

STATE OF TEXAS                   §  
  §  
COUNTY OF FORT BEND         §

**FIRST RESTATED AS AMENDED TAX ABATEMENT AGREEMENT**  
by and between  
**FORT BEND COUNTY**  
and  
**BEN E. KEITH COMPANY**

By agreement, effective November 6, 2007, Fort Bend County entered into a tax abatement agreement with BEN E. KEITH COMPANY, a Texas Corporation, hereinafter referred to as "Owner" of such Phase I and Phase II Improvements located within the City of Missouri City Reinvestment Zone No. 4. Construction of the Phase I Improvements has been delayed and BEN E. KEITH COMPANY desires to extend the terms of the tax abatement agreement. For the convenience of the parties and for ease of reference, the parties wish to restate the tax abatement agreement with all amendments to date included, if any, in this First Restated as Amended Tax Abatement Agreement.

**AGREEMENT**

This Tax Abatement Agreement, hereinafter referred to as "Agreement," is executed by and between **FORT BEND COUNTY, TEXAS**, hereinafter referred to as "County," acting by and through its Commissioners Court, and **BEN E. KEITH COMPANY**, a Texas Corporation, hereinafter referred to as "Owner," of such Phase I and Phase II Improvements located within the City of Missouri City Reinvestment Zone No. 4.

1. **Authorization**

- a. This Agreement is authorized by the Property Redevelopment and Tax Abatement Act, Chapter 312 of the TEXAS TAX CODE as it exists on the effective date of this Agreement, and;
- b. The Amended Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones created by Fort Bend County, Texas, which was approved by the Fort Bend County Commissioners Court on January 2, 2006. County has determined that the request for Tax Abatement presented by Owner conforms with the criteria established in the Guidelines for Tax Abatement.
- c. No official of County has an interest in the property subject to this Agreement.



2. **Definition**

As used in this Agreement, the following terms shall have the meanings set forth below:

- a. The **“Certified Appraised Value or Value”** means the value certified as of January 1 of each year of this Agreement regarding the property within City of Missouri City Reinvestment Zone No. 4 by the Fort Bend County Central Appraisal District.
- b. **“Phase I Improvements”** means a building to be used as a warehouse and distribution center, located on the Real Property and containing at least 300,000 square feet of floor space, and any sidewalks, parking lots, roads, outdoor lighting, landscaping and other improvements to serve the building, all as approximately shown in Exhibit C, attached to and incorporated into this Agreement by reference.
- c. **“Phase II Improvements”** means a building expansion to be used as a warehouse and distribution center located on the Real Property, and containing at least 100,000 square feet of floor space, and any sidewalks, parking lots, roads, outdoor lighting, landscaping and other improvements to serve the building, all as approximately shown in Exhibit C, attached to and incorporated into this Agreement by reference.
- d. **“Real Property”** means the approximate eighty-two (82) acre tract of real property as described in Ordinance No. O-07-25, which created Reinvestment Zone No. 4 located within City of Missouri City, described in Exhibit “A” attached hereto and incorporated by reference herein for all purposes.
- e. **“Abatement”** means the full or partial exemption from ad valorem taxes of certain property in city of Missouri City Reinvestment Zone No. 4 designated for economic development purposes.
- f. **“Eligible Property”** Abatement may be extended to fixed machinery and equipment, necessary to the operation and administration of the facility. Eligible Property is subject to abatement under the same terms as Improvements only if specifically included in Section 6(c) and 7(c).
- g. **“Ineligible Property”** means land, existing improvements, tangible personal property that the Fort Bend Central Appraisal District classifies as inventory or supplies, real property used primarily to provide retail sales or services to the public, real property used for residential purposes, tangible personal property classified as furnishings, tangible personal property located in the reinvestment zone prior to the execution date of the tax abatement agreement, real property with a productive life of less than 10 years, or any other property for which abatement is not allowed by state law.



