

**CITY COUNCIL  
AGENDA MEMORANDUM**

**City Council Action Date: October 14, 2008**

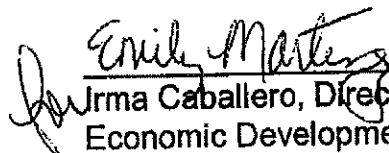
**AGENDA ITEM:**

An Ordinance authorizing the City Manager, or designee, to execute an Industrial district agreement with the Port of Corpus Christi Authority, as the landowner, and Las Brisas Energy, LLC, as lessee and improvements owner; reserving and preserving all rights, powers, and duties of the City Council; and providing for severance.

**ISSUE:** Industrial districts are formed by an agreement between a city government and industrial firms lying outside city limits. The industrial district contractually protects the industrial venture from annexation and subsequent city regulations, and allows the city and industry to negotiate a payment to the municipality in lieu of taxes. The districts were first allowed by the state under the 1963 Municipal Annexation Act, giving cities a way to expand their tax base while still providing important business incentives - lower taxes and protection from city regulation. The industrial district lies within the city's extraterritorial jurisdiction, but remains outside city limits.

**PRIOR COUNCIL ACTION:** Approval of a resolution supporting Las Brisas Energy Center's application of an air permit filed with the Texas Commission on Environmental Quality on September 16, 2008

**CONCLUSION AND RECOMMENDATION:** Recommend approval of an Industrial District Agreement with the Port of Corpus Christi Authority, as the landowner, and Las Brisas Energy, LLC

  
Irma Caballero, Director  
Economic Development

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## BACKGROUND INFORMATION

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Over the years, industrial district agreements in Texas have been limited in use to areas along the Texas Gulf Coast, including Beaumont, Houston, Port Arthur, Orange and Corpus Christi. The length of the agreements was statutorily limited to seven years until 1993, when the state allowed 15 years. But unlike tax abatement agreements which cannot be renewed, industrial district agreements can be renewed as long as it is mutually agreeable between the city and industry.

The City of Corpus Christi first became involved in industrial districts in 1981-1982 when the city council and certain industries, principally along the port, negotiated a master industrial district agreement. At that time there was considerable interest by some local groups in moving forward with annexation of the industrial areas that, while contiguous to the city, had never paid any city taxes. During discussions it was agreed that the industries, while being valuable to the city in providing a major economic impetus, would be protected through industrial district agreements. At that time, the phase-in provision (five percent per year) for new improvements was specifically designed to encourage expansion while the maximum cap (50 percent) on existing improvements was designed to provide a competitive advantage for the local industries. The original 1981-1982 contracts contained the following major elements, which have remained constant with each renewal:

1. Industry was protected from annexation for seven years.
2. No zoning, building inspection or platting requirement were enforced against the industry (although a plan for water, sewer and drainage was required).
3. Industry would pay in lieu of city ad valorem taxes 100 percent of taxes due for land and five percent of taxes due on improvements the first year increasing by five percent each year with a maximum of 50 percent in ten years.
4. The industry must be a member of the Terminal Refinery Fire Company or make an additional payment to the city for fire protection.
5. The industry pays for city utilities at outside city limit rates (this is almost exclusively water and sewer, with water charges predominantly). Water and sewer services are provided by the city to the industrial districts at standard outside city rates. This has resulted in higher rates than if the companies were in the city. These utility rates are common to other industrial districts in other cities where water and sewer services are provided.

In 1984-1985, the industries approached the city with a request for renewal of their contract to extend the contract for a full seven years. After discussion, contracts were again renewed, making the new termination date of the contract 1992.

Four years later in 1988 through 1989, the industries again sought a seven-year renewal of their contract. During that negotiation, city staff held the position that there should be a move toward an increase in both the cap and the phase-in provisions. After discussions, city staff recommended to the council the contracts be extended for seven years (through 1995) with the same terms as previously adopted.

From 1992 through 1994, discussions continued regarding renewal of the industrial district contracts, and specifically on the appropriate amount of increase in the cap and the phase-in provisions.

Industrial district contracts that became effective January 1, 1995 had the following major provisions:

1. Cap - The current 100 percent cap of land values is maintained, and the cap on improvements is increased from 50 percent to 60 percent.

2. Phase-in - The current five percent per year 10-year phase-in on new improvements is substantially increased to a sliding scale phase-in as follows:

6% - Year one and two

7% - Year three and four

8% per year following, up to the cap of 60%

This provision also allowed substantially more revenues to the city while maintaining a comparative advantage for the industries over other locations for expansion of plant or industry capacity.

