

# TAX ABATEMENT AGREEMENT

This Tax Abatement Agreement (this "Agreement") is made by and between the **City of Angleton, Texas** a municipal corporation and home-rule city (the "City"), and **3M Company**, a Delaware Corporation, (the "Owner"), a business qualified to do business in the State of Texas and an owner of interests in real property located within the Reinvestment Zone 6.

## WITNESSETH

WHEREAS, this Agreement is authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the TEXAS TAX CODE, as it exists on the effective date of this Agreement, and

WHEREAS, the creation and retention of job opportunities in the City of Angleton is paramount to the City's continued economic development, and

WHEREAS, the Owner desires to extensively renovate an existing building and modify the building to support the operation of its production equipment, and

WHEREAS, the owner has filed a written request for tax abatement, dated October 28, 2009, submitted in accordance with the City of Angleton Guidelines and Criteria for Granting Tax Abatement in a Reinvestment Zone Created in the City of Angleton, Texas, and

WHEREAS, the City Council following a public hearing on the subject designated the zone a reinvestment zone; and

WHEREAS, it is reasonably likely that this Agreement will contribute to the creation of primary employment and will attract major investment in the zone that would be of benefit to property within the zone and that would contribute to the economic development of the City; and

WHEREAS, the City has determined that the Improvements are practical and are of benefit to the land within the zone and to the City; and

WHEREAS, City Council finds that there will be no substantial potential adverse effect on the provision of City services or on the tax base caused by the Agreement; and

WHEREAS, the Owner has represented that the facility will be designed and constructed to meet all applicable federal, state, and local environmental regulations, and the construction and operation of the facility will not result in environmental degradation or hazard; and

WHEREAS, City Council finds that the planned use of the improvements, when constructed and operated in accordance with applicable environmental standards, will not constitute a hazard to public health, safety, or morals; and

WHEREAS, City Council finds that the terms of this Agreement meet the applicable requirements of the Resolution No. 2008-R-6A dated June 24, 2008, the Guidelines and Criteria for Granting Tax Abatements in a Reinvestment Zone and the Texas Tax Code;

NOW, THEREFORE, the parties hereto, for and in consideration of the premises and mutual promises stated herein, agree as follows:

**1. Definitions**

The following capitalized terms shall have the meanings assigned to them below, unless otherwise defined or the context clearly requires otherwise:

"Abatement" means the full or partial exemption from ad valorem taxes of certain property in a reinvestment zone designated for economic development purposes.

"Abatement Period" means that period which commences January 1 following the year of substantial completion of the construction described in the Project Description in Part III of Exhibit "C" and ends ten (10) years thereafter.

"City" means the City of Angleton, Texas.

"Certified Appraised Value" means the January 1st appraised value of the property within the reinvestment zone certified by the Brazoria County Appraisal District as of the January 1st valuation date.

"Construction Phase" means a material and substantial improvement of the property that represents a separate and distinct construction operation undertaken for the purpose of erecting the improvements. For purposes of the term of tax abatement, the construction phase is defined and limited by the provisions of Section 4 herein.

"Department" means the City's Department of Finance and Administration or its successor.

"Director" means the Director of the Department, the City Manager or the designee thereof.

"Effective Date of Abatement" means the January 1 immediately following the date of substantial completion of construction described as the project.

"Eligible Property" means the buildings, structures, fixed machinery, equipment and process units, site improvements, and that office space and related fixed improvements necessary to the operation and administration of the facility. "New Eligible Property" means Eligible Property, construction of which commences subsequent to the date of execution of this Agreement.

"Ineligible Property" means land, inventories, supplies, tools, furnishings and other forms of movable personal property, vehicles, vessels, aircraft, housing, hotel accommodations, retail facilities, and deferred maintenance investments.

"BCAD" means the Brazoria County Appraisal District.

"Improvements" mean the improvements to the property, more fully described in Section 5 below, constituting the project.

"Ordinance" means City of Angleton Ordinance Number 2009-O-11A, which created the zone.

"Owner" means 3M Company.

"Project" means the facility to be used by the owner on the Real Property as more fully described in Sections 4 & 5 below and in Exhibit "B".

"Property" means the real property to be improved, as more fully described in Section 3(a) below.

"Tax Code" means the Texas Property Tax Code, as amended.

"Zone" means the City of Angleton Reinvestment Zone Number Six which is more particularly described in Exhibit "A".

