

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

TAX ABATEMENT AGREEMENT
by and between
FORT BEND COUNTY
and
NIAGARA BOTTLING, LLC

This Tax Abatement Agreement, hereinafter referred to as “Agreement,” is executed by and between **FORT BEND COUNTY, TEXAS**, hereinafter referred to as “County,” acting by and through its Commissioners’ Court and **NIAGARA BOTTLING, LLC**, a foreign limited liability corporation, hereinafter referred to as “Owner,” of the Real Property and Phase 1 Improvements located within the City of Missouri City Reinvestment Zone No. 10.

1. **Authorization:**

- a. 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;
- b. The Amended Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones created by Fort Bend County, Texas, was approved by the County’s Commissioners Court on March 1, 2011. County has determined that the request for Tax Abatement presented by Owner conforms with the criteria established in the Guidelines for Tax Abatement.
- c. No official of County has an interest in the property subject to this Agreement.

2. **Definition:**

As used in this Agreement, the following terms shall have the meanings set forth below:

- a. The “**Certified Appraised Value or Value**” means the value certified as of January 1 of each year of this Agreement regarding the property within City of Missouri City Reinvestment Zone No. 10 by the District.
- b. “**Real Property**” means the land consisting of Reserves 30, 31, 32, 33, 34, 35 and 36 in Lakeview Business Park, a recorded subdivision in Fort Bend County, Texas, as described in Ordinance No. O-12-14, which created Reinvestment Zone No. 10 located within the City of Missouri City, described in Exhibit “A” attached hereto and incorporated by reference herein for all purposes.

- c. **“Phase 1 Improvements”** means a new building to be used for office, manufacturing, distribution and warehousing purposes located in Reinvestment Zone No. 10, containing at least 300,000 square feet of floor space, and the interior improvements to such office, manufacturing, distribution and warehousing building and any sidewalks, parking lots, outdoor lighting, landscaping and other improvements to serve the building, all as shown in Exhibit A, attached to and incorporated into this Agreement by reference.
- d. **“Abatement”** means the full or partial exemption from ad valorem taxes of certain property in the City of Missouri City Reinvestment Zone No. 10 designated for economic development purposes.
- e. **“Phase 1 Eligible Property”** means the personal property acquired by Owner and installed at the Phase 1 Improvements which is not Ineligible Property on or before December 31, 2012. Abatement may be extended to fixed machinery and equipment, necessary to the operation and administration of the facility. Phase 1 Eligible Property is subject to abatement only as included in Section 5(c).
- f. **“Phase 2 Eligible Property”** means the personal property consisting of a second manufacturing line within the Phase 1 Improvements, including necessary equipment having a taxable value of at least \$6,000,000 upon completion and eligible for a tax abatement only if completed and operational by December 31, 2018.
- g. **“Phase 3 Eligible Property”** means the personal property consisting of a third manufacturing line within the Phase 1 Improvements, including necessary equipment having a taxable value of at least \$6,000,000 upon completion and eligible for a tax abatement only if completed and operational by December 31, 2018.
- h. **“Ineligible Property”** means real property, existing improvements, tangible personal property that the District classifies as inventory or supplies, real property used primarily to provide retail sales or services to the public, real property used for residential purposes, tangible personal property classified as furnishings, tangible personal property located in the reinvestment zone prior to the execution date of the tax abatement agreement, real property with a productive life of less than 10 years, or any other property for which abatement is not allowed by state law.
- i. **“Owner”** means NIAGARA BOTTLING, LLC, the Owner of the Real Property the subject to this Agreement, or other person or entity to which this Agreement is assigned, with prior approval of the Fort Bend County Commissioners’ Court.
- j. **“County”** means the County of Fort Bend, Texas.
- k. **“District”** means Fort Bend County Central Appraisal District.

3. Subject Property

The City of Missouri City Reinvestment Zone No. 10 is an area located in Fort Bend County, Texas, being legally described in Exhibit A attached hereto and incorporated herein for all purposes.

The District has established the base year values for the subject property as of January 1, 2012.

4. Responsibility of Owner – Phase 1 Improvements and Phase 1 Eligible Property:

In consideration of receiving the tax abatement granted herein, Owner represents and agrees:

- (a) That construction of the Phase 1 Improvements will commence on or before October 1, 2012.
- (b) That construction of the Phase 1 Improvements shall be completed on or before December 31, 2013. Owner shall provide the County's Tax Assessor/Collector a certified statement evidencing a minimum of \$14,000,000 in project costs with respect to the design and construction of the Phase 1 Improvements within sixty (60) days after completion of the Phase 1 Improvements.
- (c) That the Certified Appraised Value of the Phase 1 Improvements on January 1, 2014, and on each and every January 1 thereafter during the term of this Agreement will not be less than \$10,000,000. Owner may from time to time during the term of this Agreement for the Phase 1 Improvements, install additional improvements, and modify, remove or replace improvements, as Owner may determine in its discretion, provided such shall not modify the minimum value requirements hereof. Failure to meet the requirements of this section will invalidate the tax abatement for the year this requirement was not satisfied.
- (d) That Owner shall provide the County's Tax Assessor/Collector with a copy of the Certificate of Occupancy for the Phase 1 Improvements on or before December 31, 2013. Owner's failure to present a copy of the Certificate of Occupancy to County may result in a forfeiture of the tax

abatement of tax year 2014.