3. Term - The term of the contract increased from seven years to ten years. While state law now allows a 15-year contract, a maximum term of ten years allows the industries substantial stability. By making the new contract effective Jan. 1, 1995, one year has been eliminated from the previous contract term.

4. Buy local - The contracts contained a new provision which required the industries in all of its procurements to use its best efforts to procure services, equipment, etc. from businesses located within the Corpus Christi area unless they are unavailable within the area.

5. Industrial use - The new contract specifically prohibited the use of land for other than the standard industrial, heavy industry, or related service providers (or the holding of land for such uses). If an area within an industrial district was used for some type of retail sales to the general public or other non-industrial use, there would be an immediate roll-back of the payment in lieu to equal 100 percent of the improvements and land as if it were in the city limits at the original date of the contract. In addition, the city was given the right to file an injunction against the use and the right to immediately annex the land.

6. Contamination clean-up and buffer zone - In order to participate in a contract, an industry located in an area of contamination monitored by the Texas Commission on

Environmental Quality had to agree to remediate their contamination in accordance with all applicable laws, and the industry had to agree to participate in an equitable program of land acquisition agreed to by owners of industries on a majority of the assessed value of property within the industrial district if such buffer acquisition program was proposed.

7. Form of contract - In the past, there have been two forms that have been used for the industrial district agreements. During this period, the agreements were consolidated into one form.

8. Emission control equipment - The contract stipulated that the calculations of payment in lieu shall be made without reference to the exemption for pollution control property in Sec. 11.31 of the Texas Property Tax Code and Art. VIII, Sec. 1-1, Texas Constitution.

The City Council adopted a uniform contract in 2004 for contracts executed 2005-2014. The Industrial District contracts that became effective January 1, 2005 had the following changes made to the 10-year phase-in on new improvements:

**Yr. of use - %**

1<sup>st</sup> yr - 6%

2<sup>nd</sup> yr - 12%

3<sup>rd</sup> yr - 19%

4<sup>th</sup> yr - 26%

5<sup>th</sup> yr - 34%

6<sup>th</sup> yr - 42%

7<sup>th</sup> yr - 50%

8<sup>th</sup> yr - 58%

9<sup>th</sup> yr - 60%

10<sup>th</sup> yr - 60%

The City of Corpus Christi encourages the updating, expansion, and growth of industries within the District. It is the established policy of the City Council to adopt reasonable measures permitted by law that will enhance the economic stability and growth of the City through the development of an Industrial District Agreement.

Las Brisas Energy Center, LLC, is one of the largest one-time investments in Corpus Christi's history. The asset value is comparable to our communities three refining partner's investment. Las Brisas is expected to be one of the largest tax payers in the region and will be a strong community partner for decades.

Las Brisas proposes building a 1,320 gross megawatt (MW) state-of-the-art electric generating facility on the north side of the Port of Corpus Christi's Inner Harbor. This project will provide much-needed, reliable electric power for users throughout Corpus Christi and South Texas at competitive prices. The state-of-the-art facility will utilize highly sophisticated equipment to generate clean energy and protect the region's environment.

### **Environmental Benefits**

- Will not discharge wastewater into Corpus Christi Bay;
- Will buy raw water (via pipeline) from the City of Corpus Christi;
- Will not cause or contribute to a change in the ozone attainment status for the Corpus Christi air shed;
- Will be constructed in an existing industrial corridor;
- Will provide a beneficial use for petroleum coke, an existing by-product of the current refining industry in the area; and
- Will use best available control technology

### **Economic Benefits**

- Will create 1,300 direct jobs and 2,600 indirect jobs during the construction phase, for an initial economic impact of \$2.5 - \$3 billion;
- More than 90% of these jobs will come from Nueces and San Patricio counties;
- Will create 80-100 direct jobs and 150-175 indirect jobs once operating, for an economic impact of \$20 - \$30 billion in annual wages;
- Permanent jobs will be long term, with starting annual salaries averaging \$75,000 plus excellent health and retirement benefits;
- Plant will produce reliable base load power locally, allowing competitive pricing and overall consumer savings; and
- Will diversify fuel sources for power production to insulate Texans from volatile natural gas prices which can lead to higher electricity prices

**AN ORDINANCE**

**AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE AN INDUSTRIAL DISTRICT AGREEMENT WITH THE PORT OF CORPUS CHRISTI AUTHORITY, AS THE LANDOWNER, AND LAS BRISAS ENERGY, LLC, AS LESSEE AND IMPROVEMENTS OWNER; RESERVING AND PRESERVING ALL RIGHTS, POWERS, AND DUTIES OF THE CITY COUNCIL; AND PROVIDING FOR SEVERANCE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS, THAT:**

**SECTION 1.** That the City Manager, or designee, is authorized to execute an industrial district agreement with the Port of Corpus Christi Authority, as Landowner, and Las Brisas Energy, LLC, as Lessee and Improvements Owner. A copy of the Industrial District Agreement is on file with the City Secretary.

