

PAYMENT-IN-LIEU-OF-TAX AGREEMENT

FOREIGN TRADE ZONE

This Agreement is entered into by and between **Fort Bend County, Texas Drainage District**, ("District"), and **SAExploration, Inc.**, ("SAE") upon terms and conditions set forth herein.

RECITALS

WHEREAS, SAE is seeking to bring merchandise into a Foreign Trade Zone Site located within the geographical boundaries of 13645 N. Promenade Boulevard, Stafford, Fort Bend County, Texas, which site is within FTZ # 149, a foreign trade zone established, operated, and maintained by the Port Freeport, and which site is described in Exhibit A, attached hereto and incorporated for all purposes, (hereinafter, "the Property");

WHEREAS, the non-opposition of DISTRICT to SAE's application to the Port Freeport for the admission and handling of merchandise in the zone is critical for SAE to obtain the Activation;

WHEREAS, SAE's intent is not to cause material financial harm to DISTRICT as a result of its Activation in the Foreign Trade Zone Site;

WHEREAS, SAE wishes to make a tax-equivalent payment in support of DISTRICT's mission, goals, and objectives;

WHEREAS, for the purposes of this Agreement, "Exempted Personal Property" shall mean the personal property exempted by 19 U.S.C. 810(e) or its successor statute as a result of Foreign-Trade Zone status being granted to the Property;

WHEREAS, District finds that this Agreement serves the public purpose of promoting economic growth.

NOW, THEREFORE, it is agreed by DISTRICT and SAE that:

A. DEFINITIONS

When used herein, the words below have the following definitions:

1. FTZ Board – Foreign-Trade Zones Board of the U.S. Department of Commerce.
2. DISTRICT – Fort Bend County Drainage District
3. SAE – SAExploration, Inc.
4. Customs – Bureau of Customs and Border Protection of the U.S. Department of Homeland Security.
5. FTZ Exemption – 19 U.S.C. Section 81o(e) federal taxation exemption for certain FTZ Inventory and other potential exemptions from taxation for personal property located in a Foreign Trade Zone.
6. FTZ Inventory – Any tangible personal property held in the FTZ Site that may qualify for the FTZ Exemption per 19 U.S.C. Section 81o(e) and that would otherwise be taxable by DISTRICT.
7. FTZ Site – The tract described in Exhibit A with the current physical address of 13645 N. Promenade Boulevard, Stafford, Texas 77477.
8. FBCAD – Fort Bend Central Appraisal District or its successors
9. Interest – interest payable on delinquent tax or other amounts owed to DISTRICT.
10. Letter – The executed Letter of Non-Opposition from DISTRICT.
11. PILOT – Payment in Lieu of Taxes means an amount paid by SAE intended to fairly compensate DISTRICT for the loss of ad valorem taxes
12. Tax Rate – refers to the actual tax rate adopted by the District for the each year that the PILOT is calculated and is inclusive of the general fund rate, the road & bridge fund rate and the interest & sinking fund rate.

B. OBLIGATIONS

1. Exempted Personal Property. Both Parties agree and understand that the FTZ Inventory at the FTZ Site may or may not belong to SAE or its successors, but may belong to third parties who locate their facilities or personal property within the FTZ Site.
2. Letter of Non-Opposition. In consideration for the promises, financial contributions, and other consideration stated herein, District agrees to execute the Letter in the form shown in Exhibit B attached hereto and incorporated herein for all purposes.
3. Payment to District.
 - a. SAE agrees that with respect to each year that all or any portion of the FTZ inventory, whether owned or leased by itself or owned or leased by an affiliated or unaffiliated third party, held within the activated FTZ Site on the valuation date for taxation purposes otherwise applicable to tangible personal property, SAE will make payment to District in an amount equal to the product of the following equation, allowing for standard exemptions otherwise taken other than the FTZ Exemption:
 - i. the appraised value of the FTZ Inventory, times 0.50, times,
 - ii. the current year tax rate adopted by District, or any other taxing entity on behalf of FBC for the applicable PILOT year.
 - b. The average appraised value of SAE FTZ inventory, whether owned or leased, will be the value computed annually by the FBCAD as part of the annual certified appraisal roll. The parties understand and agree that each year's appraised value will be calculated in accordance with Texas State Law imposed upon the FBCAD (currently Texas Tax Code Chapter 23) and only after SAE exhausts its appeal rights by law.
 - c. Should SAE choose to sub-lease space to others within the FTZ Site, then SAE shall require its sub-tenants to provide all information necessary for the FBCAD or its successor, to calculate the average appraised value of the sub-tenant business personal property, whether owned or leased by sub-tenant.