## **2. Authorization**

This Agreement is authorized by Resolution Number 474 dated June 16, 1998, as amended, which established the property tax abatement program for properties in designated reinvestment zones and by the ordinance and the Guidelines and Criteria for Granting Tax Abatements in a Reinvestment Zone adopted by the City on 11/19/99 and renewed by the City on 12/18/01, June 27, 2006 and June 24, 2008, attached hereto as Exhibit "C" and made a part hereof for all purposes.

## **3. Property**

(a) The street address of the taxable real property to be improved under this Agreement is 1508 Cedar, Angleton, Texas. The property is described more fully in the Application for Tax Abatement attached hereto as Exhibit "B" and made a part hereof for all purposes.

(b) The BCAD tax account number of the Property is: 0375-0094-110.

## **4. Representations and Warranties by the Owner**

(a) The Owner represents that it is the owner of the property and that the property is located within the boundaries of the zone. The owner represents that it is authorized to execute this Agreement and to complete the improvements described in Section 5 hereof and in the Application for Tax Abatement attached hereto as Exhibit "B" and made a part hereof for all purposes. The Owner represents that as of January 1, 2009, the property had an approximate appraised value of \$739,619.00. The Owner represents and warrants that the construction of the Improvements described in Exhibit "B" will begin on or about January 1, 2010, and will end on or about July 1, 2010, and that construction of the Improvements will not have been completed as of the effective date of this Agreement. The total size of the property is approximately 9.9 acres.

(b) The Owner represents that no interest in the property is held or leased by a member of the City Council or a member of the City's Planning Commission.

(c) The Owner represents and warrants that the value of the Property will increase by at least \$750,000.00 upon completion of the Improvements.

- (d) The Owner represents and warrants that it will create employment for at least 20 people during the construction period in the City of Angleton, and will create employment for at least 5 and up to 57 people on a permanent basis beginning not later than one (1) year from the start of the Abatement Period and continuing through the term of this Agreement, excepting accident, casualty, fire, explosion, or natural disaster that is found by the Director to substantially impact the Owner's ability to use the Project as specified in this Agreement.
- (e) The Owner represents and warrants that the Improvements will not solely or primarily have the purpose of transferring employment from one part of the City of Angleton to another.
- (f) The Owner represents that the Improvements are necessary because capacity cannot be provided efficiently utilizing its existing capacity when reasonable allowance is made for necessary improvements.
- (g) The Owner represents and warrants that it will construct and operate the Project described in Exhibit "B" attached hereto and made a part hereon for all purposes.
- (h) The Owner represents and warrants that the facility will be designed, constructed, and operated in accordance with all applicable federal, state, and local environmental regulations and that there would be no degradation or hazard to the Property or the environs of the City of Angleton.

## **5. Terms of the Agreement**

- (a) The Owner shall make the Improvements substantially in conformity with the descriptions, plans and specifications as described in the Application for Tax Abatement attached hereto as Exhibit "B" and made a part hereof for all purposes and in compliance with the City of Angleton Building Code. In case of any conflict, the Building Code shall prevail. In addition, the Owner shall comply with Angleton Subdivision Ordinance, if applicable.
- (b) Upon completion of the Improvements, the Owner shall use the Property for the proposed use specified in this paragraph during the Abatement Period specified in Section 6 hereof. However, the Director may approve a change from the proposed use in writing, if the Director determines that the change is consistent with Code of Ordinances, with Ordinance Number 2009-O-11A creating the Angleton Reinvestment Zone Number Six and with the City's general purpose of encouraging development or redevelopment of the Zone during the Abatement period. The proposed use of the Property (unless and until the Director approves a change in use) is for a commercial facility, pursuant to and to the extent described in the Application for Tax Abatement attached hereto as Exhibit "B" and made a part hereof for all purposes.
- (c) The Owner shall maintain the Improvements in good repair and condition during the Abatement Period.
- (d) The Owner shall allow the City's employees and/or the Tax Abatement Review Committee access to the Property for the purpose of inspecting the Improvements to ensure that the Improvements were completed and maintained in accordance with the terms of this Agreement. All inspections will be made only after giving the Owner notice at least twenty-four (24) hours in advance thereof, and will be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Project. All inspections will be made with one (1) or more representatives of the Owner and in accordance with the Owner's safety and security standards. The above shall not act as a limitation on the City's ability to perform any inspections or enter the affected property pursuant to the Angleton Code of Ordinances, the Building Code

or otherwise.

