

**CHAPTER 380**  
**INCENTIVE AGREEMENT**  
**By and Between**  
**CITY OF CORPUS CHRISTI, TEXAS**  
**And**  
**AIR PRODUCTS LLC**

**2009-491**  
**Res. 028452**  
**12/15/09**

## **CHAPTER 380 INCENTIVE AGREEMENT**

This agreement ("Agreement") is made and entered into as of \_\_\_\_, 2009 ("Effective Date"), by and between the City of Corpus Christi, Texas, a home-rule municipal corporation ("City"), and Air Products LLC, a Delaware limited liability company ("Air Products").

### **RECITALS**

**WHEREAS**, Air Products desires to develop and operate a steam methane reformer that produces hydrogen, commonly known as the Corpus Christi Hydrogen SMR Facility ("CC HSMR Facility"), located at 5401 Up River Road, within the city limits of Corpus Christi, Texas ("Project");

**WHEREAS**, the City has established a program under Article III, Section 52-a, Texas Constitution and Chapter 380, Texas Local Government Code ("Chapter 380") under which the City has the authority to make loans or grants of public funds for the purposes of promoting local economic development and stimulating business and commercial activity within the City;

**WHEREAS**, the City has concluded and finds that this Agreement promotes economic development in the City of Corpus Christi and meets the requirements under Chapter 380 and the City's established economic development program;

**WHEREAS**, the City finds that this Agreement is in the best interests of the City and Air Products;

**WHEREAS**, the City recognizes the positive economic impact that the investment of at least \$60,000,000 in the Project will bring to the City through development and diversification of the economy, reduction of unemployment and underemployment through the retention of existing jobs and the production of new jobs, and the attraction of new businesses;

**WHEREAS**, Air Products will directly finance, design, and construct the Project, as described in this Agreement;

**WHEREAS**, in consideration of the acquisition, development, and operation of the Project, and additional jobs located at the Project, the City agrees to use its funds in order to pay to Air Products the amount of the City Commitment (as defined in this Agreement) directly in the amount described in Article IV of this Agreement;

**WHEREAS**, consistent with Article III, Section 52-a, Texas Constitution; Chapter 380; and other laws, the City and Air Products, as contemplated in this Agreement, agree to work together to cause the public purposes of developing and diversifying the economy of the City, reducing unemployment or underemployment in the City, and developing or expanding transportation or commerce in the City;

**WHEREAS**, to ensure that the benefits the City provides under this Agreement are utilized in a manner consistent with Article III, Section 52-a, Texas Constitution; Chapter 380; and other laws, Air Products has agreed to comply with certain conditions for receiving those benefits, including performance measures relating to job creation, Project operations, and the hiring of local and disadvantaged businesses for the construction of the Project; and

**WHEREAS**, the City and Air Products desire to enter into this Agreement for their mutual benefit;

**NOW, THEREFORE:**

## **AGREEMENT**

For and in consideration of the foregoing recitals and of the mutual promises, obligations, covenants, and benefits contained in this Agreement, City and Air Products contract and agree as follows:

### **ARTICLE I GENERAL TERMS**

**Section 1.01. Incorporation of Recitals.** The recitals to this Agreement are incorporated for all purposes.

**Section 1.02. Definitions and terms.** The terms "Agreement," "Chapter 380," "City," "Air Products," "Effective Date," and "Project" have the meanings described in the Recitals, and the following terms have the following meanings:

"City Commitment" is defined in Article IV.

"Completion" means the date, on or before December 31, 2010, that Air Products has i) completed construction of the CC HSMR Facility with a minimum investment of private equity and/or financing of not less than \$60,000,000 (including the purchase price for the CC HSMR Facility) and ii) has met its obligations in the hydrogen supply agreement with its hydrogen consuming customer, triggering payment obligations in the hydrogen supply agreement.

"Fiscal Year" means the twelve consecutive month period designated by the City as its fiscal year. As of the date of this Agreement, the City's fiscal year commences on August 1 and ends on the next succeeding July 31.

"Parties" or "Party" means the City and Air Products, the parties to this Agreement.

"Property" means the improvements and personal property as described in this Agreement and as constructed by Air Products upon Completion.

"Land" means the land on which the Project will be built, as described in Exhibit B, which is attached and incorporated into this Agreement.

"Reimbursement Account" means the special fund created by the City as described in Section 4.01.A of this Agreement.