- (e) That the Certified Appraised Value of the Phase 1 Eligible Property on January 1, 2014, and on each and every January 1 thereafter during the term of this Agreement must not be less than \$10,000,000. Owner may from time to time during the term of this Agreement for Phase 1 Eligible Property, install additional Eligible Property, and modify, remove or replace Eligible Property, as Owner may determine in its discretion, provided such shall not modify the minimum value requirements hereof. Failure to meet the requirements of this section will invalidate the tax abatement for the year this requirement was not satisfied.
- (f) That Owner has, as of the effective date of this Agreement, the financial resources to implement the above representations.
- (g) That Owner will participate in the continuing economic development process in Fort Bend County by becoming a Regular Member of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of this Agreement.
- (h) **OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- (i) **OWNER SHALL BE RESPONSIBLE FOR REQUESTING AN ASSIGNMENT OF THIS AGREEMENT IN THE EVENT THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT IS SOLD, TRANSFERRED OR ASSIGNED. EXCEPT AS OTHERWISE PROVIDED HEREIN, ANY ASSIGNMENT IS NOT EFFECTIVE UNTIL APPROVED IN WRITING BY COUNTY.**

5. Value and Term of Abatement – Phase 1 Improvements and Phase 1 Eligible

Property

(a) This Agreement shall be effective on the date executed by County and shall terminate (unless earlier terminated in accordance with the terms hereof) on December 31, 2023. In no event shall this Agreement extend beyond December 31, 2023. This Agreement shall

terminate on the completion of the abatement, unless earlier terminated as provided elsewhere herein. Owner’s obligation upon default to pay to County any taxes abated under this Agreement shall not terminate until the abated taxes are paid.

(b) In each year that this Agreement is in effect, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the Phase 1 Improvements and Phase 1 Eligible Property.

(c) Subject to the limitations imposed by law and conditioned upon the representations outlined in Section 4 herein above, there shall be granted and allowed hereunder a property tax abatement for the following years and in the following amounts on the value of the Phase 1 Improvements and Phase 1 Eligible Property:

<u>Tax Year</u>	<u>Percentage Abatement</u>
2014	60%
2015	60%
2016	60%
2017	60%
2018	60%
2019	60%
2020	60%
2021	60%
2022	60%
2023	60%

- (1) The abatement granted shall not apply to the value of the Real Property, increases in the value of the Real Property, Ineligible Property, inventory or supplies.
- (2) All Phase 1 Eligible Property shall be placed and/or installed in accordance with applicable laws, ordinances, rules or regulations in effect at the time such Phase 1 Eligible Property is placed and/or installed.
- (3) The District’s determination of values shall be used to determine the value of the property subject to this Agreement. If Owner protests the District’s valuation of the property, the valuation placed on the property after the protest is resolved under State law shall be used.
- (4) On or before September 1 of each year of this Agreement, Owner shall certify in writing to Fort Bend County Tax Assessor/Collector Owner’s compliance with

each term of this Agreement.

6. Taxability – Phase 1 Improvements and Phase 1 Eligible Property

During the period that this tax abatement is effective, taxes shall be payable by the Owner as follows:

- (a) The value of Real Property and Ineligible Property shall be fully taxable, including inventory, and
- (b) The value of existing improvements, if any, and existing Eligible Property shall be determined in the base year by the District.

7. Responsibility of Owner - Phase 2 Eligible Property:

In consideration of receiving the tax abatement granted herein, Owner represents and agrees:

- (a) That to qualify for additional tax abatement, (i) the Phase 2 Eligible Property must be completed on or before December 31, 2018, and Owner must provide Tax Assessor/Collector a certified statement evidencing a minimum of \$6,000,000 in project costs with respect to the design and installation of the Phase 2 Eligible Property within sixty (60) days after completion. Failure to complete the Phase 2 Eligible Property on or before December 31, 2018 shall invalidate this Agreement as it pertains to the Phase 2 Eligible Property.
- (b) That the Certified Appraised Value of the Phase 2 Eligible Property on January 1 of the tax year following completion of the Phase 2 Eligible Property, and on each and every January 1 thereafter during the term of this Agreement must not be less than \$6,000,000. Owner may from time to time during the term of this Agreement for Phase 2 Eligible Property, install additional Eligible Property, and modify, remove or replace Eligible Property, as Owner may determine in its discretion, provided such shall not modify the minimum value requirements hereof. Failure to meet the requirements of this section will invalidate the tax abatement for the year this requirement was not satisfied.
- (c) That Owner has, as of the effective date of this Agreement, the financial resources to implement the above representations.
- (d) That Owner will participate in the continuing economic development

process in Fort Bend County by becoming a Regular Member of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of this Agreement.

- (e) **OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- (f) **OWNER SHALL BE RESPONSIBLE FOR REQUESTING AN ASSIGNMENT OF THIS AGREEMENT IN THE EVENT THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT IS SOLD, TRANSFERRED OR ASSIGNED. ANY ASSIGNMENT IS NOT EFFECTIVE UNTIL APPROVED IN WRITING BY COUNTY.**

8. Value and Term of Abatement – Phase 2 Eligible Property

(a) This Agreement shall be effective on the date executed by County and shall terminate (unless earlier terminated in accordance with the terms hereof) on December 31 of Phase 2 Eligible Property Tax Year 10, unless earlier terminated as provided elsewhere herein. Owner’s obligation upon default to pay to County any taxes abated under this Agreement for the Phase 2 Eligible Property shall not terminate until the abated taxes are paid.

(b) In each year that this Agreement for Phase 2 Eligible Property is in effect, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the Phase 2 Eligible Property.

(c) Subject to the limitations imposed by law and conditioned upon the representations outlined in Section 7 herein above, there shall be granted and allowed hereunder a property tax abatement for the following years and in the following amounts on the value of the Phase 2 Eligible Property:

<u>Tax Year</u>	<u>Percentage Abatement</u>
1	60%
2	60%
3	60%

4	60%
5	60%
6	60%
7	60%
8	60%
9	60%
10	60%

- (1) The abatement granted shall not apply to the value of the Real Property, Phase 1 Improvements after Tax Year 2023, increases in the value of the Real Property, Ineligible Property, inventory or supplies.
- (2) All Eligible Property shall be placed and/or installed in accordance with applicable laws, ordinances, rules or regulations in effect at the time such Eligible Property is placed and/or installed.
- (3) The District’s determination of values shall be used to determine the value of the property subject to this Agreement. If Owner protests the District’s valuation of the property, the valuation placed on the property after the protest is resolved under State law shall be used.
- (4) On or before September 1 of each year of this Agreement, Owner shall certify in writing to Fort Bend County Tax Assessor/Collector Owner’s compliance with each term of this Agreement.