- (e) The Owner shall not assign this Agreement without the prior written approval by Resolution of the City Council of the City of Angleton subject to the financial capacity of the assignee. No assignment will be effective or approved if either the City has declared a default hereunder which has not been cured or the Owner or assignee is delinquent in the payment of ad valorem taxes or other obligations owed to the City. Consent shall not be unreasonably withheld. Failure of the Owner to notify the City or the Brazoria County Tax Assessor/Collector or any sale of the real property shall result in immediate default of this Agreement.
- (f) Not later than March 15th of each year, during the Abatement Period, the Owner shall submit to the Director and the Chief Appraiser of BCAD a January employee count for the Project, this shall be a copy of the employee report required to be submitted to the state of Texas for unemployment tax purposes. The employee count submitted shall correspond to the employment count reported in the Owner's "Employer's Quarterly Report" to the Texas Employment Commission. The employee count submitted by the Owner shall be used to determine abatement eligibility for that year and be subject to **audit**, pursuant to the provisions of the Code of Ordinances. The Director shall certify to the Chief Appraiser of BCAD whether the Owner is in compliance with the employment requirements of the Agreement.
- (g) Owner shall furnish the following information or written statements to City upon request annually during the term of this agreement, due on March 15 of each year:
  - (1) Statement by Owner certifying the commencement and/or completion date of the contemplated improvements described in the Application for Tax Abatement attached hereto as Exhibit "B" and made a part hereof for all purposes.
  - (2) Statement by Owner of the number of permanent employees, contract employees and construction employees actually employed at the facility location;
  - (3) Statement by Owner describing the status of construction of the contemplated improvements, percentage of construction completed, construction schedule and Owner's estimate of taxable value of constructed improvements on the date of the statement; or
  - (4) In lieu of the above statements, Owner may furnish documents and records verifying the above requested information.
  - (5) Any information, documents or records of any kind reasonably necessary for City's evaluation of Owner's compliance with the terms and conditions of this agreement and City of Angleton Guidelines and Criteria for granting Tax Abatements in a Reinvestment Zone provided that Owner shall not be required to furnish any information, documents or records which a reasonably prudent owner under the same or similar circumstances would consider to be harmful to its business operations.

Owner's statements described above shall be verified by Owner's project manager or other appropriate official. Failure to provide any statement or information without just cause within thirty (30) days of the request of presentation of any false or misleading statement may at the City's option, be construed as a default by Owner under this agreement and cause for immediate termination of this agreement with recapture of taxes, if after written notice of default, Owner has not cured such default prior to the expiration

of thirty (30) days from such written notice. The Cure Period provisions of Paragraph 7 are not applicable to a default and termination under this paragraph.

## **6. Tax Abatement**

- (a) In the event the total increased value of the improvements on the property exceeds \$750,000.00, then the value of new eligible improvements subject to the abatement shall be ninety percent (90%) for a period of ten (10) years with Tax Year Number One being 2011 and Tax Year Number 10 being 2020.
- (b) Abatement on the Improvements specifically listed in the Application for Tax Abatement attached hereto as Exhibit "B" and made a part hereof for all purposes shall be permitted only for the value of new "eligible property" constructed or added after January 1, 2009, subject to the limitation stated in subsection 5 above. In addition, this exemption from taxation is specifically subject to the rights of the holders of outstanding bonds of the City. This Agreement shall be effective on the date executed by City or Owner, whichever is later, pursuant to Section 18, and Tax Year Number One shall be January 1 of the year immediately following substantial completion of construction which shall be the Effective Date of Abatement.
- (c) From the Effective Date of Abatement to the end of the Abatement Period, taxes shall be payable as follows:
  - 1. The value of ineligible property as defined in Section 2(e) of the Angleton Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zones shall be fully taxable;
  - 2. The base year value of eligible Improvements, as defined in Section 1 (d) of the Angleton Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zones, in the City of Angleton, as amended, shall be fully taxable;
  - 3. The additional value of the eligible Improvements constructed after January 1, 2009, but before the effective date of this Agreement, shall be taxable in accordance with Section 6(a) of this Agreement.
  - 4. The additional value of the eligible Improvements constructed after the effective date of this Agreement, as determined each year, shall be taxable in accordance with Section 6(a) of this Agreement.
  - 5. Any equipment or machinery, described in Exhibit "B" and installed in the Real Property pursuant to this Agreement that is removed from the Real Property for longer than a temporary repair period shall be fully taxable.
- (d) The City shall enter into only one tax abatement agreement for the Project described in this Agreement during the existence of the Zone, but may enter into new Agreements if additional land is secured for additional growth and expansion.

