

**MINUTES OF VIDEOCONFERENCE MEETING NO. 2354  
COMMISSIONERS OF  
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7**

Place: 4749 Twin City Highway, Suite 300  
Port Arthur, Texas

Date: September 7, 2021

Present: Commissioners  
Lester Champagne  
James Gamble, Sr.  
Matthew Vincent  
Albert Moses, Jr.  
Phil Kelley, Manager  
Pete Steele, Attorney

Absent: Richard Beaumont

Visitors: Allen Sims, DD7  
Dean Depew, DD7  
Brady Girouard, DD7  
Garrett Boudoin, DD7  
Kim Carroll, Texan Engineering & Consulting, LLC  
John Johnson, Griffith Moseley Johnson  
Megan Gallien, Griffith Moseley Johnson

The meeting was called to order at 2:00 p.m. by Vice-Chairman Champagne after ascertaining that the Notice of Meeting had been posted in accordance with the law. Commissioner Moses gave the invocation.

Minutes of Meeting No. 2354

The Minutes of Meeting No. 2354 was approved as read.

Public Hearing on Proposed Tax Rate for FY 21/22

Vice-Chairman Champagne asked if there was anyone from the general public that would like to speak to the proposed tax rate of 0.284775 per \$100 valuation. There were none.

Consider Adopting Tax Rate and Exemptions for FY 21/22

Mr. Phil Kelley stated the proposed tax rate is 0.284775 per \$100 valuation. Commissioner Gamble moved that the tax rate for the 2021 tax collection be set as follows:

Tax Rate

M & O Fund	0.284775/per \$100 valuation
Total	0.284775/per \$100 valuation

Commissioner Moses seconded the motion. The motion carried.

Commissioner Gamble further moved that the 2021 tax exemptions be set as follows:

Exemptions

Residential Homestead

Optional	20% or \$5,000
Over 65 & Disabled	\$40,000
Disabled Veterans	\$12,000 (maximum)

Primary Charitable Organizations	Totally – As Approved by Texas State Comptroller
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Commissioner Moses seconded the motion. The motion carried.

Consider Resolution Authorizing Master Abatement Agreement for Phase 1 and Separate Agreements for Phases 2, 3 and 4 for Property Located in the Arbor Reinvestment Zone

Resolution No. 478 Authorizing Master Abatement Agreement for Phase 1 and Separate Agreements for Phases 2, 3 and 4 for Property located in the Arbor Reinvestment Zone was presented to the Board for consideration. Mr. Phil Kelley

introduced Mr. John Johnson in attendance representing Arbor Renewable Gas LLC and asked Mr. Johnson if he would like to give a summary regarding the proposed project. Mr. Johnson introduced Megan Gallien, their CFO, and stated she can answer any financial questions. Mr. Johnson said the project is a renewable gasoline manufacturing facility which will take woody biomass, forest waste, from logging operations and through a chemical process, manufacture syngas that can then be used to manufacture renewable hydrogen or renewable gasoline. This project will produce renewable gasoline which is then mixed with conventional gasoline that meets the renewable gas standards for California and some other states. The gasoline is intended to be sold into California. There are four (4) agreements because there are four (4) phases to the project. If everything goes as planned during Phase 1, they will follow with Phases 2, 3 and 4 creating 56 permanent jobs with a \$1.1 billion investment over a 5-to-7-year period. Phase 1 will be a \$325 million investment, with the following phases reaching \$275 million per phase. The property location is between Highway 69 and Twin City Highway on the southern boundary of the City of Beaumont City Limits. Typically, the County would establish and approve the Reinvestment Zone, but in this case, it was done by the City of Beaumont. Commissioner Vincent moved to approve Resolution No. 478 Authorizing Master Abatement Agreement for Phase 1 and Separate Agreements for Phases 2, 3 and 4 for Property Located in the Arbor Reinvestment Zone. Commissioner Gamble seconded the motion. The motion carried. A copy of Resolution No. 478 is attached hereto and made a part of these minutes.

Preliminary Budget Discussion

Mr. Kelley submitted a Preliminary Budget to the Board. He stated most categories are unchanged except for Special Projects and Salaries, Wages and Fringe Benefits. The District recently hired thirteen (13) new employees, a District Engineer and three (3) Engineers in Training, and this increases overall payroll by approximately \$1.2 million and proportionally increases Social Security and Medicare taxes. The District is also facing a 4.2% increase in health insurance, and, therefore, the fringe benefits line has been increased by about \$455,000. Commissioner Gamble asked if some of the thirteen (13) new employees replaced other employees that have retired or left the District's employment for other reasons. Mr. Kelley answered yes, there has been an offset from the reduction in the number of employees but did state the District had reached the position where it did not even have enough personnel to man the hurricane schedule and with COVID last year, the District did not bring in any summer help. The number of employees has been brought back up, and the engineering department needed to be established because of the Sabine Pass to Galveston Bay Project. Commissioner Moses questioned if the increases can be covered in the Budget. Mr. Kelley explained he had created the Capital Projects Fund and moved over \$30 million to that fund at the end of last fiscal year. Depending on expenses, it is his intent to continue to fund this account in the event the State and General Land Office discontinues appropriating funds so the District will be able to pay its own way. The District also has four (4) grants that it is hopeful to get funded which is several million dollars for each project. There is a carryover fund balance of \$10 million, and with

incoming revenue based on 97% tax collections, total projected income for this year is approximately \$42.6 million. The District is in good shape.

Mr. Kelley stated he went back and added some new line items to the Special Projects Worksheet since the last meeting. He went over the new projects he added and gave a brief description of each, which included Replace Main Roof at Pump Station No. 5, Rodair Gully Detention-HMGP Project, Main "C" Extensions Improvement-Concrete Liner, Primary Pump Replacements and Clean/Paint Buildings and Construct Vehicle Shed. The bottom line was increased very little. This should be the final. The Budget for FY 21/22 will be considered and approved at the next Board meeting.

#### Sabine Pass to Galveston Bay Project

Mr. Brady Girouard gave a brief update on the Sabine Pass to Galveston Bay Project Summary. Contract 1 is underway, with projected completion by November or December 2021. There are five (5) levee zones being repaired as part of Contract 1 which have taken priority due to the last few storm scares. Geotechnical work has been started on Contract 2 and work-in-kind survey work is about to be initiated. Contract 3 is at 100% design and relocate work is currently heavily engaged. There will be several bid packages going out soon, with the first being estimated at \$1.5 million. Variance requests are being worked out with the Corps, and all agreements are in place with Valero for funding. Contract 3B is very similar and has reach 100% design level. The advance funding agreements are not in place with the City of Port Arthur for utility relocates. The District has hired a local firm to do the design and necessary plans on

the City's behalf. Contract 3A is pretty sizable, and the biggest efforts are on the Motiva pipe corridor. \$25-\$30 million is the estimate, and the District has been working on the relocation and funding agreements. Allen Sims met with the Corps on Contracts 4 and 5 last week, and these contracts are still fairly conceptual. The scope of work has a lot of variables and is not very definitive at this point. Mr. Kelley stated that some of the District staff will be in Galveston Monday and Tuesday of next week to attend meetings to begin the design process for Contract 4. Commissioner Champagne asked if Motiva is giving any funding help on the pipe corridor relocates. Mr. Kelley stated Motiva pays quite a bit in taxes, but there is no supplemental funding, and the subject has not been approached. The District must walk a fine line because Motiva's asset is being moved and the flexibility is to coordinate how the lines go in and out of service without the District getting charged for loss of production. It is the same situation with Valero. Commissioner Champagne said he understands the position the District is in; however, both Motiva and Valero are going to benefit from the relocates because of all the updates. Mr. Kelley further stated the District has received the Notice to Proceed to acquire the necessary additional right-of-way in Valero for Contract 3 and KCS down by the Port of Port Arthur for Contract 3B. Meetings will be scheduled, and a request will be forthcoming to the Board for approval to purchase the property at some point.

#### Manager's Miscellaneous Reports

Since the date of the last Commissioner's meeting, the following work has been done:

### HFPL Maintenance/Herbicide Crew

#### Herbicide Application:

- Central Gardens Outfall, Shamrock Ditch, Central Ditch, Pear Ridge Lat's 3 & 4
- Crane Bayou Lat. 1, Griffing Park Main, Pear Ridge Main Ext., PS 17 Pit, KCS Ditch
- Stadium Ditch, Stadium Ditch Lat. 1, Lakeview Ditch, North St. Ditch, Park Place
- Pear Ridge Ext. Lat 1 & 2, Pear Ridge Lat's 7<sup>th</sup> & 9<sup>th</sup>, El Vista Outfall & Lat. 1
- Lat's A1 & A1C, Pure Oil Ditch, Main B, B6, B7, Low water crossing at PS 16

#### Levee:

- Closure Structure Inspection

#### Misc.:

- Removed fencing to spread dirt pile at the new office site.
- Painting gates at various locations throughout the district.
- Repairing road at the Conoco site near Main C.
- Starting Main C bank repair across from Halbouty PS.
- Re-grade Conoco Road and Main C ditch bank.

#### Contractor:

- GP Evans Contractors: Mowing HFPL and District Rights-of-Ways, Areas: 5, 5, 6A, 7, 8, 9 and 9A
- Duck's Dragline Service: Mowing Foley Discharge Canal. Mulched trees in Foley ditch.

### Control Center Operation and Pump Station Maintenance Report

- Station 16 Annex  
Set thermostats on clutch oil cooling fans  
Set timers on Farval greasers for pumps.
- Station 19  
Rake B-fill hydraulic tank and unstick trolley. Back in Auto
- Station 16 Annex  
Unit 1 Vent fan, tripping breaker and smoking. Removing storm straps and cover on roof to look for problem. Greased units, check amperage and RPMs. All fans working at this time.
- Station 18  
Working with instrumentation on new engine hookups on units 1&2

- Station 20  
Entergy fuse blown on transformers. Bad Transformer, Entergy working to replace.
- Station 16  
Chain Drive Motor-troubleshoot to find bad motor, replace motor. Had to drain 75 gallons of hydraulic oil to change pump and motor and then refill reservoir. Back online.
- Station 10  
Unit 4-replace battery.
- Station 1  
Replace 400-watt wall pack light fixture on wall above rake A.
- Station 16 Annex  
Hook up washer, dryer & stove at station.
- Station 1  
Rake A-change out bad traverse motor.  
Rake B-change out bad trolley wheel
- Station 19  
Rake A-change out bad main gear on Hydraulic drum.
- Station 8  
Unit 3-connect motor, check rotation, run flex conduit and pull wire for pump oiler.  
Test run and place unit in Auto.  
Sump Pump-Replacing old probe system for automatic operation with bubble tube system. Connecting and wiring pressure switches with air compressor and tubing for automatic operation of new Gorman Rupp pump.

Construction Notes - Alligator Bayou Pump Station Annex  
August 9, 2021 – August 27, 2021

Monday, August 9:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy. The site conditions were dry.

Allco's superintendents (2) on site (Terrell and Joe) with (6) operators/laborers reported.

Allco's crew working on the coffer dam by removing the I-beams from inside and digging the dirt out.



Tuesday, August 10:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy. The site conditions were dry.

Allco's superintendent (2) on site (Terrell and Joe) with (6) operators/laborers reported.

Allco's crew is digging dirt out from inside the coffer dam. They switched and began water jetting down the sides of the sheet pile to remove some of the mud so that a diver can cut the sheets tomorrow.

Wednesday, August 11:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy to sunny. The site conditions were dry.

Allco's superintendent (2) on site (Terrell, Joe) with (6) operators/laborers reported.

Allco called off Diver Dan because they left a 110-ton crane out on the coffer dam overnight and the dirt gave way under the pressure. They had to pull the crane out with a trackhoe and are working on establishing support under the crane with I-beams. They are unsure about where the dirt went.

DD7 is pumping at station and training a new pumper. DD7 is also installing a trash backstop

Thursday, August 12:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy. The site conditions were dry.

Allco's superintendent (3) on site (Terrell, Joe) with (6) operators/laborers reported.

Diver Dan has (3) representatives on site. Crew is cutting the sheet pile off the cofferdam.

Allco's crew is working with Diver Dan's crew on the cofferdam.

Friday, August 13:

Alligator Project; Allco is not working on site today. Weather conditions held rain on and off throughout the day. The site conditions were dry.

Allco's superintendent (1) on site (Terrell) with (5) operators/laborers reported.

Allco's crew is working on the cofferdam and is moving I-beams for trackhoe to sit on. Rained out 9:00 am.

DD7 is pumping canal down with (2) engines.

Monday, August 16:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy to sunny. The site conditions were dry.

Allco's superintendent (2) on site (Terrell and Joe) with (6) operators/laborers reported.

Allco's crew is cutting out the upper portion of the I-beams and digging dirt out of the middle of the coffer dam.

Tuesday, August 17:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy. The site conditions were dry.

Allco's superintendent (1) on site (Terrel) with (6) operators/laborers reported.

Allco's crew is working on digging dirt out from the middle of the coffer dam.

Wednesday, August 18:

Alligator Project; Allco did work on site today; however, DD7's site representative was off, so a daily report was not generated.

Thursday, August 19:

Alligator Project; Allco worked on site today. Weather conditions cloudy. The site conditions were dry.

Allco's superintendent (2) on site (Terrell and Joe) with (6) operators/laborers reported.

Allco's crew is removing lower I-beams and digging dirt out of the cofferdam.

DD7 received (2) MCPB boxes from Kraft Power. The crew installed a box on Unit #2, but it did not work (did not clutch air compressor on and did not read RPMs). They removed the new MCPB box off Unit #2 and installed it on Unit #3, but it did not operate the clutch on that unit either. The crew installed the other MCPB box on Unit #5, and it successfully operated the clutch air compressor. The engine ran good at this time.

Friday, August 20:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy to sunny. The site conditions were dry.

Allco's superintendents (1) on site (Terrell) with (3) operators/laborers reported.

Allco's crew is water jetting down the sides of the sheet pile.

DD7's crew took MCPB control box used on Units #2 & #3 that didn't work and installed it on Unit #5. The box successfully ran the unit, and the air compressor operated the clutch. They took the MCPB box off Unit #5 and installed it back on Unit #3. This time, it worked on Unit #3, but had an air leak. The pressure dropped to 140 psi and the compressor came back on and pressured the system back up to 175 psi. The pressure then dropped to 0 psi and the clutch disengaged, but the engine kept running at 1146 RPMs and no shutdowns came on. They had to stop the engine with stop bottom.

Monday, August 23:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco's superintendent (1) on site (Terrell) with (4) operators/laborers reported.

Allco's crew is cutting up scrap iron and putting it into dumpsters.

DD7's crew is trying to figure out why Unit #3 shutdowns did not work and shut down the engine when clutch disengaged last Friday. The unit had no oil pressure on the angle gear, and it did not shut the engine down.

Tuesday, August 24:

Alligator Project; Allco worked on site today. Weather conditions were sunny. The site conditions were dry.

Allco's superintendents (2) on site (Terrell, Joe) with (5) operators/laborers reported.

Diver Dan has (3) representatives on site. Crew is cutting the sheet pile off the cofferdam.

