

Item #
8

Cesar O. Nava

From: Celeste A. Varela
Sent: Monday, December 20, 2010 8:24 AM
To: Lee Shapleigh; Anna Perez; Anthony Cobos; Veronica Escobar; Willie Gandara, Jr.; Dan Haggerty
Cc: Nancy Turrieta-Sambrano; Norma Head; Shani Enriquez; Gerald McTernan; Patricia Pietzyk; Cesar O. Nava; Edward Dion; Wallace Hardgrove
Subject: RE: Bosch Tax Abatement Agreement on 12/20 CONSENT agenda, #8

I called to confirm that Mr. Bob Cook from REDCo would be present for the item and he will.

Celeste Varela
Administrative Assistant
Commissioner Veronica Escobar, Pct. 2
500 E. San Antonio, Ste. 301
El Paso, Texas 79901
Phone: 915-546-2111
Fax: 915-543-3817

From: Lee Shapleigh
Sent: Sunday, December 19, 2010 6:54 PM
To: Anna Perez; Anthony Cobos; Veronica Escobar; Willie Gandara, Jr.; Dan Haggerty
Cc: Nancy Turrieta-Sambrano; Norma Head; Celeste A. Varela; Shani Enriquez; Gerald McTernan; Patricia Pietzyk; Cesar O. Nava; Edward Dion; Wallace Hardgrove
Subject: RE: Bosch Tax Abatement Agreement on 12/20 CONSENT agenda, #8
Importance: High

It was approved 12/21/09. There was a powerpoint presentation. Here's is the original contract you approved.

From: Anna Perez
Sent: Sunday, December 19, 2010 6:49 PM
To: Lee Shapleigh; Anthony Cobos; Veronica Escobar; Willie Gandara, Jr.; Dan Haggerty
Cc: Nancy Turrieta-Sambrano; Norma Head; Celeste A. Varela; Shani Enriquez; Gerald McTernan; Patricia Pietzyk; Cesar O. Nava; Edward Dion; Wallace Hardgrove
Subject: Re: Bosch Tax Abatement Agreement on 12/20 CONSENT agenda, #8

Can you give us date original version approved so we can look at it, or send us the copy.

Anna Perez

From: Lee Shapleigh
Sent: Sunday, December 19, 2010 05:08 PM
To: Anthony Cobos; Anna Perez; Veronica Escobar; Willie Gandara, Jr.; Dan Haggerty
Cc: Nancy Turrieta-Sambrano; Norma Head; Celeste A. Varela; Shani Enriquez; Gerald McTernan; Patricia Pietzyk; Cesar O. Nava; Edward Dion; Wallace Hardgrove
Subject: Bosch Tax Abatement Agreement on 12/20 CONSENT agenda, #8

STATE OF TEXAS)
)
 COUNTY OF EL PASO) **CHAPTER 381 ECONOMIC DEVELOPMENT
) AGREEMENT**

This **ECONOMIC DEVELOPMENT AGREEMENT** is entered into by and between the **COUNTY OF EL PASO, TEXAS**, (hereinafter referred to as the "COUNTY"), and **BOSCH BRAKE COMPONENTS LLC** (hereinafter referred to as the "APPLICANT"), for purposes and considerations stated below.

WHEREAS, APPLICANT is the sub-lessor of an existing facility located at 11751 Alameda, Socorro, Texas, 79927, in the City of Socorro, Texas and APPLICANT agrees to invest in **PERSONALTY** at such address, which is located within the City of Socorro, El Paso County, Texas;

WHEREAS, the personal property tax abatement contemplated in this Economic Development Agreement will maintain and enhance the commercial-industrial economic and employment base of the Socorro area and will stimulate business and commercial activity thereby benefiting the COUNTY in accordance with the El Paso County Chapter 381 Economic Development Program – Guidelines & Criteria;

WHEREAS, APPLICANT acknowledges and agrees to expend a minimum of Two Million, Five-hundred Thousand Dollars (\$2,500,000.00) in new business personal property in constructing, opening and operating a Distribution Facility at the address listed above;

WHEREAS, this Tax Abatement Agreement was approved by the COUNTY at a regularly scheduled meeting as provided by law.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. FINDINGS INCORPORATED.

All the statements in the preamble above are hereby found to be true and correct and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **A Agreement.** The word "Agreement" means this Chapter 381 Economic Development Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- B. **APPLICANT.** The word "APPLICANT" means BOSCH BRAKE COMPONENTS, LLC.
- C. **COUNTY.** The word "COUNTY" means the County of El Paso, Texas.
- D. **Full-Time Employment.** The words "Full-Time Employment" mean a job requiring a minimum of ONE THOUSAND NINE HUNDRED TWENTY (1,920) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including company paid health insurance, and employed exclusively and on-site at the facility in the City of Socorro, Texas.
- E. **PERSONALTY.** The word "PERSONALTY" means movable, tangible assets and personal property added to the facility, which do not include money or investments and which were not recorded on the property tax rolls prior to the Effective Date of this Agreement.
- F. **FACILITY.** The word "FACILITY" means building located at 11751 Alameda, Socorro, Texas, 79927.
- G. **Initial Term.** The phrase " Initial Term", when used in reference to the term of this Agreement, shall mean a period not exceed three (3) years from the Effective Date of this Agreement,
- H. **Secondary Term.** . The phrase " Secondary Term", when used in reference to the term of this Agreement, shall mean a period not exceed three (3) years from the end of the Initial Term of this Agreement,

SECTION 3. PROPERTY SUBJECT TO TAX ABATEMENT.

