

**NUTRABOLT
CHAPTER 381 ECONOMIC
DEVELOPMENT INCENTIVE AGREEMENT**

This Chapter 381 Economic Development Incentive Agreement (this "Agreement") is entered into by and between BRAZOS COUNTY, TEXAS, a political subdivision of the State of (hereinafter referred to as "County"), and NUTRABOLT, INC., a Delaware corporation (hereinafter referred to as "Company"). The County and Company may also be referred to collectively as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, the County is authorized under Chapter 381 of the Texas Local Government Code to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity within the County, and

WHEREAS, County actively seeks economic development prospects in Brazos County through participation in and establishment of an economic development program; and

WHEREAS, County desires to stimulate business, increase the County's tax base and create new jobs for its citizens; and

WHEREAS, County desires to stimulate business and commercial activity in the Research Valley Biocorridor (hereinafter referred to as the "Biocorridor"); and

WHEREAS, Company is developing property located within the Biocorridor as commercial development for use as a research and manufacturing site; and

WHEREAS, by letter of April 20, 2016, the chairman of The Research Valley Partnership, Inc. ("RVP") informed Company he will recommend to the Board of Directors of the RVP, which includes representatives of County, the approval the incentives proposal being implemented by this Agreement; and

WHEREAS, in 2016, the Value of Improvements is \$8,728,340, the Value of Personal Property is \$1,819,870, and Owner continues to significantly exceed employee and wage benchmarks; and

WHEREAS, in consideration of the execution of the Improvements in accordance with the performance measures set forth herein, County agrees to use available revenues calculated based on the increase in ad valorem taxes generated from the Project to grant to Company cash incentives (the "Chapter 381 Payments") as set forth herein; and

WHEREAS, to ensure that the benefits County provides under this Agreement are utilized in a manner consistent with TEXAS LOCAL GOVERNMENT CODE, Chapter 381 and other law, Company agrees to comply with certain conditions for receiving those benefits, including conditions relating to property development.

NOW, THEREFORE, for the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the parties are entering into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE I DEFINITIONS

Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Affiliate" means any person or entity which directly or indirectly controls, is controlled by or is under common control with Company, during the term of such control. A person or entity will be deemed to be "controlled" by any other person or entity if such other person or entity (a) possesses, directly or indirectly, power to direct or cause the direction of the management of such person or entity whether by contract or otherwise; (b) has direct or indirect ownership of at least fifty percent (50%) of the voting power of all outstanding shares entitled to vote at a general election of directors of the person or entity; or (c) has direct or indirect ownership of at least fifty percent (50%) of the equity interests in the entity.

"Base Year Taxable Value" shall mean the taxable value for the Property for the year in which this Agreement is executed.

"Cash Incentive" shall mean that amount of money to be reimbursed annually by County to Company as a grant herein calculated upon a percentage of ad valorem taxes assessed for a specified year for the Property, Improvements and Tangible Personal Property in accordance with the terms of this Agreement.

"Completion of Construction" shall mean: (i) substantial completion of the Improvements; and (ii) a final certificate of occupancy has been issued for the all of the Improvements.

"Company" shall mean Nutrabolt, Inc., a Delaware Corporation qualified to do business in the state of Texas.

"Effective Date" shall mean the date upon which this Agreement is fully executed by all Parties, unless the context indicates otherwise.

"FTE" shall mean any person who is an employee of Company or an Affiliate (excluding temporary or seasonal employees), who is on the payroll in a budgeted position and has an officially scheduled work week of thirty-five (35) hours or more, works at the Property for Company, and who according to Company or Affiliate Company policy is entitled to full benefits as a full-time employee.

"First year of Cash Incentive(s)" shall mean the first calendar year immediately following the date of Completion of Construction.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

"Gross Payroll" shall mean the sum of the payroll numbers that Company or an Affiliate reports to the Texas Workforce Commission quarterly for FTEs for the four preceding consecutive calendar quarters ending on or prior to a date of measurement under this Agreement.

"Improvements" shall mean the approximately 85,000 square foot facility to be constructed on the Property and other ancillary facilities such as reasonably required parking and landscaping all together which shall include a new real and personal property investment of \$8,700,000 at time of completion and have a minimum Brazos County Central Appraisal District Property Valuation of \$9,000,000 by January 1, 2017 and as depicted in Exhibit "A" attached hereto and made a part hereof.

"Incremental Taxable Value" means the Taxable Value for the Property as of January 1st of a given year less the Base Year Taxable Value.

"Maintenance and Operations Rate" means the component of the adopted tax rate of a taxing unit that will impose the amount of taxes needed to fund maintenance and operation expenditures of the unit for the following year.