**SECTION 2.** That all rights, powers, and duties of the City Council are reserved and preserved.

**SECTION 3.** If for any reason any section, paragraph, subdivision, clause, phrase, word or provision of this ordinance shall be held invalid or unconstitutional by final judgment of a court of competent jurisdiction, it shall not affect any other section, paragraph, subdivision, clause, phrase, word, or provision of this ordinance, for it is the definite intent of this City Council that every section, paragraph, subdivision, clause, phrase, word or provision of this ordinance be given full force and effect for its purpose.

That the foregoing ordinance was read for the first time and passed to its second reading on this the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

Henry Garrett	_____	Priscilla G. Leal	_____
Melody Cooper	_____	John E. Marez	_____
Larry Elizondo, Sr.	_____	Nelda Martinez	_____
Mike Hummell	_____	Michael McCutchon	_____
Bill Kelly	_____		

That the foregoing ordinance was read for the second time and passed finally on this the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following vote:

Henry Garrett	_____	Priscilla G. Leal	_____
Melody Cooper	_____	John E. Marez	_____
Larry Elizondo, Sr.	_____	Nelda Martinez	_____
Mike Hummell	_____	Michael McCutchon	_____
Bill Kelly	_____		


PASSED AND APPROVED, this the \_\_\_\_\_ day of October, 2008.

ATTEST:

\_\_\_\_\_  
 Armando Chapa  
 City Secretary

\_\_\_\_\_  
 Henry Garrett  
 Mayor

APPROVED: 3<sup>rd</sup> day of October, 2008:

  
 \_\_\_\_\_  
 R. Jay Reining  
 First Assistant City Attorney  
 For City Attorney

**INDUSTRIAL DISTRICT AGREEMENT NO. 87**

**THE STATE OF TEXAS       §  
COUNTY OF NUECES       §  
CITY OF CORPUS CHRISTI §**

This Agreement made and entered into by and between the City of Corpus Christi, Texas, a municipal corporation of Nueces County, Texas, hereinafter called "CITY", and the Port of Corpus Christi Authority, a political subdivision of the State of Texas, Landowner, and Las Brisas Energy, LLC, a Texas Limited Liability Company, Lessee, and Improvements Owner, hereinafter collectively called "COMPANY".

**WITNESSETH:**

**WHEREAS**, it is the established policy of the City Council of the City of Corpus Christi, Texas, to adopt reasonable measures permitted by law that will tend to enhance the economic stability and growth of the City and its environs and will attract the location of new and expansion of existing industries therein, and this policy is hereby reaffirmed and adopted by this City Council as being in the best interest of the City and its citizens; and

**WHEREAS**, Company is the owner or lessee of land or owner of improvements on land within the extraterritorial jurisdiction of the City of Corpus Christi, and

**WHEREAS**, upon execution of this agreement by the City this land shall be known as "Corpus Christi Industrial District No. 87," and this land is more particularly described in Exhibit "A" by metes and bounds as provided in Section VII and in Exhibit "B" by a listing of the property by account number designated by the Nueces County Appraisal District ("NCAD") or its successor attached hereto, and incorporated herein for all purposes, herein called "said land" and upon which Company has either constructed (and/or contemplates) the construction or expansion of improvements; and

**WHEREAS**, under said policy and the provisions of Section 42.044, Texas Local Government Code, City has enacted Ordinance No. 15898, as amended, including without limitation as amended by Ordinance Nos. 022092, 022360, and 025703, enacted on April 13, 2004, incorporated for all purposes, indicating its willingness to enter into industrial district agreements with industries located within its extraterritorial jurisdiction and designating areas located in its extraterritorial jurisdiction as industrial districts, herein collectively called 'Districts' and Ordinance No. 15949 designating land areas as Corpus Christi Industrial Development Area No. 1 and Corpus Christi Industrial Development Area No. 2 if the industries no later than December 15, 2004, (or later for subsequently acquired land as provided in the ordinance) submit substantially complete executed contracts to the City Manager; and

**WHEREAS**, City desires to encourage the updating, expansion and growth of industries within said Districts and for this purpose desires to enter into this Agreement with Company.



**NOW, THEREFORE**, in consideration of the premises, the mutual agreements of the parties herein contained and under the authority granted under Section 42.044, Texas Local Government Code, and the Ordinances of City referred to above, City and Company hereby agree as follows:

I.

A.1. City covenants and agrees that during the term of this Agreement, and subject to the terms and provisions hereof, said land shall retain its extraterritorial status as an industrial district and shall continue to retain this status until and unless the same is changed under the terms of this Agreement. Except as herein provided City further covenants and agrees that said land shall be immune from annexation.

2. During the term hereof City shall have no obligation to extend to said land any City services, except fire protection if Company makes additional payments to City under Article III.E. hereof, and other City services being provided to and paid for by Company on the date hereof.

B. Further, City and Company agree that during the term hereof, City shall not require with respect to said land compliance with its rules or regulations (1) governing zoning and platting of said land or any additions thereto outside the City limits and in an industrial district; provided, however, Company further agrees that it will in no way divide said land or additions thereto without complying with State law and City ordinances governing subdivision of land, including the provisions of Article XI of this Agreement; (2) prescribing any building, electrical, plumbing or inspection code or codes; or (3) prescribing any rules governing the method of operations of Company's business, except as to those regulations relating to the delivery of utility services and industrial waste disposal through City-owned facilities.

C. Company covenants and agrees that during the term hereof, Company will not use or permit the use of the land and improvements covered by this Agreement for purposes not included within the term "industry" as defined in Section 2 of Ordinance No. 15898, as amended. Holding said land and improvements for future "industry" use, without using same for non-industry purposes, does not violate this paragraph.

II.

This Agreement is an extension of the existing Agreement between the City and the Company. The term of this Agreement shall be ten (10) years beginning January 1, 2005, and continuing until December 31, 2014, unless extended for additional period or periods of time upon mutual consent of Company and City as provided by the Municipal Annexation Act; provided, however, if this Agreement is not so extended for an additional period or periods of time on or before March 31 of the final calendar year of the term hereof, then the immunity from annexation granted herein shall terminate on that date, but all other terms of this Agreement shall remain in effect for the remainder of the term; provided, however, the effective date and time of annexation shall be no earlier than midnight of December 31 of the final year of the term.

III.

Each year during the term hereof, Company shall pay to City:

A.1. An amount in lieu of taxes on said land (excluding improvements and personal property located thereon) equal to one hundred percent (100%) of the amount of ad valorem taxes based upon the market value of said land which would otherwise be payable to City by Company if said land were situated within the city limits of City.

2. With respect to any new land acquired by Company after January 1, 1981, located in the extraterritorial jurisdiction of City, and the use of which relates directly to the primary use of the parent tract, the new land shall be included in Company's land known as said land, and shall be considered in calculating the in lieu of tax payment on said land as of January 1 of the first year following the date which the new land is acquired by Company. In addition, Company shall provide City a revised Exhibit "A" that includes a complete description of the new land in accordance with Section VII and a listing by NCAD account number of the newly acquired land that will be added to Exhibits "A" and "B".

B.1. An amount in lieu of taxes on improvements (excluding personal property) located on said land equal to sixty percent (60%) of the amount of ad valorem taxes which would otherwise be payable to City by Company if said improvements were situated on land within the city limits of City. "Improvements" shall be as defined in Section 1.04(3) of the Texas Tax Code, and shall also include petroleum and/or chemical refining, processing, extraction or storage facilities, structures, or equipment erected on or affixed to the land, regardless of the land ownership, and pipelines on, under, or across the land which are owned by the Company.

2. On or before July 31 of each year or upon final determination of property values by NCAD, whichever is later, during the term of this Agreement, Company shall provide to City's Collection Section a written statement of its opinion of the market value sworn to by an official of Company authorized to do the same.

C. For new improvements or facilities completed after January 1, 1974, in lieu of the percentages of the amount of ad valorem taxes as calculated in III.B., Company shall pay to City the percentage shown in the chart below based on the year of use. Payments under this provision shall never exceed sixty percent (60%) of the amount of ad valorem taxes that would otherwise be payable to City by Company if said improvements were situated on land within the city limits of City. The first year of use for purposes of this new improvements payment shall be deemed to begin on the first day of January next following the date when the new improvements are placed in use. This provision shall apply to construction of new improvements or facilities and to the expansion of existing improvements or facilities on said land. To qualify as new improvements or facilities, the value of all new improvements or facilities in any single year must exceed a cumulative value of at least \$3,000,000.00. New improvements or facilities not included within this Article III.C. shall be deemed to be included within the provisions of Article III.B.

**Chart**

yr of use	%	yr of use	%	yr of use	%	yr of use	%
1st yr	6%	4th yr	26%	7th yr	50%	10th yr	60%
2nd yr	12%	5th yr	34%	8th yr	58%	11th yr	60%
3rd yr	19%	6th yr	42%	9th yr	60%	12th or more yr	60%

D.1. If in any year, the total in-lieu tax value of land and improvements under III.A. through III.C. is not at least an annual increase of 3% over the previous year, the value of the oldest new improvements that has not been captured under III.C. that is needed to meet the minimum required increase in value shall be added to the total in-lieu value of land and improvements for that year only. Payments under this provision shall never exceed one hundred percent (100%) of the ad valorem taxes that would otherwise be payable to City by Company for land if said land was within the city limits of City and shall never exceed sixty percent (60%) of the ad valorem taxes that would otherwise be payable to City by Company for improvements if said improvements were situated on land within the city limits of City.

2. However, if in any year, the total in-lieu tax value of land and improvements is more than 6% higher than the previous year, the increase in in-lieu tax values for that year shall be capped at 6%.

E. An additional amount for City fire protection equal to fifteen percent (15%) of the amount which would be payable on 100% of assessed value of improvements located in said land notwithstanding the provisions of Article III.B.; provided, however, that if and as long as Company is a member in good standing of the Refinery Terminal Fire Company, or its successor, or Company agrees to provide fire protection and emergency services either from a qualified external provider or by use of a qualified internal emergency response organization, it shall not be obligated to pay the additional amount provided by this Article III.E. Minimum qualifications would include meeting certain standards as defined by applicable OSHA, state regulatory and NFPA Standards that apply to fire control, emergency management, disaster planning and rescue services as recognized by the Texas Industrial Fire Training Board, the State Fireman's and Fire Marshal's Association of Texas or equivalent. Company will provide equipment, training, and facilities necessary to safely handle all expected emergencies and properly protect Company and the community from the adverse effects of an industrial disaster.

F.1. At the request of Company, as an alternative to the method of calculation set forth in Article III. A. through .E., the Company may make a payment which is determined by considering, using the method of calculation set forth in Article III. A. through .E., said land and all other lands contiguous to said land, or forming an integral part of Company's primary operation located on said land, owned by Company inside the city limits as if all the value of Company's lands above described and improvements thereon were outside the city limits, and deducting from the amount which would otherwise be due from the calculation the property taxes actually due to City resulting from the assessed values of land and improvements, excluding personal property, located inside

the City. If Company selects the alternative procedure, the amount due to City under this Article III.F. shall be the resulting difference. In addition, Company shall provide City, by attaching hereto as Exhibits "A" and "B", a complete description in accordance with Section VII or a listing of the account numbers as available from NCAD of the lands contiguous to said land, or forming an integral part of Company's primary operation located on said land, owned by Company inside the city limits.

2. With respect to any new land acquired by Company after January 1, 1981, located inside the city limits, which is contiguous to said land, or forms an integral part of Company's primary operation located on said land, the new land may be considered in the alternative method of calculating the in lieu of tax payment as stated above, as of January 1 of the first year following the date that the new land is acquired by Company. Company shall provide City a new or revised Exhibit "B" which includes a complete description of the new land or a listing of the account numbers from NCAD that will be attached to Exhibit "B". Provided, however, this provision can only be used by a Company that was utilizing this provision on December 31, 1994, only with respect to Land reflected in Exhibit "B" to that Company's Industrial District Agreement with City as of said date, and only for so long as the alternate in this paragraph is continuously used.

#### IV

A. Company agrees to pay to City on or before January 31 of the year following each year during the term hereof all payments in lieu of taxes provided for hereunder without discount for early payment. The present ratio of ad valorem tax assessment used by City is one hundred percent (100%) of the fair market value of property. Any change in the ratio used by City shall be reflected in any subsequent computations hereunder. This Agreement and the method of determining and fixing the amount of in lieu of taxes payments hereunder shall be subject to all provisions of law relating to determination of market value and taxation, including, but not limited to, laws relating to rendition, assessment, equalization and appeal.

B. In determining the Company's in lieu of taxes annual payment required under this Agreement, the calculation shall be made utilizing the fair market value of all property determined by NCAD or its successor under provisions of the Texas Property Tax Code. The Company shall timely provide information and reports required under Texas law, rules, and regulations to NCAD or its designee, so that the appraisal process can be completed in accordance with all applicable state laws. Upon written request each year by the City's Collection Section, the Company will provide the City with the certified fair market value assessment for use in calculation and preparation of the annual in-lieu tax payment. The calculation shall be made without reference to the exemption for pollution control property in Section 11.31, Texas Property Tax Code, and Article VIII, Section 1-I, Texas Constitution, as same presently exist or may be hereafter amended, using the fair market value of pollution control equipment certified by NCAD. In addition, all the amounts shall be calculated without reference to any new tax exemption or any increase in an existing tax exemption enacted after January 1, 1995.

#### V

If Company elects to protest the valuation set on any of its properties by Nueces County Appraisal District (NCAD) for any year or years during the term hereof, it is agreed that nothing in this Agreement shall preclude the protest and Company shall have the right to take all legal steps desired by it to reduce the same as if the property were located within the City, except with regard to the exemptions in Part IV B. Notwithstanding any protest by Company, Company agrees to pay to City an initial in lieu of tax payment, on or before the date therefor hereinabove provided, of at least the amount of the payment in lieu of taxes on said land and improvements which would be due by Company to City hereunder on the basis of renditions filed by Company with City's Collection Section for that year in accordance with Section III B.2 or on the basis of the assessment thereof for the last preceding year, whichever is higher. When the valuation on said property has been finally determined, either as the result of final judgment of a court of competent jurisdiction or as the result of other final settlement of the controversy, then within thirty (30) days thereafter Company shall make to City any additional payment due based on the final valuation. If as a result of final judgment of a court of competent jurisdiction, or as the result of other final settlement of the controversy, the valuation of Company's property is established as an amount less than the amount used to compute the initial in lieu of tax payment for that year by Company, then within thirty (30) days thereafter City shall make to Company any payment due based on the difference between the initial payment and that which is computed based on the final settlement.

## VI

A. If Company fails or refuses to comply with all or any of the terms, conditions and obligations herein imposed upon the Company, then this Agreement may be terminated at the option of City and/or the City may elect to sue to recover any sum or sums remaining due hereunder or take any other action which in the sole discretion of the City it deems best. If the City elects to sue to recover any sum due under this Agreement, the same penalties, interest, attorney's fees, and cost of collection shall be recoverable by the City as would be in a suit to recover delinquent ad valorem taxes. If the Company is an industry covered by the third paragraph of Section 2 of Ordinance 15898, as amended, failure to comply with the terms of that paragraph shall constitute grounds for termination of this Agreement, provided however, that the Company shall be given written notice of the grounds for termination and if within sixty (60) days the Company complies or demonstrates a satisfactory plan of compliance (where compliance requires more than sixty (60) days) the Agreement shall not be terminated.

B. If Company defaults in paying in lieu of tax payments hereunder, City shall be entitled to a tax lien on said land and improvements; and the lien may be enforced by City in the same manner as provided by law for the collection of delinquent ad valorem taxes.

C. If City breaches this Agreement by annexing or attempting to pass an ordinance annexing any of said land, Company shall be entitled to enjoin City from the date of its breach for the balance of the term of this Agreement, from enforcing any annexation ordinance adopted in violation of this Agreement and from taking any further action in violation of this Agreement. If Company elects to pursue this remedy, then so long as

City specifically performs its obligations hereunder, under injunctive order or otherwise, Company shall continue to make the annual payments required by this Agreement.

D.1. If Company uses, or permits use of, the land and improvements covered by this Agreement for purposes not included within the term "industry" as defined in Section 2 of Ordinance 15898, as amended, the payment in lieu of taxes to be paid by Company under this Agreement shall be increased to an amount equal to one hundred percent (100%) of the amount of ad valorem taxes on land, improvements, and personal property sited on the land that would otherwise be payable to City by Company if said improvements were situated on land within the city limits of City.

2. The increase shall be immediately effective for all payments from the inception of this Agreement, and Company shall transmit to the City within 10 days of being notified by City of the determination of a non-Industrial use, an amount equal to said one hundred percent (100%) of ad valorem taxes from the inception of this Agreement less any amounts previously paid plus penalties and interest as if the amounts were delinquent taxes. City shall be entitled to its attorney's fees and other costs in collecting any of these amounts. In addition, City shall have the right, in its sole and absolute discretion: (1) to obtain an injunction from a court of competent jurisdiction, upon the court's determination that the use is not an "industry" use, requiring that the use be permanently discontinued, or (2) to annex the land covered by this Agreement. Until the land is annexed, Company shall continue to make payments equal to said one hundred percent (100%) of ad valorem taxes.

## VII

Company agrees to provide to City at Company's expense, a survey plat and field note description of said land, unless the survey plat and field note description from the existing agreement has not changed. Company also agrees to provide City with a listing of account numbers as available from NCAD or its successor. With respect to Company's acquisition of new land, as described in Article III.A., which becomes included in said land, Company agrees to provide to City at Company's expense, a survey plat and field note description of the new land and a listing of account numbers as available from NCAD or its successor.

## VIII

A. If any attempt to annex any of said land owned, used, occupied, leased, rented or possessed by Company, is made by another municipality, or if the incorporation of any new municipality should attempt to include within its limits said land or property, the City shall seek a temporary and permanent injunction against the annexation or incorporation, with the cooperation of Company, and shall take any other legal action necessary or advisable under the circumstances. The cost of the legal action shall be borne equally by the parties hereto; provided, however, the fees of any special legal counsel shall be paid by the party retaining same.

B.1. If City and Company are unsuccessful in obtaining a temporary injunction enjoining the attempted annexation or incorporation, Company shall have the option of (1) terminating this Agreement, effective as of the date of the annexation or incorporation, or (2) continuing to make the in lieu of taxes payments required hereunder. This option shall be exercised within thirty (30) days after the application for the temporary injunction is denied. If Company elects to continue the in lieu of taxes payments, the City shall place future payments hereunder together with part of the payment for the calendar year in which the annexation or incorporation is attempted, prorated to the date the temporary injunction or relief is denied, in a separate interest-bearing escrow account which shall be held by City subject to the following:

B.2. If final judgment (after all appellate review, if any, has been exhausted) is entered denying a permanent injunction and/or upholding the annexation or incorporation, then all these payments and accrued interest thereon shall be refunded to Company; or

B.3. If final judgment (after all appellate review, if any, has been exhausted) is entered granting a permanent injunction and/or invalidating the annexation or incorporation, then all the payments and accrued interest thereon shall be retained for use by City.

## IX

The benefits accruing to Company under this Agreement shall also extend to Company's "affiliates" and to any properties presently owned or acquired by said affiliates within the area described in Exhibit "A" and/or Exhibit "B" to this Agreement, and where reference is made herein to land, property and improvements owned by Company, that shall also include land and improvements presently owned by its affiliates. The word "affiliates" as used herein shall mean (1) all companies with respect to which Company directly or indirectly, through one or more intermediaries at the time in question, owns or has the power to exercise control over fifty percent (50%) or more of the stock having the right to vote for the election of directors; or (2) all corporations which are members of a "controlled group of corporations" (as that term is defined in Section 1563(a) of the Internal Revenue Code of 1954, as amended) of which the Company is a member.

## X

This Agreement shall inure to the benefit of and be binding upon City and Company, and upon Company's successors and assigns, affiliates and subsidiaries, and shall remain in force whether Company sells, assigns, or in any other manner disposes of, either voluntarily or by operations of law, all or any part of said land, and the agreements herein contained shall be held to be covenants running with said land for so long as this Agreement or any extension thereof remains in force.

## XI

A. Whenever the Company sells a contiguous portion of said land to another industry as defined in Ordinance No. 15898, as amended, then platting of the property may be deferred under the following conditions:

1. The seller shall submit for approval by the City Council a site plan indicating the proposed water, sewer, drainage, access, and street plans for said land;
2. Both the buyer and the seller shall enter into an agreement with the City requiring the platting of said land if the buyer's use of the property materially changes from the permitted uses described above, or if the Company's industrial district agreement terminates without extension; and
3. The seller shall remain solely responsible for any payments in lieu of taxes attributable to the buyer's holdings on the property unless the buyer has entered into a supplemental industrial district contract with the City concerning the holdings.

B. Whenever the Company properly plats, subdivides and conveys to a buyer other than an affiliate a portion of the lands described in Exhibit "A" and/or Exhibit "B", Company shall furnish to the City's Collection Section a revised Exhibit "A" and/or Exhibit "B" and a listing of account numbers as available from NCAD or its successor, which revised exhibit or exhibits shall constitute an amendment to this Agreement, effective for the calendar year next following the calendar year in which the conveyance occurred. Seller shall remain solely responsible for any payments in lieu of taxes for the calendar year in which the conveyance occurred. Thereafter, the buyer shall be responsible for the payments including any rollback payments under Article VI.D. If the Company improperly plats, subdivides or conveys a portion of the lands described in Exhibit "A" or Exhibit "B", Company shall remain solely responsible for any payments in lieu of taxes applicable to the property, including improvements thereon, and including any rollback payments under Article VI.D. as if the improper plat, subdivision, or conveyance had not occurred.