"Useful Life" means the period of time during which the CC HSMR Facility will operate for its intended purpose, not less than 15 years.

**Section 1.03. Singular and Plural.** Words used in this Agreement in the singular, where the context so permits, also include the plural and vice versa. The definitions of words in the singular in this Agreement also apply to the words when used in the plural where the context so permits and vice versa.

## **ARTICLE II REPRESENTATIONS**

**Section 2.01. Representations of the City.** The City represents to Air Products that as of the date of this Agreement:

A. The City is a duly created and existing municipal corporation and home rule municipality of the State of Texas, and is duly qualified and authorized to carry on the governmental functions and operations as contemplated by this Agreement.

B. The City has the power, authority, and legal right under the laws of the State of Texas and the City Charter to enter into and perform this Agreement and the execution, delivery, and performance of this Agreement (i) will not, to the best of its knowledge, violate any applicable judgment, order, law, or regulation, and (ii) do not constitute a default under any agreement or instrument to which the City is a party or by which the City or its assets may be bound or affected.

C. This Agreement has been duly authorized, executed, and delivered by the City, and constitutes a legal, valid, and binding obligation of the City, enforceable under its terms, except to the extent that (i) the enforceability of the instruments may be limited by bankruptcy, reorganization, insolvency, moratorium, or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights and (ii) certain equitable remedies, including specific performance, may be unavailable.

D. The execution, delivery, and performance of this Agreement by the City do not require the consent or approval of any person that has not been obtained.

**Section 2.02. Representations of Air Products.** Air Products represents to the City that as of the date of this Agreement:

A. Air Products is duly authorized, existing, and in good standing under the laws of the State of Texas, and is qualified to do business in the State of Texas.

B. Air Products has the power, authority, and legal right to enter into and perform its obligations set forth in this Agreement, and the execution, delivery, and performance of this Agreement (i) have been duly authorized, and will not, to the best of its knowledge, violate any judgment, order, law or regulation applicable to Air Products, and (ii) do not constitute a default under any agreement or instrument to which Air Products is a party or by which Air Products or its assets may be bound or affected.

C. This Agreement has been duly authorized, executed, and delivered and constitutes a legal, valid, and binding obligation of Air Products, enforceable under its terms except to the extent that (i) the enforceability of the instruments may be limited by bankruptcy, reorganization, insolvency, moratorium or other similar laws of general application in effect from time to time relating to or affecting the enforcement of creditors' rights, and (ii) certain equitable remedies including specific performance may be unavailable.

### **ARTICLE III AIR PRODUCTS PERFORMANCE REQUIREMENTS**

#### **Section 3.01. Project.**

A. Air Products agrees:

1. To achieve Completion no later than December 31, 2010.
2. Subject to Section 7.01.C., after Completion, to operate the CC HSMR Facility for the Useful Life of the CC HSMR Facility.

B. Air Products shall pay all engineering, planning, accounting, architectural, legal fees and expenses; survey, testing, and laboratory costs; license fees; advertising and other bidding costs; amounts due under construction contracts; costs of labor and material, insurance premiums, and other costs and expenses incurred in connection with the acquisition and construction of the property which costs as set forth in Exhibit A, which is attached to and incorporated into this Agreement, and which are at least \$60,000,000. Air Products shall provide evidence, satisfactory to the City, of expenditures of private equity and/or financing for the improvements to the Project in the amounts required for completion. The City shall not be responsible for any of the costs out of its current revenues or other sources, except under the reimbursement to Air Products for the costs of the improvements through the City Commitment as provided in this Agreement.

C. Air Products agrees to assist the City, if so requested by the City, in the preparation of any documentation necessary for the preparation and approval of any of the documents or actions required by the City to perform any of the obligations under this Agreement. Air Products further shall prepare or cause to be prepared any preliminary architectural or engineering plans and financial data and projections reasonably requested by the City in order to assist the City in carrying out the purposes of this Agreement. Air Products agrees to proceed in good faith towards the development of the Project. Upon Completion of the Project and during the term of this Agreement, Air Products shall maintain the property, improvements, and premises in a commercially

reasonable manner, comparable to the maintenance of similar hydrogen steam methane reformer facilities; shall operate the Project; and shall timely pay all ad valorem taxes assessed against the property subject to exercise by Air Products of its legal rights to contest, protest, or appeal the taxes.