The APPLICANT has a fee simple interest in the PERSONALTY, which is more fully described in **EXHIBIT A**. The PERSONALTY is located within El Paso County, which is designated as a distressed county by the Governor's Texas Economic Development Bank. The APPLICANT shall be responsible for the operation of a Distribution Facility at the FACILITY. The PERSONALTY added to the FACILITY shall be subject to a tax abatement.

SECTION 4. TAX ABATEMENT.

Subject to the terms and conditions of this Agreement, the APPLICANT's fulfillment of

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y and all requirements of the Central Appraisal District and subject to the rights and holders of any outstanding bonds of the COUNTY, a portion of ad valorem taxes from the PERSONALTY of the APPLICANT otherwise owed to the COUNTY shall be abated as follows:

- A. Initial Term The tax abatement period in which the APPLICANT is eligible for PERSONALTY abatement shall be three (3) consecutive years, with the first year of abatement being the first tax year that begins after: (i) the issuance of the Certificate of Occupancy for the FACILITY; and, (ii) the APPLICANT having met all Full Time Employment job requirements noted for Year 1 in **EXHIBIT B**, which is attached hereto and incorporated herein for all purposes. Failure of the APPLICANT to receive its Certificate of Occupancy and meet its Year 1 Full Time Employment job requirements within two (2) years of the Effective Date of this Agreement shall result in the immediate termination of this Agreement.
- B. Abatement Amount for the Initial Term. The maximum tax abatement rate for each year during the Initial Term shall be FIFTY PERCENT (50%) and will apply to the portion of the value of PERSONALTY that is subject to abatement, as set forth in Section 3 and such qualifications as noted elsewhere in this Agreement. Eligibility for full, 50% abatement shall be contingent on meeting end of year (December 31) total Full Time Employment job requirements as stated in **EXHIBIT B**. In the event APPLICANT's actual job creation during the abatement period shall fall below requirements noted within **EXHIBIT B**, but does not fall below seventy-five percent (75%) of such job creation requirements, APPLICANT shall qualify for a pro rata share of the full, 50% abatement.

Said tax abatement shall be based upon the increased value of the PERSONALTY over the value in the base year, which is hereby established as 2009, the year in which this Agreement is executed in accordance with the terms of this Agreement and all applicable federal, state, and local laws and regulations.

- C. Secondary Term. The tax abatement period in which the APPLICANT may be eligible for PERSONALTY abatement shall be three (3) consecutive years, with the first year of abatement being the first tax year that begins after the Initial Term has concluded providing that the APPLICANT has met all Full Time Employment job requirements noted for Years 4 through 6 in **EXHIBIT B**, which is attached hereto and incorporated herein for all purposes. Failure of the APPLICANT to meet its Year 4-6 Full Time Employment job requirements will result in the immediate termination of this Agreement.
- D. Abatement Amount for the Secondary Term. The maximum tax abatement rate for each year during the Initial Term shall be FIFTY PERCENT (50%) and will apply to the portion of the value of PERSONALTY that is subject to abatement, as set forth

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n Section 3 and such qualifications as noted elsewhere in this Agreement. Eligibility for full, 50% abatement shall be contingent on meeting end of year ((December 31) total Full Time Employment job requirements as stated in **EXHIBIT B**. In the event APPLICANT's actual job creation during the abatement period shall fall below requirements noted within **EXHIBIT B**, but does not fall below seventy-five percent (75%) of such job creation requirements, APPLICANT shall qualify for a pro rata share of the full, 50% abatement.

Said tax abatement shall be based upon the increased value of the PERSONALTY over the value in the base year, which is hereby established as 2009, the year in which this Agreement is executed in accordance with the terms of this Agreement and all applicable federal, state, and local laws and regulations.

- E. Subsequent Failure to Meet Abatement Requirements. Failure of the APPLICANT to meet the requirements necessary for abatement in any subsequent year after the abatement period has begun shall not extend the abatement period. Rather, the APPLICANT shall forfeit its eligibility for abatement in any year in which it fails to meet any and all abatement requirements. Although such a failure does not preclude the APPLICANT from meeting subsequent Full Time Employment requirements and receiving abatements for the same, APPLICANT must meet the requirements for those subsequent years and may not rely upon the requirements established for the year in which it failed to meet its requirements.

SECTION 5. USE OF THE REAL PROPERTY.

As consideration for the agreement of COUNTY contained herein, APPLICANT agrees that it will diligently and faithfully in a good and workmanlike manner pursue the commencement of operations of a Distribution Facility within the FACILITY consistent with the requirements set forth herein. APPLICANT agrees that all construction, repairs and improvements to the FACILITY will be in accordance with all applicable federal, state, and local laws and regulations. The FACILITY shall be limited in its use to those uses consistent with the development and operation of a Distribution Facility consistent with the COUNTY's development goals, which include the stimulation of business and commercial activity in the county.

SECTION 6. REQUIREMENTS OF THE APPLICANT.