Allco's crew is trying to shore the dirt inside the coffer dam because it sank again. Once Diver Dan's crew cuts the sheet pile to a certain depth, Allco can get the 110-ton crane out onto the dam to pick up the sheet pile.

Wednesday, August 25:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy to sunny. The site conditions were dry.

Allco's superintendent (2) on site (Terrell, Joe) with (5) operators/laborers reported.

Diver Dan has (3) representatives on site.

Allco's crew is replacing a couple of rotten crane mats on the air bridge along the haul road.

Diver Dan's crew came back after lunch and finished cutting sheet pile so Allco could remove this section of the piling.

Thursday, August 26:

Alligator Project; Allco worked on site today. Weather conditions were partly cloudy. The site conditions were dry.

Allco's superintendent (2) on site (Terrell, Joe) with (5) operators/laborers reported.

Allco's crew is working on removing the coffer dam. They are moving back so they can remove another section.

DD7 is pumping with (1) engine and training Ponch Hernandez at station.

Friday, August 27:

Alligator Project; Allco is not working on site today. Weather conditions held rain on and off throughout the day. The site conditions were dry.

Allco's superintendent (2) on site (Terrell, Joe) with (5) operators/laborers reported.

Allco's crew is working on the coffer dam and moving the support beams. They left the job around 10:30 AM.

DD7 is pumping canal down with (1) engine and training Ponch Hernandez at station.

Mr. Dean Depew reported the pump that is out at Foley Pump Station should be back in November. There is still one engine needing to be installed at Pump Station No. 8, and it was going to be attempted this week, but Cummins was not available to perform the start up. The other four (4) engines that have been ordered are expected to arrive in February 2022. Mr. Depew also stated he has previously submitted pictures of sump pump replacements, and crews are still working on taking the sump pumps from under the pump stations and moving them to inside the pump stations and putting the piping under the stations.

Commissioner Champagne asked for an update on the Alligator Bayou Pump Station Annex Project. Mr. Allen Sims stated Allco is still pulling sheet pile and he met with them last week to identify the point where they will have to start cutting the sheet pile at the slope of the levee according to an agreement with the Corps and leaving a portion in the slope. Allco stated they should be complete in approximately two (2) months, but Mr. Sims does not think this is possible. He feels like it will be more likely complete by the end of the year. The pump station is functional, and the District is still holding some of Allco's retainage. There is one angle gear that is not working, and it has been sent to Lufkin Gear to repair. Mr. Sims will check on the status of the repair and have a report at next meeting.

### Permits

Texas Gas Service – Proposed Underground Pipeline Crossing of Multiple District Facilities. Heavy Haul Crossing of HFPL at Ramp G. Mr. Garrett Boudoin recommended approval with a \$880.00 permit fee and no bond required subject to the special conditions contained within the permit. Commissioner Gamble moved to approve Mr. Boudoin's recommendation. Commissioner Moses seconded the motion. The motion carried.

AT&T Texas/SWBT – Proposed 4 X 4-Inch Communication Lines Underground Crossing of Pear Ridge Main No. 2 by HDD Method. Mr. Garrett Boudoin recommended approval with a \$550.00 permit fee and no bond required subject to the special conditions contained within the permit. Commissioner Moses moved to approve Mr. Boudoin's recommendation. Commissioner Vincent seconded the motion. The motion carried.

### Checks & Purchase Orders Maintenance Fund

Ck. No. 18902 – 4 Horn Industrial  
\$734.40 – Rental Hydraulic Breaker for Sid Steer

Ck. No. 18903 – City of Port Arthur  
\$936.20 – Port Arthur Tax Reinvestment

Ck. No. 18904 – Dan Delich Consulting  
\$1,500.00 – Legislative Consulting Fees

Ck. No. 18905 – Dannenbaum Engineering Corp.  
\$21,923.06 – Engineering Fees, Sabine Pass to Galveston Bay  
Project and Groves Detention HMGP Project

Ck. No. 18906 – Duck's Dragline Service, Inc.  
\$23,840.00 – Rental LS250X3 Trackhoe 8/11-8/31/21,  
Rental Cutter Head 8/12-8/31/21 and Rental LS250X4  
Trackhoe 8/13-8/31/21

Ck. No. 18907 – FILMR, LLC  
\$300.00 – Social Media Posts

Ck. No. 18908 – Function 4 LLC  
\$192.98 – Rental Konmin Copier

Ck. No. 18909 - GP Evans Contractors  
\$33,885.00 – Mowing Levee

Ck. No. 18910 – Groves Equipment Rental Co., Inc.  
\$2,700.00 – Rental 15-Ton Crane, 8/17-9/16/21

Ck. No. 18911 – Jefferson Central Appraisal District  
\$68,013.00 – Fourth Quarter 2021 Entity Allocations

Ck. No. 18912 – Jeffrey S. Ward & Associates, Inc.  
\$5,833.33 – Groves and Halbouty Detention HMGP Projects

Ck. No. 18913 – KT Trucking & Cattle Co.  
\$330.00 – Rental of Transport Truck 8/20/21

Ck. No. 18914 – LJA Engineering, Inc.  
\$38,637.84 – Update Data Operations System Control Center,  
Engineering Fees, Starlake Remediation, Repairs to  
Sheetpile Discharge Bay and Rehab Discharge Pipe  
Supports Pump Station No. 3

Ck. No. 18915 – Mazzanti & Associates  
\$2,500.00 – Legislative Consulting Fees

Ck. No. 18916 – Mutual of Omaha Companies  
\$2,046.26 – Health Insurance Payment

Ck. No. 18917 – Nerbert Frelow  
\$5,970.00 – Rental of Dump Truck, 8/16-9/3/21

Ck. No. 18918 – Port Arthur Newsmedia, LLC  
\$420.10 – Advertising Notice of Public Hearing on Tax Rate

Ck. No. 18919 – Ray Russo  
\$6,800.00 – Legislative Consulting Fees

Ck. No. 18920 – Richard Beaumont  
\$207.58 – Health Insurance Payment

Ck. No. 18921 – Sprint Waste Services, LP  
\$172.20 – Removal of Waste from Pump Stations August 2021

Ck. No. 18922 – Texan Engineering & Consulting LLC  
\$13,320.00 – HMGP Projects, Permits, General Engineering and  
A3A Crossing

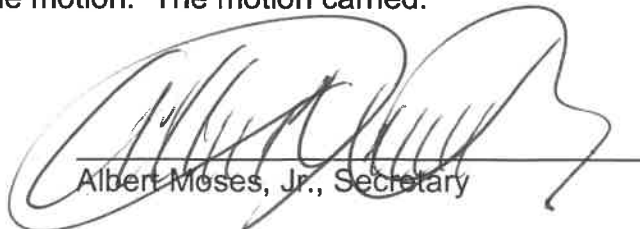
Ck. No. 18923 – Tidal Basin Government Consulting, LLC  
\$2,763.75 – Rodair Gully and A-3-A Detention HMGP Projects

Ck. No. 18925 – James Gamble Sr.  
270.00 – Health Insurance Payment


Commissioner Vincent moved that the checks from the Maintenance Fund be approved for payment. Commissioner Gamble seconded the motion. The motion carried.

Vice-Chairman Champagne asked if there was any other business to come before the Board. There was none.

At 2:38 p.m., Commissioner Gamble moved that the meeting be adjourned. Commissioner Vincent seconded the motion. The motion carried.



Albert Moses, Jr., Secretary



Lester Champagne, Vice-Chairman

STATE OF TEXAS                               §  
COUNTY OF JEFFERSON                     §



NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSIONERS OF JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7:

THAT it is in the best interest of the District to enter into the Agreements for construction of a renewable gasoline manufacturing facility to be completed over a five (5) year period in four (4) phases and authorize its Manager, Phil Kelley, to execute on behalf of the District the Agreements. The Master Abatement Agreement for Phase 1 and Separate Agreements for Phases 2, 3 and 4 for Property located in The Arbor Reinvestment Zone are attached hereto as Exhibit "A" (without exhibits) and made a part hereof by reference.

THAT the terms of the Agreements and the property subject to the Agreements meet the applicable guidelines and criteria adopted by the Board of Commissioners of the District under Section 312.002, Texas Tax Code.

THAT the Manager be, and hereby is, authorized to take any and all action and is authorized to execute any and all instruments, documents, or filings in connection with the accomplishment of the transactions outlined in this resolution and to certify the adoption of such resolutions to such parties which such Manager deems necessary or appropriate.

I, Albert Moses, Jr., Secretary of the Board of Commissioners of Jefferson County Drainage District No. 7, do hereby certify that the above is a true and correct copy of a resolution adopted by the Board of Commissioners of Jefferson County Drainage District No. 7, at their meeting No. 2355 held on the 7<sup>th</sup> day of September, 2021, upon motion made by Commissioner Vincent and seconded by

Commissioner Gamble and adopted unanimously by said Board, a quorum being present.

Given under my hand this 7<sup>th</sup> day of September, 2021.

  
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Secretary  
JEFFERSON COUNTY DRAINAGE DISTRICT NO. 7

STATE OF TEXAS                   §  
   §  
COUNTY OF JEFFERSON       §

**MASTER ABATEMENT AGREEMENT FOR PHASES 1 -4 FOR PROPERTY  
LOCATED IN THE ARBOR REINVESTMENT ZONE**

Pursuant to Section 312.401 of the Texas Tax Code, this Tax Abatement Agreement (hereinafter referred to as the “AGREEMENT”) is made and entered into by and between Jefferson County Drainage District No. No. 7 (hereinafter sometimes referred to as “DD7”), and Arbor Renewable Gas LLC Phase 1. (hereinafter sometimes referred to as “ARBOR” or “OWNER”).

**1. RECITALS**

WHEREAS, OWNER possesses interests in taxable real property located within the ARBOR Reinvestment Zone, the designation of which was implemented by the City of Beaumont July 13, 2021 (hereinafter referred to as the “ARBOR REINVESTMENT ZONE” and this reinvestment zone will be amended as needed for each additional unit constructed; and

WHEREAS, OWNER anticipates this project will entail construction of the first of up to four separate units with an investment for unit 1 of \$325 million (and all four units totaling up to \$1.15 billion), with construction on unit 1 starting by the last day of March 2022, and construction start dates for each unit set sequentially over a period not to exceed six years; and

WHEREAS, it is the desire of the Parties to incentivize this abatement for the benefit of all; and

WHEREAS, in order to incentive construction of all four units in Jefferson County, DD7 has developed a tax abatement schedule whereby, with each additional unit and its additional investment, Owner will receive the benefit of a tax abatement based on the cumulative investment and job creation consistent with DD7’s practice of basing abatements on investment amount and job creation; and

WHEREAS, it is DD7’s intent that the tax abatement schedule for each unit will start at a level applicable to the investment and job creation associated with the cumulative investment including each earlier unit and, assuming the start of construction on subsequent unit(s) by a date certain (addressed in more detail below), the schedule applicable to the

**EXHIBIT “A”**

earlier unit(s) will shift up to the schedule applicable to the subsequent unit, in recognition of the cumulative investment and job creation; and

WHEREAS, if the project does not commence construction on a subsequent unit by a date certain, (outlined in the agreements executed for each subsequent agreement) the abatement schedule applicable to the units either completed or under construction on that date will be finalized for the entire project; and

WHEREAS, each unit will be the subject of a separate sub-agreement and will have an abatement schedule applicable to that unit, subject to adjustment upward based on start of construction of a subsequent unit, except that the abatement term for any individual unit shall not exceed ten (10) years and each unit will be assigned its own individual tax account by the Jefferson County Central Appraisal District; and

WHEREAS, this AGREEMENT is limited to the project to be constructed by OWNER, on various parcels of land located within the Arbor Reinvestment Zone, which is described with particularity in Exhibit "A" attached hereto and which will involve construction of a new renewable gasoline manufacturing facility and related improvements (hereinafter referred to collectively as the "PROJECT"). The Reinvestment Zone Order will be established for the entire project with separate sub-zones noted for each phase; and

WHEREAS DD7 wishes to encourage OWNER to select Jefferson County as the site for the PROJECT; and

WHEREAS, the REINVESTMENT ZONE is an area within Jefferson County, Texas, generally described as being within the City of Beaumont which has been designated by Ordinance of the City of Beaumont, the legal description for which is attached hereto as Exhibit "C." It is understood and agreed that the REINVESTMENT ZONE boundary is subject to revision based on the final construction plan of the Project, and DD7 agrees to take the steps necessary to amend this Agreement if the Reinvestment Zone boundary is altered or amended, consistent with such final Project, upon request of Owner.

NOW, THEREFORE, for the mutual consideration set forth below, the Parties hereto agree as follows:

## **2. AUTHORIZATION**

**THIS AGREEMENT IS AUTHORIZED BY THE TEXAS PROPERTY REDEVELOPMENT AND TAX ABATEMENT ACT, TEX. TAX CODE CHAPTER 312, AS AMENDED, AND BY ORDINANCE OF THE CITY OF BEAUMONT ESTABLISHING AND ADOPTING THE ARBOR REINVESTMENT ZONE.**

### 3. DEFINITIONS

For purposes of this AGREEMENT, the following terms shall have the meanings set forth below:

“Abatement” means the full or partial exemption from ad valorem taxes of the value of certain property located in the REINVESTMENT ZONE designated for economic development purposes.

“Affiliate” of any specified person or entity means any other person or entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such specified person or entity. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

“Base Year Value” means the taxable value of eligible industrial realty improvements of the owner within Jefferson County on January 1 preceding the execution of the abatement AGREEMENT and which property is owned by the owner, co-owner and/or its parent companies, subsidiaries, partner or joint ventures or any entity exercising legal control over the owner or subject to control by the owner. Owner will attach as Exhibit “F-Affiliates” those properties which are co-owned, or which are parent companies, partnerships, joint-ventures or other entities in Jefferson County over which the Owner herein exercises legal control

“Base year”, for the Parties to this AGREEMENT, is defined as the calendar year in which this abatement contract is executed (signed) by all Parties hereto.

“Ineligible Property The following types of property shall be fully taxable and ineligible for tax abatement: land, supplies, inventory, vehicles, vessels, housing, improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; deferred maintenance, property to be rented or leased (except as provided in Section III(f), property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

“Eligible Property means realty improvements, the on-site buildings, structures, fixed machinery and equipment, storage tanks, process units (including all integral components necessary for operations), site improvements, and infrastructure included in the PROJECT, and the permanent office space and related fixed improvements necessary to the operation and administration of the PROJECT, as defined in the Tax Code, but does not include tangible personal property.

“New Eligible Property” means Eligible Property, the construction of which commences subsequent to the effective date of this AGREEMENT. During the construction phase of the New Eligible Property, the OWNER may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use. It is expressly understood that, notwithstanding anything to the contrary written herein, energy, electricity, manufacturing supplies (e.g., foreign manufactured catalysts), feedstocks, freight, and direct materials that physically become a part of the end product manufactured by the PROJECT) are not subject to the terms of this AGREEMENT.

“Taxable Value” for each taxing entity executing an abatement agreement is determined by deducting from the Market Value of all industrial realty improvements of a property owner and/or its affiliates the amount of any applicable exemptions and abatements granted for that Tax Year.