**Section 3.02. Job Creation.** Air Products' receipt of the City Commitment is subject to the following job performance requirement ("Jobs Requirement"):

A. Air Products agrees to construct the Project and assure that at the CC HSMR Facility at least four (4) new full time jobs will be created, with an average annual salary of at least \$60,000, and a gross payroll of at least \$240,000 by the end of calendar year 2011. Air Products will use its reasonable efforts to fill any new positions with local residents residing within the City.

B. As used in this Agreement, the term "jobs" means full-time equivalent positions providing a regular work schedule of at least 35 hours per week.

C. Upon the request of the City, or its designee, Air Products shall submit documentation as reasonably necessary to evidence satisfaction that Air Products has met the Jobs Requirement.

**Section 3.03. Operational Requirements.**

A. Air Products' receipt of the City Commitment is subject to the following commitment ("Operational Requirement"): Air Products agrees to maintain the Project as a hydrogen steam methane reformer facility for the duration of the period during which the City Commitment is paid; any default in this obligation shall result in the forfeiture of the right to receive reimbursement for any of the City Commitment.

B. Air Products' failure to achieve Completion of the Project within 12 months from the Effective Date is a default under this Agreement, and Air Products shall forfeit the right to receive reimbursement.

**Section 3.04. Utilization of Local Contractors and Suppliers.** In all of its procurements entered into after the Effective Date, including, but not limited to, procurements of supplies, materials, equipment, service contracts, construction contracts, and professional services contracts, Air Products shall use reasonable efforts to procure same from businesses located within Nueces and San Patricio Counties, unless supplies or services are not reasonably and competitively available within the area. Air Products 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.

**Section 3.05. Monitoring by the City.** Monitoring to determine Air Products' compliance with the terms of this Agreement for compliance purposes will be done by the City no less than twice per year during the period of construction, and on an annual basis after Completion. During the monitoring process, the City will make maximum use

of any State and Federal submissions for the determination of contract compliance. Monitoring may be accomplished by City personnel or other persons designated by the City. Air Products agrees to reasonably cooperate with the City in the monitoring process.

Section 3.06. Confidential Information. Any information provided in connection with contract compliance determinations under this Agreement will be treated by the City as privileged commercial information under Section 552.110 of the Texas Public Information Act, Chapter 552, Texas Government Code, if each page and sheet is clearly marked and identified as proprietary information that should not be made available to the public. If a request is received for the information, the request and information will be forwarded to the Attorney General for a determination under Section 552.301 of the Act. The City will withhold the information from the requester under Section 552.305 of the Act, until after the Attorney General's decision is received. The City will only release the information if directed to do so by the Attorney General.

## **ARTICLE IV PROJECT FINANCING AND FUNDING**

### **Section 4.01. Project Financing for the CC HSMR Facility.**

A. The City covenants and agrees upon the Effective Date of this Agreement to create a special fund ("Reimbursement Account") for the benefit of Air Products for the purpose of paying the City Commitment related to the CC HSMR Facility. The City shall fund the Reimbursement Account through the term of this Agreement from the difference between the ad valorem tax payments received from Air Products for the CC HSMR Facility and the in-lieu of tax amount calculated according to Section 4.02.E ("City Commitment"). The City shall annually fund the City Commitment from the funds deposited in the reimbursement account under this Agreement and the amount of the City Commitment under this Agreement shall be paid by the City to Air Products under the terms of this Agreement.

B. The Reimbursement Account shall always remain unencumbered by the City and segregated from all other funds of the City. The funds are held in trust by the City for Air Products to be used subject to and solely under the terms of this Agreement as long as Air Products is in compliance with this Agreement. The City agrees that it will pay to Air Products the City Commitment in the form of annual cash payments within ninety (90) days after Air Products notifies the City that it has paid the ad valorem taxes related to the CC HSMR Facility each year, which payments shall be made by the City from the Reimbursement Account.

### **Section 4.02. City Commitment.**

A. Under its authority under Chapter 380, the City agrees to pay the City Commitment to Air Products. It is intended by the Parties that the City Commitment will be paid by the City solely out of the Reimbursement Account. The annual amount of the City Commitment is set forth in Section 4.02.E. Payments to Air Products of the City

Commitment will commence upon Completion and will continue through the term of this Agreement. The City agrees that it will pay the City Commitment during the term of this Agreement (solely from the reimbursement account), if the Project has achieved Completion by the respective dates required in Section 3.01.A. The payments are not subject to any reduction, whether offset or otherwise, except under Section 3.03 of this Agreement.

