

FORM 132.M  
(Approving/Authorizing)

Controller's Office

To the Honorable Mayor and City Council of the City of Houston:

I hereby certify, with respect to the money required for the contract, agreement, obligation, or expenditure contemplated by the ordinance set out below that:

- ( ) Funds have been encumbered out of funds previously appropriated for such purpose.
- ( ) Funds have been certified and designated to be appropriated by separate ordinance to be approved prior to the approval of the ordinance set out below.
- ( ) Funds will be available out of current or general revenue prior to the maturity of any such obligation.
- ( X ) No pecuniary obligation is to be incurred as a result of approving the ordinance set out below.
- ( ) The money required for the expenditure or expenditures specified below is in the treasury, in the fund or funds specified below, and is not appropriated for any other purposes.
- ( ) A certificate with respect to the money required for the expenditure or expenditures specified below is attached hereto and incorporated herein by this reference.
- ( ) Other.

Date: 12-14, 2010.

*ChBh Ronald C. Khun*  
City Controller of the City of Houston

*HPS may*  
FUND REF: N/A - 5000 - N/A

AMOUNT: -0-

ENCUMB. NO.: RF 50010-11

City of Houston, Texas, Ordinance No. 2010-1015

AN ORDINANCE APPROVING AND AUTHORIZING A TAX ABATEMENT AGREEMENT BETWEEN THE CITY OF HOUSTON, TEXAS, AND EMERSON PROCESS MANAGEMENT LLLP FOR CERTAIN PROPERTY LOCATED WITHIN THE EMERSON PROCESS MANAGEMENT LLLP REINVESTMENT ZONE; MAKING FINDINGS AND CONTAINING PROVISIONS RELATED TO THE SUBJECT; AND DECLARING AN EMERGENCY.

\* \* \* \* \*

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:**

**Section 1.** That the City Council hereby approves and authorizes the contract, agreement, or other undertaking ("Agreement") described in the title of this Ordinance, in substantially the form of the document attached hereto and incorporated herein by this reference. The Mayor is hereby authorized to execute the Agreement described in the title of this Ordinance and all related documents on behalf of the City of Houston and to take all actions necessary to effectuate the City's intent and objectives in approving the Agreement in the event of changed circumstances. The City Secretary is hereby authorized to attest to all such signatures and to affix the seal of the City to all such documents.

**Section 2.** That the City Council hereby finds that the terms of the Agreement authorized by this Ordinance meet the guidelines and criteria of Chapter 44 of the Code of Ordinances, Houston, Texas relating to tax abatement; that the property subject to abatement under the Agreement authorized by this Ordinance lies within the Emerson Process Management LLLP Reinvestment Zone, a designated reinvestment zone authorized by Chapter 312 of the Texas Tax Code and Section 44-122 of the Code of Ordinances, Houston, Texas; that this Agreement will result in no substantial potential adverse effect on the provision of City services or the tax base; and that the planned use of the property as an other basic industry facility to serve as the division headquarters of the property owner, Emerson Process Management LLLP, and its affiliates (collectively, "Owner"), and on which property the Owner will consolidate its administrative, sales, information technology, and marketing functions, will not constitute a hazard to public safety, health or morals.

**Section 3.** That the City Council further finds that the property subject to abatement under the Agreement authorized by this Ordinance lies within the boundaries of Tax Increment Reinvestment Zone Number Twenty (Southwest Houston Zone) and, as required by Chapter 311.0125(b) of the Texas Tax Code, the Agreement has been approved by the board of directors of the Southwest Houston Zone, and no other taxing unit that imposes taxes on the property deposits any of its tax increment into the tax increment fund for the Southwest Houston Zone.

**Section 4.** That the City Council officially finds, determines, recites, and declares that sufficient written notice of the date, hour, place, and subject of this meeting of the City Council was posted at a place convenient to the public at the City Hall of the City for the time required by law preceding this meeting, as required by the Open Meetings law, Chapter 551, TEX. GOV'T CODE (Vernon's 2010), as amended, and that this meeting has been open to the public as required by law at all times during which this Ordinance and the subject matter thereof has been discussed, considered, and formally acted upon. City Council further ratifies, approves, and confirms such written notice and the contents and posting thereof.

**Section 5.** That the City Attorney is hereby authorized to take all actions necessary to enforce all legal obligations under such contracts, agreements, or other undertakings without further authorization from the City Council.


**Section 6.** That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

**PASSED AND ADOPTED** this 15th day of December, 2010.

**APPROVED** this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 21 2010.

  
\_\_\_\_\_  
City Secretary

(Prepared by Legal Department \_\_\_\_\_  
(DRC:drc December 7, 2010) Donna Capps/dfm DFM/ OK)  
Assistant City Attorney  
(Requested by Andy Icken, Chief Development Officer, Economic Development Department)  
(L. D. File No. 0341000078001)  
G:\LAND\Tax Abatement\Emerson Electric\ORD Approving Tax Abatement Agmt 12-07-10.doc

AYE	NO	
✓		MAYOR PARKER
• • • •	• • • •	COUNCIL MEMBERS
✓		STARDIG
✓		JOHNSON
✓		CLUTTERBUCK
	ABSENT	ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		COSTELLO
✓		LOVELL
	ABSENT - ON PERSONAL BUSINESS	NORIEGA
✓		BRADFORD
✓		JONES
CAPTION	ADOPTED	

## **TAX ABATEMENT AGREEMENT**

This **TAX ABATEMENT AGREEMENT** ("Agreement") is made by and between the **CITY OF HOUSTON, TEXAS**, a municipal corporation and home-rule city ("City"), and **EMERSON PROCESS MANAGEMENT LLLP**, a Delaware limited liability limited partnership authorized to transact business in the State of Texas ("Owner"). The City and the Owner may be referred to singularly as "Party" and collectively as the "Parties." Capitalized terms have the meanings defined in the first section of this Agreement.

### **W I T N E S S E T H:**

**WHEREAS**, the creation and retention of job opportunities in the City is paramount to the City's continued economic development; and

**WHEREAS**, in accordance with the requirements of Section 44-127(a)-(c) of the Code, the Owner desires to expand, operate, and construct an "other basic industry facility" as defined in Section 44-121 of the Code to be occupied and used by affiliates of the Owner as the division headquarters for such affiliates and thereby consolidating administrative, sales, information technology, and marketing functions of the affiliates; and

**WHEREAS**, in accordance with Section 44-123 of the Code, the Owner filed a written application for tax abatement dated October 22, 2010, and an amended application also dated October 22, 2010; and

**WHEREAS**, the City Council finds that it is reasonably likely that this Agreement will contribute to the retention, expansion, and creation of primary employment and will attract major investment in the Zone that would be a benefit to property within the Zone and that would contribute to the economic development of the City; and

**WHEREAS**, the City Council finds that the Improvements are practical and are of benefit to the area within the Zone and to the City; and

**WHEREAS**, the City Council finds that there will be no substantial potential adverse effect on the provision of City services or on the tax base caused by this Agreement; and

**WHEREAS**, the Owner has represented that the Improvements will be designed, constructed and installed in the Facility according to all applicable federal, state, and local environmental regulations; and

**WHEREAS**, the City Council finds that the terms of this Agreement meet the applicable requirements of Chapter 44, Article IV, of the Code; and

**NOW, THEREFORE**, for and in consideration of the premises and mutual promises stated herein, the Parties agree as follows:

**1. Definitions**

As used in this Agreement, the following capitalized terms shall have the meanings assigned to them below, unless otherwise defined or the context clearly requires otherwise.

"Abated Property" means improvements to the following types of property made subsequent to this Agreement: buildings, structures, fixed machinery and equipment, site improvements, office space and related fixed improvements necessary to the operation and administration of the Facility, and tangible personal property.

"Abatement Period" means the ten (10) year time period that begins on the Effective Date of Abatement.

"Agreement" means this Tax Abatement Agreement between the City of Houston and Emerson Process Management LLLP.

"Agreement Effective Date" means the date upon which City Council approves this Agreement.

"Base Year Value" means Fourteen Million Seventy Thousand and no/100 Dollars (\$14,070,000.00) which is the sum of the assessed value of all taxable property in the Zone as of January 1, 2010, plus the agreed upon value of all taxable property constructed or installed in the Zone after January 1, 2010, but before the Agreement Effective Date.

"Chapter 44" means Article IV, Tax Abatement, of the Code, as amended.

"City" means the City of Houston, Texas.

"City Council" means the City Council of the City of Houston, Texas.

"Code" means the Code of Ordinances of the City of Houston, Texas, as amended.

"Department" means the City's Economic Development Department or its successor.

"Director" means the Chief Development Officer of the Department or his or her designee, or any person who may be designated in writing by the Mayor to perform the functions delegated to the Director in this Agreement, but only for so long as the designations remain in effect.

"Effective Date of Abatement" means the January 1<sup>st</sup> immediately following the date that the last certificate of occupancy for the Improvements is issued by the City.

"EXHIBIT 1" attached to this Agreement and made a part hereof includes a map and a legal description of the Zone.

"EXHIBIT 2" attached to this Agreement and made a part hereof lists the street addresses and the respective HCAD tax account numbers of the taxable property currently and to be located in the Zone.

"EXHIBIT 3" attached to this Agreement and made a part hereof describes the Abated Property.

"EXHIBIT 4" attached to this Agreement and made a part hereof includes financial information, e.g. a project summary and economic impact analysis, related to the Abated Property.

"Facility" means an "Other basic industry facility."

"HCAD" means the Harris County Appraisal District.

"Improvements" means buildings, structures, fixed machinery and equipment, site improvements, office space and related fixed improvements necessary to the operation and administration of the Facility, and tangible personal property that are developed, constructed, or installed in the Zone by or on behalf of the Owner and its affiliates subsequent to the Agreement Effective Date.

"Ordinance" means City Ordinance No. 2010-\_\_\_\_\_ adopted on \_\_\_\_\_, 2010<sup>1</sup> creating the Zone.

"Other basic industry facility," as that term is defined in Section 44-121 of the Code, means buildings and structures, including fixed machinery and equipment not elsewhere described, that meet the economic development objectives of the general policy stated in Section 44-120 of the Code.

"Owner" means the abatement recipient, Emerson Process Management LLLP, a Delaware limited liability limited partnership authorized to transact business in the State

---

<sup>1</sup> City Secretary to insert ordinance number and date adopted by City Council.



of Texas, which owns or will own the real and/or personal property against which the ad valorem taxes levied will be partially abated pursuant to Chapter 44 of the Code.

"Permanent employee" means an individual who works for, and is an employee of, either the Owner or an affiliate of the Owner, works a minimum of thirty-five (35) hours in a seven-day period, and reports to work in the Zone, excluding any contract employee, seasonal employee, or part-time employee.

"Real Property" means the land in the Zone and all improvements existing prior to the Agreement Effective Date, which land is or will be owned by the Owner. The Real Property is more specifically described on EXHIBIT 1.

"Tax Code" means the Texas Tax Code, as amended.

"Zone" means the Emerson Process Management LLLP Reinvestment Zone, which is more particularly described in Exhibit "B" of the Ordinance.

## **2. Authorization**

This Agreement is authorized by Chapter 44, Article IV of the Code, which establishes the property tax abatement program for properties in designated reinvestment zones, and by the Ordinance.

## **3. Property**

The street addresses and HCAD tax account numbers of the Real Property and the Improvements are listed on EXHIBIT 2.

## **4. Representations and Warranties**

(a) The Owner represents that it owns or will own the Real Property. In the event that the Owner does not own the Real Property on the Agreement Effective Date, the Owner agrees to acquire the Real Property not later than March 1, 2011. The Owner further agrees that if it fails to acquire the Real Property by March 1, 2011 (to be

evidenced by a deed or other conveyance to Owner that is filed for record in the Office of the County Clerk of Harris County, Texas), this Agreement shall automatically be null, void and of no further force or effect.

(b) The Owner represents that the execution and delivery of this Agreement has been duly authorized by all requisite actions of its partners that are necessary for it to have force and effect and that the person signing this Agreement on behalf of the Owner has been and is authorized to do so.

(c) The Owner represents and warrants that construction or installation of the Improvements described in EXHIBIT 3 will begin after the Agreement Effective Date. The Owner represents that the Real Property is comprised of approximately 11.454 acres of land.

(d) The Owner represents that, to the best of the knowledge of Neal Wieschhaus and any other employee of the Owner who has participated in the negotiation or internal analysis of this Agreement, no interest in the Real Property or the Improvements is held or leased by a member of the City Council or a member of the City's Planning Commission.

(e) The Owner represents and warrants that it will invest a minimum of Thirteen Million Eight Hundred Fifty Thousand Dollars (\$13,850,000.00) in constructing and installing the Improvements in the Zone by the Effective Date of Abatement.

(f) The Owner represents and warrants that by June 30, 2013, the Owner and its affiliates, collectively, will employ, and will continue to employ throughout the Abatement Period, at least three hundred fifty-four (354) Permanent Employees in the Zone (inclusive of one hundred forty-four (144) Permanent Employees who will transfer to the Zone from Fort Bend County, Texas and/or other Texas counties), and by

January 1, 2015, will employ, and will continue to employ throughout the Abatement Period, at least ninety-six (96) Permanent Employees in the Zone whose employment position on the Effective Date of Agreement either does not exist or exists outside the State of Texas.

(g) The Owner represents that developing, constructing, and installing the Improvements in the Zone are necessary because its existing facilities cannot efficiently and economically provide the required capacity needed by the Owner and its affiliates when reasonable allowance is made for necessary improvements to the existing facilities.

(h) The Owner represents and warrants that it will operate the Facility as described in EXHIBIT 4.

(i) The Owner represents and warrants that the Improvements will be constructed, installed, and operated in accordance with all applicable federal, state, and local environmental laws and regulations.

## **5. Terms of the Agreement**

(a) The Owner shall cause the Improvements to be developed, constructed and installed substantially in conformity with the description, plans, and specifications described in EXHIBIT 3 and applicable provisions of the City of Houston Building Code ("Building Code"). In case of any conflict between EXHIBIT 3 and the Building Code, the Building Code shall prevail. In addition, during the Abatement Period, the Owner shall comply with Chapter 42 of the Code, if applicable (platting regulations), and all other laws and regulations applicable to the construction and installation of the Improvements.

(c) Upon completion of the construction and installation of the Improvements, the Owner shall use the Facility or cause the Facility to be used for the proposed uses specified in this paragraph during the Abatement Period; provided, however, the Director may approve a change from those proposed uses, if the Director determines that the change is consistent with Chapter 44 and with the City's general purpose of encouraging development or redevelopment of the Zone during the Abatement Period. The proposed use of the Facility (unless the Director approves a change in use) is to establish a division headquarters for its affiliates, consolidating administrative, sales, information technology, and marketing functions of various affiliated companies of Owner, pursuant to and to the extent described in EXHIBIT 4.

(d) The Owner shall maintain the Improvements in good repair and condition during the Abatement Period.

(e) The Owner shall allow City employees to have access to the Facility for the purpose of inspecting the Improvements to ensure that the Improvements are completed, installed, and maintained in accordance with the terms of this Agreement. All inspections will be made only after giving the Owner at least twenty-four (24) hours' advance notice, and will be conducted in such manner as to not unreasonably interfere with the construction and/or operation of the Facility. All inspections will be made with one (1) or more representatives of the Owner and in accordance with the Owner's safety and security procedures. The above shall not act as a limitation on the City's ability to otherwise perform any inspections or to otherwise enter the Facility pursuant to the Code, the Building Code, or otherwise.

(f) The Owner shall provide and cause its affiliates to provide City employees reasonable access to any relevant records requested and necessary for the purpose of

conducting an audit of the Facility to ensure compliance with this Agreement. Any such audit shall be made only after giving the Owner at least seven (7) days' advance notice, and will be conducted in such a manner as to not unreasonably interfere with the operation of the Facility. Documents and materials provided by the Owner or its affiliates to the City in connection with any audit or other inspections under this Agreement which contain information that is, or which themselves are, confidential or proprietary to Owner shall not be removed from the Facility nor shall the information contained in them be used or disclosed by the City other than for the sole purpose of determining the Owner's compliance with the terms and conditions of this Agreement, unless disclosure is otherwise required by state or federal law. In the event that the City receives any request for information pursuant to the Texas Open Records Act or similar provision of federal law, the City agrees to promptly give the Owner notice of that request. If the Owner, for itself or one or more of its affiliates, advises the City that it believes that the right of the City to withhold said information from disclosure is allowed by the Texas Open Records Act or other applicable state or federal statute, rule or regulation, the City agrees to withhold the information or to immediately request an opinion from the Texas Attorney General or other appropriate public official with authority under law to render such decision on the right of the City to withhold said information. If the decision rendered is to the effect that disclosure is not required to be made, then the City agrees to withhold disclosure of said information unless thereafter authorized by the Owner to be disclosed. The City agrees that during any period after request but before the rendering of a decision by the Texas Attorney General or other appropriate public official regarding the obligation of the City to make disclosure of

information deemed confidential, proprietary or both by the Owner, it will not disclose the requested information unless ordered to do so by a court of competent jurisdiction.

(g) The Owner shall not assign this Agreement without the written approval of the City Council, which approval shall not be unreasonably withheld; provided that the Director may consent to the assignment of this Agreement if the assignment is to an affiliated entity of the Owner and the Owner is in compliance with all terms of this Agreement. In addition, any assignment must comply with the provisions of Section 44-134 of the Code.

(h) Not later than February 1<sup>st</sup> of each year during the Abatement Period, the Owner shall submit to the Director and the Chief Appraiser of HCAD a statement of the number of Permanent Employees the Owner and its affiliates collectively employ in the Zone. The employee count submitted shall correspond to the employee count reported by the Owner in its "Employer's Quarterly Report" to the Texas Workforce Commission. The employee count submitted by the Owner shall be used to determine abatement eligibility for that year and be subject to audit, if requested by the Director, pursuant to the provisions of subsection (h) of Section 44-133 of the Code. The Owner, if requested by the Director, shall have an independent audit prepared of the employment/employee count documentation and shall submit the audit to the Director for use in complying with the requirements of this subsection. Not later than March 31<sup>st</sup> of each year during the Abatement Period, the Director shall certify to the Chief Appraiser of HCAD whether the Owner is in compliance with the employment requirements of this Agreement.

(i) This Agreement may be amended at any time upon the mutual written consent of all Parties hereto subject to approval by the City Council.

(j) Not later than April 15<sup>th</sup> or such other date as required by HCAD, whichever date is earlier, of each year during of the Abatement Period, the Owner shall file the appropriate form with HCAD to qualify for the tax abatement granted under this Agreement for that year. In addition, not later than April 15<sup>th</sup> or such other date as required by HCAD, whichever date is earlier, of each year during the Abatement Period, the Owner shall render to HCAD the value of all taxable personal property, including the tangible personal property included in the Improvements, located in the Zone on the preceding January 1<sup>st</sup>.

(k) On or before January 1<sup>st</sup> of each year the Agreement is in effect, the Owner shall provide the Director a sworn statement that includes a delineation of the number of permanent employees, contract employees and part-time employees of the Owner and its affiliates as of the immediately preceding December 1<sup>st</sup>, who report to work in the Zone.

(l) Contract employees and part-time employees may be used to comply with the Owner's contractual obligation to create/retain jobs on a full-time equivalency basis for any number of jobs; provided that full-time equivalent jobs shall only be used to satisfy the Owner's contractual obligation if the Owner maintains a minimum of twenty-five (25) permanent employees who work within the Zone.

(m) Commencing January 1, 2012, and on or before January 1<sup>st</sup> of each subsequent year during the Abatement Period, the chief financial officer, or equivalent, of the Owner shall provide the Director a sworn statement that the Owner is and has been in compliance with all provisions of this Agreement in the prior year.

(n) A chief financial officer, or equivalent, of the Owner who cannot make the sworn statement required by paragraph (m) above on any January 1<sup>st</sup> shall provide the

Director with a written statement identifying any provision of the Agreement with which the Owner is not or has not been in full compliance.

(o) Failure by the chief financial officer, or equivalent, of the Owner to timely provide the Director with either the sworn statement required by paragraph (m) above or the statement required by paragraph (n) above will result in automatic default under this Agreement for which no notice of default or opportunity to cure shall be required.

(p) The Owner shall have the option and right at any time during the Abatement Period, to give the City written notice (a "Termination Notice") that the Owner has elected to terminate this Agreement and its right to tax abatement on the Improvements effective as of the year in which the Termination Notice is given by the Owner; provided, however, at the time the Termination Notice is given by the Owner, no event of default shall exist which has not been cured. Upon the giving of a Termination Notice by the Owner and subject to the proviso of the preceding sentence, this Agreement and all rights and obligations of the Parties shall cease and terminate and the Owner shall not be entitled to any tax abatement pursuant to this Agreement for the year in which the Termination Notice is given by the Owner and for all years remaining in the Abatement Period.

## **6. Tax Abatement**

(a) The Base Year Value is Fourteen Million Seventy Thousand Dollars (\$14,070,000.00).

(b) In consideration of the Owner's commitment to invest at least Thirteen Million Eight Hundred Fifty Thousand Dollars (\$13,850,000.00) in the Improvements in the Zone, the City agrees to grant the Owner a fifty percent (50%) abatement of the ad valorem taxes on the Improvements in the Zone during the Abatement Period. In



addition, the abatement of the ad valorem taxes granted by this Agreement is specifically subject to the rights of the holders of outstanding bonds of the City as of the effective date of this Agreement. The Abatement Period begins on the January 1<sup>st</sup> following the date on which the final certificate of occupancy for the Improvements is issued by the City (the "Effective Date of Abatement"). In no case shall the Abatement Period, inclusive of the construction period, exceed ten (10) years from the Effective Date of Abatement.

(c) From the Agreement Effective Date to the Effective Date of Abatement, ad valorem taxes levied on ineligible property, as that term is defined in Section 44-127(e) of the Code, including the Real Property, shall be fully payable.

(d) From the Effective Date of Abatement to the end of the Abatement Period:

(1) Ad valorem taxes levied on "ineligible property," as that term is defined in Section 44-127(e) of the Code, including the Real Property, shall be fully payable.

(2) Ad valorem taxes levied on the Base Year Value of "eligible property," as that term is defined in Section 44-127(d) of the Code, shall be fully payable.

(3) Fifty percent (50%) of the ad valorem taxes levied on the Improvements, as determined each year, shall be fully payable.

(e) The City shall enter into only one tax abatement agreement for the Facility described in this Agreement during the existence of the Zone.

## **7. Default and Recapture**

### **(a) Events of Default**

The Owner shall be in default under this Agreement if any of the following occur at any time from the Agreement Effective Date until the expiration of the

Abatement Period or such earlier date on which this Agreement may otherwise expire or otherwise be terminated:

(1) The Facility is completed and is occupied, but subsequently is wholly vacated or abandoned for any reason other than the occurrence of a fire, explosion, or other casualty or accident or natural disaster;

(2) The Owner fails to comply timely with job creation, investment or payment requirements stated in this Agreement;

(3) The Owner fails to comply timely with any material term of this Agreement;

(4) The Owner fails to file any required report or statement or to give any required notice pursuant to this Agreement; or

(5) Employees or designated representatives of the City determine pursuant to an inspection under Section 44-132 of the Code that the Owner has not complied with this Agreement.

**(b) Notice**

(1) If the Director determines that an event of default has occurred, the Director shall notify the Owner in writing at the address stated in the Agreement, and if the condition of default is not cured within sixty (60) days from the date of the notice, then the City may take any one or more of the following actions set forth in Section 7(d) of this Agreement; provided, however, that the City shall only be required to give a sixty (60) day notice of default for failure to comply with job creation or investment requirements. The Owner's failure to comply with job creation or investment requirements is an "incurable default." Within such sixty (60) day notice period, the Owner shall be entitled to question the accuracy of the City's determination of the incurable default but shall not be entitled to cure the default. After the sixty (60) day

notice period, if the City concludes that its determination of the incurable default is correct ("noticed incurable default"), then the City shall be entitled to pursue any one or more of the remedies set forth in Section 7(d) of this Agreement.

(2) If the Owner is in default under Section 7(a) of this Agreement, the Owner shall notify the City within ninety (90) days of the default and if the default is one that can be cured hereunder, the default shall be cured within sixty (60) days following the date of the notice of default. If the Owner fails to cure the curable default within such sixty (60) day period, then the City may pursue any one or more of the remedies listed in Section 7(d) of this Agreement.

**(c) Cure**

(1) In curing an event of default based on any of the items set forth in Section 7(a) of this Agreement, and assuming the event of default is curable and is not an incurable default, the Owner shall provide sufficient evidence to the Director that the default has been cured within sixty (60) days following the date of the notice of default. Sufficient evidence shall include the providing of the information not timely provided and/or providing evidence of the completion of the act(s) not timely performed. The City shall have the right to ask for additional information to confirm the adequate cure of any default.

**(d) City Remedies for Default**

(1) In the event of a noticed incurable default or a curable default which has not been cured after notice and an opportunity to cure was given, no tax abatement shall be allowed for the calendar year in which the default occurs (and thereafter) and the City shall have the right to pursue any one or more of the following remedies: terminate the Agreement; terminate the Owner's right to any future abatement under the

Agreement without terminating the Agreement; pursue any and all remedies allowed under the Agreement; and pursue any and all remedies allowed under Texas law.

(2) In addition to the foregoing, in the event of a noticed incurable default or a curable default which has not been cured after notice and an opportunity to cure has been given, the City, in its sole discretion, may recover all or any part of the taxes abated at any time under the Agreement. The Owner shall pay to the City all such previously abated taxes within thirty (30) days of the City's written demand therefor. Any taxes or economic incentive not paid timely shall bear interest at the rate of twelve percent (12%) annually.

(3) Notwithstanding the foregoing, the Director and the City Attorney are hereby authorized to negotiate and enter into amendments and revisions to the Agreements under which there are noticed incurable defaults or curable defaults which have not been cured after notice and opportunity to cure has been given. In the foregoing circumstances, the Parties are also authorized to negotiate and enter into any other and further agreements they determine best protect the City's interests.

(e) The City's right and authority to pursue any default and to recover abated taxes granted under this Section 7 shall survive the amendment, revision, expiration, or termination of this Agreement.

## **8. Administration**

(a) The Chief Appraiser of HCAD shall annually determine the taxable value of the Improvements listed in EXHIBIT 3. Each year, the Owner shall furnish the City with such information as may be necessary for calculating the amount of tax abatement granted under this Agreement. Once the taxable values of the Improvements have been established and the amount of the tax abatement calculated, the Chief Appraiser

of HCAD shall notify the affected jurisdictions that levy taxes on the Improvements of the amounts of the taxable values of the Improvements.

(b) Upon completion of construction or installation of the Improvements, the Director shall annually evaluate the Facility to ensure compliance with this Agreement and prepare a report of any violations of this Agreement.

**9. Compliance with Applicable Government Regulations**

Except as specifically provided herein, nothing in this Agreement shall be construed to alter or affect the obligation of the Owner to comply with any ordinance, rule or regulation of the City, or the laws and regulations of the State of Texas and the United States.

**10. Merger**

The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the Parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence, and preliminary understandings between the Parties and others relating hereto are superseded by this Agreement.

**11. Notices**

All notices shall be in writing and unless hand-delivered, shall be sent by U.S. Mail certified, return receipt requested. Unless otherwise provided in this Agreement, all notices shall be delivered to the following addresses:

**To the Owner:** Emerson Process Management LLLP  
Attn: Michael K. Shannon  
Vice President and General Counsel, Legal Dept.  
8100 W. Florissant Avenue  
St. Louis, MO 63136

with copies to: Emerson Process Management LLLP  
Attn: Neal Wieschhaus  
Senior Manager, Indirect Taxes & Incentives, Finance Dept.  
8000 W. Florissant Avenue  
St. Louis, MO 63136

Fulbright & Jaworski L.L.P.  
600 Congress Avenue, 24<sup>th</sup> Floor  
Austin, Texas 78701  
Attn: Mr. R. G. "Jerry" Converse

**To the City:** Mailing Address:  
  
Director  
Economic Development Department  
P. O. Box 1562  
Houston, Texas 77251

Physical Address:  
  
Director  
Economic Development Department  
611 Walker, 10th Floor  
Houston, Texas 77002

Each Party may designate a different address by giving the other Party written notice ten (10) days in advance of such designation.

This Agreement has been executed by the Parties in multiple originals, each having full force and effect.

[Execution page to follow]

**EMERSON PROCESS MANAGEMENT LLLP**  
(a Delaware limited liability limited partnership)

**CITY OF HOUSTON, TEXAS**

By: \_\_\_\_\_

Michael K. Shannon  
Vice President and General Counsel

\_\_\_\_\_  
Mayor

**ATTEST:**

**ATTEST/SEAL:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
City Secretary

**COUNTERSIGNED:**

\_\_\_\_\_  
City Controller

**DATE COUNTERSIGNED:**

**APPROVED:**

\_\_\_\_\_  
Chief Development Officer,  
Economic Development Department

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Assistant City Attorney  
L.D. File No. 0341000078001

## **EXHIBIT 1**

### **LEGAL DESCRIPTION OF PROPERTY**

All of Restricted Reserve "B" (Restricted to Commercial Use), containing 11.454 acres, more or less, of REALTY ASSOCIATES OAK PARK, an addition in Harris County, Texas according to the map or plat thereof recorded under Film Code No. 609055, of the Map Records of Harris County, Texas.



**EXHIBIT 1**  
**BOUNDARY MAP OF PROPERTY**

## EXHIBIT 2

<u>Tax Account Number</u>	<u>Street Address</u>
1292390010002	6005 Rogerdale Drive, Houston, Texas 77072

[HCAD to provide additional new account numbers needed]

**EXHIBIT 3**  
**ABATED PROPERTY**

The "Improvements" as that term is defined in the Tax Abatement Agreement to which this EXHIBIT 3 is attached, is composed of two groups of property and together they constitute the "Abated Property" referenced therein. All construction and installation of these properties will be completed by June 30, 2013. The proposed use of the Improvements/Abated Property is for an "other basic industry facility," as defined in Section 44-121 of the Code of Ordinances of the City of Houston.

**Shell Fit Out Investment:**

New Construction to Create General Office Space

New Construction to Create Specialty Space

New Construction to Create Training Multi-purpose Space

New Construction to Create Lab Space

New Construction to Create Warehouse Space

**Personal Property Investment:**

Data/Network Equipment

Compressed Air Equipment

Systems Furniture Fixtures and Equipment

Security Equipment

Phone System Equipment

Signage

Generator/UPS Systems and Equipment

## EXHIBIT 4

### PROJECT SUMMARY AND ECONOMIC IMPACT ANALYSIS

**Emerson Electric Co.**  
**AKA: PROJECT SON**

**PREPARED FOR:**

City of Houston

Finance Department – Economic Development

**COMPANY CONTACT:**

Michael Lateur, CCIM

VP, Property Tax Advisory Services

DUFF & PHELPS,

Tel: 512-671-5575

[michael.lateur@duffandphelps.com](mailto:michael.lateur@duffandphelps.com)

### **COMPANY BACKGROUND**

#### **History**

Emerson Electric Co. was incorporated in Missouri in 1890, and has grown from a regional manufacturer of electric motors and fans into a diversified global technology company. Having expanded its product lines through internal growth and acquisition, Emerson today is designing and supplying product technology and delivering engineering services and solutions in a wide range of industrial, commercial and consumer markets around the world.

Emerson is organized into the following business segments, based on the nature of the products and services rendered:

- Process Management, providing measurement, control and diagnostic capabilities for automated industrial processes producing items such as foods, fuels, medicines and power.
- Industrial Automation, bringing integrated manufacturing solutions to diverse industries worldwide.
- Network Power, providing power and environmental conditioning and reliability to help keep telecommunication systems, data networks and critical business applications continuously operating.
- Climate Technologies, enhancing household and commercial comfort as well as food safety and energy efficiency through air-conditioning and refrigeration technology.
- Appliance and Tools, providing uniquely designed motors for a broad range of applications, appliances and integrated appliance solutions, tools for both professionals and homeowners, and home and commercial storage systems.

## **Business Activities**

The specific business segment involved in this project is Process Management. The Process Management segment generated revenue of \$6.2 billion in fiscal year 2009. The business segment offers customers product technology as well as engineering and project management services for precision control, monitoring and asset optimization of oil and gas reservoirs and plants that produce power or that process or treat such items as oil, natural gas and petrochemicals; food and beverages; pulp and paper; pharmaceuticals; and municipal water supplies. This array of products and services helps customers optimize their plant capabilities in the areas of plant safety and reliability, and product quality and output.

In 2009, sales by geographic destination for this segment were United States 33 percent, Europe 22 percent, Asia 23 percent and other regions 22 percent.

## **PROJECT SUMMARY**

Emerson is considering the purchase of an existing facility in the Houston area. Upon renovation of the facility, the company will consolidate several of its various operations in the area into the renovated structure. The company is reviewing two structures for its expanded operations in the range of 150,000–500,000 square feet.

Emerson has stated that a facility located at 6005 Rogerdale Rd. is under contract and will commence the purchase subject to property tax abatement approval by the City of Houston.

2 Locations under consideration:

- **6005 Rogerdale Rd., Houston, TX (building under contract and will close purchase subject to property tax abatement approval by City of Houston)**
- 14141 Southwest Freeway, Sugar Land, TX

The company anticipates retaining 210 jobs and relocating 144 jobs from Fort Bend County and 96 new jobs. Emerson is anticipating an investment of approximately \$13.8 million. A location decision will be made by the end of 2010.

## **Project/Potential Site facts**

<b>Request:</b>	Tax Abatement
<b>Precinct:</b>	District F - Al Hoang
<b>Investment:</b>	\$13.8M Total Investment \$ 5.9M Office Building Purchase \$ 7.6M Tenant Improvements \$ 6.2M Build-Out Costs

<b>Consolidation (Retained) Jobs:</b>	210
<b>Jobs Transferred From Fort Bend:</b>	144
<b>New Jobs:</b>	96
<b>D &amp; I Jobs Created:</b>	1,006
<b>Total Salaries:</b>	\$1,332,894,777
<b>Taxable Purchases by workers:</b>	\$512,947,468
<b>Net Benefit to City:</b>	\$11,451,281

## **ECONOMIC AND FISCAL IMPACTS**

This analysis was created on the assumption of the created employment and production at the Houston facility. *Source: Impact DataSource Fiscal Impact Model – Developed by Jerry Walker for the Greater Houston Partnership – Research Department*

### **Economic Impact Over the First Ten Years**

The following are some of the economic impacts that the area can expect from the firm over the first ten years:

#### **Some of the Regional Economic Impacts of the Firm over the First Ten Years (1)**

Total number of direct and indirect jobs to be retained and created	1,006
Total salaries to be paid to direct and indirect workers retained and created	\$ 810,214,714
Total taxable sales and purchases retained and created	\$ 512,947,468
Total property to be added to local tax rolls over the first ten years	\$ 96,166,768

### **Costs and Benefits for Over the First Ten Years**

The city can expect the following costs and benefits from the plant and from the retained direct and indirect employees associated with the plant over the over the first ten years:

#### **Net Benefits Created and Retained for the City Over the First Ten Years**

##### *Benefits:*

Sales taxes collections	\$ 5,129,475
Property tax collections	\$ 5,525,079
Utility revenues and utility franchise fee collections	\$ 14,322,509
Collections of other taxes and user fees	\$ 3,393,739
Total benefits	\$ 28,370,802

##### *Costs:*

Costs of providing municipal services	\$ 6,369,453
Costs of providing utility services	\$ 10,550,068
Total costs	\$ 16,919,520
Net benefits	<b>\$ 11,451,281</b>

## **Net Benefits for All Local Taxing Districts Over the First Ten Years**

The city, county, school district and other districts where the plant is located can expect the following costs and benefits from the plant and the retained direct and indirect employees associated with the plant over the first 10 years.

### **Net Benefits Created and Retained for the City, County, School District, and Special Taxing Districts Over the First Ten Years**

#### *Benefits:*

Sales tax collections	\$ 11,676,825
Property tax collections	\$ 24,065,497
Utility revenues	\$ 10,931,463
Utility franchise fees	\$ 3,391,045
Hotel occupancy taxes	\$ 3,123,534
Collections of other taxes and user fees	\$ 1,455,875
Building permits	\$ 54,403
Additional state and federal school funding	\$ 25,021,980
Total benefits	\$ 79,720,622

#### *Costs:*

Costs of providing services to new residents	\$ 7,279,375
Costs of providing city utility services to new residents	\$ 10,550,068
Costs of providing services to new students	\$ 11,852,734
Reduction in state aid with the addition of new residential and commercial property on school district tax rolls	\$ 10,354,605
Total costs	\$ 40,036,781

Net benefits for city, county, school district and special taxing districts	<b>\$ 39,683,841</b>
---	----------------------