- A. APPLICANT agrees that it shall create, staff, and maintain Full-Time Employment positions for the FACILITY as required by **EXHIBIT B**. APPLICANT further agrees that it shall maintain these positions as required by **EXHIBIT B** through the full term of the abatement period. APPLICANT shall report to the COUNTY, on a quarterly basis, its employment level, distributed by wage brackets, and any other pertinent information that would affect the ability of the operation of the REAL PROPERTY. Such reports shall be submitted to the El Paso Regional Economic Development Corporation and to the COUNTY, no later than thirty (30) days following the end of

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each calendar quarter.

- B. In the event the abatement period commences but APPLICANT subsequently discontinues or alters its operations and the minimum number of Full-Time Employment positions is not maintained in accordance with Section 4B and **EXHIBIT B** for a period in excess of one (1) year, this Agreement may be terminated by the COUNTY and all taxes previously abated pursuant to this Agreement shall be recaptured and paid within sixty (60) days from the date of termination. There shall be created hereby a superior lien on all Personality described herein to secure recapture of all taxes previously abated ("Abated Taxes"). APPLICANT shall be responsible for all of County's litigation costs and Attorney's fees to recapture the previously abated taxes.

SECTION 7. DEFAULT, CURE AND DELINQUENT TAXES.

A. Event of Default.

APPLICANT shall be in default of this Agreement, in the event that APPLICANT either:

- (i) fails to commence operations within the FACILITY in accordance with this Agreement; or
- (ii) fails to create, staff, and maintain Full-Time Employment positions in the FACILITY in accordance with this Agreement; or
- (iii) breaches any of the terms or conditions of this Agreement.

B. Ability to Cure.

In the event that APPLICANT defaults pursuant to subsections (i), (ii), or (iii) of Section 7A above, the COUNTY shall give APPLICANT written notice of such default. If APPLICANT has not cured any such default within sixty (60) days, the COUNTY may terminate this Agreement, and the taxes abated by virtue of this Agreement shall be recaptured and paid within sixty (60) days from the date of such termination.

If such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, and APPLICANT fails to commence to cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such failure, the COUNTY may terminate this Agreement, and the taxes abated by virtue of this Agreement shall be recaptured and paid within sixty (60) days from the date of termination.

- C. Delinquent Taxes. Should APPLICANT allow its real or personal property taxes owed the COUNTY to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such taxes, this Agreement shall

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terminate and so shall the abatement of the taxes for the tax year of the delinquency. Further, the total taxes assessed without abatement for that tax year shall be paid within sixty (60) days from the date of the termination.

D. SECTION 8. RIGHT OF ACCESS FOR INSPECTION.

APPLICANT further agrees that the COUNTY, its agents and employees, shall have reasonable rights to access the FACILITY and PERSONALTY to inspect the construction and improvements and other items subject to this Agreement in order to ensure that the construction and improvements are in accordance with this Agreement and all applicable federal, state, and local laws and regulations. After completion of the construction and improvements, the COUNTY shall have the continuing right of inspection to ensure that such are thereafter maintained and operated in accordance with this Agreement. All inspections will be made only after giving at least twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the construction and or operations of the APPLICANT. All inspections will be made with one (1) or more representatives of the APPLICANT, and in accordance with its safety standards, if any.

SECTION 9. ANNUAL CERTIFICATION.

On or before March 31 of each year, APPLICANT shall provide to COUNTY's agent (El Paso Regional Economic Development Corporation) written certification that APPLICANT is in compliance with each applicable term and condition of this Agreement. Such certification shall be in a form reasonably satisfactory to the COUNTY and shall include, at a minimum, verified information supporting APPLICANT's conclusions that it met (or expects to meet) each condition and requirement to abatement set forth in this Agreement. Any failure of the COUNTY to request or demand such certification shall not constitute a waiver of such certification or any future certification. Further, it will be the responsibility of APPLICANT to provide the reports as required herein. The COUNTY is not obligated to request the annual certifications, and will not certify APPLICANT's eligibility to receive any tax abatement without the reports. Failure to provide these required reports in a timely manner shall constitute grounds for termination of this Agreement.

SECTION 10. UNDOCUMENTED WORKERS.

During the term of this Agreement, APPLICANT agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), APPLICANT shall repay the amount of the Abated Taxes received by APPLICANT from the COUNTY as of the date of such violation not later than one hundred twenty (120) days after the date APPLICANT is notified by COUNTY of a violation of this section, plus interest from the date the Grant payment(s) was paid to APPLICANT, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to APPLICANT until the date reimbursement payments are repaid to COUNTY. COUNTY may also recover court costs and reasonable attorney's fees incurred in an action to

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over the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person with whom APPLICANT contracts.

SECTION 11. CANCELLATION, TERMINATION OR MODIFICATION.

The COUNTY and APPLICANT agree that the COUNTY may cancel, terminate or modify this Agreement if APPLICANT fails to comply with this Agreement.

SECTION 12. AUTHORIZATION TO SIGN THIS AGREEMENT.