“Completion” as used herein, shall mean, the successful commissioning of the PROJECT and the attainment of reliable operations. OWNER shall certify in writing to DD7 when such Completion is attained.

“Full-time job”, as used herein, shall mean a permanent full-time position that: requires at least 1,600 hours or work per year, is not a transferred from another area of the state, is not created to replace a previous employee, and is covered by a group health benefit plan, and pays at least 110% of DD7 average weekly wage for manufacturing jobs in Jefferson County.

“Payment in Lieu of Taxes”. If, during the period of this abatement, any Federal or State law provides an additional tax exemption for the property that is already the subject of this AGREEMENT, Applicant agrees to decline that tax exemption during the period of this abatement. If Applicant is unable to decline that tax exemption, Applicant agrees to pay the taxes, or payment in lieu of taxes, on the reduction of property tax revenue to DD7 that is the result of said exemption. Any payment in lieu of taxes shall be due on or before November 15 of the year in which payment is due.

#### **4. TERM OF ABATEMENT**

This AGREEMENT shall be effective and enforceable upon execution by both Parties (which date is herein referred to as the "Effective Date"). The Term of the Abatement pursuant to this AGREEMENT (the “Abatement Term”) for each unit shall begin on the date dictated by the construction completion schedule applicable to that unit and shall terminate on the date dictated in the abatement schedule applicable to that unit, unless sooner terminated pursuant to other provisions of this AGREEMENT.

Jefferson County will request that the Jefferson Central Appraisal District establish discrete account numbers for each unit to facilitate efficient administration of this AGREEMENT.

Should OWNER not begin construction on unit 1 of the PROJECT by December 31, 2022, this AGREEMENT shall be null and void.

## 5. OWNER REPRESENTATIONS/OBLIGATIONS

In order to receive a tax abatement with respect to a tax year listed on EXHIBIT: Tax Abatement Schedule,” OWNER shall comply with the following:

- a. As a result of the PROJECT, and upon its Completion (currently estimated to be the date reflected in the sub-agreement applicable to each unit, each of which is incorporated by reference, maintain not less than the number of new full-time jobs specified in that sub-agreement (consisting of both permanent direct employee jobs and permanent contractor jobs), using headcount as of the execution date of this AGREEMENT as the starting point, relating to the PROJECT during the remaining term of this AGREEMENT; provided, however that OWNER may reduce employment levels due to improved efficiencies or changing economic conditions during the term of this AGREEMENT as long as such employment levels do not fall below the number of full-time jobs specified in each sub-agreement for total on-site employment by owner during said term. There will be 20 new full-time jobs created for unit 1. In the event that such employment falls below that number of full-time jobs for total on site employment, Abatement may be reduced proportionate to such employment decline beginning with the tax year in which the decline occurs and each tax year thereafter per the example calculation cited below where:

A1 = initial Abatement \$s

A2 = revised Abatement \$s

E1 = 20 full-time jobs

E2 = revised employee count

$A2 = A1 \times (E2/E1)$

- b. Report and certify the requisite job levels to DD7, annually during each tax year under this AGREEMENT;
- c. Construct the PROJECT with an estimated investment in the amount specified in each sub-agreement;
- d. Make available to DD7 information concerning the details of contractor bids, every quarter, during the construction phase of the PROJECT under the express understanding that COMPANY is providing DD7 such contractor bid information on a strictly confidential basis so as to maintain the integrity of the competitive bid process;
- e. Report and certify to DD7 completion of construction for each unit, as well as the requisite cost of each unit within 120 days after the completion of that unit (or 120 days after the Effective Date, whichever is later);

- f. Ensure that qualified local labor, vendors, suppliers, and sub-contractors are given a timely opportunity to bid on contracts for the provision of supplies, goods and services (including engineering and construction services, *e.g.*, piping, electrical, civil, fabrication) in connection with construction of the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period. Such consideration shall be made in good faith without discrimination. For purposes of the foregoing:
- i. “Local labor” is defined as those qualified laborers or craftsmen who are residents and domiciliaries of the nine county regions comprised of Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers Counties, as well as the Bolivar Peninsula area of Galveston County. “Local vendors” and “local suppliers” shall include only those located or having a principal office in Jefferson County. “Local subcontractors” shall include only those located or having a principal office in Jefferson County.
  - ii. OWNER agrees to give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency. For any such exception in cases involving purchases over \$1 million, a justification for such purchase shall be included in OWNER’S annual letter of compliance. OWNER further acknowledges that it is a contractual obligation, under this AGREEMENT, of persons receiving property tax abatements to favor local manufacturers, suppliers, contractors, and labor, all other factors being equal. In the event of a breach of this “buy local” provision, OWNER agrees that the percentage of abatement shall be proportionately reduced in an amount equal to the amount the disqualified contract bears to the total construction cost for the PROJECT.
  - iii. OWNER agrees that it will provide sufficient notice and information regarding of the project to qualified local contractors to enable them to submit bids for materials in the initial procurement processes, including but not limited PROJECT information provided in job fairs to be conducted by OWNER.
- g. Report and certify to DD7, quarterly the total number of dollars spent on local labor, local subcontractors and local vendors/suppliers, as total and percentage compared to total dollars spent in connection with the PROJECT;
- h. OWNER will invoice purchases locally to ensure that sales taxes credited to the benefit of Jefferson County, Texas. As further clarification OWNER will enter into a Separate Contract as defined in 34 Texas Administrative Code 3.291 (a) (13) with



an EPC contractor (EPC) for the construction of the new plant facility Project to be located in the Reinvestment Zone of OWNER in Jefferson County Texas.

OWNER will obtain a Texas Direct Payment Permit (DPP) and issue a DPP exemption certificate in lieu of sales tax to EPC. OWNER will remit use taxes on taxable purchases made for use in the PROJECT directly to the state of Texas on its monthly Texas Direct Payment Return for both state and county taxes at the applicable rates. The State of Texas collects Limited, Sales, Excise and Use Taxes for both the state and local tax jurisdictions. The state is responsible for distributing the local taxes it collected to the applicable local jurisdiction.

- i. Not in any way discriminate against or treat disparately union contractors who choose to participate in the competitive bid process relating to work on the PROJECT, nor discriminate against or treat disparately union members who seek employment on the PROJECT; and
- j. Encourage and promote the utilization of Historically Underutilized Businesses (HUBs) (also known as Disadvantaged Business Enterprises, or DBEs) by the general contractor engaged by OWNER to construct the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period by ensuring qualified HUB/DBE vendors and contractors are given a timely opportunity to bid on contracts for supplies and services. For purposes of the foregoing:
  - i. A HUB/DBE is a business owned or controlled by Socially and Economically Disadvantaged Individuals as defined by all applicable federal or state laws and local policies, including Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian Indian Americans, women, and individuals with disabilities.
  - ii. A HUB/DBE is one that is at least 51 percent owned or controlled by one or more women or Socially and Economically Disadvantaged Individuals or, in the case of a publicly-owned business, one that at least 51 percent of the stock of which is controlled by one or more women or Socially and Economically Disadvantaged Individuals.
  - iii. A business that has been certified as a HUB/DBE by an agency of the federal government or the State of Texas is presumed to be a HUB/DBE for purposes of AGREEMENT.
  - iv. Only a HUB/DBE with its principal office in the State of Texas will be recognized as a HUB/DBE for purposes of this AGREEMENT. A list of HUB/DBE vendors/suppliers is maintained in DD7 office and a list of same is attached hereto as Exhibit D. As to the use of qualified local and

HUB/DBE vendors, suppliers and sub-contractors, OWNER will, at a minimum:

- k. Consult with chambers of commerce, minority business associations, trade associations and other regional economic development organizations to identify local and HUB/DBE vendors, suppliers and sub-contractors;
- l. Notify qualified local and HUB/DBE vendors, suppliers and sub-contractors, allowing sufficient time for effective preparation of bids for the planned work to be sub-contracted or materials, supplies or equipment to be purchased;
- m. Provide qualified local and HUB/DBE vendors, suppliers and sub-contractors who are interested in bidding on a subcontract or contract for materials, supplies, equipment, or the provision of engineering and construction services and labor adequate information regarding the project as early as is practicable in the bidding process in order to allow the HUB/DBE vendors, suppliers and sub-contractors sufficient time to prepare a bid (*i.e.*, plans, specifications, scope of work, bonding and insurance requirements, and a point of contact within the general/prime contractor);
- n. Negotiate in good faith with interested qualified local and HUB/DBE vendors, suppliers or sub-contractors, and award sub-contracts or contracts for materials, supplies equipment, or the provision of engineering and construction services and labor to local or HUB/DBE vendors, suppliers or sub-contractors when they are the lowest qualified responsive bidder who meets all of the applicable bid specifications; and

Include a provision in OWNER'S contract with the general/prime contractor on the PROJECT which requires the general/prime contractor to read and comply with the terms of this AGREE Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.

- o. Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.
- p. Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.

## **6. VALUE OF ABATEMENT**

For each year under this AGREEMENT, the abatement percentage received by OWNER under this AGREEMENT with respect to the value of New Eligible Property, is set forth on attached Exhibit: "Tax Abatement Schedule"

The Abatement during each year covered by this AGREEMENT shall be the value attributable to the Project multiplied by Abatement Schedule, adjusted by the Base Year Value.

## **7. QUARTERLY MONITORING MEETINGS**

With respect to the quarterly monitoring meetings referenced in Section 5(d) above, DD7's general manager or their designee(s) shall be allowed to attend such quarterly monitoring meetings, on the express condition that they execute a confidentiality agreement prepared by OWNER so as to protect confidential information which may be disclosed to them during or as a result of such monitoring meetings. OWNER will provide DD7 with quarterly reports which detail procurement of services, equipment and labor utilized in construction.

## **8. TAXABILITY**

During the period that this AGREEMENT is effective, taxes shall be payable as follows:

- a. The value of Ineligible Property shall be fully taxable;
- b. The Taxable Value of existing Eligible Property as determined each shall be fully taxable; and
- c. The value of New Eligible Property shall be abated as set forth in Section 6, hereinabove.

## **9. ADJUSTMENTS TO ABATEMENT FOR BASE YEAR VALUE DECLINE**

The Jefferson Central Appraisal District will establish the certified values of Eligible Property as of January 1, 2021 (year abatement executed) as set forth on attached Exhibit "B," and such values shall be the values used to calculate the Base Year Value as herein defined. The Base Year Value as established on January 1, 2021, shall apply to each unit, without regard for the date construction is commenced on that unit, consistent with DD7's understanding that this is a single project with up to four units. If on January 1<sup>st</sup> of any tax year listed on the "Tax Abatement Schedule" the Taxable Value is less than the Base Year Value, then the abatement of value otherwise available shall be reduced by one dollar for each dollar that the Taxable Value of realty improvements is less than the Base Year Value, except that no such reduction of OWNER's abatement shall be made should any reduction to Taxable Value of OWNER's Eligible Property result from a Force Majeure event.

In the event OWNER, Joint Venture, or Owner's Affiliates reduces its *ad valorem* taxes on personal property otherwise payable to DD7 by participating in a foreign trade zone, then the amount of abated value otherwise available shall be reduced by one dollar for each dollar of tax value reduction attributable to special treatment from trade zone participation.

The Parties hereto stipulate and agree that they have received certified appraisal value for this property, as calculated by the Jefferson Central Appraisal District.

It is specifically understood and agreed by OWNER, Joint Venture, or Owner's Affiliates that, if at any time during the effective dates of this AGREEMENT relating to abatement, OWNER files or prosecutes an action in district court to contest the appraised value of any property of OWNER or OWNER's affiliates, or Joint Venture within Jefferson County for unequal appraisal or revision thereof pursuant to Sec. 42.26, Texas Tax Code, any and all abatements granted by DD7 to OWNER, Joint Venture, or its affiliates shall become null and void and cancelled.

#### **10. POLLUTION CONTROL EXEMPTION**

DD7 understands that OWNER plans (i) to request from the TCEQ a determination under Section 11.31 of the Texas Tax Code that certain property included in the New Eligible Property is pollution control property, and (ii) to apply for an exemption from ad valorem taxes under Section 11.31 of the Texas Tax Code with respect to all or a portion of such property determined by the TCEQ to be pollution control property. The maximum dollar value for equipment that OWNER intends to claim to the TCEQ as exempt from taxation under Section 11.31 is fifteen percent (15%) of cost ("Intended Maximum"), though that number could change as current estimated project costs are refined. It is understood that DD7 would not have agreed to this abatement percentages if it were known that the actual exempt property claimed by OWNER would exceed the Intended Maximum. In the event OWNER ultimately obtains an amount in excess of the Intended Maximum in any year of Abatement under this AGREEMENT (such amount the "Exempt Property Excess"), the percentage of abatement described in the "Abatement Schedule" shall be reduced *pro rata* so as to reimburse DD7 for the total decrease in County tax revenue during the abatement period for each unit which is expected to result from the Exempt Property Excess. It is understood and agreed that OWNER will not seek a tax exemption for any equipment or portion of the facility which merely reduces the pollution characteristics of the finished product produced by the facility and that an exemption will only be sought for equipment and technology utilized to reduce pollution at or around the facility.

#### **11. EVENT OF DEFAULT**

If either party should default in performing any obligation under this AGREEMENT, the other party shall provide such defaulting party written notice of default and provide the defaulting party with a minimum period of thirty (30) days to cure such default prior to instituting an action for breach or pursuing any other remedy for default, provided however, that, if the default is of such a nature that it cannot, with the exercise of reasonable diligence, be cured within thirty (30) days, then such party shall not be in default so long as such party has commenced such cure within thirty (30) days after receiving written notice of such default and is diligently prosecuting such cure to completion. Subject to providing such notice of default and the aforesaid opportunity to cure same, the party aggrieved by default shall have the right to terminate this AGREEMENT and to pursue any remedy available at law or in equity, for breach hereof. In addition, if a party (the

“Affected Party”) shall become unable to timely perform any of its obligations under this AGREEMENT, other than any obligation to pay money, as a consequence of a Force Majeure Event, the Affected Party shall be relieved of such obligation (and such failure to timely perform such obligation shall not constitute a default) to the extent that and for so long as (but only to the extent that and only for so long as) it is unable to timely perform such obligation as a consequence of such Force Majeure Event. A “Force Majeure Event” means any of the following: (a) acts of God, earthquakes, tidal waves, lightning, floods, and storms; (b) explosions and fires; (c) strikes and lockouts; (d) wars, riots, acts of the public enemy, civil disturbances, hostilities, sabotage, blockades, insurrections, terrorism, and epidemics; (e) acts of expropriation, confiscation, nationalization, requisitioning, or other taking; and (f) any other event, condition, or circumstance beyond the reasonable control of the party claiming relief as a consequence thereof; provided, however, that “Force Majeure Event” does not include the inability to make payment or financial distress.

## **12. RECAPTURE OF TAXES**

In the event DD7 terminates this AGREEMENT pursuant to the provisions of Section 11 as a result of any event of default by OWNER under such Section 11, including, for the avoidance of doubt, if OWNER fails to make the improvements to the Eligible Property as provided by this AGREEMENT, DD7 shall be entitled to recapture and be paid all taxes previously abated by virtue of this AGREEMENT within thirty (30) days of the termination, together with all penalties and interest required by the Texas Property Tax Code.