B. The Parties agree that the City Commitment will be limited solely to the funds deposited or required to be deposited into the Reimbursement Account under this Agreement.

C. The City shall determine the amount of the City Commitment annually. The City agrees to deposit from the ad valorem tax payment of Air Products related to the CC HSMR Facility an amount equal to the annual City Commitment into the Reimbursement Account under Section 4.01(A) of this Agreement, and pledges the fund to the payment of the City Commitment as provided in this Agreement. The City Commitment shall be remitted to Air Products ninety (90) days after Air Products notifies the City that it has paid the ad valorem taxes related to the CC HSMR Facility each year.

D. The City shall maintain complete books and records showing deposits to and disbursements from the Reimbursement Account, which books and records shall be deemed complete if kept under generally accepted accounting principles as applied to Texas municipalities. The books and records shall be available for examination by the duly authorized officers or agents of Air Products during normal business hours upon request made not less than five business days prior to the date of the examination. The City shall maintain the books and records throughout the term of this Agreement and store the books and records for four years after a transaction.

E. The City Commitment is determined as follows:

1. For the purposes of this Section 4.02.E, the following words are defined as set forth in this Agreement:

"Improvements" have the meaning set forth in Section 1.04(3), Texas Tax Code.

"Personal property" has the meaning set forth in Section 1.04(4), Texas Tax Code.

2. Each year during the term of this Agreement, the City Commitment is the difference between (i) the total ad valorem taxes assessed on the property of the CC HSMR Facility and paid by Air Products, as described in Exhibit B, and (ii) the in-lieu of tax amount determined as follows:

a. *In-lieu of taxes on property located on the land prior to Completion.*

(1) An amount in-lieu of taxes on property located on the land prior to Completion equal to zero percent (0%) of the amount of ad valorem taxes which would otherwise be payable to City by Air Products.



(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, Air Products shall provide to City's Department of Financial Services a written statement of its opinion of the market value sworn to by an official of Air Products authorized to do the same.

*b. In-lieu of taxes on property existing on the land as of Completion and any new property added to the land after Completion.*

(1) For property existing on, or new property added after, Completion, in-lieu of the percentages of the amount of ad valorem taxes as calculated in paragraph b., the in-lieu of tax payment shall be based on the percentage shown in the Chart 4.02.E.2.b based on the year of use. Payments under this provision will not exceed sixty percent (60%) of the amount of ad valorem taxes that would otherwise be payable to City by Air Products.

(2) The first year of use for purposes of this Section 4.02.E.2.b:

(i) With respect to property existing on the land as of Completion, shall be deemed to begin the first day of January after Completion.

(ii) With respect to new property, shall be deemed to begin on the first day of January next following the date when the new property is placed in use.

(3) Section 4.02.E.b.(2)(ii) applies to construction of new Improvements, Personal Property, or facilities and to the expansion of existing Improvements, Personal Property, or facilities on the land.

(4) To qualify as new Improvements, Personal Property, or facilities, the value of all new Improvements, Personal Property, or facilities in any single year must exceed a cumulative value of at least \$3,000,000.00.

(5) New Improvements, Personal Property, or facilities not included within this Section 4.02.E.2.b are deemed to be included within the provisions of paragraph Section 4.02.E.2.a.

**Chart 4.02.E.2.b**

<b>Year of Use</b>	<b>%</b>	<b>Year of Use</b>	<b>%</b>	<b>Year of Use</b>	<b>%</b>	<b>Year of Use</b>	<b>%</b>
1st year	6%	4th year	26%	7th year	50%	10th year	60%
2nd year	12%	5th year	34%	8th year	58%	11th year	60%
3rd year	19%	6th year	42%	9th year	60%	12th or more year	60%

*d. Minimum and maximum annual increases of in-lieu of tax value.*

(1) If in any year, the total in-lieu of tax value of property under Section 4.02.E.2.a and b is not at least an annual increase of 3% over the previous year, the value of the oldest new property, which has not been captured under Section 4.02.E.2.b, that is needed to meet the minimum required increase in value is added to the total in-lieu of value of property for that year only. Payments under this provision will not exceed one hundred percent (100%) of the ad valorem taxes on the property existing on the Effective Date, based on the appraised value of the existing property for that year, and sixty percent (60%) of the ad valorem taxes that would be payable to City by Air Products for property constructed after the Effective Date.