- h. **“Owner”** means **Ben E. Keith Company**, the Owner of the Real Property subject to this Agreement, or other person or entity to which this Agreement is assigned, with prior written approval of the Fort Bend County Commissioners Court.
- i. **“County”** means the County of Fort Bend, Texas.
- j. **“District”** means Fort Bend County Central Appraisal District.

3. **Subject Property**

(a) City of Missouri City Reinvestment Zone No. 4 is an area located in Fort Bend County, Texas, being legally described in Exhibit “A” attached hereto and incorporated herein for all purposes. The Fort Bend County Appraisal District has established the base-year values for the subject property as of January 1, 2008.

(b) In the event Owner is unable to secure rail service to the Real Property to serve Owner’s business requirements on or before January 1, 2009, Owner may terminate this Agreement. Owner shall provide to County written notice of the acquisition of rail service on or before February 1, 2009.

4. **Responsibility of Owner for Phase I Improvements (“Phase I Provisions”)**

In consideration of receiving the tax abatement granted herein, Owner represents and agrees:

- (a) That construction of Phase I Improvements shall be completed on or before June 1, 2011. Owner shall provide Tax Assessor/Collector a certified statement evidencing a minimum of \$46,000,000 in project costs with respect to the design and construction of the Improvements within sixty (60) days after completion of the Improvements to be constructed by Owner.
- (b) That the certified appraised value of Phase I Improvements on January 1 of each year that taxes are abated under this Agreement’s Phase I Provisions must have a minimum value of \$46,000,000. Failure to meet the requirements of this section will invalidate the tax abatement for the year that this requirement was not satisfied, unless cured in conformity with this Agreement.
- (c) Beginning on January 1, 2012 and continuing through December 31, 2021, Owner shall have and maintain at least 210 employees at the Phase I Improvements. Failure of Owner to comply with this provision for any 90 consecutive days during



an abatement year shall not be a default of this Agreement, but shall automatically invalidate the tax abatement for the year that this requirement was not satisfied, not subject to cure.

- (d) If the requirements of paragraph 4(b) (relating to the value of the Phase I Improvements) are not met for Phase I for any year subject to this Agreement, the failure will not be a default of this Agreement and Owner may cure such condition and receive an abatement on the assessed value, plus pay the County a sum equal to the full taxes on the difference between the assessed value and the requirement of paragraph 4(b), as well as all taxes not subject to abatement under this Agreement.

- (1) For instance, if the certified appraised value of the Improvements is \$40,000,000 in any year and the contractually required amount is \$46,000,000, Owner shall receive an abatement on the assessed value of \$40,000,000, plus pay the County a sum equal to the full taxes on \$6,000,000, in addition to all other taxes due.

- (e) The requirement of Section 4(d) are contractual in nature and are not subject to any provisions of the TEXAS PROPERTY TAX CODE.
- (f) That Owner has, as of the effective date of this Agreement, the financial resources to implement the above representations.
- (g) That Owner will participate in the continuing economic development process in Fort Bend County by becoming a trustee member of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of this Agreement's Phase I Provisions. The fees for Owner's trustee membership are currently and shall remain \$6,000 per annum for the duration of this Agreement's Phase I Provisions.
- (h) **OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- (i) **OWNER SHALL BE RESPONSIBLE FOR REQUESTING AN ASSIGNMENT OF THIS AGREEMENT IN THE EVENT THE REAL**



**PROPERTY THE SUBJECT OF THIS AGREEMENT IS SOLD OR ASSIGNED. FAILURE OF OWNER TO NOTIFY THE TAX ASSESSOR-COLLECTOR OF ANY SALE OF THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT SHALL RESULT IN IMMEDIATE DEFAULT OF THIS AGREEMENT.**

**5. Responsibility of Owner for Phase II Improvements ("Phase II Provisions")**

In consideration of receiving the Phase II Tax Abatement granted herein, Owner represents and agrees:

- (a) That construction of Phase II Improvements shall be completed on or before June 1, 2018 if Owner elects to participate in the Phase II Provisions and receive the Phase II Abatement. Owner shall provide Tax Assessor/Collector a certified statement evidencing a minimum of \$15,000,000 in project costs with respect to the design and construction of the Improvements within sixty (60) days after completion of the Improvements to be constructed by Phase II Owner. The Phase II Improvements are at the sole discretion of Owner and Owner's failure to build any Phase II Improvements shall not be a breach of this Agreement, nor shall it in any manner affect any prior abatement under the Phase I Provisions. The only consequence of Owner's failure to build the Phase II Improvements in compliance with the Phase II Provisions shall be the forfeiture of the Phase II Abatements.
- (b) That the certified appraised value of Phase II Improvements on January 1 of each year that taxes are abated under this Agreement's Phase II Provisions must have a minimum value of \$15,000,000. Failure to meet the requirements of this section will invalidate the tax abatement for the year that this requirement was not satisfied, unless cured in conformity with this Agreement.
- (c) Beginning on January 1, 2019 and continuing through December 31, 2028, Owner will have and maintain 300 employees at the combined Phase I and Phase II Improvements. Failure of Owner to comply with this provision for any 90 consecutive days during an abatement year shall not be a default of this Agreement, but shall automatically invalidate the tax abatement for the year that this requirement was not satisfied, not subject to cure.



- (d) If the requirements of paragraph 5(b) (relating to the value of the Phase II Improvements) are not met for Phase II for any year subject to this Agreement, the failure will not be a default of this Agreement and Owner may cure such condition and receive an abatement on the assessed value, plus pay the County a sum equal to the full taxes on the difference between the assessed value and the requirement of paragraph 5(b), as well as all taxes not subject to abatement under this Agreement.
- (1) For instance, if the certified appraised value of the Improvements is \$10,000,000 in any year and the contractually required amount is \$15,000,000, Owner shall receive an abatement on the assessed value of \$10,000,000, plus pay the County a sum equal to the full taxes on \$5,000,000, in addition to all other taxes due.
- (e) The requirements of Section 5(d) are contractual in nature and are not subject to any provisions of the TEXAS PROPERTY TAX CODE.
- (f) That Owner has, as of the effective date of this Agreement, the financial resources to implement the above representations.
- (g) That Owner will participate in the continuing economic development process in Fort Bend County by becoming a trustee member of the Greater Fort Bend Economic Development Council for a minimum period coinciding with the term of this Agreement's Phase II Provisions. The fees for Owner's trustee membership are currently and shall remain \$6,000 per annum for the duration of this Agreement's Phase II Provisions.
- (h) **OWNER SHALL BE RESPONSIBLE FOR NOTIFYING THE DISTRICT OF THE ABATEMENT, INCLUDING FILING WITH THE DISTRICT ANY APPLICATION OR OTHER FORMS NECESSARY TO QUALIFY FOR OR RECEIVE THE ABATEMENT GRANTED.**
- (i) **OWNER SHALL BE RESPONSIBLE FOR REQUESTING AN ASSIGNMENT OF THIS AGREEMENT IN THE EVENT THE REAL PROPERTY THE SUBJECT OF THIS AGREEMENT IS SOLD OR ASSIGNED. FAILURE OF OWNER TO NOTIFY THE TAX ASSESSOR-COLLECTOR OF ANY SALE OF THE REAL PROPERTY THE SUBJECT**



6. **Value and Term of Abatement – Phase I Improvements (“Phase I Provisions”)**

(a) This Agreement shall be effective on the date executed by County or Owner, whichever is later. Phase I of this Agreement shall terminate (unless earlier terminated in accordance with the terms hereof) on December 31, 2021. In no event shall this agreement extend beyond December 31, 2021 for Phase I Provisions. This Agreement shall terminate upon the completion of the abatements, unless earlier terminated as provided elsewhere herein. Owner’s obligation upon default to pay to County any taxes abated under this Agreement shall not terminate until the abated taxes are paid.