## XII

Except for industrial districts in the Gulf of Mexico created under Section 11.0131 of the Texas Natural Resources Code, if City enters into an agreement with any other landowner, within the extraterritorial jurisdiction of the City, engaged in a similar industry, as classified by Major Group according to the Standard Industrial Classification Manual 1987 or enters into a renewal of any existing industrial district agreement with an industry of the same classification which contains in lieu of tax payment terms and provisions more favorable to the landowner than those in this Agreement, Company and its assigns shall have the right to either terminate this Agreement, or amend this Agreement to contain the more favorable in lieu of tax payment terms and provisions. "Similar industry" shall not include any tourist-related business or facilities under Section 42.044, Texas Local Government Code.

## XIII

In all of its procurements, including, but not limited to, procurements of supplies, materials, equipment, service contracts, construction contracts, and professional services contracts, the Company shall use reasonable efforts to procure same from



businesses located within Nueces and San Patricio Counties unless same are not reasonably and competitively available within said area. Company acknowledges that the City provides a regional water system that is critical to the well-being and economic growth of the entire area and that it is important for each customer to continue to use the system as its principal source of water. Company agrees to provide six months written notice of any intent or action to obtain more than ten percent (10%) of its total water needs from any source other than the City. The Company shall make reasonable efforts to determine local availability and competitiveness of other supplies, materials, equipment, service, construction, and professional service contracts, but shall not be required to maintain records regarding this requirement other than those normally kept in its usual course of business.

#### XIV

If any word, phrase, clause, sentence, paragraph, section, article or other part of this Agreement or the application thereof to any person, firm, corporation or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, then the application, invalidity or unconstitutionality of the word, phrase, clause, sentence, paragraph, section, article or other part of this Agreement shall be deemed to be independent of and separable from the remainder of this Agreement and the validity of the remaining parts of this Agreement shall not be affected thereby, unless the holding has the effect of diminishing the revenues payable to City hereunder.

#### XV

Upon the commencement of the term of this Agreement, all other previously existing industrial district agreements with respect to said land shall terminate. This Agreement may be **executed in multiple counterparts**, each of which is deemed an original.

ENTERED into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_\_.

**ATTEST:**

**CITY OF CORPUS CHRISTI**

\_\_\_\_\_  
Armando Chapa  
City Secretary

\_\_\_\_\_  
'Angel R. Escobar  
Interim City Manager

**LEGAL FORM APPROVED:** October \_\_, 2008

\_\_\_\_\_  
R. Jay Reining  
First Assistant City Attorney  
For City Attorney

**CITY OF CORPUS CHRISTI ACKNOWLEDGMENT**

**STATE OF TEXAS       §**  
**§**  
**COUNTY OF NUECES   §**

This instrument was acknowledged before me on \_\_\_\_\_, 2008, by 'Angel R. Escobar, Interim City Manager of the City of Corpus Christi, a Texas municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public, State of Texas

**PORT OF CORPUS CHRISTI AUTHORITY  
LANDOWNER**

By: \_\_\_\_\_  
John P. LaRue  
Executive Director

**LANDOWNER ACKNOWLEDGMENT**

**THE STATE OF TEXAS §  
  §  
COUNTY OF NUECES §**

This instrument was acknowledged before me on \_\_\_\_\_, 2008, by John P. LaRue, Executive Director, Port of Corpus Christi Authority, a political subdivision of the State of Texas, on behalf of the authority.

\_\_\_\_\_  
Notary Public, State of Texas

**LAS BRISAS ENERGY, LLC  
LESSEE AND IMPROVEMENTS OWNER**

By: \_\_\_\_\_  
John D. Upchurch  
Chief Executive Officer

**LESSEE AND IMPROVEMENTS OWNER ("LESSEE") ACKNOWLEDGMENT**

THE STATE OF TEXAS §  
  §  
COUNTY OF \_\_\_\_\_ §

Before me, the notary public whose name is signed and printed (or typed) below, on this day personally appeared John D. Upchurch, known to me/proved to me through his/her driver's license number \_\_\_\_\_ to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as Chief Executive Officer of Las Brisas Energy, LLC, a Texas limited liability company, as the act of a for the purposes and consideration therein expressed.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 200\_.

\_\_\_\_\_  
Notary Public, State of Texas