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

*e. Fire protection.* At Air Products' option, Air Products may pay to the City 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 on the land notwithstanding the provisions of paragraph B. Air Products agrees to use commercially reasonable efforts to equip the Project with equipment, and to provide training to its employees, reasonably appropriate to address emergencies or industrial disasters occurring at the Project.

*f.* 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 under this Agreement. This Agreement and the method of determining and fixing the amount of in-lieu of taxes payments under this Agreement 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.

g. In determining Air Products' in-lieu of tax amount required under this Agreement, the calculation is made utilizing the fair market value of all property determined by NCAD or its successor under provisions of the Texas Property Tax Code. Air Products 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 under all applicable state laws. Upon written request each year by the City's Department of Financial Services, Air Products will provide the City with the certified fair market value assessment for use in calculation and preparation of the annual in-lieu tax amount. The calculation must be made without reference to the exemption for pollution control property in Section 11.31, Texas Tax Code, and Article VIII, Section 1-I, Texas Constitution, as they presently exist or may be 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.

h. If Air Products 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 of this Agreement, it is agreed that nothing in this Agreement precludes the protest and Air Products has the right to take all legal steps desired by it to reduce the same, except with regard to the exemptions in Section 4.02.E.2.g. Notwithstanding any protest by Air Products, Air Products agrees to pay to City an initial tax payment, on or before the date payment is due under this Agreement of at least the amount of the taxes on the property that would be due by Air Products to City under this Agreement on the basis of renditions filed by Air Products with City's Department of Financial Services for that year under Section 4.02.E.2.b(2) or on the basis of the assessment under this Agreement for the last preceding year, whichever is higher. When the valuation on the 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 Air Products 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 Air Products' property is established as an amount less than the amount used to compute the initial tax payment for that year by Air Products, then within thirty (30) days thereafter City shall make to Air Products any payment due based on the difference between the initial payment and that which is computed based on the final settlement.

i. The Parties agree that, if, during the term of this Agreement, the Industrial District agreement terms are renegotiated, the terms as renegotiated shall be applied to this Section 4.02 for the purposes of calculating the in-lieu of tax amount used to determine the annual City Commitment.

**Section 4.03. Treatment Similar to Land Within Industrial District.** To the extent permitted by law, the Parties agree that, for so long as the property is used for the purposes of operating a hydrogen steam methane reformer facility, the purpose of this Agreement is to treat the property related to the CC HSMR Facility as property not within the corporate limits of the City and to that end, Air Products will expect and request no services from the City, except services for which contract is made under this

Agreement or services provided by separate payment by Air Products, such as water, gas, storm water, or wastewater, City shall provide no services except as similar services are provided to industries within Industrial District No. 1, and City shall not require permitting or apply other regulations in a manner other than is done for industries within Industrial District No. 1, and Air Products shall comply with all applicable federal and state, statutes, laws, rules, and regulations.

## **ARTICLE V ADDITIONAL DUTIES AND RESPONSIBILITIES**

**Section 5.01. Amendment of Agreement.** Upon the request of Air Products, the City may agree to amend this Agreement to provide for any reasonable changes necessary to carry out the intent of this Agreement. The City's consent to an amendment of this Agreement will not be unreasonably withheld.

## **ARTICLE VI TERM OF THE AGREEMENT AND OTHER OBLIGATIONS**

**Section 6.01. Term and termination.** This Agreement has a term ("term") beginning on the Effective Date of this Agreement and continuing coextensive with the term and continuation of Industrial District agreements for industries within Industrial District No. 1.

## **ARTICLE VII DEFAULT**

### **Section 7.01. Default.**

A. If the City does not perform its obligations under this Agreement in substantial compliance with this Agreement and, if the default remains uncured for a period of 60 days after notice of the default of this Agreement has been given, in addition to the other rights under the law or given Air Products under this Agreement, Air Products may enforce specific performance of this Agreement, or seek a writ of mandamus to perform obligations under this Agreement.