## **13. TERMINATION**

OWNER shall have the right to terminate this AGREEMENT at any time upon thirty (30) days’ written notice to DD7 and COUNTY shall have the right of recapture per Provision number 12 above.

## **14. ASSIGNMENT**

OWNER may assign this AGREEMENT, in whole or in part, to a new owner or lessee of the same PROJECT, or a portion thereof, or to an Affiliate of OWNER upon written approval by resolution of the DD7 board of such assignment, and approval shall not be unreasonably withheld or delayed. It shall not be unreasonable for the board to withhold approval if OWNER or the proposed assignee is liable to DD7 for outstanding taxes or other obligations.

## **15. ENTIRE AGREEMENT**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties and others relating hereto are superseded by the AGREEMENT.

## **16. SUCCESSORS AND ASSIGNS**

This AGREEMENT shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. OWNER may not assign all or part of its rights and obligations hereunder without the prior written consent of DD7, which shall not be unreasonably withheld or delayed. It shall not be unreasonable to withhold consent to assignment if OWNER or the proposed assignee(s) is/are delinquent in the payment of any ad valorem taxes.

## **16. NOTICE**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

**OWNER:** Timothy Vail  
Arbor Renewable Gas  
1800 Bering Drive,  
Suite 510  
Houston, Texas 77057

**DD7:** Phil Kelley, General Manager  
Jefferson County Drainage District No. 7  
P. O. Box 3244  
Port Arthur, Texas 77643

**With a copy to:** Mr. Pete Steele, Counsel  
Jefferson County Drainage District No. 7  
P. O. Box 3244  
Port Arthur, Texas 77643

## **17. MERGER**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties and others relating hereto are superseded by this AGREEMENT.

## **18. INTERPRETATION**

The Parties acknowledge that both have been represented by counsel of their choosing in the negotiation and preparation of this AGREEMENT. Regardless of which PARTY prepared the initial draft of this AGREEMENT, this AGREEMENT shall, in the event of any dispute over its meaning or application, be interpreted without reference to the principle of construction favoring the party who did not draft the AGREEMENT under construction.

**19. APPLICABLE LAW AND VENUE**

This AGREEMENT is made and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Jefferson County, Texas.

**20. SEVERABILITY**

In the event any provision of this AGREEMENT is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the Parties to this AGREEMENT that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable, a provision be added to this AGREEMENT which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Executed in duplicate this the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**FOR DD7:**

\_\_\_\_\_

**FOR OWNER:**

\_\_\_\_\_  
BY:

STATE OF TEXAS

§

COUNTY OF JEFFERSON

§

§

**ABATEMENT AGREEMENT FOR PHASE 2 FOR PROPERTY LOCATED IN  
THE ARBOR REINVESTMENT ZONE**

Pursuant to Section 312.401 of the Texas Tax Code, this Tax Abatement Agreement (hereinafter referred to as the “AGREEMENT”) is made and entered into by and between Jefferson County Drainage District No. 7 (hereinafter sometimes referred to as “DD7”), and Arbor Renewable Gas LLC Phase 2. (hereinafter sometimes referred to as “ARBOR” or “OWNER”).

**1. RECITALS**

WHEREAS, OWNER possesses interests in taxable real property located within the ARBOR Reinvestment Zone (sub-zone 2), the designation of which was implemented by the City of Beaumont July 13, 2021 (hereinafter referred to as the “ARBOR REINVESTMENT ZONE”; and

WHEREAS, OWNER anticipates this project will entail construction of the second of up to four separate units with an investment for unit 2 of \$275 million (and all four units totaling up to \$1.15 billion), with construction having commenced on unit 1 by the last day of March 2022, a construction start dates for unit 2 no later than the last day of March 2024, and each additional unit set sequentially over a period not to exceed six years for all four units; and

WHEREAS, it is the desire of the Parties to incentivize this abatement for the benefit of all; and

WHEREAS, in order to incentive construction of all four units in Jefferson County, DD7 has developed a tax abatement schedule whereby, with each additional unit and its additional investment, Owner will receive the benefit of a tax abatement based on the cumulative investment and job creation consistent with DD7’s practice of basing abatements on investment amount and job creation; and

WHEREAS, it is DD7’s intent that the tax abatement schedule for each unit will start at a level applicable to the investment and job creation associated with the cumulative investment including each earlier unit and ~~that unit and~~, assuming start of construction on ~~the~~ each subsequent unit by a date certain (addressed in more detail below), the schedule applicable to the earlier unit(s) will shift to the schedule applicable to the subsequent unit, in recognition of the cumulative investment and job creation; and

WHEREAS, if the project does not commence construction on a subsequent unit by a date certain, (outlined in the agreements executed for each subsequent agreement) the

**EXHIBIT “A”**



abatement schedule applicable to the units either completed or under construction on that date will be finalized for the entire project; and

WHEREAS, each unit will be the subject of a separate sub-agreement and will have an abatement schedule applicable to that unit, subject to adjustment upward based on start of construction of a subsequent unit, except that the abatement term for any individual unit shall not exceed ten (10) years and each unit will be assigned its own individual tax account by the Jefferson County Central Appraisal District; and

WHEREAS, this AGREEMENT is limited to the project to be constructed by OWNER, on various parcels of land located within the Arbor Reinvestment Zone, which is described with particularity in Exhibit "A" attached hereto and which will involve construction of a new renewable gasoline manufacturing facility and related improvements (hereinafter referred to collectively as the "PROJECT"). The Reinvestment Zone Order will be established for the entire project with separate sub-zones noted for each phase; and

WHEREAS, DD7 wishes to encourage OWNER to select Jefferson County as the site for the PROJECT; and

WHEREAS, the REINVESTMENT ZONE is an area within Jefferson County, Texas, generally described as being within the City of Beaumont which has been designated by Ordinance of the City of Beaumont, the legal description for which is attached hereto as Exhibit "C." It is understood and agreed that the REINVESTMENT ZONE boundary is subject to revision based on the final construction plan of the Project, and DD7 agrees to take the steps necessary to amend this Agreement if the Reinvestment Zone boundary is altered or amended, consistent with such final Project, upon request of Owner.

NOW, THEREFORE, for the mutual consideration set forth below, the Parties hereto agree as follows:

## **2. AUTHORIZATION**

**THIS AGREEMENT IS AUTHORIZED BY THE TEXAS PROPERTY REDEVELOPMENT AND TAX ABATEMENT ACT, TEX. TAX CODE CHAPTER 312, AS AMENDED, AND BY ORDER OF THE JEFFERSON COUNTY COMMISSIONERS COURT ESTABLISHING AND ADOPTING THE ARBOR REINVESTMENT ZONE.**

## **3. DEFINITIONS**

For purposes of this AGREEMENT, the following terms shall have the meanings set forth below:

"Abatement" means the full or partial exemption from ad valorem taxes of the value of certain property located in the REINVESTMENT ZONE designated for economic development purposes.

“Affiliate” of any specified person or entity means any other person or entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such specified person or entity. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

“Base Year Value” means the taxable value of eligible industrial realty improvements of the owner within Jefferson County on January 1 preceding the execution of the abatement AGREEMENT and which property is owned by the owner, co-owner and/or its parent companies, subsidiaries, partner or joint ventures or any entity exercising legal control over the owner or subject to control by the owner. Owner will attach as Exhibit “F-Affiliates” those properties which are co-owned or which are parent companies, partnerships, joint-ventures or other entities in Jefferson County over which the Owner herein exercises legal control

“Base year”, for the Parties to this AGREEMENT, is defined as the calendar year in which this abatement contract is executed (signed) by all Parties hereto.

“Ineligible Property The following types of property shall be fully taxable and ineligible for tax abatement: land, supplies, inventory, vehicles, vessels, housing, improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; deferred maintenance, property to be rented or leased (except as provided in Section III(f), property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

“Eligible Property means realty improvements, the on-site buildings, structures, fixed machinery and equipment, storage tanks, process units (including all integral components necessary for operations), site improvements, and infrastructure included in the PROJECT, and the permanent office space and related fixed improvements necessary to the operation and administration of the PROJECT, as defined in the Tax Code, but does not include tangible personal property.

“New Eligible Property” means Eligible Property, the construction of which commences subsequent to the effective date of this AGREEMENT. During the construction phase of the New Eligible Property, the OWNER may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use. It is expressly understood that, notwithstanding anything to the contrary written herein, energy, electricity, manufacturing supplies (e.g., foreign manufactured catalysts), feedstocks, freight, and direct materials that physically become a part of the end product manufactured by the PROJECT) are not subject to the terms of this AGREEMENT.

“Taxable Value” for each taxing entity executing an abatement agreement is determined by deducting from the Market Value of all industrial realty improvements of a property

owner and/or its affiliates the amount of any applicable exemptions and abatements granted for that Tax Year.

“Completion” as used herein, shall mean, the successful commissioning of the PROJECT and the attainment of reliable operations. OWNER shall certify in writing to DD7 when such Completion is attained.

“Full-time job”, as used herein, shall mean a permanent full-time position that: requires at least 1,600 hours or work per year, is not a transferred from another area of the state, is not created to replace a previous employee, and is covered by a group health benefit plan, and pays at least 110% of DD7 average weekly wage for manufacturing jobs in Jefferson County.

“Payment in Lieu of Taxes”. If, during the period of this abatement, any Federal or State law provides an additional tax exemption for the property that is already the subject of this AGREEMENT, Applicant agrees to decline that tax exemption during the period of this abatement. If Applicant is unable to decline that tax exemption, Applicant agrees to pay the taxes, or payment in lieu of taxes, on the reduction of property tax revenue to DD7 that is the result of said exemption. Any payment in lieu of taxes shall be due on or before November 15 of the year in which payment is due.

#### **4. TERM OF ABATEMENT**

This AGREEMENT shall be effective and enforceable upon execution by both Parties (which date is herein referred to as the "Effective Date"). The Term of the Abatement pursuant to this AGREEMENT (the “Abatement Term”) for each unit shall begin on the date dictated by the construction completion schedule applicable to that unit and shall terminate on the date dictated in the abatement schedule applicable to that unit, unless sooner terminated pursuant to other provisions of this AGREEMENT.

County will request that the Jefferson Central Appraisal District establish discrete account numbers for each unit to facilitate efficient administration of this AGREEMENT.

Should OWNER not begin construction on unit 2 of the PROJECT by the last day of March 2024, this AGREEMENT shall be null and void.

#### **5. OWNER REPRESENTATIONS/OBLIGATIONS**

In order to receive a tax abatement with respect to a tax year listed on EXHIBIT: Tax Abatement Schedule,” OWNER shall comply with the following:

- a. As a result of the PROJECT, and upon its Completion (currently estimated to be the date reflected in the sub-agreement applicable to each unit, each of which is incorporated by reference, maintain not less than the number of new full-time jobs specified in that sub-agreement (consisting of both permanent direct employee jobs and permanent contractor jobs), using headcount as of the execution date of this

AGREEMENT as the starting point, relating to the PROJECT during the remaining term of this AGREEMENT; provided, however that OWNER may reduce employment levels due to improved efficiencies or changing economic conditions during the term of this AGREEMENT as long as such employment levels do not fall below the number of full-time jobs specified in each sub-agreement for total on-site employment by owner during said term. In addition to the 20 new full-time jobs created for unit 1, 12 new full-time jobs will be created for unit 2. In the event that such employment falls below that number of full-time jobs for total on site employment, Abatement may be reduced proportionate to such employment decline beginning with the tax year in which the decline occurs and each tax year thereafter per the example calculation cited below where:

A1 = initial Abatement \$s

A2 = revised Abatement \$s

E1 = 32 full-time jobs

E2 = revised employee count

$A2 = A1 \times (E2/E1)$

- b. Report and certify the requisite job levels to DD7, annually during each tax year under this AGREEMENT;
- c. Construct the PROJECT with an estimated investment in the amount specified in each sub-agreement;
- d. Make available to DD7 information concerning the details of contractor bids, every quarter, during the construction phase of the PROJECT under the express understanding that COMPANY is providing DD7 such contractor bid information on a strictly confidential basis so as to maintain the integrity of the competitive bid process;
- e. Report and certify to DD7 completion of construction for each unit, as well as the requisite cost of each unit within 120 days after the completion of that unit (or 120 days after the Effective Date, whichever is later);
- f. Ensure that qualified local labor, vendors, suppliers, and sub-contractors are given a timely opportunity to bid on contracts for the provision of supplies, goods and services (including engineering and construction services, *e.g.*, piping, electrical, civil, fabrication) in connection with construction of the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period. Such consideration shall be made in good faith without discrimination. For purposes of the foregoing:
  - i. "Local labor" is defined as those qualified laborers or craftsmen who are residents and domiciliaries of the nine county regions comprised of Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers Counties, as well as the Bolivar Peninsula area of Galveston

County. "Local vendors" and "local suppliers" shall include only those located or having a principal office in Jefferson County. "Local subcontractors" shall include only those located or having a principal office in Jefferson County.

- ii. OWNER agrees to give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency. For any such exception in cases involving purchases over \$1 million, a justification for such purchase shall be included in OWNER'S annual letter of compliance. OWNER further acknowledges that it is a contractual obligation, under this AGREEMENT, of persons receiving property tax abatements to favor local manufacturers, suppliers, contractors, and labor, all other factors being equal. In the event of a breach of this "buy local" provision, OWNER agrees that the percentage of abatement shall be proportionately reduced in an amount equal to the amount the disqualified contract bears to the total construction cost for the PROJECT.
- iii. OWNER agrees that it will provide sufficient notice and information regarding of the project to qualified local contractors to enable them to submit bids for materials in the initial procurement processes, including but not limited PROJECT information provided in job fairs to be conducted by OWNER.
- g. Report and certify to DD7, quarterly the total number of dollars spent on local labor, local subcontractors and local vendors/suppliers, as total and percentage compared to total dollars spent in connection with the PROJECT;
- h. OWNER will invoice purchases locally to ensure that sales taxes credited to the benefit of Jefferson County, Texas. As further clarification OWNER will enter into a Separate Contract as defined in 34 Texas Administrative Code 3.291 (a) (13) with an EPC contractor (EPC) for the construction of the new plant facility Project to be located in the Reinvestment Zone of OWNER in Jefferson County Texas.