9. Taxability – Phase 2 Eligible Property

During the period that this tax abatement is effective, taxes shall be payable by the Owner as follows:

- (a) The value of Real Property, Phase 1 Improvements after Tax Year 2023, and Ineligible Property shall be fully taxable, including inventory, and
- (b) The value of existing improvements, if any, and Eligible Property shall be determined in the base year by the District.

10. Responsibility of Owner - Phase 3 Eligible Property:

In consideration of receiving the tax abatement granted herein, Owner represents and agrees:

- (a) That to qualify for additional tax abatement, (i) the Phase 3 Eligible Property must be completed on or before December 31, 2018, and (ii) Owner must provide Tax Assessor/Collector a certified statement evidencing a minimum of \$6,000,000 in project costs with respect to the design and installation of the Phase 3 Eligible Property within sixty (60)

days after completion. Failure to complete the Phase 3 Eligible Property on or before December 31, 2018 shall invalidate this Agreement as it pertains to the Phase 3 Eligible Property.

- (b) That the Certified Appraised Value of the Phase 3 Eligible Property on January 1 of the tax year following completion of the Phase 3 Eligible Property, and on each and every January 1 thereafter during the term of this Agreement must not be less than \$6,000,000. Owner may from time to time during the term of this Agreement for Phase 3 Eligible Property, install additional Eligible Property, and modify, remove or replace Eligible Property, as Owner may determine in its discretion, provided such shall not modify the minimum value requirements hereof. Failure to meet the requirements of this section will invalidate the tax abatement for the year this requirement was not satisfied.
- (c) That Owner has, as of the effective date of this Agreement, the financial resources to implement the above representations.
- (d) That Owner will participate in the continuing economic development process in Fort Bend County by becoming a Regular Member of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of this Agreement.
- (e) **OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- (f) **OWNER SHALL BE RESPONSIBLE FOR REQUESTING AN ASSIGNMENT OF THIS AGREEMENT IN THE EVENT THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT IS SOLD, TRANSFERRED OR ASSIGNED. ANY ASSIGNMENT IS NOT EFFECTIVE UNTIL APPROVED IN WRITING BY COUNTY.**

11. Value and Term of Abatement – Phase 3 Eligible Property

(a) This Agreement shall be effective on the date executed by County and shall terminate (unless earlier terminated in accordance with the terms hereof) on the earlier of

December 31 of Phase 3 Eligible Property Tax Year 10, unless earlier terminated as provided elsewhere herein. Owner’s obligation upon default to pay to County any taxes abated under this Agreement for the Phase 3 Eligible Property shall not terminate until the abated taxes are paid.

(b) In each year that this Agreement for Phase 3 Eligible Property is in effect, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the Phase 3 Eligible Property.

(c) Subject to the limitations imposed by law and conditioned upon the representations outlined in Section 10 herein above, there shall be granted and allowed hereunder a property tax abatement for the following years and in the following amounts on the value of the

Phase 3 Eligible Property:	<u>Tax Year</u>	<u>Percentage Abatement</u>
	1	60%
	2	60%
	3	60%
	4	60%
	5	60%
	6	60%
	7	60%
	8	60%
	9	60%
	10	60%

(1) The abatement granted shall not apply to the value of the Real Property, Phase 1 Improvements after Tax Year 2023, increases in the value of the Real Property, Ineligible Property, inventory or supplies.

(2) All Eligible Property shall be placed and/or installed in accordance with applicable laws, ordinances, rules or regulations in effect at the time such Eligible Property is placed and/or installed.

(3) The District’s determination of values shall be used to determine the value of the property subject to this Agreement. If Owner protests the District’s valuation of the property, the valuation placed on the property after the protest is resolved under State law shall be used.

(4) On or before September 1 of each year of this Agreement, Owner shall certify in writing to Fort Bend County Tax Assessor/Collector Owner’s compliance with each term of this Agreement.

12. Taxability – Phase 3 Eligible Property

During the period that this tax abatement is effective, taxes shall be payable by the Owner as follows:

- (a) The Value of Real Property, Phase 1 Improvements after Tax Year 2023, and Ineligible Property shall be fully taxable, including inventory, and
- (b) The Value of existing Improvements, if any, and Eligible Property shall be determined in the base year by the District.

13. Event of Default

- (a) County may declare Owner in default of this Agreement if: (1) Owner fails to comply with any term of this Agreement or (2) Owner allows County ad valorem taxes on any Eligible Property or Ineligible Property, or any property located thereon, to become delinquent, or (3) ceases operations on the Real Property for a continuous period of one hundred eighty (180) days before the expiration of the term of the Abatement without the prior written consent of the County, except that (i) a temporary shutdown of the facility, with assurance of the resumption of operations, for the purpose of facility modification, expansion, improvement, retooling or similar purpose, (ii) in the event the facility is being actively marketed, the County shall not unreasonably withhold consent to a reasonable extension to such period to permit the sale of the facility to another operator, (iii) the closure of the facility pending settlement of insurance, casualty or condemnation claims or (iv) the closure of the facility due to inadequate or unacceptable raw water supply shall not constitute a vacating of or a cessation of operations on the Real Property under this Section 13(a)(3). Such exceptions are subject to further extension for force majeure as defined in Section 17 herein.
- (b) County shall notify Owner of any default in writing specifying the default. Owner shall have sixty (60) days from the date of the notice to cure any default. If Owner to cure the default within ninety (90) days from receipt of notice, County may terminate this Agreement by written notice.
- (c) If this Agreement is terminated by County, Owner agrees that they are liable for and will pay to County within thirty (30) days of the termination

of this Agreement:

- (1) The amount of all taxes abated during the term of this Agreement; and
 - (2) Interest on the abated amount at the rate provided for in the TEXAS TAX CODE for delinquent taxes.
- (d) Penalties on the amount abated in the year of default, at the rate provided for in the TEXAS TAX CODE for delinquent taxes. County shall have a lien against the Real Property, Ineligible Property and Eligible Property for the taxes and interest owed because of the recapture of taxes under this paragraph during the time period beginning on the date such payment obligation accrues and continuing until the date is paid.
- (e) This paragraph is required by Chapter 2264, TEXAS GOVERNMENT CODE and governs over any conflicting provisions 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 1324a(f), the conviction shall be considered a default of this Agreement, from which no cure provisions shall apply. In such event, County shall provide written notice to Owner of the default and this Agreement shall automatically terminate on the 30th day after the date of the notice of default from County to Owner. In the event of termination under this paragraph, Owner shall repay to County 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.

14. Administration and Inspection

(a) This Agreement shall be administered on behalf of the Fort Bend County Tax Assessor/Collector or her designee. Owner shall allow employees or other representatives of County who have been designated by the Tax Assessor/Collector to have access to the Real Property (during normal business hours) during the term of the Agreement. All regular inspections shall be made only after two (2) business days prior notice and will be conducted in such a manner as not to unreasonably interfere with the construction or operation of the facility.

A representative of Owner may accompany the inspector. County shall cause each of its employees and representatives who conduct such inspections to abide by all of Owner's security, safety and operational rules (as the same may be amended from time to time), copies of which have been made available to County.

(b) Upon completion of the placement and/or installation of the Phase 1 Eligible Property, County shall annually evaluate the Phase 1 Improvements and any Eligible Property to ensure compliance with the terms and provisions of this Agreement and shall report potential defaults to the Owner.

(c) The Chief Appraiser of the Fort Bend County Appraisal District shall annually determine (1) the taxable value under the terms of this abatement of the Phase 1 Improvements, and any Eligible Property located on the Real Property and (2) the full taxable value without abatement of the Real Property, the Phase 1 Improvements, and any Eligible Property located on the Real Property. The Chief Appraiser shall record both abatement taxable value and full taxable value in the appraisal records. The full taxable value figure listed in the appraisal records shall be used to compute the amount of abated taxes that is terminated in a manner that results in recapture of abated taxes.

(d) Owner shall furnish the Chief Appraiser annually such information as provided for under Chapter 22 of the TEXAS TAX CODE, including payroll records, as may be necessary for the administration of the this Agreement. Such information, including payroll records, shall also be provided annually to the County Tax Assessor/Collector in preparation of its annual evaluation for compliance with the terms and provisions of this Agreement.

15. Assignment

(a) Owner may not assign this Agreement without prior written consent of County. No assignment shall be effective or approved if County has declared a default hereunder which has not been cured or the assignee is delinquent in the payment of any ad valorem taxes owed to

County. Approval shall not be unreasonably withheld. Assignment by Owner to Fairway Pines Properties, LLC, is permitted without written approval by County.

(b) Any and all assignments shall contain the same terms and conditions as set out in this Agreement and shall be granted for the remaining term of the original Agreement only.

(c) Owner shall provide notice to County within ninety (90) days of any sale or assignment of the Real Property subject to this Agreement.

16. Indemnity

It is understood and agreed between the parties that Owner, in performing obligations hereunder, is acting independently, and County assumes no responsibilities or liabilities in connection therewith to third parties. **OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS COUNTY AND THE DISTRICT FROM ANY AND ALL NON-OWNER CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ARISING OUT OF OWNER'S BREACH OF ITS OBLIGATIONS HEREUNDER EXCEPT THAT THE INDEMNITY SHALL NOT APPLY TO THAT PORTION OF RESPONSIBILITIES AND LIABILITIES RESULTING FROM THE FAULT OR NEGLIGENCE OF COUNTY OR TAXING UNITS, THEIR RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES. OWNER'S INDEMNIFICATION OBLIGATIONS INCLUDE THE 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 COUNTY'S, THE DISTRICT'S OR THEIR REPRESENTATIVES' INTENTIONAL CONDUCT OR NEGLIGENCE. OWNER SHALL BE RESPONSIBLE FOR ALL FEES INCURRED BY COUNTY IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, OR CAUSES OF ACTION SO LONG AS DEFENSE COUNSEL AND COURSES OF ACTION ARE DETERMINED SOLELY BY OWNER. NOTHING IN THIS AGREEMENT SHALL BE**

INTERPRETED TO PROHIBIT COUNTY FROM INCURRING REPRESENTATION OF ANY SUCH CLAIM, SUIT OR CAUSE OF ACTION AND OWNER SHALL NOT BE RESPONSIBLE FOR ANY SUCH COSTS AND OR FEES SO INCURRED.

17. Force Majeure

If by reason of force majeure, Owner is are unable to perform any obligation of this Agreement, it shall give notice of the force majeure to County in writing within thirty (30) calendar days after Owner first become aware or should have become 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 include, but not be limited to acts of God, landslides, lightning, earthquakes, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, 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 or lack of capacity of the wastewater system or water supply system; or any other cause not reasonably within the control of the Owner.

18. Commissioners Court Approval

This Agreement is conditioned entirely upon the approval of the Commissioners’ Court by the affirmative vote of a majority of the members present at a duly scheduled meeting of the Commissioner’s Court.

19. Compliance with State and Local Regulations

This Agreement shall not be construed to alter or affect the obligations of Owner to comply with any city ordinance or federal or state law or regulation.