B. If Air Products does not perform its obligations under this Agreement in substantial compliance with this Agreement, and, if the default remains uncured for a period of 60 days after notice of the default under this Agreement has been given or the longer period as is reasonably necessary to cure default if the default cannot be cured within 60 days, then the City may terminate this Agreement and City may recover funds previously paid to Air Products under this Agreement in an amount proportionate to the uncured default. Such proration is determined by deducting the period during which the CC HSMR Facility satisfies the Operational Requirements (stated as a percentage) from 100%, and multiplying the resulting percentage to the amount of the City Commitment paid to Air Products to the date of such termination. For the purposes of this Agreement, since greater benefits are provided to Air Products in the earlier years of this Agreement, the amount of funds that the City will be entitled to recover in connection with such a termination will be greater in the early years of this Agreement,

and may include up to 100% of the City Commitment for all prior years. For example, if the CC HSMR Facility never satisfies the Operational Requirements or only satisfies the Operational Requirements for a limited period of time, the City could recover up to 100% of all prior City Commitment payments during the prior years of this Agreement. But if Air Products satisfies the Operational Requirements of the CC HSMR Facility for two thirds of the facility's useful life, the City could only recover 33% of prior City Commitment paid to Air Products. Recovery of such funds as provided in this subsection B shall be the City's sole and exclusive remedy, and Air Products' sole and exclusive liability, for any termination pursuant to this subsection B.

C. Notwithstanding anything in this Agreement that is or may appear to be to the contrary, if the performance of any covenant or obligation to be performed under this Agreement by either Party is delayed as a result of circumstances that are beyond the reasonable control of the Party (which circumstances may include, without limitation, pending or threatened litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions (such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures, hurricane, or tornados), labor action, strikes, or similar acts) the time for the performance is extended by the amount of time of the delay. The Party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any the delay resulting from the force majeure event not later than seven days after the claiming Party becomes aware of the circumstances causing the delay, and if the claiming Party fails to so notify the other Party of the occurrence of a force majeure event causing the delay, the claiming Party is not entitled to avail itself of the provisions for the extension of performance contained in this Section.

D. Should Air Products fail to achieve Completion by the date required in Section 3.01.A, this Agreement terminates without obligation of City to provide reimbursement to Air Products.

## **ARTICLE VIII GENERAL**

**Section 8.01. Severability.** If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction for any reason, the provision is fully severable, and the remainder of this Agreement remains in full force and effect. This Agreement must be construed and enforced as if the invalid or unenforceable provision had never comprised a part of this Agreement.

**Section 8.02. Indemnification.** *Air Products agrees to indemnify, defend, and hold the City and its respective council members, board members, officers, employees, and agents, harmless from any actions, suits, liens, claims, damages, expenses, losses, and liabilities (including reasonable attorneys' fees and expenses) arising from any grossly negligent act or omission on the part of Air Products to the extent Air Products is held liable*

*for the act or omission under a final, unappealable order of a court with jurisdiction over Air Products or the property.*

**Section 8.03. Notice.**

A. Any notice or other communication required or permitted to be given under this Agreement must be given to the other Party at the following address:

If to Air Products: Air Products LLC  
ATTN: Vice President-Taxes  
c/o Air Products and Chemicals, Inc.  
7201 Hamilton Boulevard  
Allentown, PA 18195-1501

If to the City: City of Corpus Christi  
ATTN: City Manager  
1201 Leopard Street (78401)  
P. O. Box 9277  
Corpus Christi, Texas 78469

With a copy to: City of Corpus Christi  
ATTN: City Attorney  
1201 Leopard Street (78401)  
P. O. Box 9277  
Corpus Christi, Texas 78469

B. Any the notice or communication is deemed given on the date so delivered or so deposited in the mail, unless otherwise provided in this Agreement.

C. Either Party may change the above address by sending written notice of the change to the other Party in the manner provided in Section 8.03.A.

D. With the consent of the receiving Party, notice may be given by facsimile transmission or electronic mail.

**Section 8.04. Amendments and Waivers.** Any provision of this Agreement may be amended or waived if the amendment or waiver is in writing and is signed by the City and Air Products.

**Section 8.05. Successors and Assigns.**

A. Except as provided in Article IV, no Party has the right to assign its rights under this Agreement or any interest in this Agreement, without the prior written consent of the other Party, except Air Products may assign its rights and responsibilities under this Agreement to any related, affiliated, or subsidiary entity to which substantially all of its assets, liabilities, and its rights to proceed with development of the Project are transferred without the consent of the City. The written consent may not be unreasonably withheld.

B. If Air Products is seeking City consent to assign, City Council shall consider the consent to assign within thirty (30) days of the written notification. If the decision is not received by the Party seeking consent within sixty (60) days of their request for consent, the assignment is deemed approved.