"Property" means the real property comprised of approximately 8.6 acres more or less and as depicted in Exhibit "A", not including any improvements constructed on such real property.

"Premises" shall mean collectively, the Property and Improvements following construction thereof, but excluding the Tangible Personal Property.

"Tangible Personal Property" shall mean tangible personal property, equipment and fixtures, excluding inventory and supplies, owned or leased by Company that is added to the Improvements subsequent to the execution of this Agreement.

"Taxable Value" means the appraised value as certified by the Brazos Central Appraisal District as of January 1st of a given year.

Article II GENERAL PROVISIONS

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

Company covenants and agrees that it will construct the Improvements, and operate and maintain its business on the Premises as set forth in this Agreement, and for the time period and manner as set forth herein.

Article III COMPANY OBLIGATIONS

3.1 Construction of Improvements. Subject to events of Force Majeure, construction of the Improvements on the Property must commence no later than January 1, 2015 (the "Start Date"), and Company shall notify the County of such Start Date. There shall be Completion of Construction and Company shall be fully operational by no later than January 1, 2016.

3.2 Occupancy. The Company must continuously own, occupy and use the Improvements as an administrative and network operations center including customer support (i.e. billing and technical), engineering and warehouse functions relating to Company's global technology communications business commencing upon Completion of Construction and for each year for which there is a Cash Incentive paid.

3.3 Jobs Created. By the end of the second year following Completion of Construction of the Improvements (January 1, 2016), Company agrees that it will have created a minimum of Seventy-five (75) FTE's with an annual pay roll of \$3,000,000 according to the Texas Workforce Commission records for FTE's of Company at the Premises. This payroll must be achieved and maintained as recited herein.

3.4 Company reimbursement and waiver of Cash Incentives.

a. If Company does not have timely Completion of Construction and/or fails to occupy the Premises in accordance with Sections 3.1 and 3.2 of this Agreement, Company shall be in default.

b. Company herein waives payment of any Cash Incentives for any year in which it fails to continuously have, operate and maintain the Improvements in accordance with this Agreement, including maintaining the minimum required appraised value, FTEs, and operating in the manner represented herein and to reimburse County for any Cash Incentives paid in contravention of the terms of this Agreement.

3.5 Reporting Requirement.

(1) While this Agreement is in effect, annually within sixty (60) days following the anniversary date of the Effective Date of this Agreement, the Company will certify to the County that it has complied with the terms of this Agreement and provide sufficient written information, records, and documents, to support its certification of compliance. Additionally, Company agrees to report whether the required jobs to be created and maintained in accordance with this Article have been met by the end of the second year following Completion of Construction of the Improvements and every year thereafter that this Agreement is in effect, as certified by a Certified Public Accountant at Company's expense and signed by the chief executive officer of Company.

(2) Documentation, including, but not limited to, Texas Workforce Commission quarterly reports, demonstrating that Company met the employment and job creation targets for the preceding year when required must be provided to County within 10 days of Company's receipt.

(3) Upon County's written request, the Company will promptly provide to the County any additional information reasonably necessary for the County to determine if the Company has complied with this Agreement.

(4) The Company will allow the County access to the Property during regular business hours to inspect the Property and Improvements to verify that Company is complying with the terms of this Agreement.

3.6 Compliance with applicable law. The Property and the Improvements constructed thereon at all times shall be constructed, operated and used in the manner (i) that is consistent with the City of College Station's Code of Ordinances, as amended, including its Uniform Development Code; (ii) that is in accordance with all applicable state and local laws, codes, and regulations; and (iii) that, during the period Cash Incentives are provided hereunder, is consistent with the general purposes of encouraging development or redevelopment within the Biocorridor.

3.7 Ownership. Company agrees to continuously own the Premises for a period of at least seven (7) years from the Effective Date; provided, (i) Company, without County consent may engage in a sale-leaseback or similar transfer of ownership of the Premises as long as Company continues to occupy and operate the Premises, (ii) Company without COUNTY consent may transfer ownership of the Premises to an Affiliate; and (iii) Company may transfer ownership of the Premises to a person that County approves as an assignee of this Agreement pursuant to Section 7.07 Assignment of this Agreement.

3.8 Disclosure Requirements. When applicable, Company agrees to comply with all disclosure requirements, including those under Section 2252.908 Texas Government Code when entering into a contract that requires approval of the governing body of the County unless falling within certain exceptions, and Chapter 176 Texas Local Government Code for vendor disclosure requirements for certain business relationships with local government officers or their family members.