20. Changes in Laws/Vested Rights

The tax abatement provided in this Agreement is conditioned upon and subject to any

changes in the state tax laws during the term of this Agreement, but only the extent required by law to be enforceable and after giving Owner all vesting, non-conforming and/or “grandfather” rights, contained in and applicable to this Agreement and allowed by law.

21. Miscellaneous

(a) This Agreement and the rights and obligations of each party shall be construed and enforced under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.

(b) In the event of 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.

22. Notices

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been hand delivered or deposited, enclosed in a wrapper with the proper postage prepaid thereon, and certified, return receipt requested, in a United States Post Office, addressed to County and Owner at the mailing address as hereinafter set out. If mailed, any notice of communication shall be deemed to be received three (3) business days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to Owner or County at the following addresses:

To the **Tax Assessor/Collector**: The Honorable Patsy Schultz
Fort Bend County Tax Assessor-Collector
1317 Eugene Heimann Circle
Richmond, Texas 77406

To **Owner**: Niagara Bottling, LLC
2560 E. Philadelphia Street
Ontario, California 91761
Attn: Brian Hess

Copy to: Niagara Bottling, LLC
2560 E. Philadelphia Street
Ontario, California 91761
Attn: Pamela Cridlebaugh

Copy to: Niagara Bottling, LLC
7633 American Way
Groveland, Florida 34736
Attn: Derieth Sutton

Copy to: Wilson, Cribbs & Goren, P.C.
2500 Fannin
Houston, Texas 77002
Attn: Reid C. Wilson

To **County**: Fort Bend County
301 Jackson, Suite 719
Richmond, Texas 77469
Attention: County Judge

Copy to: Fort Bend County Attorney
301 Jackson, Suite 728
Richmond, Texas 77469

Any party may designate a different address by giving the other parties ten (10) days prior written notice thereof. **Failure of Owner to provide County Tax Assessor/Collector thirty (30) days notice of a change of address may result in termination of this Agreement.**

23. Entire Agreement; Ordinance and Economic Impact Statement

This Agreement contains the entire Agreement among the parties and supercedes all other negotiations and agreements, whether written or oral. This Agreement shall inure to the benefit of and be binding upon the parties hereto and each of their respective successors and assigns. Attached hereto are (a) Exhibit A – City of Missouri City Ordinance No. O-12-14 designating

Reinvestment Zone No. 10, and (b) Exhibit B - Economic Impact Statement/Application for Value Added Tax Abatement, which are made part of this Agreement.

24. Reliance

The County recognizes that Owner is relying upon the enforceability of this Agreement and the financial benefits it promises in making a major financial investment in the County. But for this Agreement, Owner would not locate in the County. The County realizes that Owner has viable alternative locations, but has chosen the County due to the type and amount of economic development incentives represented by this Agreement.

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25. Execution

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

“COUNTY:”
FORT BEND COUNTY, TEXAS

By: *Robert E. Hebert*
Robert E. Hebert, County Judge

Date: June 26, 2012

ATTEST:

Dianne Wilson
Dianne Wilson, County Clerk

“Owner:”
NIAGARA BOTTLING, ^{LLC} INC.

By: *Pamela Andiebaugh*

Name: Pamela Andiebaugh

Title: Director of Legal Affairs

Date: June 20, 2012

Attest: *Janelle A. Granger*
Janelle A. Granger
Associate Corporate Counsel

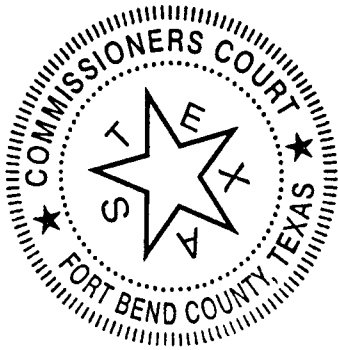


Exhibit A
Ordinance Creating City of Missouri City Reinvestment Zone No. 10

ORDINANCE NO. O-12-14

AN ORDINANCE OF THE CITY OF MISSOURI CITY, TEXAS, CREATING REINVESTMENT ZONE NO 10 ENCOMPASSING RESERVES 30, 31, 32, 33, 34, 35 AND 36 OF LAKEVIEW BUSINESS PARK LOCATED SOUTHWEST OF THE INTERSECTION OF BUFFALO RUN AND FONDREN ROAD IN THE CITY OF MISSOURI CITY, TEXAS; MAKING RELATED FINDINGS, AND PROVIDING FOR SEVERABILITY.

WHEREAS, the City Council of the City of Missouri City has passed and approved Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones Created in Missouri City, Texas; and

WHEREAS, pursuant to the Guidelines, the City has received a request for creation of a reinvestment zone and tax abatement; and

WHEREAS, after proper notice, the City held a public hearing where all interested persons were given an opportunity to speak and present evidence for and against the creation of Reinvestment Zone No. 10; and

WHEREAS, written notice of the hearing was given to all taxing entities where the proposed zone is to be located; and

WHEREAS, the City Council has determined, based on evidence presented, that the improvements sought to be located in proposed Reinvestment Zone No. 10 are feasible and practical and would be a benefit to the land to be included in the Zone and to the City after the expiration of the tax abatement agreement; and

WHEREAS, the creation of Reinvestment Zone No. 10 will be reasonably likely, as a result of its creation, to contribute to the retention or expansion of primary employment or to attract major investment into the Zone that would be a benefit to the property located therein and that will contribute to the economic development of the City of Missouri City; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS.

Section 1. That the facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct, and are made a part of this Ordinance for all purposes.

Section 2. That Reinvestment Zone No 10 is hereby created for the purpose of encouraging economic development through tax abatement. The Zone is described as Reserves 30, 31, 32, 33, 34, 35 and 36 of Lakeview Business Park, a recorded subdivision in Fort Bend County, Texas.

Section 3. This designation shall be effective for five (5) years from the date of final passage of this Ordinance and may be renewed for periods not to exceed five (5) years.

Section 4. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict only.

Section 5. In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional, and the City Council of the City of Missouri City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

PASSED and APPROVED on first reading this 7th day of May, 2012.

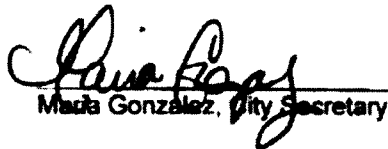
PASSED, APPROVED and ADOPTED on second and final reading this 21st day of May, 2012.



Allen Owen, Mayor

ATTEST:

APPROVED AS TO FORM:



Maria Gonzalez, City Secretary



Caroline Kelley, City Attorney

Exhibit B



ECONOMIC IMPACT STATEMENT QUESTIONNAIRE

Company Name
City, Fort Bend County

Based on the information you provide below, the Greater Fort Bend Economic Development Council (GFBEDC) will begin prequalification of your project. The information you provide will allow the GFBEDC to begin to develop your application and economic impact statement for presentation to the taxing entities for consideration of economic incentives. The following factors will be considered as a whole to determine the entire economic impact of the company: location of project, type of business, is the company in one of the city's target industries, number of jobs, skill level of each job, average salary, investment in building improvements or new building, value of taxable inventory, value of taxable personal property and equipment, sales tax revenue generated for the city, impact on local infrastructure, and impact (good or bad) on existing businesses in the County.

- 1. Please provide a detailed summary statement about your company (its history, type of business and industry, etc.) and clearly describe its operations at the proposed facility in Fort Bend.**

COMPANY HISTORY:

Andrew Peykoff, Sr. started bottling high quality low cost NIAGARA™ water in five-gallon glass containers for home and office delivery in 1963. The Niagara tradition of quality, integrity, hard work, and great customer service made Niagara a household name in Southern California.

In the early '90's, Niagara expanded into offering single-serve private label bottled water for grocery, club store, convenience, and wholesale customers with the same focus on offering an unmatched combination of quality, price, and service.

Throughout the following decade, Niagara's significant developments in vertical integration, innovative bottle design, and high speed manufacturing positioned the company as the industry leading private label bottled water supplier in the Western United States.

Niagara's family owned and operated status continued with Andy Peykoff, II becoming President and CEO in 2002. Since then, Niagara has established itself as a National leader in high quality affordable bottled water with geographically diversified production facilities throughout the United States.

The dedication to operational improvements, a consistent recipe of hard work, integrity, attention to detail, and the relentless quest for perfection has driven Niagara to become the largest family owned and operated bottled water company in the United States.

Much has changed since 1963; however the Niagara family tradition of high quality low cost bottled water has not. The company has been recognized as the Most Innovative PET Manufacturer as well as for having the Best PET Design on its light-weighted Eco-Air™ bottle.

Niagara operates ten (10) plants across the United States: two in Ontario, CA, where the company is headquartered; and plants in Stockton, CA; Irvine, CA; Dallas, TX; Allentown, PA; Groveland, FL; Plainfield, IN; Phoenix, AZ and Mooresville, NC.

Niagara proposes to construct a 356,000 square-foot plant in the Lakeview Business Park. The project calls for an initial investment of over \$50 million in both real and personal property and the creation of 59 jobs, at an average wage of \$39,152.54. The company would initially install two bottling lines.

2. Information About Your Company

Company Name: Niagara Bottling, LLC		Title: Economic Development & Government Relations Manager
Contact Person: Derieth L. Sutton		
Current Address: Corporate: 2560 E. Philadelphia Street, Ontario, CA 91761		
Contact Address: 7633 American Way, Groveland, FL 34736		
Office #:	Mobile #: 949.910.3950	
Fax #: 949.203.6150	Website: www.niagarawater.com	
Email Address: dsutton@niagarawater.com		
The Company's Primary SIC Code: 312112		

3. Type of project (check all that apply):
- Existing business in Fort Bend County
 - New business to Fort Bend County
 - Expansion of existing facility
 - Construction of new facility
 - Company will lease facility
 - Company will own facility
 - Corporate/Regional Headquarters

4. If the company will lease the facility, who will be the owner:

Niagara typically creates a holding company for the real estate portion of its project. The holding company, yet to be created, would likely be called Lakeview Properties, LLC.

5. Location of proposed site(s) in Fort Bend (street address, name of Business Park or other development, city, or name of area if unincorporated):

Lakeview Business Park
 One Fluor Daniel Drive • Sugar Land, Texas 77478 • www.fortbendcounty.org
 Main (281) 242-0000 • Fax (281) 242-6739 • Toll Free (888) 500-5668

6. **Scope of project:**

Size of new facility/expansion:	356,000 square feet (new)
Size of existing facility (if applicable):	N/A
Size of lease space in existing facility (if applicable):	N/A
Number of acres at facility site:	15 acres
Type of Construction (tilt wall, metal, concrete, etc.):	Tilt Wall Construction

7. **Please give detailed breakdown of operations within the proposed facility (i.e., 20% office; 25% distribution; 15% metal fabrication; 40% warehouse, etc.):**

Niagara's breakdown of operations within the proposed facility is as such:

2 Lines:	4 Lines:
Office: 2%	Office: 2%
Production: 18%	Production: 28%
Warehouse: 80%	Warehouse: 70%

8. **Truck traffic to be generated (# daily or weekly):** Truck traffic breakdown for both peak and off-peak times by number of lines:

Weekdays (Weekend traffic is approximately 30% lower):

2 Lines:	4 Lines:	6 Lines:
Peak= 70	Peak= 140	Peak= 210
Off-peak= 35	Off-peak= 70	Off-peak= 105

9. **Targeted start of construction:** As soon as possible, but no later than May 2012.

10. **Targeted start of operations:** The plant will need to be fully operational (first sell-able product off the line) by March 1, 2013.

11. **Market value (taxable assets) of the firm's property that would be located at the facility in Fort Bend (new property to Fort Bend):** The following does NOT include the following:

Special Tooling/Retooling = \$2,250,000
 IT & Telecommunications = \$375,000

Land	Construction Costs of Building Improvements	Furniture & Fixtures	Equipment	Inventory	Total
\$4,279,552	\$18,000,000	\$120,000	\$29,100,000	\$2,000,000	\$53,499,552

12. **Estimated percent of inventory that would be Freeport qualified, if any: 25-50%**
Freeport goods are inventories (raw materials, goods in process, and finished products) acquired by a

business and held for no more than 175 days before being shipped out of state.

13. **Does the company require a Foreign Trade Zone (FTZ)? If so, what percent of the inventory would be FTZ qualified: _____ %**

No

14. **Employment information:**

Number of new jobs to Fort Bend County	Number of existing jobs to be retained (if company currently located in Fort Bend)	Total Number of Jobs
59 (initially)	N/A	59 (initially)

15. **Average salary (before benefits): \$39,152.54**
16. **Amount of initial, annual local payroll to be created: \$2,260,000.00 (initially)**
17. **What are the estimated annual total sales at the new facility? What portion of the total sales will be subject to local (city) sales taxes?**

Niagara's estimated total sales for this facility for 2013: \$60 million
Niagara's final product (bottled water) is not subject to sales tax.

18. **Does the company own a corporate airplane that would be housed at a local corporate airport in Fort Bend (i.e., Sugar Land Regional Airport or Houston Southwest Airport)? If so, what is the plane's value:**

No, the company does NOT own a corporate airplane.

19. **Will the company's local business practices necessitate business travel that will bring clients or employees to the Fort Bend facility, resulting in hotel/motel bookings? If so, what is the estimated number of hotel/motel stays per year that will be booked locally:**

Construction of a new facility as well as the ongoing maintenance of running a successful plant does require business travel that will bring both contractors, customers and employees to the Fort Bend plant. On average, and while Niagara cannot guarantee the number of stays (sometimes it's greater and sometimes it's less), the company negotiates direct-bill contracts with local hotels for a minimum of 125 stays per quarter.

20. **If your company currently has operations elsewhere in the State of Texas, please list the name of the communities:**

Niagara does own and operate a plant in Dallas, TX.

21. **Employee benefit burden (percent of employee's salary that is invested by the company into the employee's benefits):**

15%

22. Current owner of real property (land/building) at the time of application:

The land is currently owned by developer Trammel Crow.

23. Have you received or are you currently receiving tax abatement in Fort Bend:

Yes No

24. Is this land currently under Agriculture Exemption: Yes No

a. If so, what will be the increase in taxes paid annually to taxing authorities: *To be answered by GFBEDC*

b. What is the value of roll back taxes to be collected as a result of being taken out of Ag Exemption: *To be answered by GFBEDC*

25. What is the expected increase in value of the land once it is sold? (to be answered by GFBEDC)

26. Productive life of proposed improvements and/or initial term of lease:

This project will not be a lease deal. However, Niagara's holding company, most likely to be called Lakeview Properties, L.L.C (not yet formed), will purchase land and construct a new building. Niagara follows a depreciation schedule of 39 years on new construction of its buildings.

27. Time of day activities will be taking place (i.e., # of shifts):

Niagara operates 24/7; 363 days of the year. This plant would operate 12 hour shifts.

28. The costs to be incurred by local government to provide facilities or services directly resulting from the new improvements:

Explain any costs for development or depletion of infrastructure the city and/or water district are being asked to absorb, if any.

There are no known costs at this time.

29. If located in the city limits, do you (or your construction company) agree to declare "situs" for construction sales taxes at the construction site:

When purchasing construction materials for the new facility from a company that is situated outside the city where the new facility will be located, the builder agrees to declare the situs (point of sale) of the materials as the construction site address so the local city receives the sales tax revenue.

Niagara agrees.

30. Please provide wastewater information, including activities, facilities, plant processes, products, services, chemicals, materials, and hazardous substances that

may be used or that may result from the activities to be conducted within the proposed improvements:

Niagara Bottling manufactures bottled water. Niagara Bottling LLC discharges wastewater consisting of process water, wash down water, and R/O backwash. The waste stream includes reverse osmosis concentrate flow, Cooling tower blow down is the additional minor side stream. Also, small amount of drinking water will find its way from the filler to the floor drains. The waste water discharge represents approximately 20% of the incoming water.

- 31. Explain any proposed pretreatment of wastewater prior to discharge into the sanitary sewer system:**

Neutralize, pH adjust.

- 32. Will there be any proposed monitoring of wastewater discharge into the sanitary sewer system:**

Yes, Niagara will install a wastewater discharge meter to monitor the flow.

- 33. Public improvements to be made by the Company in which the public may benefit (please list if any):**

City staff has not made Niagara aware of any necessary public improvements.

- 34. Will this business compete with existing businesses in the county? If so, please list local companies providing the same services:**

None of which the company is aware.

- 35. Are there possibilities for local businesses to become suppliers? Any new retail opportunities? Please explain.**

While Niagara does not currently have any suppliers in the Fort Bend area, the company is always open to the exploration of partnerships that lend themselves to the success of both parties.

- 36. Do you anticipate your relocation to attract other new businesses to the area? Please explain:**

While Niagara cannot guarantee the relocation of other business to the area, however, it would not be uncommon for regular vendors of the company to locate close as to reduce any additional cost they may have (i.e. freight, time, etc.). In addition, Niagara has participated in recruitment efforts in its head-quartered community in Ontario, CA.

- 37. Does the business produce any type of emissions or are there any other environmental matters for the city/county to consider:**

No. Niagara operations are very clean and do not produce any adverse emissions.

- 38. **The company agrees to participate in the continuing economic development process in Fort Bend County by becoming a Trustee member (\$6,000/yr) of the GFBEDC for a minimum period coinciding with the term of any County abatement agreement: X Yes No**

The County Commissioners' Court encourages the company's participation in the Council to support the continued economic growth in the County. The Court considers your decision in their evaluation of the project.

- 39. **By signing and submitting this application you certify that the company, its branches, divisions and departments (company) do not and will not knowingly employ an undocumented worker. An agreement with the company will require the company to repay the total amount of the public benefit received with interest at the rate and according to the terms of the agreement if the company is convicted of a violation under 8 U.S.C. Section 1324a. Repayment will be due no later than the 120th day after the date the City/County notifies the company of the violation as provided in the agreement.**

**An undocumented worker is an individual who, at the time of employment, is not:
a. (1) lawfully admitted for permanent residence to the United States; or
b. (2) authorized under law to be employed in that manner in the United States.**

In order to prepare the documents creating the Reinvestment Zone, in which all eligible property placed therein, would receive any property tax abatement, and the Abatement Agreement itself, a Site Plan and Legal Description, including a metes and bounds description is necessary. Please provide these as soon as possible if they are not available at the time this EIS is submitted.

CERTIFICATION:


I. APPLICANT:

Niagara Bottling, LLC

(Name of Company)

does hereby certify that all statements and representations made herein are accurate to the best of their knowledge and agree to comply with these terms.

By Authorized Representative:



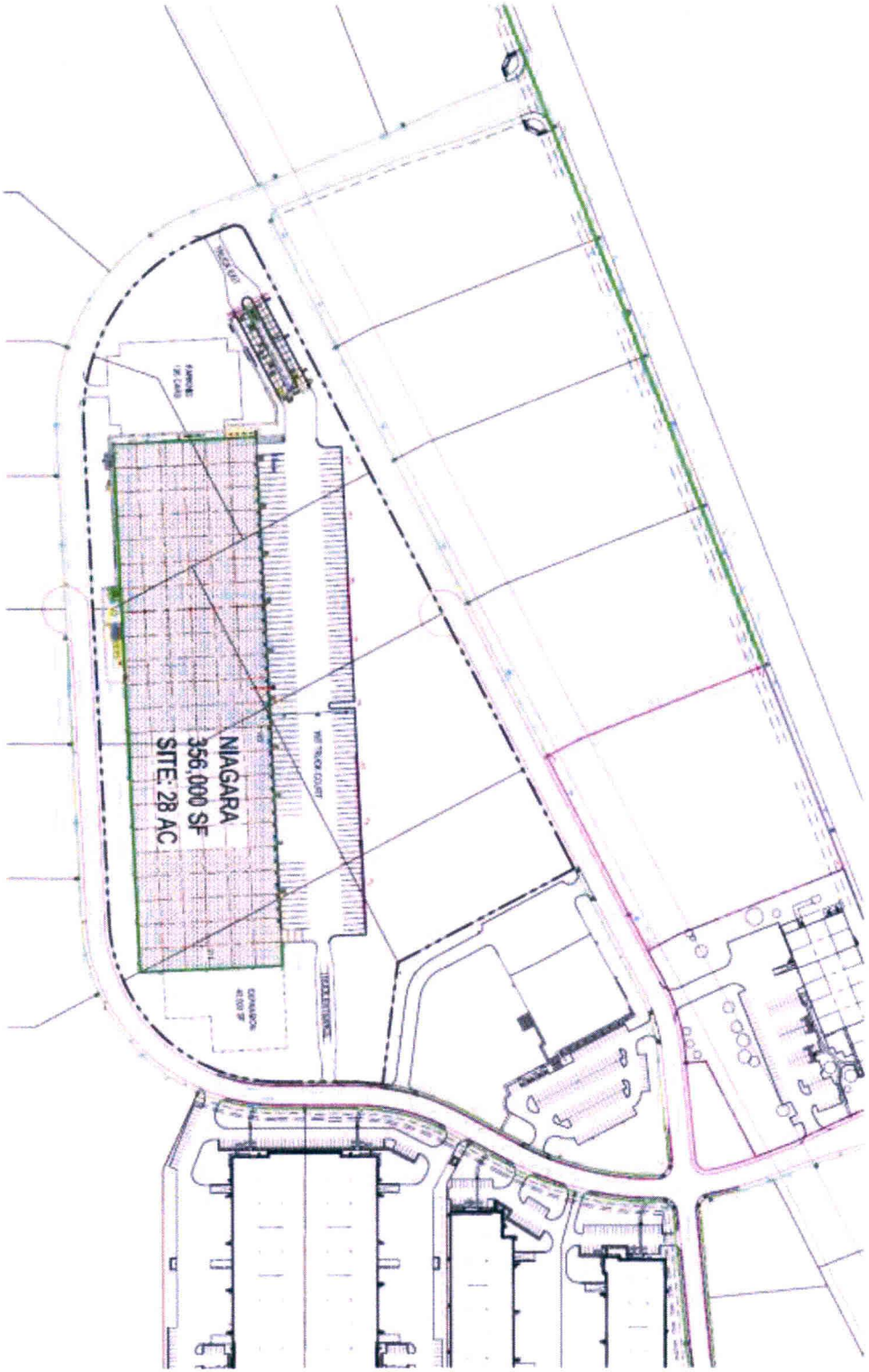
Signature

2/7/2012
Date

Printed Name: Derieth L. Sutton

Title: Economic Development & Government Relations Manager

One Fluor Daniel Drive • Sugar Land, Texas 77478 • www.fortbendcounty.org
Main (281) 242-0000 • Fax (281) 242-6739 • Toll Free (888) 500-5668



Terraced Creek Company



NIAGARA WATER - SCHEMATIC LAYOUT
1-23-2012

