Letter of Agreement

This Agreement, made this _____ day of _____, 20___, by and between _____, of _____, Bay City, Michigan 4870 _____ (“Company”) and the CITY OF BAY CITY, a Michigan municipal corporation, of 301 Washington Avenue, Bay City, Michigan 48708 (“City”) for the purposes of fulfilling the requirements of Act. No. 198 of the Public Acts of 1974, as amended, and to set forth the rights, duties and obligations of the respective parties.

1. Company acknowledges that as a prerequisite to obtaining an Industrial Facilities Exemption Certificate (“tax abatement”) that Company has made certain material representations to the City in its application for an Industrial Facilities Exemption Certificate dated _____, _____, upon which the City has justifiably relied, and upon which the City will continue to rely, and based upon which the Company will receive certain monetary benefits, tax abatements, to which it otherwise would not be entitled.

2. Company further acknowledges that the receipt of an Industrial Facilities Exemption Certificate is also based upon the material representations made by the Company in its application for an Industrial Facilities Exemption Certificate. Further, that all representations made therein are true and correct to the best of the company’s information, knowledge and belief and that the representations include the past history of the Company, the present status of the Company and the future duties and obligations to be performed by the Company.

3. In consideration of the receipt of an Industrial Facilities Exemption Certificate, it is expressly agreed by the Company that should any of the material representations of Company be erroneous or should Company fail to substantially perform any future promises, duties or obligations, the same shall be deemed to constitute a breach of this Agreement and the City may petition the State Tax Commission to revoke the Industrial Facilities Exemption Certificate.

4. Company agrees to comply with all relevant local rules, regulations, codes and ordinances within the City of Bay City during the entire period for which the Industrial Facilities Exemption Certificate was granted. Under this provision the Company agrees to comply at all its facilities in the City of Bay City with all construction, building and zoning codes in effect during the entire period for which the Industrial Facilities Exemption Certificate was granted. Failure to comply shall constitute grounds for revocation of the Industrial Facilities Exemption Certificate.

Attachment D

5. Company shall submit to the City Assessor, for the term of the Industrial Facilities Exemption Certificate, an annual status report recapping activity for the abated project as of December 31, of each year. The report will be due no later than February 20 of each subsequent year. It will indicate actual moneys expended as of each annual report date, total project actual costs by year of completion and actual number of jobs created or retained as of December 31, of each year of the project. If, as of any annual report date during the life of the project, there is a variation of more than ten percent (10%) in the estimated employment levels or expended moneys from what was set forth in the application, the Company must include an explanation for this variation in the annual status report.

6. Company further agrees that it shall pay all taxes and assessments on the regular ad valorem tax roll, real and personal, hereupon levied on said premises or any equipment or personal property thereon before any penalty for non-payment attaches thereto, beginning with the next tax billing and continuing throughout the term of the Industrial Facilities Exemption Certificate. Failure to pay all such taxes as provided above shall be deemed to constitute a breach of this Agreement and City may petition the State Tax Commission to revoke the Industrial Facilities Exemption Certificate and/or may otherwise proceed in accordance with the remedies provided by statute. If, at any time during the effective term of the exemption certificate, a participant in the program appeals to the Michigan Tax Tribunal disputing the "taxable value" of the property subject to the tax abatement, the City of Bay City may petition the State Tax Commission to revoke the Industrial Facilities Exemption Certificate.

7. Company represents that it intends to remain within the City of Bay City during the entire period of time for which the Industrial Facilities Exemption Certificate has been approved. Under this provision the Company agrees to maintain buildings, equipment and employment related to the new project as represented by the Company in its application for an Industrial Facilities Exemption Certificate. Company also represents that it intends to maintain overall building, equipment and employment at the level as represented by the Company in its application for an Industrial Facilities Exemption Certificate. Failure to remain within the limits of the City of Bay City or failure to implement and maintain buildings, equipment and employment related to the new project shall be deemed to constitute a breach of this Agreement and City may petition the State Tax Commission to revoke the Industrial Facilities Exemption Certificate. Company acknowledges that failure to remain within the City of Bay City during the entire period for which the Industrial Facilities Exemption Certificate was granted shall constitute grounds for immediate revocation of the Industrial Facilities Exemption Certificate and the denial of the City's consent to the granting of an Industrial Facilities Exemption Certificate in a governmental unit to which the Company has relocated or employment has been transferred from the City. Company may present to the City Commission those compelling circumstances, which could allow the City Commission, in its sole discretion, to approve such transfer.

8. Company does not agree to maintain any specified level of overall plant employment, for any particular period of time, except as specifically set forth in its Application for an Industrial Facilities Exemption Certificate. The City's sole remedy and the Company's sole obligation in the event of an employment shortfall are set forth herein.

9. City acknowledges that in some instances, economic conditions, technology, or conditions beyond the control of the Company may prevent the Company from fulfilling the terms of the Application for an Industrial Facilities Exemption Certificate and complying fully with this Agreement. City agrees that it shall give the Company an opportunity to explain to the City Commission the reasons for any variations from the representations as contained in the Application for an Industrial Facilities Exemption Certificate and the City Commission, in its sole discretion, will evaluate the Company's situation prior to taking any action authorized by this Agreement.

10. This Agreement shall become effective upon the issuance of a Certificate in compliance with the Application for an Industrial Facilities Exemption Certificate by the Michigan State Tax Commission and shall be null and void and of no force or effect whatsoever, if the Michigan State Tax Commission fails to issue such a Certificate. This Agreement shall be null and void upon expiration of the Industrial Facilities Exemption Certificate.

11. The Affidavit attached as "**Exhibit A**" is incorporated by reference as if fully set forth herein.

INWITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first written above.

WITNESSES:

COMPANY: _____

WITNESSES:

CITY OF BAY CITY:

Rev. 7/28/2021

Affidavit

STATE OF MICHIGAN)
)ss
COUNTY OF BAY)

The undersigned, being first duly sworn deposes and says as follows:

“We swear and affirm by our signatures below that no payment of any kind in excess of the fee allowed by Act 198 of 1974, as amended by PA 323 of 1996, has been made or promised in exchange for favorable consideration of the exemption certificate application.”

COMPANY:

On the ____ day of _____, 20__, before me, a Notary Public in and for said County, appeared _____, to me personally known, who being duly sworn did say that he/she is the _____ of _____, the corporation named herein and which executes the within instrument, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and acknowledged said instrument to be the free act and deed of said corporation.

_____, Notary Public
_____, County, Michigan
My Commission Expires: _____

CITY:

City Manager or Designee

On the ____ day of _____, 20__, before me, a Notary Public in and for said County, appeared _____, to me personally known, who being duly sworn did say that he/she is the _____ of the City of Bay City, the municipal corporation named herein and which executes the within instrument, and that said instrument was signed and sealed in behalf of said corporation by authority of its Commission, and acknowledged said instrument to be the free act and deed of said corporation.

_____, Notary Public
_____, County, Michigan
My Commission Expires: _____