C. Notwithstanding the foregoing, the City consents to Air Products' assignment to a lending institution of all of Air Products' rights under this Agreement as security for repayment of one or more loans to finance the construction or ownership of the Project or construction of the Improvements.

D. Air Products shall give written notice of its assignment of its rights under this Agreement to the City within five business days of the occurrence of the assignment.

E. The foregoing provisions of Section 8.05 notwithstanding, any assignment of Air Products' rights under this Agreement to any related, affiliated, or subsidiary entity to which substantially all of its assets, liabilities, and its rights to proceed with development of the Project are transferred without the consent of the City does not release Air Products from its obligations under Section 3.01.C of this Agreement.

**Section 8.06. Exhibits; Titles of Articles, Sections, and Subsections.**

A. The exhibits attached to this Agreement are incorporated in this Agreement and are considered a part of this Agreement for the purposes stated in this Agreement, except that in the event of any conflict between any of the provisions of the exhibits and the provisions of this Agreement, the provisions of this Agreement prevail.

B. All titles or headings are only for the convenience of the Parties, and may not be construed to have any effect or meaning as to the agreement between the Parties to this Agreement.

C. Any reference in this Agreement to a section or subsection is considered a reference to the section or subsection of this Agreement unless otherwise stated.

D. Any reference in this Agreement to an exhibit shall be considered a reference to the applicable exhibit attached to this Agreement unless otherwise stated.

**Section 8.07. Construction.** This Agreement is a contract made under and shall be construed under and governed by the laws of the United States of America and the State of Texas, excluding conflicts of laws, as the laws are now in effect. Venue for any action arising under this Agreement lies in the state district courts of Nueces County, Texas.

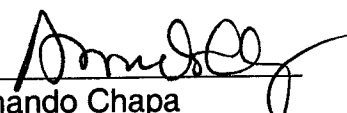
**Section 8.08. Entire agreement.** This written Agreement represents the final agreement between the parties, and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the Parties. There are no unwritten oral agreements between the Parties.

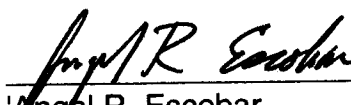
**Section 8.09. Approval by the parties.** Whenever this Agreement requires or permits approval or consent to be given by either Party, the Parties agree that the approval or consent may not be unreasonably withheld or delayed.

**IN WITNESS WHEREOF**, the parties to this agreement have caused this instrument to be duly executed as of the 15<sup>th</sup> day of December, 2009.

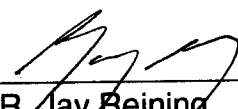
**ATTEST**

**CITY OF CORPUS CHRISTI, TEXAS**

  
Armando Chapa  
City Secretary

  
Angel R. Escobar  
City Manager

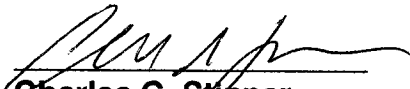
**APPROVED AS TO FORM:**

  
R. Jay Reining  
First Assistant City Attorney  
For City Attorney

Res. 128452 AUTHORIZED  
BY COUNCIL 12/15/09  
A.C.  
SECRETARY *pb*



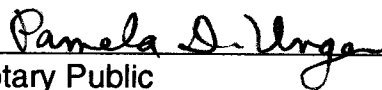
AIR PRODUCTS LLC

By:   
Charles G. Stinner  
Vice President

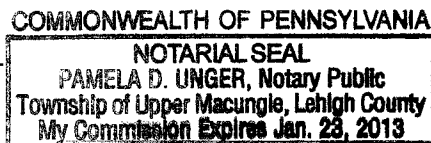
~~Commonwealth~~  
THE STATE OF PENNSYLVANIA

COUNTY OF Lehigh

This instrument was acknowledged before me on 11 December, 2009, by Charles G. Stinner, Vice President for Air Products LLC, a Delaware limited liability company, on behalf of the company.

  
Notary Public  
~~State~~ of Pennsylvania

~~Commonwealth~~



## **Exhibit A**

### **Air Products, LLC**

#### **Estimated Project Investment**

Tax Exempt Equipment	41,744,135
Tax Exempt Fabrication Materials	2,674,599
Tax Exempt Engineering Labor	4,852,924
Tax Exempt Fabrication Labor	2,964,723
Sub-Contractor Labor & Materials	7,763,619
<b>Total</b>	<b>60,000,000</b>

## **Exhibit B**