## **7. Force Majeure**

If by reason of force majeure, Owner is unable to perform any obligation of this Agreement, it shall give notice of the force majeure to City in writing within ten (10) calendar days after Owner first becomes aware of the occurrence relied upon. By doing so, the obligation of Owner to the extent and for the period of time affected by the force majeure, shall be suspended. Owner shall endeavor to remove or overcome the inability with all reasonable effort. For purposes of this provision, "force majeure" shall mean acts of God, landslides, lightning, earthquakes, hurricanes, storms, floods, or other natural occurrences; strikes, insurrections, riots, wars or other civil or industrial disturbances; orders of any kind of the federal or state government or of any civil or military authority; explosions,

fires, breakage or accidents to machinery, lines, or equipment, or the failure of the waste water system or water supply system; or any other cause not reasonably within the control of Owner.

## **8. Default and Recapture**

This Agreement shall terminate in the event that the use and operation of the facility for the purpose specified in Section 5(b) above is discontinued continuously for a period in excess of twelve (12) months during the abatement period for any reason excepting force majeure. The Owner shall not be entitled to the abatement of taxes for that twelve-month period during which the facility did not produce a product or service. The taxes abated during that twelve month period shall become immediately due and payable, and shall be paid to the City within sixty (60) days from the date of termination of this Agreement.

The Owner shall be in default hereof in the event that the Owner:

1. Allows ad valorem taxes owed the City to become delinquent and fails to timely and properly follow the legal procedures for their protest and/or contest; or
2. Has made any material representation which is determined to be false or misleading in any respect; or
3. Is in breach of any material warranty and fails to cure within sixty (60) days from the date notice is provided thereof as described below (the "Cure Period"); or
4. Violates any of the terms and conditions of this Agreement and fails to cure during the Cure Period.

Should the City determine that the Owner is in default according to the terms and conditions of this Agreement, the City shall notify the Owner in writing at the address stated in this Agreement, and if such default is not cured during the Cure Period, then this Agreement may be terminated as to all parties and all taxes previously abated by virtue of this Agreement, shall be recaptured, and paid by the Owner within sixty (60) days of the termination.

## **9. Administration**

- (a) This agreement shall be administered on behalf of the City by the office of the City Manager pursuant to the direction of the City Council and/or other persons appointed by the City Council.
- (b) For purposes of this Agreement, the value of the real and personal Property comprising the Zone, including the value of the Improvements listed in the Application for Tax Abatement attached hereto as Exhibit "B" and made a part hereof for all purposes shall be the same as the value of the Improvements determined annually by the chief appraiser of BCAD. Each year, the Owner shall furnish the City with such information as may be necessary for calculating the amount of abatement. Once the value of the Improvements has been established and the amount of the abatement calculated, the chief appraiser of the BCAD shall notify the affected jurisdictions that levy taxes of the amount of assessment.
- (c) Upon the completion of construction of the Improvements, the Director shall annually evaluate each facility receiving abatement to ensure compliance with this Agreement and prepare a report of any violations of this Agreement.

## **10. Indemnification**

It is understood and agreed between the parties that Owner, in performing its obligations hereunder, is acting independently, and City assumes no responsibilities or liabilities in connection therewith to third parties. **OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, CITY COUNCIL, OFFICERS, EMPLOYEES AND BCAD FROM ANY AND ALL CLAIMS, SUITS, CAUSES OF ACTION OF ANY NATURE WHATSOEVER ARISING OUT OF ANY OBLIGATIONS HEREUNDER EXCEPT THAT THE INDEMNITY AND DUTY TO DEFEND SHALL NOT APPLY TO THAT PORTION OF LIABILITIES RESULTING FROM THE INTENTIONAL CONDUCT OR NEGLIGENCE OF CITY OR THE BCAD OR THEIR RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES. OWNER'S INDEMNIFICATION OBLIGATIONS INCLUDE PAYMENT OF REASONABLE ATTORNEYS' FEES AND EXPENSES INCURRED IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, AND CAUSES OF ACTION WHICH ARE NOT DUE TO CITY'S, BCAD'S, OR THEIR REPRESENTATIVES', INTENTIONAL CONDUCT OR NEGLIGENCE. OWNER SHALL BE RESPONSIBLE FOR ALL FEES INCURRED BY CITY IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, OR CAUSES OF ACTION. NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED TO PROHIBIT CITY OR THE DISTRICT FROM ENGAGING REPRESENTATION OF ANY SUCH CLAIM, SUIT OR CAUSE OF ACTION AND OWNER SHALL BE RESPONSIBLE FOR ANY SUCH COSTS AND OR FEES SO INCURRED.**