Article IV COUNTY's OBLIGATIONS

4.01 **Condition Precedent.** The County's obligation to make the Chapter 381 Payment to Company as set forth herein is contingent and conditioned upon: (i) Company's Completion of Construction of the Improvements, and (ii) minimum Incremental Taxable Value of the Property in the then preceding calendar year of at least EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00); and (iii) Company is in compliance with all of the terms and conditions set forth in this Agreement.

4.02 Subject to the Company's compliance with the conditions precedent set forth in Section 4.01 above, County agrees to pay annually to Company an amount equal to the stated percentage as found in the table contained in 4.07, below, of the Maintenance and Operations Rate portion of the Ad Valorem Tax Revenues collected by the County on the Incremental Taxable Value of the Property for the preceding calendar year by the Company and/or any End user in accordance with the terms of this Agreement, provided that the total amount of Chapter 381 Payments paid to Company under this Agreement shall not exceed ONE HUNDRED FIFTY ONE THOUSAND DOLLARS (\$151,000.00)

4.03 In no event will the Chapter 381 Payment paid in connection with a tax year exceed the amount of ad valorem taxes actually collected by the County on the Property by July 1 for such tax year, and any rollback taxes previously collected by the County on the Property.

4.04 The County's obligation to make the Chapter 381 Payment(s) hereunder is subject to annual appropriation by the Brazos County Commissioners' Court, which the County agrees to use good faith efforts to appropriate such funds each year during the Term of this Agreement. Under no circumstances shall County's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. None of the County's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution or other party.

4.05 The total amount of Chapter 381 Payments paid by the County under this Agreement shall in no event exceed ONE HUNDRED FIFTY ONE THOUSAND DOLLARS (\$151,000.00), at which time County's obligation to make the Chapter 381 Payments to Company ends.

4.06 County will remit the first Chapter 381 Payment to Company no later than sixty (60) days after receipt by the County Auditor of a proper Payment Request from the Company in accordance with the terms of this Agreement. Beginning with the First Year of Cash Incentives, Company may only submit a Payment Request during the

period commencing July 1 and ending on December 31 of any given year. The failure by Company to timely submit to the County Auditor a Payment Request will result in the forfeiture of the Chapter 381 Payment attributable to that tax year.

4.07 During the term of this Agreement, Company shall be subject to all taxation, including but not limited to, sales tax and ad valorem taxation; provided, this Agreement does not prohibit Company from claiming any exemptions from tax provided by applicable law.

Subject to the terms and conditions of this Agreement, and provided that the combined Taxable Value for the Improvements, Property and Tangible Personal Property is at least EIGHT MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$8,700,000.00) additional value above Base Year Taxable Value beginning January 1st of the First Year of Cash Incentives and as of January 1st of each year thereafter this Agreement is in effect, County hereby grants an annual Cash Incentive to Company in the following amounts expressed as a percentage of ad valorem taxes assessed, paid and not contested:

<u>Tax Year</u>	<u>Percentage Abatement</u>
2016	100 %
2017	90 %
2018	80 %
2019	40 %
2020	30 %
2021	30 %
2022	20 %
2023	20 %

b. The total amount of Cash Incentive will in no event exceed a total of \$151,000.00 at which time County's obligation to grant Cash Incentives to Company ends.

4.08 Right to offset. County may, at its option, offset any amounts due and payable under this Agreement, including Cash Incentive payments, against any debt (including taxes) lawfully due to County from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise.

Article V. TERM

5.01 This Agreement shall terminate upon any one or more of the following:

- (a) By mutual agreement of the Parties;
- (b) December 31, 2024;
- (c) Company has been paid the Maximum Payment Amount.
- (d) By County, if the Company suffers an event of bankruptcy or insolvency;
- (e) By County or Company in the event the other Party breaches any of the terms or conditions of the Agreement, and any such breach is not cured within thirty (30) days after written notice;
- (f) If the Company sells or otherwise conveys the Property or any portion of the Property to a third party, other than an Affiliate as defined herein, prior to the Property obtaining or maintaining a minimum Incremental Taxable Value of \$8,700,000, the County's obligations under this Agreement to make any Chapter 381 Payments to Company shall terminate as of the conveyance date.
- (g) This paragraph is required by Chapter 2264, Tex. Gov. Code and governs over any conflicting provisions of this Agreement. The Company will not knowingly employ undocumented workers as that term is defined in Section 2264.001, Tex. Gov. Code. If the Company is convicted of a violation under 8 U.S.C. Section 1324a (f), the conviction is a breach of this Agreement and County will send Company written notice that the Company has violated this paragraph and that the Agreement terminates thirty (30) days from the date of the notice.