OWNER will obtain a Texas Direct Payment Permit (DPP) and issue a DPP exemption certificate in lieu of sales tax to EPC. OWNER will remit use taxes on taxable purchases made for use in the PROJECT directly to the state of Texas on its monthly Texas Direct Payment Return for both state and county taxes at the applicable rates. The State of Texas collects Limited, Sales, Excise and Use Taxes for both the state and local tax jurisdictions. The state is responsible for distributing the local taxes it collected to the applicable local jurisdiction.
- i. Not in any way discriminate against or treat disparately union contractors who choose to participate in the competitive bid process relating to work on the

PROJECT, nor discriminate against or treat disparately union members who seek employment on the PROJECT; and

- j. Encourage and promote the utilization of Historically Underutilized Businesses (HUBs) (also known as Disadvantaged Business Enterprises, or DBEs) by the general contractor engaged by OWNER to construct the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period by ensuring qualified HUB/DBE vendors and contractors are given a timely opportunity to bid on contracts for supplies and services. For purposes of the foregoing:
  - i. A HUB/DBE is a business owned or controlled by Socially and Economically Disadvantaged Individuals as defined by all applicable federal or state laws and local policies, including Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian Indian Americans, women, and individuals with disabilities.
  - ii. A HUB/DBE is one that is at least 51 percent owned or controlled by one or more women or Socially and Economically Disadvantaged Individuals or, in the case of a publicly-owned business, one that at least 51 percent of the stock of which is controlled by one or more women or Socially and Economically Disadvantaged Individuals.
  - iii. A business that has been certified as a HUB/DBE by an agency of the federal government or the State of Texas is presumed to be a HUB/DBE for purposes of AGREEMENT.
  - iv. Only a HUB/DBE with its principal office in the State of Texas will be recognized as a HUB/DBE for purposes of this AGREEMENT. A list of HUB/DBE vendors/suppliers is maintained in DD7 office and a list of same is attached hereto as Exhibit D. As to the use of qualified local and HUB/DBE vendors, suppliers and sub-contractors, OWNER will, at a minimum:
- k. Consult with chambers of commerce, minority business associations, trade associations and other regional economic development organizations to identify local and HUB/DBE vendors, suppliers and sub-contractors;
- l. Notify qualified local and HUB/DBE vendors, suppliers and sub-contractors, allowing sufficient time for effective preparation of bids for the planned work to be sub-contracted or materials, supplies or equipment to be purchased;
- m. Provide qualified local and HUB/DBE vendors, suppliers and sub-contractors who are interested in bidding on a subcontract or contract for materials, supplies, equipment, or the provision of engineering and construction services and labor

adequate information regarding the project as early as is practicable in the bidding process in order to allow the HUB/DBE vendors, suppliers and sub-contractors sufficient time to prepare a bid (*i.e.*, plans, specifications, scope of work, bonding and insurance requirements, and a point of contact within the general/prime contractor);

- n. Negotiate in good faith with interested qualified local and HUB/DBE vendors, suppliers or sub-contractors, and award sub-contracts or contracts for materials, supplies equipment, or the provision of engineering and construction services and labor to local or HUB/DBE vendors, suppliers or sub-contractors when they are the lowest qualified responsive bidder who meets all of the applicable bid specifications; and

Include a provision in OWNER'S contract with the general/prime contractor on the PROJECT which requires the general/prime contractor to read and comply with the terms of this AGREE Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.

- o. Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.
- p. Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.

## **6. VALUE OF ABATEMENT**

For each year under this AGREEMENT, the abatement percentage received by OWNER under this AGREEMENT with respect to the value of New Eligible Property, is set forth on attached Exhibit: "Tax Abatement Schedule"

The Abatement during each year covered by this AGREEMENT shall be the value attributable to the Project multiplied by Abatement Schedule, adjusted by the Base Year Value.

## **7. QUARTERLY MONITORING MEETINGS**

With respect to the quarterly monitoring meetings referenced in Section 5(d) above, DD7's general manager or their designee(s) shall be allowed to attend such quarterly monitoring meetings, on the express condition that they execute a confidentiality agreement prepared by OWNER so as to protect confidential information which may be disclosed to them during or as a result of such monitoring meetings. OWNER will provide DD7 with quarterly reports which detail procurement of services, equipment and labor utilized in construction.

## **8. TAXABILITY**

During the period that this AGREEMENT is effective, taxes shall be payable as follows:

- a. The value of Ineligible Property shall be fully taxable;
- b. The Taxable Value of existing Eligible Property as determined each shall be fully taxable; and
- c. The value of New Eligible Property shall be abated as set forth in Section 6, hereinabove.

## **9. ADJUSTMENTS TO ABATEMENT FOR BASE YEAR VALUE DECLINE**

The Jefferson Central Appraisal District will establish the certified values of Eligible Property as of January 1, 2021 (year abatement executed) as set forth on attached Exhibit "B," and such values shall be the values used to calculate the Base Year Value as herein defined. The Base Year Value as established on January 1, 2021 shall apply to each unit, without regard for the date construction is commenced on that unit, consistent with DD7's understanding that this is a single project with up to four units. If on January 1<sup>st</sup> of any tax year listed on the "Tax Abatement Schedule" the Taxable Value is less than the Base Year Value, then the abatement of value otherwise available shall be reduced by one dollar for each dollar that the Taxable Value of realty improvements is less than the Base Year Value, except that no such reduction of OWNER's abatement shall be made should any reduction to Taxable Value of OWNER's Eligible Property result from a Force Majeure event.

In the event OWNER, Joint Venture, or Owner's Affiliates reduces its *ad valorem* taxes on personal property otherwise payable to DD7 by participating in a foreign trade zone, then the amount of abated value otherwise available shall be reduced by one dollar for each dollar of tax value reduction attributable to special treatment from trade zone participation. The Parties hereto stipulate and agree that they have received certified appraisal value for this property, as calculated by the Jefferson Central Appraisal District.

It is specifically understood and agreed by OWNER, Joint Venture, or Owner's Affiliates that, if at any time during the effective dates of this AGREEMENT relating to abatement, OWNER files or prosecutes an action in district court to contest the appraised value of any property of OWNER or OWNER's affiliates, or Joint Venture within Jefferson County for unequal appraisal or revision thereof pursuant to Sec. 42.26, Texas Tax Code, any and all abatements granted by DD7 to OWNER, Joint Venture, or its affiliates shall become null and void and cancelled.

## **10. POLLUTION CONTROL EXEMPTION**

DD7 understands that OWNER plans (i) to request from the TCEQ a determination under Section 11.31 of the Texas Tax Code that certain property included in the New Eligible Property is pollution control property, and (ii) to apply for an exemption from ad valorem



taxes under Section 11.31 of the Texas Tax Code with respect to all or a portion of such property determined by the TCEQ to be pollution control property. The maximum dollar value for equipment that OWNER intends to claim to the TCEQ as exempt from taxation under Section 11.31 is fifteen percent (15%) of cost ("Intended Maximum"), though that number could change as current estimated project costs are refined. It is understood that DD7 would not have agreed to this abatement percentages if it were known that the actual exempt property claimed by OWNER would exceed the Intended Maximum. In the event OWNER ultimately obtains an amount in excess of the Intended Maximum in any year of Abatement under this AGREEMENT (such amount the "Exempt Property Excess"), the percentage of abatement described in the "Abatement Schedule" shall be reduced *pro rata* so as to reimburse DD7 for the total decrease in County tax revenue during the abatement period for each unit which is expected to result from the Exempt Property Excess. It is understood and agreed that OWNER will not seek a tax exemption for any equipment or portion of the facility which merely reduces the pollution characteristics of the finished product produced by the facility and that an exemption will only be sought for equipment and technology utilized to reduce pollution at or around the facility.

## 11. EVENT OF DEFAULT

If either party should default in performing any obligation under this AGREEMENT, the other party shall provide such defaulting party written notice of default and provide the defaulting party with a minimum period of thirty (30) days to cure such default prior to instituting an action for breach or pursuing any other remedy for default, provided however, that, if the default is of such a nature that it cannot, with the exercise of reasonable diligence, be cured within thirty (30) days, then such party shall not be in default so long as such party has commenced such cure within thirty (30) days after receiving written notice of such default and is diligently prosecuting such cure to completion. Subject to providing such notice of default and the aforesaid opportunity to cure same, the party aggrieved by default shall have the right to terminate this AGREEMENT and to pursue any remedy available at law or in equity, for breach hereof. In addition, if a party (the "Affected Party") shall become unable to timely perform any of its obligations under this AGREEMENT, other than any obligation to pay money, as a consequence of a Force Majeure Event, the Affected Party shall be relieved of such obligation (and such failure to timely perform such obligation shall not constitute a default) to the extent that and for so long as (but only to the extent that and only for so long as) it is unable to timely perform such obligation as a consequence of such Force Majeure Event. A "Force Majeure Event" means any of the following: (a) acts of God, earthquakes, tidal waves, lightning, floods, and storms; (b) explosions and fires; (c) strikes and lockouts; (d) wars, riots, acts of the public enemy, civil disturbances, hostilities, sabotage, blockades, insurrections, terrorism, and epidemics; (e) acts of expropriation, confiscation, nationalization, requisitioning, or other taking; and (f) any other event, condition, or circumstance beyond the reasonable control of the party claiming relief as a consequence thereof; provided, however, that "Force Majeure Event" does not include the inability to make payment or financial distress.

## **12. RECAPTURE OF TAXES**

In the event DD7 terminates this AGREEMENT pursuant to the provisions of Section 11 as a result of any event of default by OWNER under such Section 11, including, for the avoidance of doubt, if OWNER fails to make the improvements to the Eligible Property as provided by this AGREEMENT, DD7 shall be entitled to recapture and be paid all taxes previously abated by virtue of this AGREEMENT within thirty (30) days of the termination, together with all penalties and interest required by the Texas Property Tax Code.

## **13. TERMINATION**

OWNER shall have the right to terminate this AGREEMENT at any time upon thirty (30) days' written notice to DD7 and COUNTY shall have the right of recapture per Provision number 12 above.

## **14. ASSIGNMENT**

OWNER may assign this AGREEMENT, in whole or in part, to a new owner or lessee of the same PROJECT, or a portion thereof, or to an Affiliate of OWNER upon written approval by resolution of the DD7 board of such assignment, and approval shall not be unreasonably withheld or delayed. It shall not be unreasonable for the board to withhold approval if OWNER or the proposed assignee is liable to DD7 for outstanding taxes or other obligations.

## **15. ENTIRE AGREEMENT**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties and others relating hereto are superseded by the AGREEMENT.

## **16. SUCCESSORS AND ASSIGNS**

This AGREEMENT shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. OWNER may not assign all or part of its rights and obligations hereunder without the prior written consent of DD7, which shall not be unreasonably withheld or delayed. It shall not be unreasonable to withhold consent to assignment if OWNER or the proposed assignee(s) is/are delinquent in the payment of any ad valorem taxes.

## **16. NOTICE**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

**OWNER:** Timothy Vail  
Arbor Renewable Gas  
1800 Bering Drive, Suite 510  
Houston, Texas 77057

**DD7:** Phil Kelley, General Manager  
Jefferson County Drainage District No. 7  
P. O. Box 3244  
Port Arthur, Texas 77643

**With a copy to:** Mr. Pete Steele, Counsel  
Jefferson County Drainage District No. 7  
P. O. Box 3244  
Port Arthur, Texas 77643

## **17. MERGER**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties and others relating hereto are superseded by this AGREEMENT.

## **18. INTERPRETATION**

The Parties acknowledge that both have been represented by counsel of their choosing in the negotiation and preparation of this AGREEMENT. Regardless of which PARTY prepared the initial draft of this AGREEMENT, this AGREEMENT shall, in the event of any dispute over its meaning or application, be interpreted without reference to the principle of construction favoring the party who did not draft the AGREEMENT under construction.

## **19. APPLICABLE LAW AND VENUE**

This AGREEMENT is made and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Jefferson County, Texas.

## **20. SEVERABILITY**

In the event any provision of this AGREEMENT is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the Parties to this AGREEMENT that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable, a provision be added to this AGREEMENT which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Executed in duplicate this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FOR DD7:**

\_\_\_\_\_

**FOR OWNER:**

BY: \_\_\_\_\_

**STATE OF TEXAS**

§

§

**COUNTY OF JEFFERSON**

§

**ABATEMENT AGREEMENT FOR PHASE 3 FOR PROPERTY LOCATED IN  
THE ARBOR REINVESTMENT ZONE**

Pursuant to Section 312.401 of the Texas Tax Code, this Tax Abatement Agreement (hereinafter referred to as the “AGREEMENT”) is made and entered into by and between Jefferson County Drainage District No. 7 (hereinafter sometimes referred to as “DD7”), and Arbor Renewable Gas LLC Phase 3. (hereinafter sometimes referred to as “ARBOR” or “OWNER”).

**1. RECITALS**

WHEREAS, OWNER possesses interests in taxable real property located within the ARBOR Reinvestment Zone (sub-zone 3), the designation of which was implemented by the City of Beaumont July 13, 2021 (hereinafter referred to as the “ARBOR REINVESTMENT ZONE”; and

WHEREAS, OWNER anticipates this project will entail construction of the third of up to four separate units with an investment for unit 3 of \$275 million (and all four units totaling up to \$1.15 billion), with construction having commenced on unit 1 by the last day of March 2022, unit 2 by the last day of March 2024, and unit 3 no later than the last day of March 2026; and

WHEREAS, it is the desire of the Parties to incentivize this abatement for the benefit of all; and

WHEREAS, in order to incentive construction of all four units in Jefferson County, DD7 has developed a tax abatement schedule whereby, with each additional unit and its additional investment, Owner will receive the benefit of a tax abatement based on the cumulative investment and job creation consistent with DD7’s practice of basing abatements on investment amount and job creation; and

WHEREAS, it is DD7’s intent that the tax abatement schedule for each unit will start at a level applicable to the investment and job creation associated with the cumulative investment including each earlier unit and, assuming start of construction on the each subsequent unit by a date certain (addressed in more detail below), the schedule applicable to the earlier unit(s) will shift up to the schedule applicable to the subsequent unit, in recognition of the cumulative investment and job creation; and

WHEREAS, if the project does not commence construction on a subsequent unit by a date certain, (outlined in the agreements executed for each subsequent agreement) the

**EXHIBIT “A”**

abatement schedule applicable to the units either completed or under construction on that date will be finalized for the entire project; and

WHEREAS, each unit will be the subject of a separate sub-agreement and will have an abatement schedule applicable to that unit, subject to adjustment upward based on start of construction of a subsequent unit, except that the abatement term for any individual unit shall not exceed ten (10) years and each unit will be assigned its own individual tax account by the Jefferson County Central Appraisal District; and

WHEREAS, this AGREEMENT is limited to the project to be constructed by OWNER, on various parcels of land located within the Arbor Reinvestment Zone, which is described with particularity in Exhibit "A" attached hereto and which will involve construction of a new renewable gasoline manufacturing facility and related improvements (hereinafter referred to collectively as the "PROJECT"). The Reinvestment Zone Order will be established for the entire project with separate sub-zones noted for each phase; and

WHEREAS DD7 wishes to encourage OWNER to select Jefferson County as the site for the PROJECT; and

WHEREAS, the REINVESTMENT ZONE is an area within Jefferson County, Texas, generally described as being within the City of Beaumont which has been designated by Ordinance of the City of Beaumont, the legal description for which is attached hereto as Exhibit "C." It is understood and agreed that the REINVESTMENT ZONE boundary is subject to revision based on the final construction plan of the Project, and DD7 agrees to take the steps necessary to amend this Agreement if the Reinvestment Zone boundary is altered or amended, consistent with such final Project, upon request of Owner.

