

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF SAGINAW, TEXAS
AND
CTI FOODS, LLC**

This Chapter 380 Economic Development Agreement (“**Agreement**”) is made by and between the City of Saginaw, Texas (“**City**”) and CTI Foods, L.L.C., a Texas limited liability company (“**Company**”). City and Company are sometimes hereafter referred to individually as a “party” and collectively as the “parties.”

RECITALS

WHEREAS, Company is primarily engaged in the food industry, providing products for use in restaurants and commercial food facilities; and

WHEREAS, Company produces dehydrated beans for its customers through a custom bean dehydration process in a facility located in Saginaw, Texas, a byproduct of which is an occasional odor that has contributed to complaints from the area surrounding the factory; and

WHEREAS, the Company desires to improve their wastewater treatment equipment by adding an industrial scrubber in order to abate the odor; and

WHEREAS, the City desires to provide the incentives herein to assist the Company with the costs related to construction of the project; and

WHEREAS, the City Council finds and determines that by providing the incentives, this Agreement will aid in the abatement of the odor and promote the comfort and wellbeing of the general public and the surrounding areas; and

WHEREAS, City is authorized by Article 52-a of the Texas Constitution and Chapter 380 of the Texas Local Government Code to establish programs to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City Council has determined that establishing a program to bring the project to the City in accordance with this Agreement will further the objectives of the City, benefit the City and City’s inhabitants, and promote economic development and stimulate business and commercial activity in the City.

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions set forth below, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1 DEFINITIONS

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

The terms “Agreement”, “City”, and “Company” shall have the meanings provided above.

“Effective Date” means the last date this Agreement is executed by the parties.

“Expiration Date” means the date both parties have fulfilled their obligations under this Agreement.

“Project” means the enhancement of the Company’s wastewater treatment equipment by installing an industrial scrubber component on the Property, as further described in Exhibit “A,” hereto.

“Property” means Company’s facility located at: CTI Saginaw, LLC, 500 Sansom Blvd., Saginaw, TX 76179

“Related Agreement” means any agreement (other than this Agreement) between City and Company.

“Term” shall have the meaning as defined in Article 2 of this Agreement.

ARTICLE 2 PROGRAM AND TERM

2.1 Program. A program authorized under Chapter 380 of the Texas Local Government Code is hereby established to bring the Project to City. The terms of this Agreement implement the program.

2.2 Term. The term of this Agreement (“**Term**”) will commence on the Effective Date and will continue until the Expiration Date, unless sooner terminated as provided herein.

ARTICLE 3 COMPANY OBLIGATIONS

The obligations of City to provide the fee waivers and cash reimbursements described in Article 4 of this Agreement are conditioned upon the compliance and satisfaction by Company of the terms and conditions of this Agreement and each of the conditions set forth in this Article 3.

3.1 Continued Operation. Company shall continue to operate its business on the Property for the term of this Agreement.

3.2 Good Standing. Company shall not have an uncured breach or default of this Agreement or a Related Agreement.

ARTICLE 4 CITY OBLIGATIONS

4.1 Fee Waivers. Provided Company is in compliance with this Agreement, City agrees to waive the following fees attributable to the development and construction of the Project: 100% of building permit fees, and 100% of inspection fees. Any fees not referenced herein as being waived are specifically deemed not to be waived by City.

4.2 Cash Reimbursements. Provided Company is in compliance with this Agreement, City agrees to provide the following cash reimbursements after the completion of the project.

- a. \$15,000 after completion of the project as demonstrated by evidence suitable to the City; provided, however, the industrial scrubber component must be operational and fully functioning for the duration of a minimum of 4 years after the date of such payment or the payment is subject to repayment pursuant to section 5.2, below.
- b. \$5,000 annually for 4 years after completion of the project, each payment to be made on the annual anniversary of the date of the completion of the project, so long as there are no documented violations of this Agreement in that year and so long as the industrial scrubber component has been operational and fully functioning for the duration of the 4 years, as demonstrated by evidence suitable to the City.