Article VI DEFAULT

6.1 If Company defaults in any term or condition of this Agreement, then County shall not be obligated to provide Cash Incentives for that year in which the default occurred.

6.2 County shall give to Company notice of any default. To the extent a default may be cured, Company shall have the right, but not the obligation, to cure the default within thirty (30) days of receiving written notice from County. If the default cannot reasonably be cured within a thirty (30) day period, and Company has diligently pursued such remedies as shall be reasonably necessary to cure such default, then County may extend for a reasonable additional length of time the period in which the default must be cured. If Company fails to cure the default within the time provided as specified above or, as such time period may be extended, then at its sole option shall have the right to terminate, by written notice, this Agreement.

6.3 It is further understood and agreed by the parties that if Company is convicted of a violation under 8 U.S.C. Section 1324a(f), Company will reimburse County the full amount paid to the Company, with interest at the rate equal to the 90 day Treasury Bill plus one half% (.5%) per annum, within 120 days after the County notifies the Company of the violation.

6.4 The Company's obligation to reimburse the County payments made to Company if the Company breaches this Agreement survives termination of this Agreement.

6.5 It is understood and agreed by the parties that, in the event of a default by the County on any of its obligations under this Agreement, the Company's sole and exclusive remedy shall be limited to either i) the termination of this Agreement, or ii) a suit for specific performance.

Article VII MISCELLANEOUS

7.01 Notices. Notices under this Agreement are sufficient if given by nationally recognized overnight courier service, certified mail (return receipt requested), facsimile with electronic confirmation, or personal delivery to the other Party at the address below. If no address is listed for a Party, notice to such Party will be effective if given to the last known address. Notice is effective: (a) when delivered personally, (b) three (3) business days after sending by certified mail, (c) on the business day after sending by a nationally recognized courier service, or (d) on the business day after sending by facsimile with electronic confirmation to the sender. Each Party may update its contact information by notice to the other. Routine business and technical correspondence must be in English, and may be in electronic form. The contact information for each Party is as follows:

County:
Brazos County
Attn: County Judge
200 S. Texas Avenue, Suite 332
Bryan, Texas 77803
Telephone: (979) 209-5100
Facsimile: (979) 209-5003

Company:
Nutrabolt, Inc.
Attn:
6155 El Camino Real
Carlsbad, California 92009
Telephone:
Facsimile:

7.02 Severability. In the event any section, subsection, paragraph, sentence, phrase or word herein is held invalid, illegal or unconstitutional, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the Parties intended at all times to delete said invalid section, subsection, paragraph, sentence, phrase or word.

7.03 Governing Law. This Agreement shall be governed by the laws of the State of Texas without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Brazos County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

7.04 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

7.05 Entire Agreement. This Agreement embodies the complete agreement of the Parties hereto, superseding all oral or written previous and contemporary agreements between the Parties and relating to the matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the Parties to be attached to and made a part of this Agreement.

7.06 Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

7.07 Assignment. This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. This Agreement may not be assigned by Company without the prior written consent of the County which consent shall not be unreasonably withheld, conditioned or delayed.

7.08 Amendment. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by duly authorized representatives of County and Company.

7.09 Venue and Jurisdiction. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America, and this Agreement shall be construed in accordance with Texas law.

7.10 Authority to Contract. Each Party has the full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each Party has been properly authorized and empowered to enter into this Agreement. The persons executing this Agreement hereby represent that they have authorization to sign on behalf of their respective corporations.

7.11 No Debt. Under no circumstances shall the obligations of County hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision; provided, however, County agrees during the term of this Agreement to make a good faith effort to appropriate funds each year to pay amounts under this Agreement for the then ensuing fiscal year.

7.12 Waiver. Failure of any Party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of the Agreement, any part hereof, or the right of the Party thereafter to

enforce each and every provision hereof. No term of this Agreement shall be deemed waived or breach excused unless the waiver shall be in writing and signed by the Party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

7.13 Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

EXECUTED in duplicate originals to be effective as of the Effective Date.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

DRAFT

Nutrabolt, Inc.

By: _____
Name: _____
Title: _____

BRAZOS COUNTY COMMISSIONERS COURT

Duane Peters, County Judge

Lloyd Wassermann
Commissioner, Precinct 1

Sammy Catalena
Commissioner, Precinct 2

Kenny Mallard
Commissioner, Precinct 3

Irma Cauley
Commissioner, Precinct 4

ATTEST:

Karen McQueen, County Clerk

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