The COUNTY's execution of this Agreement was authorized by Order of the Commissioners Court at a regularly scheduled meeting authorizing the County Judge to execute the Agreement on behalf of the COUNTY. Each person signing this Agreement on behalf of the APPLICANT represents and warrants that he or she has the authority to legally bind the APPLICANT to the provisions hereof and that the representations made to the COUNTY as inducement to enter into this Agreement are still true and correct.

SECTION 13. NOTICE.

All notices required by this Agreement shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, or overnight delivery to the addresses below:

Notice to APPLICANT:

Mr. Frank Schlehuber
Vice President
Global Business Unit Leader
Bosch Brake Components LLC
2800 South 25th Avenue
Broadview, IL 60155

Copy to APPLICANT:

Mr. Jorge Diaz-Dulanto
Director Manufacturing &
Operations - Friction
Bosch Brake Components LLC

Notice to COUNTY:

County Auditor
County of El Paso
800 E. Overland #406
El Paso, Texas 79901

Copy to COUNTY:

County Judge
County of El Paso
500 E. San Antonio
El Paso, Texas 79901

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SECTION 14. MISCELLANEOUS PROVISIONS.

- A. If a court of competent jurisdiction finds any provisions of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. It is the intention and agreement of the parties to this Agreement that each such illegal, invalid or unenforceable provision shall be amended by the parties hereto to the extent necessary to make it legal, valid and enforceable while achieving the same objective of such provision, or, if that is not possible, by substituting therefore another provision that is legal, valid and enforceable and achieves the same objectives (or, if such provision cannot be amended or a provision substituted therefore in a manner that is legal, valid and enforceable and achieves the same objectives, then such provision shall be amended or a new provision substituted therefore that achieves as closely as possible the same objectives or economic position as the illegal, invalid or unenforceable provision, irrespective of whether such amendment or substituted provision is materially different than the illegal, invalid or unenforceable provision).
- B. Notwithstanding any provision in this Agreement to the contrary, APPLICANT's and COUNTY's only liability for breaching any provision of this Agreement shall be the remedies expressly set forth in this Agreement.
- C. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. However, APPLICANT cannot assign this Agreement unless written permission is first granted by the COUNTY. Any attempt to transfer without the prior written consent of the COUNTY shall be void and shall constitute an event of default that will result in the termination of this Agreement and recapture of the taxes abated prior to the attempted transfer.
- D. It is understood and agreed between the parties that the APPLICANT, in performing its obligations hereunder, is acting independently, and the COUNTY assumes no responsibility or liability in connection therewith to third parties. THE APPLICANT FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE COUNTY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, INCLUDING ATTORNEYS' FEES, OF ANY NATURE WHATSOEVER ARISING OUT OF APPLICANT'S OBLIGATIONS HEREUNDER.
- E. This Agreement shall be construed under laws of the State of Texas. Venue for any action arising under state law under this Agreement shall be the State District Court of El Paso County, Texas.
- F. A certified copy of this Agreement in recordable form shall be recorded in the Deed Records of El Paso County by the APPLICANT.

- G. No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- H. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

Signatures begin on the following page

In Witness Whereof the parties execute this Agreement.

ATTEST:

THE COUNTY OF EL PASO

County Clerk Delia Briones

County Judge Anthony Cobos

BOSCH BRAKE COMPONENTS LLC

By _____
Name: _____
Title: _____

Ex

Exhibit A

Description of PERSONALTY to be provided by APPLICANT.

Exhibit B

During the initial Term of this agreement, all 70 jobs will be full-time, and will be created within calendar year 2010.

In 2010, each job recipient will be paid \$8.65 per hour, exclusive of overtime pay and benefits.

The following benefits will be made available to each full-time employee:

- Medical, dental and vision coverage for which the company will pay 85% of the premium cost
- Retirement plan

Schedule for Potential Additional Abatement for Secondary Term (Years 4 through 6)

If the company creates at least 100 new jobs (the original 70 jobs plus at least 30 additional jobs) anytime during the first three years of operation, the 381 agreement will extend an additional three years.

- If 100-111 total full-time jobs are created at the Socorro location, the 381 rebate for years 4 thru 6 will be equivalent to a 40% ad valorem tax abatement.
- If 112-124 total full-time jobs are created at the Socorro location, the 381 rebate for years 4 thru 6 will be equivalent to a 45% ad valorem tax abatement.
- If at least 125 total full-time jobs are created at the Socorro location, the 381 rebate for years 4 thru 6 will be equivalent to a 50% ad valorem tax abatement.

STATE OF TEXAS)
) **CHAPTER 381 ECONOMIC DEVELOPMENT**
COUNTY OF EL PASO) **AGREEMENT**

This **ECONOMIC DEVELOPMENT AGREEMENT** is entered into by and between the **COUNTY OF EL PASO, TEXAS**, (hereinafter referred to as the "COUNTY"), and **BOSCH BRAKE COMPONENTS LLC** (hereinafter referred to as the "APPLICANT"), for purposes and considerations stated below. The effective date of this agreement is October 1, August 9, 2010 ("Effective Date").

Comment [RC1]: Effective date needs to be determined.