#### **11. Compliance with State and Local Regulations**

- (a) Except as specifically provided herein, nothing in this Agreement shall be construed to alter or affect the obligation of the Owner to comply with any ordinance, rule or regulation of the City, or the laws and regulations of the State of Texas and the United States.
- (b) This paragraph is required by Chapter 2264, Texas Government Code and supersedes any conflicting provision of this Agreement. Owner is prohibited from knowingly employing undocumented workers as that term is defined in Section 2264.001, Texas Government Code. If Owner is convicted of a violation under 8 U.S.C. Section 1324(f), the conviction shall be considered default of this Agreement, from which no cure provisions shall apply. In such event, City shall provide written notice to Owner of any default and this Agreement shall automatically terminate on the 30<sup>th</sup> day after the date of notice of default from City to Owner. In the event of termination under this paragraph, Owner shall repay to City the amount of all property taxes abated under this Agreement, plus interest on the abated amount at the rate provided for in the Texas Tax Code for delinquent taxes.

#### **12. 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 understanding between the parties and others relating thereto are superseded by the Agreement.

#### **13. Modification or Termination**

At any time before the expiration of this agreement the parties may, upon mutual consent, modify or terminate the original agreement. Such modification or termination shall be done in accordance with the Property Redevelopment and Tax Abatement Act, V.A.T.S., Chapter 312, Section 312.208 of Subchapter B.

**14. Changes in Tax Laws**

The Abatement provided in this Agreement is subject to any changes in the state tax laws during the term of this Agreement.

**15. Miscellaneous**

(a) This Agreement shall be construed under and in accordance with the laws of the State of Texas, except conflict of laws principles and provisions, and all obligations of the parties created hereunder are performable in Brazoria County, Texas.

(b) In the event one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(c) The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach.

(d) Any amendments of this Agreement shall be of no effect unless in writing and signed by both parties hereto.

**16. Notice**

All notices shall be in writing and unless hand delivered, shall be sent by U. S. Mail certified, return receipt requested. If mailed, any notice or communication shall be deemed to be received three (3) days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to the following address:

To the Owner: (if mailed or personally delivered)

**3M Company  
6801 River Place Blvd.  
Austin, Texas 78726-9000  
Attention: Mr. Richard Pope**

To the City: (if mailed or personally delivered)

**City Manager  
City of Angleton  
121 South Velasco  
Angleton, Texas 77515**

Each party may designate a different address by giving the other party written notice ten (10) days in advance of such designation.

**17. Entire Agreement**

This Agreement contains the entire Agreement among the parties and supersedes all other negotiations and agreements, whether written or oral. Attached hereto are Exhibit A – Ordinance designation Reinvestment Zone #6; Exhibit B – Application for Tax Abatement in City of Angleton by 3M Company; Exhibit C – Resolution No. 2008-R-6A adopting Guidelines and Criteria for Granting Tax Abatements in Reinvestment Zone Created by the City of Angleton .

**18. Agreement Approval**

This Agreement is conditioned upon the approval of the Council of the City of Angleton by affirmative vote of a majority of the members present at a regularly scheduled meeting of the City Council and upon execution of this Agreement by a representative of the Owner fully authorized to engage in such transaction.

**19. Execution**

IN TESTIMONY OF WHICH, THIS AGREEMENT has been executed by City and Owner as of the dates below stated. Owner warrants and represents that the individuals executing this Agreement on behalf of 3M Company have full authority to execute this Agreement and bind 3M Company to the same.

**CITY OF ANGLETON, TEXAS**

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

**PAUL FEAZELLE, INTERIM CITY MANAGER**

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SHELLY DEISHER, CITY SECRETARY

APPROVED AS TO FORM:

\_\_\_\_\_  
MARY KAY FISCHER, CITY ATTORNEY

**OWNER  
3M COMPANY**

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

**Name** \_\_\_\_\_

**Title** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Attachments:**

- Exhibit A – Ordinance No. 2009-O-11A, Designating Reinvestment Zone No. 6
- Exhibit B - Application by 3M Company for Tax Abatement in City of Angleton, Texas
- Exhibit C - Resolution No. 2008-R-6A, Guidelines for Granting Tax Abatements in a Reinvestment Zone