ARTICLE 5 TERMINATION; REPAYMENT; OFFSET

5.1 Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:

- a. by mutual written agreement by the parties;
- b. upon written notice by either party, if the other party defaults or breaches any of the terms or conditions of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof;
- c. by the City at any time, without cause and for convenience, upon thirty (30) days' notice to Company.

5.2 Repayment. In the event this Agreement is terminated by City pursuant to Section 5.1 (b); or, in the event that Company is the subject of enforcement, receives a notice of violation (NOV), or receives a notice of enforcement (NOE) from the Texas Commission on Environmental Quality regarding any activity occurring on or any facility/equipment located on the Property during the

Term of this Agreement, Company shall immediately refund to City an amount equal to the amount of all of the fee waivers and cash reimbursements that have been provided by City to Company prior the date of such termination, plus interest at the rate of interest periodically announced by the Wall Street Journal as the prime or base commercial lending rate, or if the Wall Street Journal shall ever cease to exist or cease to announce a prime or base lending rate, then at the annual rate of interest from time to time announced by Citibank, N.A. (or by any other New York money center bank selected by City) as its prime or base commercial lending rate, accruing from the Effective Date until paid. The repayment obligation of Company set forth in this Section 5.2 hereof shall survive termination of this Agreement.

5.3 Offsets. City may at its option, offset any fee waivers due under this Agreement against any debt (including taxes) lawfully due to City from Company, regardless of whether the amount due arises pursuant to the terms of this Agreement, a Related Agreement or otherwise, and regardless of whether or not the debt due City has been reduced to judgment by a court.

ARTICLE 6 MISCELLANEOUS

6.1 Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the parties hereto.

6.2 Limitation on Liability. It is understood and agreed between the parties that Company and City, in satisfying the conditions of this Agreement, have acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

6.3 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties.

6.4 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement. The undersigned officers and/or agents of the parties are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties.

6.5 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered.

If intended for City, to:

City of Saginaw, Texas
Attn: Economic Development Director
P.O. Box 79070
Saginaw, TX 76179

If intended for Company, to:

CTI Foods, LLC

Attn: _____

CTI Saginaw, LLC

500 Sansom Blvd

Saginaw, TX 76179

6.6 Entire Agreement. This Agreement is the entire agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.7 Governing Law/Venue. The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of, or relating to, this Agreement and all of the transactions it contemplates, including without limitation its validity, interpretation, construction, performance and enforcement. Mandatory and exclusive venue for any action arising out of, or relating to, this Agreement must be in a court of competent jurisdiction in Tarrant County, Texas.

6.8 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

6.9 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

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

6.11 Successors and Assigns. This Agreement may not be assigned without the prior written consent of City.

6.12 Recitals. The recitals to this Agreement are incorporated herein.

6.13 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

6.14 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.15 Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any undocumented workers, and if convicted of a violation under

8 U.S.C. Section 1324a (f) Company shall repay the fee waivers granted herein and any other funds received by Company from City pursuant to this Agreement as of the date of such violation within one hundred twenty (120) days after the date Company is notified by City of such violation, plus interest at the rate of four percent (4%) compounded annually from the date of violation until paid.

6.16 Consequential Damages. The parties agree that the parties will never be liable under this Agreement for consequential damages (including lost profits) or exemplary damages.

6.17 No Waiver. Any failure by a party to insist upon strict performance by another party of any material provision of this Agreement shall not be deemed a waiver thereof, and the party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

6.18 Attorneys' Fees. If either party employs an attorney or attorneys to enforce any of the provisions hereof, or to recover damages for the breach of this Agreement, the non-prevailing party in any final judgment or award agrees to pay the other party all reasonable costs, charges and expenses, including reasonable attorneys' fees and costs of court, expended or incurred in connection therewith.

{Signatures on following page}

CITY OF SAGINAW, TEXAS

Todd Flippo, Mayor

Date: _____

CTI FOODS, L.L.C,
a Texas limited liability company

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A"