WHEREAS, APPLICANT is the sub-lessor of an existing facility located at 11751 Alameda, Socorro, Texas, 79927, in the City of Socorro, Texas and APPLICANT agrees to invest in PERSONALTY at such address, which is located within the City of Socorro, El Paso County, Texas;

WHEREAS, the personal property tax abatement contemplated in this Economic Development Agreement will maintain and enhance the commercial-industrial economic and employment base of the Socorro area and will stimulate business and commercial activity thereby benefiting the COUNTY in accordance with the El Paso County Chapter 381 Economic Development Program - Guidelines & Criteria;

WHEREAS, APPLICANT acknowledges and agrees to expend a minimum of Two Million, Five-hundred Thousand Dollars (\$2,500,000.00) in new business personal property and including taxable inventory in ~~constructing~~ opening and operating a Distribution Facility at the address listed above;

WHEREAS, this Tax Abatement Agreement was approved by the COUNTY at a regularly scheduled meeting as provided by law.

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. FINDINGS INCORPORATED.

All the statements in the preamble above are hereby found to be true and correct and are hereby approved and incorporated into the body of this Agreement as if copied in their entirety.

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SECTION 2. DEFINITIONS.

The following words shall have the following meanings when used in this Agreement.

- A. **AGREEMENT** ~~greement~~. The word "Agreement" means this Chapter 381 Economic Development Agreement, together with all exhibits and schedules attached to this Agreement from time to time, if any.
- B. **APPLICANT**. The word "APPLICANT" means BOSCH BRAKE COMPONENTS, LLC.
- C. **COUNTY**. The word "COUNTY" means the County of El Paso, Texas.
- D. **FULL-TIME** ~~Time~~ **EMPLOYMENT** ~~employment~~. The words "Full-Time Employment" mean a job requiring a minimum of ONE THOUSAND NINE HUNDRED TWENTY (1,920) hours of work averaged over a twelve (12) month period, including allowance for vacation and sick leave, with full company benefits, including company paid health insurance, and employed exclusively and on site at the facility in the City of Socorro, Texas.
- E. **PERSONALTY**. The word "PERSONALTY" means movable, tangible assets, ~~and~~ personal property, ~~and taxable inventory~~ added to the facility, which do not include money or investments and which were not recorded on the property tax rolls prior to the Effective Date of this Agreement.
- F. **FACILITY**. The word "FACILITY" means building located at 11751 Alameda, Socorro, Texas, 79927.
- G. **INITIAL** ~~initial~~ **TERM** ~~term~~. The phrase "Initial Term", when used in reference to the term of this Agreement, shall ~~commence 1/2/2010~~ ~~mean for~~ a period not ~~to~~ exceed three (3) ~~taxable~~ years from the Effective Date of this Agreement,
- H. **SECONDARY** ~~econdary~~ **TERM** ~~term~~. The phrase "Secondary Term", when used in reference to the term of this Agreement, shall mean a period not exceed three (3) ~~taxable~~ years from the end of the Initial Term of this Agreement.

SECTION 3. PROPERTY SUBJECT TO TAX ABATEMENT.

The APPLICANT has a fee simple interest in the PERSONALTY, which is more fully described in **EXHIBIT A**. The PERSONALTY is located within El Paso County, which is designated as a distressed county by the Governor's Texas Economic Development Bank. The APPLICANT shall be responsible for the operation of a Distribution Facility at the FACILITY. The PERSONALTY added to the FACILITY shall be subject to a tax abatement.

SECTION 4. TAX ABATEMENT.

Subject to the terms and conditions of this Agreement, the APPLICANT's fulfillment of any and all requirements of the Central Appraisal District and subject to the rights and holders of any outstanding bonds of the COUNTY, a portion of ad valorem taxes from the PERSONALTY of the APPLICANT otherwise owed to the COUNTY shall be abated as follows:

A. Initial Term The tax abatement period in which the APPLICANT is eligible for PERSONALTY tax abatement shall be three (3) consecutive tax years, with the first year of tax abatement being the first tax year that begins after ~~:- (i) the issuance of the Certificate of APPLICANT Occupancy for of the FACILITY:-, and, (ii) the APPLICANT having met all Full -Time Employment job requirements noted for Year 1 in EXHIBIT B, which is attached hereto and incorporated herein for all purposes.~~ Failure of the APPLICANT to ~~receive its Certificate of Occupancy occupy the FACILITY and meet its Year 1 Full Time Employment job requirements~~ within two (2) years of the Effective Date of this Agreement ~~shall may~~ result in the immediate termination of this Agreement.

B. Tax Abatement Amount for the Initial Term. The ~~maximum~~ tax abatement rate for each year ~~during the Initial Term~~ shall be ~~FIFTY PERCENT~~ fifty percent (50%) and will apply to the portion of the value of PERSONALTY that is subject to tax abatement, as set forth in Section 3 and such qualifications as noted elsewhere in this Agreement. The tax abatement rate for each year during the Initial Term shall increase to sixty percent (60%) if a majority of the Full- Time employees are residents of the COUTY. Eligibility for ~~the full, 50% or 60% tax~~ abatement shall be contingent on meeting end of year (December 31st) total Full- Time Employment job requirements as stated in **EXHIBIT B**. In the event APPLICANT's actual job creation during the tax abatement period shall fall below ~~the~~ requirements noted within **EXHIBIT B**, but ~~does~~ not fall below seventy-five percent (75%) of such job creation requirements, APPLICANT shall qualify for a pro rata share of the ~~full, 50% or 60% tax~~ abatement, whichever is applicable that tax year.