NOW, THEREFORE, for the mutual consideration set forth below, the Parties hereto agree as follows:

## **2. AUTHORIZATION**

**THIS AGREEMENT IS AUTHORIZED BY THE TEXAS PROPERTY REDEVELOPMENT AND TAX ABATEMENT ACT, TEX. TAX CODE CHAPTER 312, AS AMENDED, AND BY ORDER OF THE JEFFERSON COUNTY COMMISSIONERS COURT ESTABLISHING AND ADOPTING THE ARBOR REINVESTMENT ZONE.**

## **3. DEFINITIONS**

For purposes of this AGREEMENT, the following terms shall have the meanings set forth below:

"Abatement" means the full or partial exemption from ad valorem taxes of the value of certain property located in the REINVESTMENT ZONE designated for economic development purposes.

“Affiliate” of any specified person or entity means any other person or entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such specified person or entity. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

“Base Year Value” means the taxable value of eligible industrial realty improvements of the owner within Jefferson County on January 1 preceding the execution of the abatement AGREEMENT and which property is owned by the owner, co-owner and/or its parent companies, subsidiaries, partner or joint ventures or any entity exercising legal control over the owner or subject to control by the owner. Owner will attach as Exhibit “F-Affiliates” those properties which are co-owned or which are parent companies, partnerships, joint-ventures or other entities in Jefferson County over which the Owner herein exercises legal control

“Base year”, for the Parties to this AGREEMENT, is defined as the calendar year in which this abatement contract is executed (signed) by all Parties hereto.

“Ineligible Property The following types of property shall be fully taxable and ineligible for tax abatement: land, supplies, inventory, vehicles, vessels, housing, improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; deferred maintenance, property to be rented or leased (except as provided in Section III(f), property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

“Eligible Property means realty improvements, the on-site buildings, structures, fixed machinery and equipment, storage tanks, process units (including all integral components necessary for operations), site improvements, and infrastructure included in the PROJECT, and the permanent office space and related fixed improvements necessary to the operation and administration of the PROJECT, as defined in the Tax Code, but does not include tangible personal property.

“New Eligible Property” means Eligible Property, the construction of which commences subsequent to the effective date of this AGREEMENT. During the construction phase of the New Eligible Property, the OWNER may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use. It is expressly understood that, notwithstanding anything to the contrary written herein, energy, electricity, manufacturing supplies (e.g. foreign manufactured catalysts), feedstocks, freight, and direct materials that physically become a part of the end product manufactured by the PROJECT) are not subject to the terms of this AGREEMENT.

“Taxable Value” for each taxing entity executing an abatement agreement is determined by deducting from the Market Value of all industrial realty improvements of a property

owner and/or its affiliates the amount of any applicable exemptions and abatements granted for that Tax Year.

“Completion” as used herein, shall mean, the successful commissioning of the PROJECT and the attainment of reliable operations. OWNER shall certify in writing to DD7 when such Completion is attained.

“Full-time job”, as used herein, shall mean a permanent full-time position that: requires at least 1,600 hours or work per year, is not a transferred from another area of the state, is not created to replace a previous employee, and is covered by a group health benefit plan, and pays at least 110% of DD7 average weekly wage for manufacturing jobs in Jefferson County.

“Payment in Lieu of Taxes”. If, during the period of this abatement, any Federal or State law provides an additional tax exemption for the property that is already the subject of this AGREEMENT, Applicant agrees to decline that tax exemption during the period of this abatement. If Applicant is unable to decline that tax exemption, Applicant agrees to pay the taxes, or payment in lieu of taxes, on the reduction of property tax revenue to DD7 that is the result of said exemption. Any payment in lieu of taxes shall be due on or before November 15 of the year in which payment is due.

#### **4. TERM OF ABATEMENT**

This AGREEMENT shall be effective and enforceable upon execution by both Parties (which date is herein referred to as the "Effective Date"). The Term of the Abatement pursuant to this AGREEMENT (the “Abatement Term”) for each unit shall begin on the date dictated by the construction completion schedule applicable to that unit and shall terminate on the date dictated in the abatement schedule applicable to that unit, unless sooner terminated pursuant to other provisions of this AGREEMENT.

County will request that the Jefferson Central Appraisal District establish discrete account numbers for each unit to facilitate efficient administration of this AGREEMENT.

Should OWNER not begin construction on unit 3 of the PROJECT by the last day of March 2026, this AGREEMENT shall be null and void.

#### **5. OWNER REPRESENTATIONS/OBLIGATIONS**

In order to receive a tax abatement with respect to a tax year listed on EXHIBIT: Tax Abatement Schedule,” OWNER shall comply with the following:

- a. As a result of the PROJECT, and upon its Completion (currently estimated to be the date reflected in the sub-agreement applicable to each unit, each of which is incorporated by reference, maintain not less than the number of new full-time jobs specified in that sub-agreement (consisting of both permanent direct employee jobs and permanent contractor jobs), using headcount as of the execution date of this



AGREEMENT as the starting point, relating to the PROJECT during the remaining term of this AGREEMENT; provided, however that OWNER may reduce employment levels due to improved efficiencies or changing economic conditions during the term of this AGREEMENT as long as such employment levels do not fall below the number of full-time jobs specified in each sub-agreement for total on-site employment by owner during said term. In addition to the 20 new full-time jobs created for unit 1 and 12 new full-time jobs created for unit 2, there will be 12 new full-time jobs created for unit 3. In the event that such employment falls below that number of full-time jobs for total on site employment, Abatement may be reduced proportionate to such employment decline beginning with the tax year in which the decline occurs and each tax year thereafter per the example calculation cited below where:

A1 = initial Abatement \$s  
A2 = revised Abatement \$s  
E1 = 44 full-time jobs  
E2 = revised employee count  
 $A2 = A1 \times (E2/E1)$

- b. Report and certify the requisite job levels to DD7, annually during each tax year under this AGREEMENT;
- c. Construct the PROJECT with an estimated investment in the amount specified in each sub-agreement;
- d. Make available to DD7 information concerning the details of contractor bids, every quarter, during the construction phase of the PROJECT under the express understanding that COMPANY is providing DD7 such contractor bid information on a strictly confidential basis so as to maintain the integrity of the competitive bid process;
- e. Report and certify to DD7 completion of construction for each unit, as well as the requisite cost of each unit within 120 days after the completion of that unit (or 120 days after the Effective Date, whichever is later);
- f. Ensure that qualified local labor, vendors, suppliers, and sub-contractors are given a timely opportunity to bid on contracts for the provision of supplies, goods and services (including engineering and construction services, *e.g.*, piping, electrical, civil, fabrication) in connection with construction of the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period. Such consideration shall be made in good faith without discrimination. For purposes of the foregoing:
  - i. “Local labor” is defined as those qualified laborers or craftsmen who are residents and domiciliaries of the nine county regions comprised of Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers

Counties, as well as the Bolivar Peninsula area of Galveston County. "Local vendors" and "local suppliers" shall include only those located or having a principal office in Jefferson County. "Local subcontractors" shall include only those located or having a principal office in Jefferson County.

- ii. OWNER agrees to give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency. For any such exception in cases involving purchases over \$1 million, a justification for such purchase shall be included in OWNER'S annual letter of compliance. OWNER further acknowledges that it is a contractual obligation, under this AGREEMENT, of persons receiving property tax abatements to favor local manufacturers, suppliers, contractors, and labor, all other factors being equal. In the event of a breach of this "buy local" provision, OWNER agrees that the percentage of abatement shall be proportionately reduced in an amount equal to the amount the disqualified contract bears to the total construction cost for the PROJECT.
- iii. OWNER agrees that it will provide sufficient notice and information regarding of the project to qualified local contractors to enable them to submit bids for materials in the initial procurement processes, including but not limited PROJECT information provided in job fairs to be conducted by OWNER.
- g. Report and certify to DD7, quarterly the total number of dollars spent on local labor, local subcontractors and local vendors/suppliers, as total and percentage compared to total dollars spent in connection with the PROJECT;
- h. OWNER will invoice purchases locally to ensure that sales taxes credited to the benefit of Jefferson County, Texas. As further clarification OWNER will enter into a Separate Contract as defined in 34 Texas Administrative Code 3.291 (a) (13) with an EPC contractor (EPC) for the construction of the new plant facility Project to be located in the Reinvestment Zone of OWNER in Jefferson County Texas.

OWNER will obtain a Texas Direct Payment Permit (DPP) and issue a DPP exemption certificate in lieu of sales tax to EPC. OWNER will remit use taxes on taxable purchases made for use in the PROJECT directly to the state of Texas on its monthly Texas Direct Payment Return for both state and county taxes at the applicable rates. The State of Texas collects Limited, Sales, Excise and Use Taxes for both the state and local tax jurisdictions. The state is responsible for distributing the local taxes it collected to the applicable local jurisdiction.
- i. Not in any way discriminate against or treat disparately union contractors who choose to participate in the competitive bid process relating to work on the

PROJECT, nor discriminate against or treat disparately union members who seek employment on the PROJECT; and

- j. Encourage and promote the utilization of Historically Underutilized Businesses (HUBs) (also known as Disadvantaged Business Enterprises, or DBEs) by the general contractor engaged by OWNER to construct the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period by ensuring qualified HUB/DBE vendors and contractors are given a timely opportunity to bid on contracts for supplies and services. For purposes of the foregoing:
  - i. A HUB/DBE is a business owned or controlled by Socially and Economically Disadvantaged Individuals as defined by all applicable federal or state laws and local policies, including Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian Indian Americans, women, and individuals with disabilities.
  - ii. A HUB/DBE is one that is at least 51 percent owned or controlled by one or more women or Socially and Economically Disadvantaged Individuals or, in the case of a publicly-owned business, one that at least 51 percent of the stock of which is controlled by one or more women or Socially and Economically Disadvantaged Individuals.
  - iii. A business that has been certified as a HUB/DBE by an agency of the federal government or the State of Texas is presumed to be a HUB/DBE for purposes of AGREEMENT.
  - iv. Only a HUB/DBE with its principal office in the State of Texas will be recognized as a HUB/DBE for purposes of this AGREEMENT. A list of HUB/DBE vendors/suppliers is maintained in DD7 office and a list of same is attached hereto as Exhibit D. As to the use of qualified local and HUB/DBE vendors, suppliers and sub-contractors, OWNER will, at a minimum:
- k. Consult with chambers of commerce, minority business associations, trade associations and other regional economic development organizations to identify local and HUB/DBE vendors, suppliers and sub-contractors;
- l. Notify qualified local and HUB/DBE vendors, suppliers and sub-contractors, allowing sufficient time for effective preparation of bids for the planned work to be sub-contracted or materials, supplies or equipment to be purchased;
- m. Provide qualified local and HUB/DBE vendors, suppliers and sub-contractors who are interested in bidding on a subcontract or contract for materials, supplies, equipment, or the provision of engineering and construction services and labor

adequate information regarding the project as early as is practicable in the bidding process in order to allow the HUB/DBE vendors, suppliers and sub-contractors sufficient time to prepare a bid (*i.e.*, plans, specifications, scope of work, bonding and insurance requirements, and a point of contact within the general/prime contractor);

- n. Negotiate in good faith with interested qualified local and HUB/DBE vendors, suppliers or sub-contractors, and award sub-contracts or contracts for materials, supplies equipment, or the provision of engineering and construction services and labor to local or HUB/DBE vendors, suppliers or sub-contractors when they are the lowest qualified responsive bidder who meets all of the applicable bid specifications; and

Include a provision in OWNER'S contract with the general/prime contractor on the PROJECT which requires the general/prime contractor to read and comply with the terms of this AGREE Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.

- o. Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.
- p. Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.

## **6. VALUE OF ABATEMENT**

For each year under this AGREEMENT, the abatement percentage received by OWNER under this AGREEMENT with respect to the value of New Eligible Property, is set forth on attached Exhibit: "Tax Abatement Schedule"

The Abatement during each year covered by this AGREEMENT shall be the value attributable to the Project multiplied by Abatement Schedule, adjusted by the Base Year Value.

## **7. QUARTERLY MONITORING MEETINGS**

With respect to the quarterly monitoring meetings referenced in Section 5(d) above, DD7's general manager or their designee(s) shall be allowed to attend such quarterly monitoring meetings, on the express condition that they execute a confidentiality agreement prepared by OWNER so as to protect confidential information which may be disclosed to them during or as a result of such monitoring meetings. OWNER will provide DD7 with quarterly reports which detail procurement of services, equipment and labor utilized in construction.

## **8. TAXABILITY**

During the period that this AGREEMENT is effective, taxes shall be payable as follows:

- a. The value of Ineligible Property shall be fully taxable;
- b. The Taxable Value of existing Eligible Property as determined each shall be fully taxable; and
- c. The value of New Eligible Property shall be abated as set forth in Section 6, hereinabove.

## **9. ADJUSTMENTS TO ABATEMENT FOR BASE YEAR VALUE DECLINE**

The Jefferson Central Appraisal District will establish the certified values of Eligible Property as of January 1, 2021 (year abatement executed) as set forth on attached Exhibit "B," and such values shall be the values used to calculate the Base Year Value as herein defined. The Base Year Value as established on January 1, 2021 shall apply to each unit, without regard for the date construction is commenced on that unit, consistent with DD7's understanding that this is a single project with up to four units. If on January 1<sup>st</sup> of any tax year listed on the "Tax Abatement Schedule" the Taxable Value is less than the Base Year Value, then the abatement of value otherwise available shall be reduced by one dollar for each dollar that the Taxable Value of realty improvements is less than the Base Year Value, except that no such reduction of OWNER's abatement shall be made should any reduction to Taxable Value of OWNER's Eligible Property result from a Force Majeure event.

In the event OWNER, Joint Venture, or Owner's Affiliates reduces its *ad valorem* taxes on personal property otherwise payable to DD7 by participating in a foreign trade zone, then the amount of abated value otherwise available shall be reduced by one dollar for each dollar of tax value reduction attributable to special treatment from trade zone participation. The Parties hereto stipulate and agree that they have received certified appraisal value for this property, as calculated by the Jefferson Central Appraisal District.

It is specifically understood and agreed by OWNER, Joint Venture, or Owner's Affiliates that, if at any time during the effective dates of this AGREEMENT relating to abatement, OWNER files or prosecutes an action in district court to contest the appraised value of any property of OWNER or OWNER's affiliates, or Joint Venture within Jefferson County for unequal appraisal or revision thereof pursuant to Sec. 42.26, Texas Tax Code, any and all abatements granted by DD7 to OWNER, Joint Venture, or its affiliates shall become null and void and cancelled.

## **10. POLLUTION CONTROL EXEMPTION**

DD7 understands that OWNER plans (i) to request from the TCEQ a determination under Section 11.31 of the Texas Tax Code that certain property included in the New Eligible Property is pollution control property, and (ii) to apply for an exemption from *ad valorem*

taxes under Section 11.31 of the Texas Tax Code with respect to all or a portion of such property determined by the TCEQ to be pollution control property. The maximum dollar value for equipment that OWNER intends to claim to the TCEQ as exempt from taxation under Section 11.31 is fifteen percent (15%) of cost ("Intended Maximum"), though that number could change as current estimated project costs are refined. It is understood that DD7 would not have agreed to this abatement percentages if it were known that the actual exempt property claimed by OWNER would exceed the Intended Maximum. In the event OWNER ultimately obtains an amount in excess of the Intended Maximum in any year of Abatement under this AGREEMENT (such amount the "Exempt Property Excess"), the percentage of abatement described in the "Abatement Schedule" shall be reduced *pro rata* so as to reimburse DD7 for the total decrease in County tax revenue during the abatement period for each unit which is expected to result from the Exempt Property Excess. It is understood and agreed that OWNER will not seek a tax exemption for any equipment or portion of the facility which merely reduces the pollution characteristics of the finished product produced by the facility and that an exemption will only be sought for equipment and technology utilized to reduce pollution at or around the facility.