(b) In each year that this Agreement is in effect for Phase I Provisions, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the Improvements.

(c) Subject to the limitations imposed by law and conditioned upon the representations outlined in Section 4 herein above, there shall be granted and allowed hereunder a property tax abatement for the following years and in the following amounts on the Value of the Improvements:

<b><u>Tax Year</u></b>	<b><u>Percentage Abatement</u></b>
2012	75%
2013	75%
2014	75%
2015	75%
2016	75%
2017	75%
2018	75%
2019	75%
2020	75%
2021	75%
<b>TOTAL =</b>	<b>750%</b>

(d) The abatement granted shall not apply to the value of the Real Property, increases, in the value of the Real Property, inventory, Ineligible Property as defined in Section 2(g) above, or Eligible Property as defined in Section 2(f).



(e) All Phase I Improvements shall be completed in accordance with applicable laws, ordinances, rules or regulations in effect at the time such Improvements are erected.

(f) The Fort Bend Central Appraisal District's determination of values shall be used to determine the value of the property subject to this Agreement. If Owner protests the District's valuation of the property, the valuation placed on the property after the protest is resolved under State law shall be used.

(g) On or before September 1 of each year of this Agreement, Owner shall certify in writing to Fort Bend County Tax Assessor/Collector that each party is in compliance with each term of this Agreement.

7. **Value and Term of Abatement – Phase II Improvements (“Phase II Provisions)”)**

(a) This Agreement shall be effective on the date executed by County or Owner, whichever is later. Phase II of this Agreement shall terminate (unless earlier terminated in accordance with the terms hereof) on December 31, 2028. In no event shall this agreement extend beyond December 31, 2028 for Phase II Provisions. This Agreement shall terminate on the completion of the abatements, unless earlier terminated as provided elsewhere herein. Owner's obligation upon default to pay to County any taxes abated under this Agreement shall not terminate until the abated taxes are paid.

(b) In each year that this Agreement is in effect for Phase II Provisions, the amount of abatement shall be an amount equal to the percentage indicated below of the taxes assessed upon the Improvements.

(c) Subject to the limitations imposed by law and conditioned upon the representations outlined in Section 5 herein above, there shall be granted and allowed hereunder a property tax abatement for the following years and in the following amounts on the value of the Improvements

<b><u>Tax Year</u></b>	<b><u>Percentage Abatemen</u></b>
2019	75%
2020	75%
2021	75%
2022	75%
2023	75%



2024	75%
2025	75%
2026	75%
2027	75%
2028	75%

**TOTAL = 750%**

(d) In the event Owner completes the Phase II Improvements prior to June 1, 2018, tax abatement will commence on January 1 of the tax year immediately following the year construction is completed and extend for ten years thereafter. It shall be the sole responsibility of Owner to notify County in writing within sixty (60) calendar days of the commencement of construction of the Phase II Improvements. Upon the completion of the construction for the Phase II Improvements, Owner shall provide the form attached as Exhibit D to County and County shall forward the completed form to the District, provided all other requirements of this Agreement have been satisfied by Owner as they relate to the Phase II Improvements. County hereby authorizes the Tax Assessor/Collector to complete the form attached as Exhibit D on behalf of County. County shall have no obligation or duty to inquire of Owner as to the status of the Phase II Improvements. The failure of Owner to comply with the requirement of this section shall call for the termination of the tax abatement for the Phase II Improvements for which there is no cure.

(e) The abatement granted shall not apply to the value of the Real Property, increases in the value of the Real Property, inventory Ineligible Property as defined in Section 2(g) above, or Eligible Property as defined in Section 2(f).

(f) All Phase II Improvements shall be completed in accordance with applicable laws, ordinances, rules or regulations in effect at the time such Improvements are erected.

(g) The Fort Bend Central Appraisal District's determination of values shall be used to determine the value of the property subject to this Agreement. If Owner protests the District's valuation of the property, the valuation placed on the property after the protest is resolved under State law shall be used.