Said tax abatement shall be based upon the increased value of the PERSONALTY over the value in the base year, ~~The base year -which~~ is hereby established as ~~2009/10 (PERSONALTY assessed on January 1, 2010), the year in which this Agreement is executed in accordance with the terms of this Agreement and all applicable federal, state, and local laws and regulations.~~

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Comment [RC2]: This language seems irrelevant and should be removed.

C. Secondary Term. The tax abatement period in which the APPLICANT may be eligible for PERSONALTY tax abatement shall be three (3) consecutive tax years, with the first year of tax abatement being the first tax year that begins after the Initial Term has concluded, ~~providing that the APPLICANT has met all Full Time Employment job requirements noted for Years 4 through 6 in EXHIBIT B, which is attached hereto and incorporated herein for all purposes. Failure of the APPLICANT to meet its Year 4-6 Full Time Employment job requirements will result in the immediate termination of this Agreement.~~

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D. Tax Abatement Amount for the Secondary Term. The ~~maximum~~ tax abatement rate for each year during the Initial Term shall be in accordance with the Schedule for Potential Abatement for Secondary Term stated in EXHIBIT B FIFTY PERCENT (50%) and will apply to the portion of the value of PERSONALTY that is subject to the tax abatement, as set forth in Section 3 and such qualifications as noted elsewhere in this Agreement. The tax abatement rate for each year during the Secondary Term shall increase by five percent (5%) if a majority of the Full- Time employees are residents of the COUNTY. Eligibility for the full, 50%-tax abatement shall be contingent on meeting end of year (December 31st) total Full- Time Employment job requirements as stated in **EXHIBIT B**. In the event APPLICANT's actual job creation during the tax abatement period shall fall below the requirements noted within **EXHIBIT B**, but ~~does~~ not fall below seventy-five percent (75%) of such job creation requirements, APPLICANT shall qualify for a pro rata share of the ~~full, 50% abatement tax abatement that is applicable that tax year.~~ Said tax abatement shall be based upon the increased value of the PERSONALTY over the value in the base year. The base year which is hereby established as ~~2009~~10 (PERSONALTY assessed on January 1, 2010), ~~the year in which this Agreement is executed in accordance with the terms of this Agreement and all applicable federal, state, and local laws and regulations.~~

Comment [RC3]: The language seems irrelevant and should be removed.

E. Subsequent Failure to Meet Tax Abatement Requirements. Failure of the APPLICANT to meet the requirements necessary for a tax abatement in any subsequent year after the tax abatement period has begun shall not extend the tax abatement period. Rather, the APPLICANT ~~shall may~~ forfeit its eligibility for tax abatement in any year in which it fails to meet any and all tax abatement requirements. Although such a failure does not preclude the APPLICANT from meeting subsequent Full- Time Employment requirements and receiving tax abatements for the same, APPLICANT must meet the requirements for those subsequent years and may not rely upon the requirements established for the year in which it failed to meet its requirements.

SECTION 5. USE OF THE REAL PROPERTY.

As consideration for the Agreement of COUNTY contained herein, APPLICANT agrees that it will diligently and faithfully in a good and workmanlike manner pursue the commencement of operations of a Distribution Facility within the FACILITY consistent with the requirements set forth herein. APPLICANT agrees that all construction, repairs and improvements to the FACILITY will be in accordance with all applicable federal, state, and local laws and regulations. The FACILITY shall be limited in its use to those uses consistent with the development and operation of a Distribution Facility consistent with the COUNTY's development goals, which include the stimulation of business and commercial activity in the county.

SECTION 6. REQUIREMENTS OF THE APPLICANT.

A. APPLICANT agrees that it shall create, staff, and maintain Full-Time Employment positions for the FACILITY as required by **EXHIBIT B**. APPLICANT further agrees

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that it shall maintain these positions as required by **EXHIBIT B** through the full term of the tax abatement period. APPLICANT shall ~~report provide~~ to the COUNTY an annual report listing the Full-Time employment, gross wages, hours worked, job title, on a quarterly basis, its employment level, distributed by wage brackets, and any other pertinent information that would affect the ability of the operation of the ~~REAL PROPERTY FACILITY~~. Such annual reports shall be submitted to the El Paso Regional Economic Development Corporation and to the COUNTY, ~~no later than thirty (30) days following the end of each calendar quarter by March 31st~~.

- B. In the event the tax abatement period commences but APPLICANT subsequently discontinues or alters its operations during the Initial Term and the minimum number of Full-Time Employment positions is not maintained for the Initial Term in accordance with Section 4B and **EXHIBIT B** for a period in excess of one (1) year, this Agreement may be terminated by the COUNTY and all taxes previously abated pursuant to this Agreement shall be recaptured and paid within sixty (60) days from the date of termination or the COUNTY abated tax repayment invoice issuance date; whichever date is later. There shall be created hereby a superior lien on all ~~PERSONALTY~~ Personality described herein to secure recapture of all taxes previously abated ("Abated Taxes"). APPLICANT shall be responsible for all of County's litigation costs and Attorney's fees to recapture the previously ~~A~~abated ~~T~~axes.

Comment [d4]: The Bosch group of companies is very large and annual wage information is not readily available until after January 31st (e.g. W-2's are not required to be mailed to an employee until January 31st. March 31st date consistent with Section 9 – Annual Certification due date of March 31st.

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SECTION 7. DEFAULT, CURE AND DELINQUENT TAXES.

A. Event of Default.

APPLICANT shall be in default of this Agreement, in the event that APPLICANT either:

- (i) Fails to commence operations within the FACILITY in accordance with this Agreement; or
- (ii) Fails to create, staff, and maintain Full-Time Employment positions in the FACILITY in accordance with this Agreement; or
- (iii) Breaches any of the terms or conditions of this Agreement.

B. Ability to Cure.

In the event that APPLICANT defaults pursuant to subsections (i), (ii), or (iii) of Section 7A above, the COUNTY shall give APPLICANT written notice of such default. If APPLICANT has not cured any such default within sixty (60) days, the COUNTY may terminate this Agreement, and the taxes abated by virtue of this Agreement shall be recaptured and paid within sixty (60) days from the date of such termination or the COUNTY abated tax repayment invoice issuance date; whichever date is later. ~~If such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, and APPLICANT fails to commence to cure within such sixty (60) day period or fails to continuously thereafter diligently prosecute the cure of such failure, the COUNTY may terminate this Agreement, and the taxes abated by virtue of this Agreement shall be recaptured and paid within sixty (60) days from the date of termination.~~

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C. Delinquent Taxes. Should APPLICANT allow its ~~real or~~ personal property taxes owed the COUNTY to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of any such taxes, this Agreement ~~shall~~ may terminate unless APPLICANT makes payment including any interest and penalty within sixty (60) days. ~~and so shall the tax abatement of the taxes for the tax year of the delinquency. Further, the total taxes assessed without tax abatement for that tax year shall be paid within sixty (60) days from the date of the termination.~~

SECTION 8. RIGHT OF ACCESS FOR INSPECTION.

APPLICANT further agrees that the COUNTY, its agents and employees, shall have reasonable rights to access the FACILITY ~~and PERSONALTY~~ to inspect the PERSONALTY construction and improvements and other items subject to this Agreement in order to ensure that the ~~construction and improvements are~~ PERSONALTY is in accordance with this Agreement and all applicable federal, state, and local laws and regulations, After APPLICANT begins operating the FACILITY completion of the construction and improvements, the COUNTY shall have the continuing right of inspection the PERSONALTY to ensure that such are thereafter maintained and operated in accordance with this Agreement. All inspections will be made only after giving at least twenty-four (24) hours prior notice and will only be conducted in such manner as to not unreasonably interfere with the ~~construction and or~~ operations of the APPLICANT. All inspections will be made with one (1) or more representatives of the APPLICANT, and in accordance with its safety standards, if any,

SECTION 9. ANNUAL CERTIFICATION.

On or before March 31 of each year, APPLICANT shall provide to COUNTY's agent (EI Paso Regional Economic Development Corporation) written certification that APPLICANT is in compliance with each applicable term and condition of this Agreement. Such certification shall be in a form reasonably satisfactory to the COUNTY and shall include, at a minimum, verified information supporting APPLICANT's conclusions that it met (or expects to meet) each condition and requirement ~~to of the~~ abatement set forth in this Agreement. Any failure of the COUNTY to request or demand such certification shall not constitute a waiver of such certification or any future certification, Further, it will be the responsibility of APPLICANT to provide the reports as required herein, The COUNTY is not obligated to request the annual certifications, and will not certify APPLICANT's eligibility to receive any tax abatement without the reports,

Failure to provide these required reports in a timely manner ~~shall~~ may constitute grounds for termination of this Agreement.

SECTION 10. UNDOCUMENTED WORKERS.

During the term of this Agreement, APPLICANT agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264,001, If convicted of a violation under 8 U.S.C, Section 1324a(f), APPLICANT shall repay the amount of the Abated Taxes received by APPLICANT from the COUNTY as of the date of such violation not later

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than one hundred twenty (120) days after the date APPLICANT is notified by COUNTY or the COUNTY abated tax repayment invoice issuance date; whichever date is later. of a violation of this section, plus interest from the date the Grant payment(s) was paid to APPLICANT, at the rate of seven percent (7%) per annum. The interest will accrue from the date the Grant payment(s) were paid to APPLICANT until the date reimbursement payments are repaid to COUNTY, COUNTY may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section, Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person with whom APPLICANT contracts.

SECTION 11. ~~DELETED INTENTIONALLY CANCELLATION, TERMINATION OR MODIFICATION.~~

~~The COUNTY and APPLICANT agree that the COUNTY may cancel, terminate or modify this Agreement if APPLICANT fails to comply with this Agreement.~~

Comment [d5]: Termination for breach or failure to meet the criteria for tax abatement is all covered in Section 7. This section is not needed.

SECTION 12. AUTHORIZATION TO SIGN THIS AGREEMENT.

The COUNTY's execution of this Agreement was authorized by Order of the Commissioners Court at a regularly scheduled meeting authorizing the County Judge to execute the Agreement on behalf of the COUNTY. Each person signing this Agreement on behalf of the APPLICANT represents and warrants that he or she has the authority to legally bind the APPLICANT to the provisions hereof and that the representations made to the COUNTY as inducement to enter into this Agreement are still true and correct.

SECTION 13. NOTICE.

All notices required by this Agreement shall be in writing and shall be delivered by personal delivery or certified mail, return receipt requested, or overnight delivery to the addresses below:

Notice to APPLICANT:

Mr. Frank Schlehuber
Vice President
Global Business Unit Leader
Bosch Brake Components LLC
2800 South 25th Avenue
Broadview, IL 60155

Copy to APPLICANT:

Mr. Jorge Diaz-Dulanto
Director Manufacturing &
Operations - Friction
Bosch Brake Components LLC

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Notice to COUNTY:

County Auditor
County of El Paso
800 E. Overland #406
El Paso, Texas 79901

Copy to COUNTY:

County Judge
County of El Paso
500 E. San Antonio
El Paso, Texas 79901

SECTION 14. MISCELLANEOUS PROVISIONS.

- A. If a court of competent jurisdiction finds any provisions of this Agreement to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances. It is the intention and agreement of the parties to this Agreement that each such illegal, invalid or unenforceable provision shall be amended by the parties hereto to the extent necessary to make it legal, valid and enforceable while achieving the same objective of such provision, or, if that is not possible, by substituting therefore another provision that is legal, valid and enforceable and achieves the same objectives (or, if such provision cannot be amended or a provision substituted therefore in a manner that is legal, valid and enforceable and achieves the same objectives, then such provision shall be amended or a new provision substituted therefore that achieves as closely as possible the same objectives or economic position as the illegal, invalid or unenforceable provision, irrespective of whether such amendment or substituted provision is materially different than the illegal, invalid or unenforceable provision).
- B. Notwithstanding any provision in this Agreement to the contrary, APPLICANT's and COUNTY's only liability for breaching any provision of this Agreement shall be the remedies expressly set forth in this Agreement.
- C. The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. However, APPLICANT cannot assign this Agreement unless written permission is first granted by the COUNTY. Any attempt to transfer without the prior written consent of the COUNTY shall be void and shall constitute an event of default that will result in the termination of this Agreement and recapture of the taxes abated prior to the attempted transfer.
- D. It is understood and agreed between the parties that the APPLICANT, in performing its obligations hereunder, is acting independently, and the COUNTY assumes no responsibility or liability in connection therewith to third parties. THE APPLICANT FURTHER AGREES TO INDEMNIFY AND HOLD HARMLESS THE COUNTY FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS,

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INCLUDING ATTORNEYS' FEES, OF ANY NATURE WHATSOEVER ARISING OUT OF APPLICANT'S OBLIGATIONS HEREUNDER.

- E. This Agreement shall be construed under laws of the State of Texas. Venue for any action arising under state law under this Agreement shall be the State District Court of El Paso County, Texas.
- F. A certified copy of this Agreement in recordable form shall be recorded in the Deed Records of El Paso County by the APPLICANT.
- G. No party hereto waives any statutory or common law right to sovereign immunity by virtue of its execution hereof.
- H. It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

Signatures begin on the following page

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In Witness Whereof the parties execute this Agreement.

ATTEST:

THE COUNTY OF EL PASO

County Clerk Delia Briones

County Judge Anthony Cobos

BOSCH BRAKE COMPONENTS LLC

By: _____

Name: _____

Title: _____

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Exhibit A

PERSONALTY

Estimated total cost - \$2,500,000

Movable, tangible assets, personal property, and taxable inventory

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Exhibit B

Full- Time Employment Job Requirements.

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During the Initial Term of this agreement the APPLICANT shall create, all 70-63 jobs will be Full-Time jobs by December 31, and will be created within calendar year 2010 at the FACILITY.

During the Initial Term and if applicable during the Secondary Term, APPLICANT shall pay each full-time employee In 2010, each job recipient will be paid at least \$8.65 per hour, exclusive of overtime pay and benefits.

The following benefits will be made available to each Full-Time employee:

- Medical insurance, dental and vision coverage for which the company Applicant will pay 85% of the premium cost
- Dental and vision insurance
- Retirement plan

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Schedule for Potential Additional Abatement for Secondary Term (Years 4 through 6)

If the company APPLICANT creates at least 100 new Full- Time jobs (the original 70 new Full-Time jobs plus at least 30 additional new Full-Time jobs) anytime during the first three (3) years of operation Initial Term, the 381-a Agreement will extend an additional three (3) years and APPLICANT shall receive the following tax abatement:-

- For years 4 through 6, If 100-111 total Full-Time jobs are created at the FACILITY during the Initial Term Socorro location, then the tax abatement rate shall 381-rebate for years 4 thru 6 will be equivalent to a 40% ad valorem tax abatement.
- For years 4 through 6, If 112-124 total Full-Time jobs are created at the FACILITY during the Initial Term Socorro location, then the tax abatement rate shall 381-rebate for years 4 thru 6 will be equivalent to a 45% ad valorem tax abatement.
- For years 4 through 6, If at least 125 total Full-Time jobs are created at the FACILITY during the Initial Term, then Socorro location, the 381-rebate for years 4 thru 6 will be equivalent tax abatement rate shall be to a 50% ad valorem tax abatement.

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