

STATE OF TEXAS §

COUNTY OF BRAZOS §

**EVAPCO, INC.
CHAPTER 381 ECONOMIC DEVELOPMENT AGREEMENT
WITH THE BRAZOS COUNTY, TEXAS**

This Chapter 381 Agreement ("Agreement") is entered into on this the 24 day of August, 2023 by and between **BRAZOS COUNTY, TEXAS**, ("County") a political subdivision organized under the laws of Texas, acting herein by and through its duly elected Commissioners Court, and **EVAPCO, INC.**, ("Company") a corporation created and operating under the laws of the State of Maryland; collectively referred to as "**PARTIES.**"

WHEREAS, the Texas Constitution prohibits any County, or other political subdivision, from lending its credit or granting public money to any individual, association, or corporation whatsoever without a valid public purpose for doing so; and

WHEREAS, the Texas Constitution specifically states that economic development programs created pursuant to Chapter 381 of the Texas Local Government Code serve the public purpose of alleviating poverty, joblessness, economic blight, and provide other intangible benefits incidental to the development of the local economy; and

WHEREAS, Company is a market leader in industrial refrigeration. Company is looking to expand its manufacturing operations in the USA near an existing operations site. The Company anticipates being operational within 1 year to 18 months; and

WHEREAS, Company desires to construct a new facility in Brazos County that will add upwards of Nine Million Dollars (\$9,000,000) in taxable value on the property, including both improvements to the real property as well as taxable personal property, and approximately ninety (90) New Full-time Employment Positions at an average annual salary of at least Sixty-Five Thousand Dollars (\$65,000) for total wages of at least, Five Million Eight Hundred and Fifty Thousand Dollars (\$5,850,000); and

WHEREAS, the County strongly desires this employer to expand its facilities in Brazos County, increase the tax base, and generate the New FTE Positions that would come with Project Thoroughbred, and is therefore willing to provide a Chapter 381 Agreement that will ease the costs associated with the project and offset the purchase price of a portion of the property; and

WHEREAS, the Commissioners Court determines that it is in the best interest of the community to offer the incentives set forth herein in exchange for the economic development benchmarks set forth herein, and that the overall benefits of this project outweigh the costs associated with it; and

NOW, THEREFORE IT IS AGREED BY THE PARTIES AS FOLLOWS

I. GENERAL TERMS

1. Definitions. As used herein, the terms listed below shall be defined as follows:
 - a. Base Year Taxable Value – the taxable value for the property for the year in which this Agreement is executed. The Parties agree that this value is One Hundred and Forty-Seven Thousand Five Hundred and Thirty-Two Dollars (\$147,532).

- b. BCAD – the Brazos Central Appraisal District
 - c. County – Brazos County, Texas, a political subdivision organized under the laws of Texas.
 - d. Company – EVAPCO, Inc. acting by and through its Senior Vice President and Chief Financial Officer, Jeffrey W. Fineli.
 - e. Development Codes – the Building Code, Mechanical Code, Plumbing Code, and National Electric Code, as adopted by the City of Bryan and as may be later amended. The term also applies to the City’s Subdivision Ordinance, Chapter 110 of the Bryan Code of Ordinances.
 - f. Dry-in – the stage of construction of a building where the building’s shell has been completed, which is further defined as the completion of the roof, walls, windows, and doors in a manner sufficient to protect the interior of the structure from exposure to the elements (rain, wind, etc.).
 - g. Effective Date – the date above written, which shall be after all parties have signed, and dated the date the last party signs.
 - h. Facility – a new manufacturing facility containing approximately 50,000 sf. space to be constructed.
 - i. Incremental Taxable Value – means the taxable value for the property as of January 1st of a given year less the Base Taxable Value.
 - j. New Full-time Employment Position or New FTE Position – means an employment position for a thirty-five (35) hour work week at the Facility.
 - k. Property – the real property situated in Brazos County, Texas at Crosswinds Drive, Bryan, Texas and more particularly described in **Exhibit A**.
 - l. Salary – means fixed compensation paid regularly to Full-Time Employees that excludes and is separate and apart from: overtime, bonuses, retirement plans, employer paid benefits or other fringe benefits.
2. *Term.* This term of this Agreement shall be from the Effective Date through December 31, 2031, unless earlier terminated as provided herein.