## 11. EVENT OF DEFAULT

If either party should default in performing any obligation under this AGREEMENT, the other party shall provide such defaulting party written notice of default and provide the defaulting party with a minimum period of thirty (30) days to cure such default prior to instituting an action for breach or pursuing any other remedy for default, provided however, that, if the default is of such a nature that it cannot, with the exercise of reasonable diligence, be cured within thirty (30) days, then such party shall not be in default so long as such party has commenced such cure within thirty (30) days after receiving written notice of such default and is diligently prosecuting such cure to completion. Subject to providing such notice of default and the aforesaid opportunity to cure same, the party aggrieved by default shall have the right to terminate this AGREEMENT and to pursue any remedy available at law or in equity, for breach hereof. In addition, if a party (the "Affected Party") shall become unable to timely perform any of its obligations under this AGREEMENT, other than any obligation to pay money, as a consequence of a Force Majeure Event, the Affected Party shall be relieved of such obligation (and such failure to timely perform such obligation shall not constitute a default) to the extent that and for so long as (but only to the extent that and only for so long as) it is unable to timely perform such obligation as a consequence of such Force Majeure Event. A "Force Majeure Event" means any of the following: (a) acts of God, earthquakes, tidal waves, lightning, floods, and storms; (b) explosions and fires; (c) strikes and lockouts; (d) wars, riots, acts of the public enemy, civil disturbances, hostilities, sabotage, blockades, insurrections, terrorism, and epidemics; (e) acts of expropriation, confiscation, nationalization, requisitioning, or other taking; and (f) any other event, condition, or circumstance beyond the reasonable control of the party claiming relief as a consequence thereof; provided, however, that "Force Majeure Event" does not include the inability to make payment or financial distress.

## **12. RECAPTURE OF TAXES**

In the event DD7 terminates this AGREEMENT pursuant to the provisions of Section 11 as a result of any event of default by OWNER under such Section 11, including, for the avoidance of doubt, if OWNER fails to make the improvements to the Eligible Property as provided by this AGREEMENT, DD7 shall be entitled to recapture and be paid all taxes previously abated by virtue of this AGREEMENT within thirty (30) days of the termination, together with all penalties and interest required by the Texas Property Tax Code.

## **13. TERMINATION**

OWNER shall have the right to terminate this AGREEMENT at any time upon thirty (30) days' written notice to DD7 and COUNTY shall have the right of recapture per Provision number 12 above..

## **14. ASSIGNMENT**

OWNER may assign this AGREEMENT, in whole or in part, to a new owner or lessee of the same PROJECT, or a portion thereof, or to an Affiliate of OWNER upon written approval by resolution of the DD7 board of such assignment, and approval shall not be unreasonably withheld or delayed. It shall not be unreasonable for the board to withhold approval if OWNER or the proposed assignee is liable to DD7 for outstanding taxes or other obligations.

## **15. ENTIRE AGREEMENT**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties and others relating hereto are superseded by the AGREEMENT.

## **16. SUCCESSORS AND ASSIGNS**

This AGREEMENT shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. OWNER may not assign all or part of its rights and obligations hereunder without the prior written consent of DD7, which shall not be unreasonably withheld or delayed. It shall not be unreasonable to withhold consent to assignment if OWNER or the proposed assignee(s) is/are delinquent in the payment of any ad valorem taxes.

## **16. NOTICE**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

**OWNER:** Timothy Vail  
Arbor Renewable Gas  
1800 Bering Drive, Suite 510  
Houston, Texas 77057

**DD7:** Phil Kelley, General Manager  
Jefferson County Drainage District 7  
P. O. Box 3244  
Port Arthur, Texas 77642-1862

**With a copy to:** Mr. Pete Steele, Counsel  
Jefferson County Drainage District No. 7  
P. O. Box 3244  
Port Arthur, Texas 77643

### **17. MERGER**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties and others relating hereto are superseded by this AGREEMENT.

### **18. INTERPRETATION**

The Parties acknowledge that both have been represented by counsel of their choosing in the negotiation and preparation of this AGREEMENT. Regardless of which PARTY prepared the initial draft of this AGREEMENT, this AGREEMENT shall, in the event of any dispute over its meaning or application, be interpreted without reference to the principle of construction favoring the party who did not draft the AGREEMENT under construction.

### **19. APPLICABLE LAW AND VENUE**

This AGREEMENT is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Jefferson County, Texas.

### **20. SEVERABILITY**

In the event any provision of this AGREEMENT is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the Parties to this AGREEMENT that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable, a provision be added to this AGREEMENT which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.



Executed in duplicate this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FOR DD7:**

\_\_\_\_\_

**FOR OWNER:**

\_\_\_\_\_  
BY:

STATE OF TEXAS

§

COUNTY OF JEFFERSON

§

§

**ABATEMENT AGREEMENT FOR PHASE 4 FOR PROPERTY LOCATED IN  
THE ARBOR REINVESTMENT ZONE**

Pursuant to Section 312.401 of the Texas Tax Code, this Tax Abatement Agreement (hereinafter referred to as the “AGREEMENT”) is made and entered into by and between Jefferson County Drainage District No. 7 (hereinafter sometimes referred to as “DD7”), and Arbor Renewable Gas LLC Phase 4. (hereinafter sometimes referred to as “ARBOR” or “OWNER”).

**1. RECITALS**

WHEREAS, OWNER possesses interests in taxable real property located within the ARBOR Reinvestment Zone (sub-zone 4), the designation of which was implemented by the City of Beaumont City Council by an Ordinance dated July 13, 2021 (hereinafter referred to as the “ARBOR REINVESTMENT ZONE”; and

WHEREAS, OWNER anticipates this project will entail construction of the fourth of four separate units with an investment for unit 4 of \$275 million (and all four units totaling up to \$1.15 billion), with construction having commenced on unit 1 by the last day of March 2022, unit 2 by the last day of March 2024, unit 3 by the last day of March 2026 and unit 4 no later than the last day of March 2027; and

WHEREAS, it is the desire of the Parties to incentivize this abatement for the benefit of all; and

WHEREAS, in order to incentive construction of all four units in Jefferson County, DD7 has developed a tax abatement schedule whereby, with each additional unit and its additional investment, Owner will receive the benefit of a tax abatement based on the cumulative investment and job creation consistent with DD7’s practice of basing abatements on investment amount and job creation; and

WHEREAS, it is DD7’s intent that the tax abatement schedule for each unit will start at a level applicable to the investment and job creation associated with the cumulative investment including each earlier unit and, assuming start of construction on the each subsequent unit by a date certain (addressed in more detail below), the schedule applicable to the earlier unit(s) will shift up to the schedule applicable to the subsequent unit, in recognition of the cumulative investment and job creation; and

WHEREAS, if the project does not commence construction on a subsequent unit by a date certain, (outlined in the agreements executed for each subsequent agreement) the

**EXHIBIT “A”**

abatement schedule applicable to the units either completed or under construction on that date will be finalized for the entire project; and

WHEREAS, each unit will be the subject of a separate sub-agreement and will have an abatement schedule applicable to that unit, subject to adjustment upward based on start of construction of a subsequent unit, except that the abatement term for any individual unit shall not exceed ten (10) years and each unit will be assigned its own individual tax account by the Jefferson County Central Appraisal District; and

WHEREAS, this AGREEMENT is limited to the project to be constructed by OWNER, on various parcels of land located within the Arbor Reinvestment Zone, which is described with particularity in Exhibit "A" attached hereto and which will involve construction of a new renewable gasoline manufacturing facility and related improvements (hereinafter referred to collectively as the "PROJECT"). The Reinvestment Zone Order will be established for the entire project with separate sub-zones noted for each phase; and

WHEREAS DD7 wishes to encourage OWNER to select Jefferson County as the site for the PROJECT; and

WHEREAS, the REINVESTMENT ZONE is an area within Jefferson County, Texas, generally described as being within the City of Beaumont which has been designated by Ordinance of the City of Beaumont, the legal description for which is attached hereto as Exhibit "C." It is understood and agreed that the REINVESTMENT ZONE boundary is subject to revision based on the final construction plan of the Project, and DD7 agrees to take the steps necessary to amend this Agreement if the Reinvestment Zone boundary is altered or amended, consistent with such final Project, upon request of Owner

NOW, THEREFORE, for the mutual consideration set forth below, the Parties hereto agree as follows:

## **2. AUTHORIZATION**

**THIS AGREEMENT IS AUTHORIZED BY THE TEXAS PROPERTY REDEVELOPMENT AND TAX ABATEMENT ACT, TEX. TAX CODE CHAPTER 312, AS AMENDED, AND BY ORDER OF THE JEFFERSON COUNTY COMMISSIONERS COURT ESTABLISHING AND ADOPTING THE ARBOR REINVESTMENT ZONE.**

## **3. DEFINITIONS**

For purposes of this AGREEMENT, the following terms shall have the meanings set forth below:

"Abatement" means the full or partial exemption from ad valorem taxes of the value of certain property located in the REINVESTMENT ZONE designated for economic development purposes.

“Affiliate” of any specified person or entity means any other person or entity which, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such specified person or entity. For purposes of this definition, the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract or otherwise.

“Base Year Value” means the taxable value of eligible industrial realty improvements of the owner within Jefferson County on January 1 preceding the execution of the abatement AGREEMENT and which property is owned by the owner, co-owner and/or its parent companies, subsidiaries, partner or joint ventures or any entity exercising legal control over the owner or subject to control by the owner. Owner will attach as Exhibit “F-Affiliates” those properties which are co-owned or which are parent companies, partnerships, joint-ventures or other entities in Jefferson County over which the Owner herein exercises legal control

“Base year”, for the Parties to this AGREEMENT, is defined as the calendar year in which this abatement contract is executed (signed) by all Parties hereto.

“Ineligible Property The following types of property shall be fully taxable and ineligible for tax abatement: land, supplies, inventory, vehicles, vessels, housing, improvements for the generation or transmission of electrical energy not wholly consumed by a new facility or expansion; any improvements, including those to produce, store or distribute natural gas, fluids or gases, which are not integral to the operation of the facility; deferred maintenance, property to be rented or leased (except as provided in Section III(f), property which has a productive life of less than ten years, or any other property for which abatement is not allowed by state law.

“Eligible Property means realty improvements, the on-site buildings, structures, fixed machinery and equipment, storage tanks, process units (including all integral components necessary for operations), site improvements, and infrastructure included in the PROJECT, and the permanent office space and related fixed improvements necessary to the operation and administration of the PROJECT, as defined in the Tax Code, but does not include tangible personal property.

“New Eligible Property” means Eligible Property, the construction of which commences subsequent to the effective date of this AGREEMENT. During the construction phase of the New Eligible Property, the OWNER may make such change orders to the New Eligible Property as are reasonably necessary to accomplish its intended use. It is expressly understood that, notwithstanding anything to the contrary written herein, energy, electricity, manufacturing supplies (e.g. foreign manufactured catalysts), feedstocks, freight, and direct materials that physically become a part of the end product manufactured by the PROJECT) are not subject to the terms of this AGREEMENT.

“Taxable Value” for each taxing entity executing an abatement agreement is determined by deducting from the Market Value of all industrial realty improvements of a property

owner and/or its affiliates the amount of any applicable exemptions and abatements granted for that Tax Year.

“Completion” as used herein, shall mean, the successful commissioning of the PROJECT and the attainment of reliable operations. OWNER shall certify in writing to DD7 when such Completion is attained.

“Full-time job”, as used herein, shall mean a permanent full-time position that: requires at least 1,600 hours or work per year, is not a transferred from another area of the state, is not created to replace a previous employee, and is covered by a group health benefit plan, and pays at least 110% of DD7 average weekly wage for manufacturing jobs in Jefferson County.

“Payment in Lieu of Taxes”. If, during the period of this abatement, any Federal or State law provides an additional tax exemption for the property that is already the subject of this AGREEMENT, Applicant agrees to decline that tax exemption during the period of this abatement. If Applicant is unable to decline that tax exemption, Applicant agrees to pay the taxes, or payment in lieu of taxes, on the reduction of property tax revenue to DD7 that is the result of said exemption. Any payment in lieu of taxes shall be due on or before November 15 of the year in which payment is due.

#### **4. TERM OF ABATEMENT**

This AGREEMENT shall be effective and enforceable upon execution by both Parties (which date is herein referred to as the "Effective Date"). The Term of the Abatement pursuant to this AGREEMENT (the “Abatement Term”) for each unit shall begin on the date dictated by the construction completion schedule applicable to that unit and shall terminate on the date dictated in the abatement schedule applicable to that unit, unless sooner terminated pursuant to other provisions of this AGREEMENT.

County will request that the Jefferson Central Appraisal District establish discrete account numbers for each unit to facilitate efficient administration of this AGREEMENT.

Should OWNER not begin construction on unit 3 of the PROJECT by the last day of March 2026, this AGREEMENT shall be null and void.

#### **5. OWNER REPRESENTATIONS/OBLIGATIONS**

In order to receive a tax abatement with respect to a tax year listed on EXHIBIT: Tax Abatement Schedule,” OWNER shall comply with the following:

- a. As a result of the PROJECT, and upon its Completion (currently estimated to be the date reflected in the sub-agreement applicable to each unit, each of which is incorporated by reference, maintain not less than the number of new full-time jobs specified in that sub-agreement (consisting of both permanent direct employee jobs and permanent contractor jobs), using headcount as of the execution date of this

AGREEMENT as the starting point, relating to the PROJECT during the remaining term of this AGREEMENT; provided, however that OWNER may reduce employment levels due to improved efficiencies or changing economic conditions during the term of this AGREEMENT as long as such employment levels do not fall below the number of full-time jobs specified in each sub-agreement for total on-site employment by owner during said term. In addition to the 20 new full-time jobs created for unit 1 and 12 new full-time jobs created for unit 2, there will be 12 new full-time jobs created for unit 3. In the event that such employment falls below that number of full-time jobs for total on site employment, Abatement may be reduced proportionate to such employment decline beginning with the tax year in which the decline occurs and each tax year thereafter per the example calculation cited below where:

A1 = initial Abatement \$s

A2 = revised Abatement \$s

E1 = 44 full-time jobs

E2 = revised employee count

$A2 = A1 \times (E2/E1)$

- b. Report and certify the requisite job levels to DD7, annually during each tax year under this AGREEMENT;
- c. Construct the PROJECT with an estimated investment in the amount specified in each sub-agreement;
- d. Make available to DD7 information concerning the details of contractor bids, every quarter, during the construction phase of the PROJECT under the express understanding that COMPANY is providing DD7 such contractor bid information on a strictly confidential basis so as to maintain the integrity of the competitive bid process;
- e. Report and certify to DD7 completion of construction for each unit, as well as the requisite cost of each unit within 120 days after the completion of that unit (or 120 days after the Effective Date, whichever is later);
- f. Ensure that qualified local labor, vendors, suppliers, and sub-contractors are given a timely opportunity to bid on contracts for the provision of supplies, goods and services (including engineering and construction services, *e.g.*, piping, electrical, civil, fabrication) in connection with construction of the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period. Such consideration shall be made in good faith without discrimination. For purposes of the foregoing:
  - i. "Local labor" is defined as those qualified laborers or craftsmen who are residents and domiciliaries of the nine county regions comprised of Jefferson, Orange, Hardin, Jasper, Newton, Liberty, Tyler and Chambers

Counties, as well as the Bolivar Peninsula area of Galveston County. "Local vendors" and "local suppliers" shall include only those located or having a principal office in Jefferson County. "Local subcontractors" shall include only those located or having a principal office in Jefferson County.