- d. The first PILOT Payment, provided the FTZ Site is designated and activated by January 1, 2019, is due from SAE to District on or before February 1, 2020. Annual PILOT payments will be due on or before February 1st following the year for which payment is being made. If SAE fails to pay the PILOT Amount to the District within such time, the District shall have the right to exercise any and all legal remedies available to it to obtain such payment. SAE agrees to pay the statutory amounts for penalties, interest, attorney's fees, and costs of collection applicable to suits to recover delinquent ad valorem taxes under Texas Tax Code Chapter 33 for failure to remit timely PILOT payments to District as a contract obligation even though the FTZ inventory would be exempt from local ad valorem taxation.
- e. All payments shall be made payable to Fort Bend County Drainage District and shall be sent to the Fort Bend County Treasurer, P.O. Box 1202, Richmond, Texas 77406-1202.
4. Greater Fort Bend Economic Development Council SAE agrees to become a member of the Greater Fort Bend Economic Development Council, or its successor organization, at the standard membership level for the duration of the active FTZ Site.
5. **Tax Obligation. SAE ACKNOWLEDGES AND AGREES THAT THIS PAYMENT-IN-LIEU-OF-TAX AGREEMENT DOES NOT AFFECT, EXEMPT OR WAIVE ANY TAX OBLIGATIONS OF SAE TO DISTRICT, INCLUDING THOSE BASED ON REAL PROPERTY OR PERSONAL PROPERTY THAT WOULD NOT QUALIFY FOR THE FTZ EXEMPTION.**
6. Severability. To the extent permitted by law, a holding by any court that any part or any provision in this Agreement is invalid, illegal or unenforceable in any respect shall not affect any other provision, and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been a part of the Agreement.

7. Non-Waiver of Rights. This Agreement may not be amended except in a writing specifically referring to this Agreement and signed by DISTRICT and SAE. Any right created under this Agreement may not be waived, except in a writing specifically referring to this Agreement and signed by the party waiving the right. Provided, however, termination of this Agreement shall not relieve SAE, or its successors, from any payments due District prior to such termination.
8. Termination by Change in FTZ Site Activation. This Agreement shall remain in effect so long as the FTZ Site is designated and activated as a Foreign Trade Zone Site by the FTZ Board and Customs.
9. Liquidated Damages. If for any reason SAE should fail to make the tax-equivalent payment in accordance with paragraph 3 the parties agree that (i) the amount of taxes that would have been imposed upon any SAE FTZ inventory plus (ii) the amount of Interest calculated in accordance with sub-paragraph 3(e); plus (iii) District's reasonable attorney's fees and costs of collection should any action be required in order to compel payment of all such amounts shall serve as liquidated damages from SAE to DISTRICT.
10. Request for Deactivation for Breach. If for any reason SAE fails to comply with this Agreement, including its failure to make the tax-equivalent payment in accordance with paragraph 3 above or failure to pay liquidated damages to DISTRICT in accordance with paragraph 8 above, DISTRICT shall notify Port Freeport of DISTRICT's withdrawal of its concurrence for SAE's activation, and shall request that SAE be deactivated from operating in the FTZ Site.
11. FTZ Site Modification and Transfer of Ownership. As long as this Agreement is in effect, SAE shall not modify its FTZ Site boundaries as described in Exhibit A, or transfer ownership of the FTZ Site or its operations, unless District enters into a new or amended agreement allowing the boundary modification and/or with such party allowing such transfer of ownership.

12. Notices. Any notice provided or permitted to be given pursuant to this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid, certified mail, with return receipt requested, by fax (with confirmation of receipt), by personal delivery service or nationally recognized air courier service. For purposes of notice, the addresses of the parties shall be as set forth below:

SAEXPLORATION, INC.:

With Copy to:

RYAN, LLC:

DISTRICT:

ATTN: COUNTY JUDGE
401 JACKSON STREET
RICHMOND, TEXAS 77469

13. Governing Law and Venue. This agreement shall be governed by the laws of the State of Texas. Venue for any action concerning this Agreement shall be in the District Courts of Fort Bend County, Texas.

14. Assignment. SAE may not assign, transfer or otherwise convey any of its rights or obligations under this Agreement to any other person or entity without the prior consent of DISTRICT, which consent shall not be unreasonably withheld, conditioned on (i) the prior approval of the assignee or successor and a finding by DISTRICT that the proposed assignee or successor is financially capable of meeting the terms and conditions of this Agreement and (ii) prior execution by the proposed assignee or successor of a written agreement with DISTRICT under which the proposed assignee or successor agrees to assume and be bound by all covenants and obligations of SAE under this Agreement. Any attempted assignment without DISTRICT's prior consent shall constitute grounds for termination of this Agreement and following ten (10) calendar days of receipt of written notice from DISTRICT to SAE.

15. Entire Agreement. This Agreement constitutes the entire understanding between the parties and supersedes any prior negotiations, discussions, agreements, and understandings between the parties with respect to the subject matter of this Agreement.

[SIGNATURES ON NEXT PAGE]

EFFECTIVE DATE: The date last executed below.

AGREED:

**"DISTRICT"
FORT BEND COUNTY
DRAINAGE DISTRICT**

By: _____
Robert E. Hebert, County Judge

ATTEST:

Date: _____

Laura Richard, County Clerk

**"SAE"
SAEXPLORATION, INC.**

By: _____

Printed: Name: _____

Title: _____

ATTEST:

Date: _____

Printed Name: _____

Exhibit A: FTZ Site Legal Description

Exhibit B: Letter of Non-Opposition