II. COMPANY’S OBLIGATIONS

- 1. Company agrees to begin construction on a Facility within twelve (12) months of the Effective Date. This shall be evidenced by obtaining permits required by the City of Bryan Development Codes for the construction of the Facility.
- 2. Company agrees to comply with the requirements of the Development Codes throughout the construction of the Facility. This includes but is not limited to, obtaining a re plat of the Property as necessary, as well as all necessary permits, prior to beginning construction, as well as complying with the standards for construction set forth in the Development Codes.
- 3. Company shall complete the Dry-in for the Facility within twenty-four (24) months of the Effective Date. Within thirty (30) months of the Effective Date, Company shall get a certificate of occupancy for the Facility. If the construction of the Facility is done in phases, Company must have completed all phases.

- a. In the event of weather delays that slow completion of the Dry-in, the Company may request an extension of these deadlines. Company shall make the request within a reasonable time, but not more than ninety (90) days, after the weather delay, or any claim for an extension related to same is waived. Company shall make the request in writing and shall provide documentation of the weather event(s) in question, a reasonable explanation for the delay, and the amount of time for the delay/extension.
 - b. If the Commissioners Court approves the request, which approval shall not be unreasonably withheld, the deadlines shall each be extended, as reasonably necessary.
 - c. There is a rebuttable presumption that, after Dry-in has been completed, further weather delays are not reasonable.
4. The Company agrees that by December 31, 2026, the combined taxable appraised value of the improvements on the real property (excluding the \$147,532 base value of the real property) as well as the business personal property shall be \$9,000,000.00 or higher.
5. The Company agrees that by December 31, 2026, it will have ninety (90) New FTE Positions filled with an average salary of at least \$65,000 annually on the payroll with total wages of at least \$5,850,000. Prior to the expiration of the term of this Agreement, Company shall provide the County with documentation verifying the positions filled and the wages paid for same.

III. COUNTY'S OBLIGATIONS

1. Subject to the Company's compliance with the terms and conditions of this Agreement, County agrees to pay to Company annually, not later than October 31st of each year, an amount equal to fifty percent (50%) of Maintenance and Operations Rate portion of the Real Property Taxes collected and attributable to the Incremental Taxable Value of the Property for the preceding tax year. These payments will terminate five (5) years after the initial payment. The initial payment is anticipated to occur in October 2026 for the 2025 assessment and taxes paid unless an extension was granted as outlined in section II 3 of this agreement.
2. In no event will the Chapter 381 Payment paid in connection with a tax year exceed fifty percent (50%) of the Maintenance and Operations portion of ad valorem taxes actually collected by the County from the Property.
3. In no event shall the Chapter 381 Payments exceed five (5) total payments.
4. 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 best efforts to appropriate such funds annually 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.
5. 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.
6. The County's obligation to make the Chapter 381 Payment(s) hereunder is subject to Company's filing of a Payment Request on or before May 1st of each calendar year, requesting payment for the previous year's taxes. The request shall be made on the form attached hereto as Exhibit "C", together with all supporting documentation.

7. The County shall make the payment on or before October 31st of the year of the payment request for taxes actually paid in the previous year.

IV. DEFAULT & TERMINATION

1. Breach by Company. It is a breach of this Agreement if the Company during the term of this agreement:
 - a. fails to comply with the Development Codes, provided that Company has the right to cure such failure within thirty (30) days of receiving notice of same from the County; or if a longer period of time is necessary to cure such breach, Company has a reasonable amount of time agreed to in writing by the County, which shall not be longer than ninety (90) days from notice of such breach;
 - b. allows the Maintenance and Operations portion of ad valorem property taxes (either real property or personal property accounts) on the Property and any other property owned by Company in the County to become delinquent, provided that it is understood that a tax is not delinquent if it is the subject of an on-going appeal under Tax Code Chapter 42);
 - c. fails to reach the \$9,000,000.00 valuation, per BCAD, for the Property and the personal property accounts at that location; or
 - d. fails to maintain ninety (90) full time positions by December 31, 2026 and continually all years thereafter while this agreement is in full force and effect, at the pay rate required by Section II (5) of this Agreement.
2. Default. If a breach is not cured as provided in Section 1(a), or if the breach is described by section 1(b)-(d) and cannot be cured, the County may declare the Company in default. In the event of a default, the County is entitled to terminate the Agreement, and may seek any other remedies available at law or in equity.

V. REPORTING AND AUDITING

1. Compliance Certification. Company shall, before May 1st of each calendar year that the Agreement is in effect, certify in writing to County that it is in compliance with each term of the Agreement, using the Certificate of Compliance form attached hereto as Exhibit "B". The submission of these reports shall be the responsibility of Company and shall be signed by a representative of the Company. Current year paid tax receipts shall be attached to the form as an Exhibit.
2. FTE Compliance. Company shall before May 1st of each calendar year deliver to the COUNTY documentation, including, but not limited to, Texas Workforce Commission quarterly reports; demonstrating that the Company met the employment FTE requirements stated in this agreement for the relevant tax year.
3. Access to Records / Right to Audit. Company shall allow County reasonable access, during normal business hours, to examine its records and books and all other relevant records related to the Company's compliance with the performance requirements of this Agreement.

VI. MISCELLANEOUS

1. Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Company agrees not to employ any person who is not lawfully admitted for permanent

residence to the United States or who is not authorized under law to be employed in the United States ("*Undocumented Worker*"). During the term of this Agreement, Company shall notify County of any complaint brought against Company alleging that Company has employed Undocumented Workers. If Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of five percent (5%) per annum from the date of each payment of an economic development grant, shall be repaid by Company to the County not later than the 120th day after the date the County notifies Company of the violation. Company shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, or franchisee, or by a person with whom Company contracts.

2. Foreign Business Engagements. Company represents and warrants, for purposes of Subchapter F of Chapter 2252 of the Texas Government Code, that at the time of execution and delivery of this Agreement neither the Company, nor any wholly-owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Company, (i) engages in business with Iran, Sudan or any foreign terrorist organization as described in Chapters 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is an Owner listed by the Texas Comptroller under Sections 806.051, 807.051 or 2252.153 of the Texas Government Code. The term "foreign terrorist organization" as used in this clause has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.
- ~~3.~~ HB 1295 Compliance. Section 2252.908 of the Texas Government Code requires that for certain types of contracts, Company must fill out a conflict-of-interest form ("Disclosure of Interested Parties") at the time you submit your signed contract to the County. Company bears the responsibility of determining if this Agreement requires such a form and to comply.
4. Successors and Assigns. 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. Company shall not assign this Agreement without the written approval of the Commissioners Court. An assignment to a subsidiary or affiliate company of Company shall not be prohibited under the section.
5. Severability. If any term of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such term shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining terms of this Agreement shall not be affected thereby, and in lieu of such deleted terms, there shall be added as part of this Agreement a term that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted term.
6. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in Brazos County, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
7. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement and supersedes any prior understandings or written or oral agreements between the parties.
8. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.

9. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
10. No 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 anyway affect the validity of this Agreement, any part hereof, or the right of either 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.
11. Notices. Any notices required to be provided pursuant to this Agreement are deemed provided upon personal delivery or within three (3) days after being sent via U.S. Certified Mail, Return Receipt Requested to the addresses provided herein. County and Company hereby designate the following individuals to receive any notices required to be submitted pursuant to the terms of this Agreement:

COUNTY

Brazos County, Texas
Attn: County Judge
200 S. Texas Ave., Ste. 332
Bryan, Texas 77803

COMPANY

EVAPCO, Inc.
Attn: Senior Vice President & CFO, Jeffrey Finch
5151 Allendale Lane
Taneytown, MD 21787

12. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement
13. Incorporation of Exhibits. The exhibits attached hereto are included as if fully set forth herein for all purposes.
14. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
15. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
16. Gender and Number. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise

Executed to be effective this 24th day of August, 2023.

ATTEST:

BRAZOS COUNTY, TEXAS


Karen McQueen, County Clerk

Duane Peters, County Judge

APPROVED AS TO FORM:

Bruce Erratt, General Counsel

EVAPCO, INC.



Jeffrey Finch, Senior Vice President/CFO

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

9.15 Acres located on Crosswind Drive and being part of the 24.349 Acres out of CAD
#12637.

EXHIBIT "B"

Certificate of Compliance

Reporting Year _____

I, _____, the authorized representative of EVAPCO, Inc., hereby certify that EVAPCO, Inc. has complied fully with the Chapter 381 Economic Development Program Agreement during the reporting year and have met or exceeded the required \$9,000,000 in improvements as determined by the Brazos County Central Appraisal District and have also met or exceeded 90 Full time employees consistently through the subject tax year, with total wages of at least \$5,850,000. Current year paid tax receipts, assessment and Texas Workforce Commission Documents are attached hereto as Exhibit "1".

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Received By:

County Auditor
Brazos County, Texas

Date: _____

381 Economic Development Agreement

Payment #: _____ of 5.

1. Total amount of the Operations and Maintenance portion of the Ad Valorem Tax Revenues collected by the County through May 1st, less the Incremental Taxable Value \$ _____
2. Abatement agreement % per contract: 50%
3. Multiply Line 1 by Line 2. Amount due from Brazos County, Texas. \$ _____

Date: _____