- ii. OWNER agrees to give preference and priority to local manufacturers, suppliers, vendors, contractors and labor, except where not reasonably possible to do so without significant added expense, substantial inconvenience, or sacrifice in operating efficiency. For any such exception in cases involving purchases over \$1 million, a justification for such purchase shall be included in OWNER'S annual letter of compliance. OWNER further acknowledges that it is a contractual obligation, under this AGREEMENT, of persons receiving property tax abatements to favor local manufacturers, suppliers, contractors, and labor, all other factors being equal. In the event of a breach of this "buy local" provision, OWNER agrees that the percentage of abatement shall be proportionately reduced in an amount equal to the amount the disqualified contract bears to the total construction cost for the PROJECT.
  - iii. OWNER agrees that it will provide sufficient notice and information regarding of the project to qualified local contractors to enable them to submit bids for materials in the initial procurement processes, including but not limited PROJECT information provided in job fairs to be conducted by OWNER.
  - g. Report and certify to DD7, quarterly the total number of dollars spent on local labor, local subcontractors and local vendors/suppliers, as total and percentage compared to total dollars spent in connection with the PROJECT;
  - h. OWNER will invoice purchases locally to ensure that sales taxes credited to the benefit of Jefferson County, Texas. As further clarification OWNER will enter into a Separate Contract as defined in 34 Texas Administrative Code 3.291 (a) (13) with an EPC contractor (EPC) for the construction of the new plant facility Project to be located in the Reinvestment Zone of OWNER in Jefferson County Texas.
- OWNER will obtain a Texas Direct Payment Permit (DPP) and issue a DPP exemption certificate in lieu of sales tax to EPC. OWNER will remit use taxes on taxable purchases made for use in the PROJECT directly to the state of Texas on its monthly Texas Direct Payment Return for both state and county taxes at the applicable rates. The State of Texas collects Limited, Sales, Excise and Use Taxes for both the state and local tax jurisdictions. The state is responsible for distributing the local taxes it collected to the applicable local jurisdiction.
- i. Not in any way discriminate against or treat disparately union contractors who choose to participate in the competitive bid process relating to work on the

PROJECT, nor discriminate against or treat disparately union members who seek employment on the PROJECT; and

- j. Encourage and promote the utilization of Historically Underutilized Businesses (HUBs) (also known as Disadvantaged Business Enterprises, or DBEs) by the general contractor engaged by OWNER to construct the PROJECT and any turnaround project which is undertaken as part of or in connection with the PROJECT during the term of the abatement period by ensuring qualified HUB/DBE vendors and contractors are given a timely opportunity to bid on contracts for supplies and services. For purposes of the foregoing:
  - i. A HUB/DBE is a business owned or controlled by Socially and Economically Disadvantaged Individuals as defined by all applicable federal or state laws and local policies, including Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian Indian Americans, women, and individuals with disabilities.
  - ii. A HUB/DBE is one that is at least 51 percent owned or controlled by one or more women or Socially and Economically Disadvantaged Individuals or, in the case of a publicly-owned business, one that at least 51 percent of the stock of which is controlled by one or more women or Socially and Economically Disadvantaged Individuals.
  - iii. A business that has been certified as a HUB/DBE by an agency of the federal government or the State of Texas is presumed to be a HUB/DBE for purposes of AGREEMENT.
  - iv. Only a HUB/DBE with its principal office in the State of Texas will be recognized as a HUB/DBE for purposes of this AGREEMENT. A list of HUB/DBE vendors/suppliers is maintained in DD7 office and a list of same is attached hereto as Exhibit D. As to the use of qualified local and HUB/DBE vendors, suppliers and sub-contractors, OWNER will, at a minimum:
- k. Consult with chambers of commerce, minority business associations, trade associations and other regional economic development organizations to identify local and HUB/DBE vendors, suppliers and sub-contractors;
- l. Notify qualified local and HUB/DBE vendors, suppliers and sub-contractors, allowing sufficient time for effective preparation of bids for the planned work to be sub-contracted or materials, supplies or equipment to be purchased;
- m. Provide qualified local and HUB/DBE vendors, suppliers and sub-contractors who are interested in bidding on a subcontract or contract for materials, supplies, equipment, or the provision of engineering and construction services and labor



adequate information regarding the project as early as is practicable in the bidding process in order to allow the HUB/DBE vendors, suppliers and sub-contractors sufficient time to prepare a bid (*i.e.*, plans, specifications, scope of work, bonding and insurance requirements, and a point of contact within the general/prime contractor);

- n. Negotiate in good faith with interested qualified local and HUB/DBE vendors, suppliers or sub-contractors, and award sub-contracts or contracts for materials, supplies equipment, or the provision of engineering and construction services and labor to local or HUB/DBE vendors, suppliers or sub-contractors when they are the lowest qualified responsive bidder who meets all of the applicable bid specifications; and

Include a provision in OWNER'S contract with the general/prime contractor on the PROJECT which requires the general/prime contractor to read and comply with the terms of this AGREE Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.

- o. Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.
- p. Provide access to and authorize the inspection of the Eligible Property by DD7's personnel to ensure that the improvements or repairs thereto are made according to the specifications and conditions of this AGREEMENT.

## **6. VALUE OF ABATEMENT**

For each year under this AGREEMENT, the abatement percentage received by OWNER under this AGREEMENT with respect to the value of New Eligible Property, is set forth on attached Exhibit: "Tax Abatement Schedule"

The Abatement during each year covered by this AGREEMENT shall be the value attributable to the Project multiplied by Abatement Schedule, adjusted by the Base Year Value.

## **7. QUARTERLY MONITORING MEETINGS**

With respect to the quarterly monitoring meetings referenced in Section 5(d) above, DD7's general manager or their designee(s) shall be allowed to attend such quarterly monitoring meetings, on the express condition that they execute a confidentiality agreement prepared by OWNER so as to protect confidential information which may be disclosed to them during or as a result of such monitoring meetings. OWNER will provide DD7 with quarterly reports which detail procurement of services, equipment and labor utilized in construction.

## **8. TAXABILITY**

During the period that this AGREEMENT is effective, taxes shall be payable as follows:

- a. The value of Ineligible Property shall be fully taxable;
- b. The Taxable Value of existing Eligible Property as determined each shall be fully taxable; and
- c. The value of New Eligible Property shall be abated as set forth in Section 6, hereinabove.

## **9. ADJUSTMENTS TO ABATEMENT FOR BASE YEAR VALUE DECLINE**

The Jefferson Central Appraisal District will establish the certified values of Eligible Property as of January 1, 2021 (year abatement executed) as set forth on attached Exhibit "B," and such values shall be the values used to calculate the Base Year Value as herein defined. The Base Year Value as established on January 1, 2021 shall apply to each unit, without regard for the date construction is commenced on that unit, consistent with DD7's understanding that this is a single project with up to four units. If on January 1<sup>st</sup> of any tax year listed on the "Tax Abatement Schedule" the Taxable Value is less than the Base Year Value, then the abatement of value otherwise available shall be reduced by one dollar for each dollar that the Taxable Value of realty improvements is less than the Base Year Value, except that no such reduction of OWNER's abatement shall be made should any reduction to Taxable Value of OWNER's Eligible Property result from a Force Majeure event.

In the event OWNER, Joint Venture, or Owner's Affiliates reduces its *ad valorem* taxes on personal property otherwise payable to DD7 by participating in a foreign trade zone, then the amount of abated value otherwise available shall be reduced by one dollar for each dollar of tax value reduction attributable to special treatment from trade zone participation. The Parties hereto stipulate and agree that they have received certified appraisal value for this property, as calculated by the Jefferson Central Appraisal District.

It is specifically understood and agreed by OWNER, Joint Venture, or Owner's Affiliates that, if at any time during the effective dates of this AGREEMENT relating to abatement, OWNER files or prosecutes an action in district court to contest the appraised value of any property of OWNER or OWNER's affiliates, or Joint Venture within Jefferson County for unequal appraisal or revision thereof pursuant to Sec. 42.26, Texas Tax Code, any and all abatements granted by DD7 to OWNER, Joint Venture, or its affiliates shall become null and void and cancelled.

## **10. POLLUTION CONTROL EXEMPTION**

DD7 understands that OWNER plans (i) to request from the TCEQ a determination under Section 11.31 of the Texas Tax Code that certain property included in the New Eligible Property is pollution control property, and (ii) to apply for an exemption from *ad valorem*

taxes under Section 11.31 of the Texas Tax Code with respect to all or a portion of such property determined by the TCEQ to be pollution control property. The maximum dollar value for equipment that OWNER intends to claim to the TCEQ as exempt from taxation under Section 11.31 is fifteen percent (15%) of cost ("Intended Maximum"), though that number could change as current estimated project costs are refined. It is understood that DD7 would not have agreed to this abatement percentages if it were known that the actual exempt property claimed by OWNER would exceed the Intended Maximum. In the event OWNER ultimately obtains an amount in excess of the Intended Maximum in any year of Abatement under this AGREEMENT (such amount the "Exempt Property Excess"), the percentage of abatement described in the "Abatement Schedule" shall be reduced *pro rata* so as to reimburse DD7 for the total decrease in County tax revenue during the abatement period for each unit which is expected to result from the Exempt Property Excess. It is understood and agreed that OWNER will not seek a tax exemption for any equipment or portion of the facility which merely reduces the pollution characteristics of the finished product produced by the facility and that an exemption will only be sought for equipment and technology utilized to reduce pollution at or around the facility.

## 11. EVENT OF DEFAULT

If either party should default in performing any obligation under this AGREEMENT, the other party shall provide such defaulting party written notice of default and provide the defaulting party with a minimum period of thirty (30) days to cure such default prior to instituting an action for breach or pursuing any other remedy for default, provided however, that, if the default is of such a nature that it cannot, with the exercise of reasonable diligence, be cured within thirty (30) days, then such party shall not be in default so long as such party has commenced such cure within thirty (30) days after receiving written notice of such default and is diligently prosecuting such cure to completion. Subject to providing such notice of default and the aforesaid opportunity to cure same, the party aggrieved by default shall have the right to terminate this AGREEMENT and to pursue any remedy available at law or in equity, for breach hereof. In addition, if a party (the "Affected Party") shall become unable to timely perform any of its obligations under this AGREEMENT, other than any obligation to pay money, as a consequence of a Force Majeure Event, the Affected Party shall be relieved of such obligation (and such failure to timely perform such obligation shall not constitute a default) to the extent that and for so long as (but only to the extent that and only for so long as) it is unable to timely perform such obligation as a consequence of such Force Majeure Event. A "Force Majeure Event" means any of the following: (a) acts of God, earthquakes, tidal waves, lightning, floods, and storms; (b) explosions and fires; (c) strikes and lockouts; (d) wars, riots, acts of the public enemy, civil disturbances, hostilities, sabotage, blockades, insurrections, terrorism, and epidemics; (e) acts of expropriation, confiscation, nationalization, requisitioning, or other taking; and (f) any other event, condition, or circumstance beyond the reasonable control of the party claiming relief as a consequence thereof; provided, however, that "Force Majeure Event" does not include the inability to make payment or financial distress.

## **12. RECAPTURE OF TAXES**

In the event DD7 terminates this AGREEMENT pursuant to the provisions of Section 11 as a result of any event of default by OWNER under such Section 11, including, for the avoidance of doubt, if OWNER fails to make the improvements to the Eligible Property as provided by this AGREEMENT, DD7 shall be entitled to recapture and be paid all taxes previously abated by virtue of this AGREEMENT within thirty (30) days of the termination, together with all penalties and interest required by the Texas Property Tax Code.

## **13. TERMINATION**

OWNER shall have the right to terminate this AGREEMENT at any time upon thirty (30) days' written notice to DD7 and COUNTY shall have the right of recapture per Provision number 12 above..

## **14. ASSIGNMENT**

OWNER may assign this AGREEMENT, in whole or in part, to a new owner or lessee of the same PROJECT, or a portion thereof, or to an Affiliate of OWNER upon written approval by resolution of the DD7 board of such assignment, and approval shall not be unreasonably withheld or delayed. It shall not be unreasonable for the board to withhold approval if OWNER or the proposed assignee is liable to DD7 for outstanding taxes or other obligations.

## **15. ENTIRE AGREEMENT**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties and others relating hereto are superseded by the AGREEMENT.

## **16. SUCCESSORS AND ASSIGNS**

This AGREEMENT shall be binding on and inure to the benefit of the Parties, their respective successors and assigns. OWNER may not assign all or part of its rights and obligations hereunder without the prior written consent of DD7, which shall not be unreasonably withheld or delayed. It shall not be unreasonable to withhold consent to assignment if OWNER or the proposed assignee(s) is/are delinquent in the payment of any ad valorem taxes.

## **16. NOTICE**

Any notice and/or statement required and permitted to be delivered shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

**OWNER:** Timothy Vail  
Arbor Renewable Gas  
1800 Bering Drive, Suite 510  
Houston, Texas 77057

**DD7:** Phil Kelley, General Manager  
Jefferson County Drainage District 7  
P. O. Box 3244  
Port Arthur, Texas 77643

**With a copy to:** Mr. Pete Steele, Counsel  
Jefferson County Drainage District No. 7  
P. O. Box 3244  
Port Arthur, Texas 77643

## **17. MERGER**

The Parties agree that this AGREEMENT contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the Parties and others relating hereto are superseded by this AGREEMENT.

## **18. INTERPRETATION**

The Parties acknowledge that both have been represented by counsel of their choosing in the negotiation and preparation of this AGREEMENT. Regardless of which PARTY prepared the initial draft of this AGREEMENT, this AGREEMENT shall, in the event of any dispute over its meaning or application, be interpreted without reference to the principle of construction favoring the party who did not draft the AGREEMENT under construction.

## **19. APPLICABLE LAW AND VENUE**

This AGREEMENT is made, and shall be construed and interpreted under the laws of the State of Texas and venue shall lie in Jefferson County, Texas.

## **20. SEVERABILITY**

In the event any provision of this AGREEMENT is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this AGREEMENT shall not be affected thereby, and it is also the intention of the Parties to this AGREEMENT that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable, a provision be added to this AGREEMENT which is legal, valid, and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Executed in duplicate this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**FOR DD7:**

\_\_\_\_\_

**FOR OWNER:**

\_\_\_\_\_  
BY: