

STATE OF TEXAS

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**ECONOMIC DEVELOPMENT
GRANT AGREEMENT OF THE
CITY OF SAN ANTONIO**

COUNTY OF BEXAR

This Economic Development Grant Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the **City of San Antonio**, a municipal corporation of the State of Texas, hereinafter referred to as "City", by and through its City Manager or his designee, Navistar, Inc. ("Navistar"), and Navistar Manufacturing San Antonio LLC ("NMSA", collectively with Navistar, hereinafter referred to as "Manufacturer").

WHEREAS, Manufacturer is a manufacturer of commercial trucks, school and commercial buses, chassis for motor homes and step vans, and is a private label designer and manufacturer of diesel engines for the truck market, and is also a provider of truck and diesel engine parts and service (the "Business Activities"); and

WHEREAS, Manufacturer is engaged in an economic development project consisting of investing approximately \$235,000,000.00, which excludes land acquisition, for the purpose of establishing a production facility within the city limits of the City of San Antonio (the "Project") at 15770 S. US Highway 281, San Antonio, TX 78221, legally described in Exhibit A (the "Project Site"), all in accordance with that certain City of San Antonio Tax Abatement Agreement for Real and Personal Property, executed simultaneously with this Agreement, by and between the City and the Manufacturer (the "Tax Abatement Agreement") which is attached hereto as Exhibit A; and

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code, City is authorized to grant municipal funds in furtherance of public purposes for economic development projects; and

WHEREAS, in accordance with City of San Antonio City Ordinance No. 100684, City created an economic development program for the purpose of making such grants available; and

WHEREAS, the capital investment and creation of full-time jobs will promote local economic development and stimulate business and commercial activity in the City of San Antonio; and

WHEREAS, City has identified funds available in the form of an economic development grant for Manufacturer to use in deferring costs associated with the Project, including infrastructure improvements; and

WHEREAS, the City Council of City authorized the City Manager or designee to enter into this Agreement with Manufacturer as reflected in Ordinance No. 2019-10-31-0893, passed and approved on October 31, 2019 and City now wishes to engage Manufacturer to carry out the Project;

WHEREAS, capitalized terms used herein and not defined herein shall have the meaning ascribed to such terms in the Tax Abatement Agreement;

NOW THEREFORE:

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

SECTION 1. AGREEMENT PURPOSE

Manufacturer shall promote local economic development and stimulate business and commercial activity in the City of San Antonio. The City is supporting the Project through an economic development grant to provide funding for the purpose of defraying costs associated with infrastructure improvements at the Project Site as part of a larger incentive package, to include the Tax Abatement Agreement, intended, in part, to attract companies that support the City’s targeted industries.

SECTION 2. PROJECT REQUIREMENTS

A. Both Manufacturer and City understand and agree that this Agreement is to be executed pursuant to the approval of the City Council of the City of San Antonio by Ordinance Number 2019-10-31-0893 given on October 31, 2019.

B. Manufacturer, in support of the Project, shall:

- i.) invest the required amount in Real Property Improvements and Personal Property Improvements in accordance with the Tax Abatement Agreement;
- ii.) maintain the number of employees employed in Full-Time Jobs contemplated by the Tax Abatement Agreement; and
- iii.) obtain electricity exclusively from CPS Energy (“CPS”), or its successors or assigns, and water and wastewater service exclusively from San Antonio Water Systems (“SAWS”), or its successors or assigns for the full term of the Tax Abatement Agreement; provided, that, if CPS or SAWS ceased to be a municipally owned, controlled or operated utility company, then Manufacturer may seek services from alternate electricity and water providers; provided, further, that the foregoing shall not prohibit Manufacturer from implementing any sustainability efforts at the Project which would help produce savings with respect to any of its utility expense (including without limitation the installation of solar panels).

C. Manufacturer, in support of the Project, shall construct or shall cause the construction of certain water utility infrastructure improvements at the Project necessary for the Project to have access to SAWS’ water utilities and such other water utility infrastructure improvements at the Project which qualify as Allowable Costs (as defined below) hereunder.

D. The total amount of funding that may be granted toward the Project is SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$750,000.00), which shall be restricted to defraying costs associated with water utility infrastructure improvements at the Project as further described in Section 2(C).

E. The funding provided in Section 2(D) above shall be disbursed to Manufacturer within thirty (30) days following Manufacturer's submission of evidence reasonably satisfactory to City that the water utility infrastructure improvements at the Project as further described in Section 2(C) have been completed.

SECTION 3. AGREEMENT PERIOD

This Agreement shall commence upon full execution of this Agreement and be coterminous with the Tax Abatement Agreement.

SECTION 4. MANUFACTURER PERFORMANCE

A. Manufacturer shall complete the Project described in the Tax Abatement Agreement.

B. Manufacturer shall comply with all applicable laws and regulations with respect to the construction of the water utility infrastructure improvements at the Project as further described in Section 2(C), and shall perform all activities in accordance with the terms of this Agreement, and with all other terms, provisions, and requirements set forth herein.

SECTION 5. DEPARTMENT OBLIGATIONS

A. In consideration of full and satisfactory performance of activities required by Section 2(C) of this Agreement, City will disburse grant funds not to exceed SEVEN HUNDRED FIFTY THOUSAND AND 00/1000 DOLLARS (\$750,000.00) to Manufacturer as set forth in Section 2(E), and subject to the limitations set forth in this Section 5 and in Sections 14 and 15 below. Notwithstanding any other provision of this Agreement, the total of all grant payments and other obligations incurred by City under this Agreement will not exceed the sum of SEVEN HUNDRED FIFTY THOUSAND AND 00/1000 DOLLARS (\$750,000.00).

B. Except for Allowable Costs, City will not be liable to Manufacturer or other entity for any costs incurred by Manufacturer.

C. Manufacturer is only entitled to funds for the costs of actual expenses incurred and not in any amounts exceeding the allocations in Section 2(D) of this Agreement. Allowable Costs will be reasonably determined in accordance with this Agreement by City's Economic Development Department and are considered as infrastructure construction activities under Section 2(C). Any written invoice from SAWS for water utility infrastructure fees shall serve as conclusive evidence of such costs being considered Allowable Costs under this Agreement.

SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS

A. Manufacturer shall maintain the fiscal records and supporting documentation for all expenditures of funds to be paid on behalf of Manufacturer under this Agreement in a manner that conforms to this Agreement. Manufacturer shall retain such records, and any supporting documentation, for the greater of: (1) two (2) years from the end of the Agreement period; or (2) the period required by other applicable laws and regulations.

B. Manufacturer shall give the City, its designee, or any of its duly authorized representatives, access to and the right to examine all books, accounts, records, audit reports, reports, files, documents, written or photographic material, videotape and other papers, things, or property belonging to or in use by Manufacturer and solely which pertain to the funds paid on behalf of Manufacturer under this Agreement. Such rights to access shall continue as long as the records are retained by Manufacturer. Failure to provide reasonable access to authorized City representatives shall give the City the right to suspend or terminate the Agreement as provided for in Sections 15 and 16, or any portion thereof, for reason of default. All records and other information shall be retained by Manufacturer for a period of two (2) years after all performance requirements are achieved for audit purposes until such audits or other administrative, civil or criminal matters including, but not limited to, investigations, lawsuits, administrative inquiries and open record requests are completed. Manufacturer agrees to maintain such records in an accessible location and to provide citizens reasonable access to such records consistent with the Texas Public Information Act. Notwithstanding the foregoing, Manufacturer shall be deemed to have satisfied the City's requirements under this Section 6(B) upon providing reasonably satisfactory evidence to City that work with respect to water utility infrastructure at the Project has been completed and a written invoice from SAWS for water utility infrastructure fees in an aggregate amount that is no less than the amount set forth in Section 5(A) of this Agreement.

SECTION 7. MONITORING

A. City reserves the right to confirm Manufacturer's compliance with the terms and conditions of this Agreement. City will provide Manufacturer with a written report of the monitor's findings. If the monitoring report notes deficiencies in Manufacturer's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by Manufacturer and a reasonable amount of time in which to attain compliance. Failure by Manufacturer to take action specified in the monitoring report may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

B. Manufacturer shall provide to City a statement with reasonable supporting information evidencing the entities providing electricity and water at the Project Site.

SECTION 8. INDEPENDENT CONTRACTOR

It is expressly understood and agreed by the parties hereto that City is contracting with Manufacturer as an independent contractor, and that Manufacturer, its employees and subcontractors are not employees of the City.

SECTION 9. CONFLICT OF INTEREST

A. Manufacturer shall ensure that no employee, officer, or agent of Manufacturer shall participate in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when: (1) the employee, officer, or agent; (2) any member of his or her immediate family; (3) his or her partner; or (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract. Manufacturer shall comply with Chapter 171, Texas Local Government Code as well as the City's Code of Ethics.

B. Except for eligible administrative costs, no employee, agent, consultant, officer, or elected or appointed official, of either Manufacturer or of a subcontractor, who exercises or has exercised any functions or responsibilities or is in a position to participate in decision-making or gain inside information in regard to the activities involved in the Project, shall be permitted to have or obtain a financial interest in or benefit from the Project or any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties. This prohibition shall remain in effect for the duration of the prohibited relationship plus one calendar year thereafter.

SECTION 10. NONDISCRIMINATION AND SECTARIAN ACTIVITY

A. Manufacturer shall ensure that no person shall, on the ground of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity funded in whole or in part with funds made available under this Agreement.

B. None of the performances rendered by Manufacturer under this Agreement shall involve, and no portion of the funds received by Manufacturer under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

C. Manufacturer shall include the substance of this Section 10 in all subcontract agreements with respect to water utility infrastructure improvements at the Project.

SECTION 11. LEGAL AUTHORITY

A. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. The person or persons signing and executing this Agreement on behalf of each party or representing themselves as signing and executing this Agreement on behalf of a party, do hereby guarantee that he, she or they have been duly authorized to execute this Agreement on behalf of

that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

SECTION 12. LITIGATION AND CLAIMS

A. Manufacturer shall give City immediate notice in writing of any material action, including any proceeding before an administrative agency, filed against Manufacturer arising out the performance of any subcontract hereunder. Except as otherwise directed by City, Manufacturer shall furnish immediately to City copies of all pertinent papers received by Manufacturer with respect to such action or claim. Manufacturer shall notify the City immediately of any material legal action filed against the Manufacturer or any subcontractor in connection with the construction of the water utility infrastructure described herein. Manufacturer shall submit a copy of such notice to City within thirty (30) calendar days after receipt. No funds provided under this Agreement may be used in the payment of any costs incurred from violations or settlements of, or failure to comply with, federal and state regulations.

B. City and Manufacturer acknowledge that City is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

SECTION 13. CHANGES AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by both parties to this Agreement upon City approval and authorization of Manufacturer.

B. It is understood and agreed by the parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth this date, and the terms and conditions of this Agreement.

SECTION 14. SUSPENSION

A. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, in the event Manufacturer fails to comply with the terms of any Agreement with the City, City shall provide Manufacturer with written notification as to the nature of the non-compliance in accordance with the notice provisions of Section 9 of the Tax Abatement Agreement. City shall grant Manufacturer a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance under such Agreement. Should Manufacturer fail to cure any default within this period of time, the City may, upon written Notice of Suspension to Manufacturer, suspend this Agreement in whole or in part and withhold further payments to

Manufacturer, and prohibit Manufacturer from incurring additional obligations of funds under this Agreement. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended. Notwithstanding the foregoing, any default with respect to the requirements of Sections 2(B)(i)-(ii) and 4(A) of this Agreement shall be governed by the Cure Periods and notice requirements in the Tax Abatement Agreement.

B. In the case of default for causes beyond Manufacturer's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the City shall, in its reasonable discretion, extend the cure period provided that Manufacturer shall: (1) immediately upon receipt of Notice of Suspension advise City of Manufacturer's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same. Notwithstanding the foregoing, any default with respect to the requirements of Sections 2(B)(i)-(ii) and 4(A) of this Agreement shall be governed by the Cure Periods and notice requirements in the Tax Abatement Agreement.

C. A suspension under this Section 14 may be lifted only at the reasonable discretion of the City upon a showing of compliance with or written waiver by City of the term(s) in question.

D. With the exception of payment for work in progress or materials ordered prior to receiving a Notice of Suspension, City shall not be liable to Manufacturer or to Manufacturer's creditors for costs incurred during any term of suspension of this Agreement.

SECTION 15. TERMINATION

A. City shall have the right to terminate this Agreement for non-compliance, in whole or in part, at any time before the date of completion specified in Section 4 of this Agreement whenever City determines in its reasonable discretion that Manufacturer has failed to comply with any term of any Agreement with the City. City will provide Manufacturer with written notification as to the nature of the non-compliance in accordance with the notice provisions of Section 9 of the Tax Abatement Agreement, and grant Manufacturer a sixty (60) day period from the date of the City's written notification to cure any issue of non-compliance under such Agreement. Should Manufacturer fail to cure any default within this period of time, the City may, upon issuance to Manufacturer of a written Notice of Termination, terminate this Agreement in whole or in part and withhold further payments to Manufacturer, and prohibit Manufacturer from incurring additional obligations of funds under this Agreement. Such notification shall include: (1) the reasons for such termination; (2) the effective date of such termination; and, (3) in the case of partial termination, the portion of the Agreement to be terminated. Notwithstanding the foregoing, any default with respect to the requirements of Sections 2(B)(i)-(ii) and 4(A) of this Agreement shall be governed by the Cure Periods and notice requirements in the Tax Abatement Agreement.

B. In the case of default for causes beyond Manufacturer's reasonable control, which cannot with due diligence be cured within such sixty (60) day period, the City shall, in its reasonable discretion, extend the cure period provided that Manufacturer shall: (1) immediately upon receipt

of Notice of Termination advise City of Manufacturer's intention to institute all steps necessary to cure such default and the associated time frame; and (2) institute and thereafter prosecute to completion with reasonable dispatch all steps necessary to cure same. Notwithstanding the foregoing, any default with respect to the requirements of Sections 2(B)(i)-(ii) and 4(A) of this Agreement shall be governed by the Cure Periods and notice requirements in the Tax Abatement Agreement.

C. Manufacturer is liable to City for any money it has received from City or which has been expended by City on behalf of Manufacturer for performance of the provisions of this Agreement if City rightfully suspends or terminates this Agreement for Manufacturer's material non-compliance, in whole or in part, at any time before the date of completion. Upon termination, Manufacturer shall have no more than sixty (60) days to repay City any and all funds disbursed under this Agreement.

SECTION 16. RESERVED

SECTION 17. SUBCONTRACTS

A. Manufacturer shall ensure that the performance rendered under all subcontracts complies with all terms and provisions of this Agreement as if such performance were rendered by Manufacturer. Manufacturer shall bear full responsibility for performance by all subcontractors.

B. Manufacturer, in subcontracting any of the performances hereunder, expressly understands that in entering into such subcontracts, City is in no way liable to Manufacturer's subcontractor(s).

C. Manufacturer assures and shall obtain assurances from all of its subcontractors where applicable, that no person shall, on the grounds of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Agreement.

SECTION. 18. DEBARMENT

By signing this Agreement, Manufacturer certifies that it will not award any funds provided under this Agreement to any party which is debarred, suspended or otherwise excluded from or ineligible for participation in assistance programs.

SECTION 19. RIGHTS UPON DEFAULT

It is expressly understood and agreed by the parties hereto that any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under any Agreement between Manufacturer and the City or under any provision of law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. Failure to exercise any right or remedy hereunder shall not constitute a waiver of the right to exercise that or any other right or remedy at any time.

SECTION 20. NON-ASSIGNMENT

This Agreement shall be assignable in accordance with Section 11 of the Tax Abatement Agreement. Notwithstanding any attempt to assign the Agreement, Manufacturer shall remain fully liable on this Agreement and shall not be released from performing any of the terms, covenants and conditions herein. Manufacturer shall be held responsible for all funds received or expended on Manufacturer's behalf under this Agreement.

SECTION 21. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 22. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

Notwithstanding anything in this Agreement to the contrary, City shall grant relief from performance of the Agreement if the Manufacturer is prevented from compliance and performance due to Force Majeure. The burden of proof for the need for such relief shall rest upon the Manufacturer. To obtain release based upon Force Majeure the Manufacturer must file a written request with the City as set forth in the Tax Abatement Agreement.

SECTION 23. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS

The following provisions of the Agreement, concerning Manufacturer's obligations, shall survive the termination of the Agreement:

- A. Section 6 (Records Retention and Accessibility of Records) – Solely to the extent required by any applicable laws.

Signatures to follow on the next page

EXECUTED and AGREED to as of _____, 2019 (the "Effective Date"):

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

Erik Walsh
CITY MANAGER

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

NAVISTAR, INC.

Timothy J. Tamer
Name: Timothy J. Tamer
Title: Vice President, Tax



ATTEST (if necessary):

Karen S. Battaglia
Printed Name: Karen S. Battaglia

NAVISTAR MANUFACTURING SAN
ANTONIO LLC

Timothy J. Tamer
Name: Timothy J. Tamer
Title: Vice President, Tax



ATTEST (if necessary):

Karen S. Battaglia
Printed Name: Karen S. Battaglia