(h) On or before September 1 of each year of this Agreement, Owner shall certify in writing to Fort Bend County Tax Assessor/Collector that each party is in compliance with each term of this Agreement.

8. **Taxability – Phase I & Phase II Improvements and Inventory**

During the period that this tax abatement is effective, taxes shall be payable as follows:

- (a) The Value of Real Property, Eligible Property and Ineligible Property shall be fully taxable, including inventory;
- (b) The Value of existing Improvements shall be determined in the base year by the Central Appraisal District.

9. **Event of Default - Phase I & Phase II Improvements**

- (a) County may declare the Owner in default of this Agreement if: (1) Owner fails to comply with any obligations under this Agreement (excluding, however, Section 4(b) and 5(b) above); (2) allows County ad valorem taxes on the Land, or any property located thereon, to become delinquent; (3) vacates any of the improvements subject to the agreement before the term of the abatement without prior written approval from the county.
- (b) County shall notify Owner of any default in writing specifying the default. The Owner shall have thirty (30) days from the date of the notice to cure any default. If Owner fails to cure the default, County may terminate this Agreement by written notice.
- (c) If this Agreement is terminated by County due to Owner's default, Owner agrees that it is liable for and will pay to County within thirty (30) days of the termination of this Agreement:
  - (1) The amount of all property taxes abated under this Agreement;
  - (2) Interest on the abated amount at the rate provided for in the Tax Code for delinquent taxes; and
  - (3) Penalties on the amount abated in the year of default, at the rate provided for in the TAX CODE for delinquent taxes.
- (d) County shall have a lien against Owner and the real property and Improvements for the taxes and interest owed because of the recapture of taxes under this



paragraph during the time period beginning on the date such payment obligation accrues and continuing until the date paid.

10. **Administration and Inspection – Phase I & Phase II Improvements**

(a) This Agreement shall be administered on behalf of Fort Bend County by the Fort Bend County Tax Assessor/Collector or her designee. Owner shall allow employees or other representatives of County, who have been designated by the Tax Assessor/Collector for the specific purpose of ensuring compliance with this Agreement, to have access to the reinvestment zone during the term of the Agreement. All inspections shall be made only after twenty-four (24) hours prior notice and will be conducted in such a manner as not to unreasonably interfere with the construction and/or operation of the facility. A representative of Owner may accompany the inspector at Owner's sole discretion.

(b) Upon completion of the contemplated construction, County shall annually evaluate the facility to ensure compliance with the terms and provisions of this Agreement and shall report possible defaults to Owner.

(c) The Chief Appraiser of the Fort Bend County Appraisal District shall annually determine (1) the taxable value under the terms of this abatement of the Real Property, Improvements, and other property otherwise located at or about Owner's premises subject to this Agreement and (2) the full taxable value without abatement of the real property, Improvements, and other property otherwise located at or about Owner's premises. The Chief Appraiser shall record both abatement taxable value and full taxable value in the appraisal records. The full taxable value figure listed in the appraisal records shall be used to compute the amount of abated taxes that is terminated in a manner that results in recapture.

(d) Owner shall furnish the Chief Appraiser annually such information requested by the Chief Appraiser and as provided for under Chapter 22 of the TEXAS TAX CODE as may be necessary for the administration of the abatement. Such information shall also be provided to County Tax Assessor/Collector in preparation of its annual evaluation for compliance with the terms and provisions of this Agreement, including Owner's payroll records. However, Owner shall provide Chief Appraiser and County Tax Assessor/Collector with only those payroll records necessary to determine Owner's compliance with this agreement (i.e. number of employees is appropriate; payroll dollars, taxes, benefits, bonuses are not appropriate) and only to the extent allowed by federal, state, and local laws.



11. **Assignment**

(a) This Agreement may not be assigned without prior written consent of County. No assignment shall be effective or approved if either County has declared a default hereunder which has not been cured or the new Owner/assignee is delinquent in the payment of ad valorem taxes owed to County. Approval shall not be unreasonably withheld.

(b) Any and all assignments shall contain the same terms and conditions as set out in this Agreement and shall be granted for the remaining term of the original tax abatement agreement only.

12. **Indemnity**

It is understood and agreed between the parties that Owner, in performing its obligations hereunder, is acting independently, and County assumes no responsibilities or liabilities in connection therewith to third parties. **OWNER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS COUNTY AND THE CENTRAL APPRAISAL DISTRICT FROM ANY AND ALL CLAIMS, SUITS, AND CAUSES OF ACTION OF ANY NATURE WHATSOEVER ARISING OUT OF ANY OBLIGATIONS HEREUNDER EXCEPT THAT THE INDEMNITY AND DUTY TO DEFEND SHALL NOT APPLY TO THAT PORTION OF LIABILITIES RESULTING FROM THE INTENTIONAL CONDUCT OR NEGLIGENCE OF COUNTY OR TAXING UNITS, THEIR RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES. OWNER'S INDEMNIFICATION OBLIGATIONS INCLUDE THE PAYMENT OF REASONABLE ATTORNEY'S FEES AND EXPENSES INCURRED IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, AND CAUSES OF ACTION WHICH ARE NOT DUE TO COUNTY'S OR TAXING UNIT'S, OR THEIR REPRESENTATIVES, INTENTIONAL CONDUCT OR NEGLIGENCE. OWNER SHALL BE RESPONSIBLE FOR ALL FEES INCURRED BY COUNTY IN THE DEFENSE OF ANY SUCH CLAIMS, SUITS, OR CAUSES OF ACTION SO LONG AS**



**DEFENSE COUNSEL AND COURSES OF ACTION ARE DETERMINED SOLELY BY OWNER. NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED TO PROHIBIT COUNTY FROM INCURRING REPRESENTATION OF ANY SUCH CLAIM, SUIT OR CAUSE OF ACTION AND OWNER SHALL NOT BE RESPONSIBLE FOR ANY SUCH COSTS AND OR FEES SO INCURRED.**

**13. Force Majeure**

If by reason of force majeure Owner is unable to perform any obligation of this Agreement, it shall give notice of the force majeure to County in writing within ten (10) calendar days after Owner first becomes aware of the occurrence relied upon. By doing so, the obligation of Owner to the extent and for the period of time affected by the force majeure, shall be suspended. Owner shall endeavor to remove or overcome the inability with all reasonable effort. For purposes of this provision, "force majeure" shall mean acts of God, landslides, lightning, earthquakes, hurricanes, storms, floods, or other natural occurrences; strikes, lockouts, insurrections, riots, wars or other civil or industrial disturbances; orders of any kind of the federal or state government or of any civil or military authority; explosions, fires, breakage or accidents to machinery, lines, or equipment, or the failure of the system or water supply system; or any other cause not reasonably within the control of Owner.

**14. Commissioners Court Approval**

This Agreement is conditioned entirely upon the approval of the Commissioners Court by the affirmative vote of a majority of the members present at a duly scheduled meeting of the Commissioner's Court.

**15. Compliance with State and Local Regulations**

(a) This Agreement shall not be construed to alter or affect the obligations of Owner to comply with any city ordinance or federal or state law or regulation.

(b) Owner and Owner's successors, executors, administrators, assigns, branches, divisions and departments certify that they do not and will not knowingly employ any undocumented workers. Owner shall repay the total amount of the public benefit (tax abatement) received, with interest at the rate and according to the terms of this Agreement, if Owner is convicted of a violation under 8 U.S.C. Section 1324a (f). Repayment will be due no later than



the 120th day after the date County notifies Owner of the violation as provided in Section 9 of this Agreement.

16. **Changes in Tax Laws**

The tax abatement provided in this Agreement is conditioned upon and subject to any changes in the state tax laws during the term of this Agreement.

17. **Miscellaneous**

(a) This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Fort Bend County, Texas.

(b) In the event of 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 any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(c) The waiver by either party of a breach of any provision of this Agreement shall not operate as or be construed as a waiver of any subsequent breach.

(d) Any amendments of this Agreement shall be of no effect unless in writing and signed by both parties hereto.

(e) If there is a conflict between this Agreement and Exhibit B, the provisions of this Agreement shall prevail.

18. **Notices**

Any notice required to be given under the provisions of this Agreement shall be in writing and shall be duly served when it shall have been deposited, enclosed in a wrapper with the proper postage prepaid thereon, and duly registered or certified, return receipt requested, in a United States Post Office, addressed to Owner, County, or Tax Assessor at the mailing address as hereinafter set out. If mailed, any notice of communication shall be deemed to be received three (3) business days after the date of deposit in the United States Mail. Unless otherwise provided in this Agreement, all notices shall be delivered to Owner, County, or Tax Assessor at the following addresses:



To the **Tax Assessor/Collector:** The Honorable Patsy Schultz  
Fort Bend County Tax Assessor-Collector  
500 Liberty, Suite 101  
Richmond, Texas 77469

**To Owner:** Ben E. Keith Management Trust  
PO Box 2628  
Fort Worth, TX 76113  
Attn: Mel Cockrell, Chief Financial Officer

**Copy Owner:** Ben E. Keith Management Trust  
PO Box 2628  
Fort Worth, TX 76113  
Attn: Craig Woodcook, Corporate Counsel

**To County:** Fort Bend County  
301 Jackson, Suite 719  
Richmond, Texas 77469  
Attention: County Judge

**Copy County:** Fort Bend County Attorney  
301 Jackson, Suite 728  
Richmond, Texas 77469

Either party may designate a different address by giving the other party ten (10) days written notice thereof. **Failure of Owner to provide County Tax Assessor/Collector thirty (30) days notice of a change of address may result in termination of this Agreement.**

19. **Entire Agreement; Ordinance and Economic Impact Statement**

This Agreement contains the entire Agreement among the parties and supercedes all other negotiations and agreements, whether written or oral. Attached hereto are Exhibit A – Ordinance No. O-07-25 Designating Reinvestment Zone No. 4; Exhibit B – Economic Impact Statement/Application for Value Added Tax Abatement; Exhibit C – Phase I and Phase II Preliminary Design for Improvements, which are made part of this Agreement; Exhibit D – Tax Abatement Schedule Revision for Phase II Improvements.

*EXECUTION PAGE TO FOLLOW*



20. **Execution**


**IN TESTIMONY OF WHICH, THIS RESTATED AS AMENDED AGREEMENT**  
has been executed by County, and Owner as of the dates below stated. Owner warrants and represents that the individuals executing this agreement on behalf of Ben E. Keith Company have full authority to execute this Agreement and bind Ben E. Keith Company to the same.

**FORT BEND COUNTY**

By:   
Robert E. Hebert, County Judge

Date: 11-4-08

**ATTEST:**

  
Dianne Wilson, County Clerk



“Owner:” **Ben E. Keith Company,**  
**a Texas Corporation.**

By:   
Mike Roach, Vice President

Date: 10-22-08

**ATTEST:**



**Attachments:**

Exhibit A – Ordinance No. O-07-25 Designating Reinvestment Zone No. 4.

Exhibit B – Economic Impact Statement/Application for Value Added Tax Abatement.

Exhibit C – Phase I and Phase II Preliminary Design for Improvements, which are made part of this Agreement.

Exhibit D – Tax Abatement Schedule Revision for Phase II Improvements.



**ORDINANCE NO. O-07-25**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS, CREATING REINVESTMENT ZONE NO. 4 LOCATED IN THE GESSNER ROAD/INDUSTRIAL DRIVE AREA IN MISSOURI CITY, TEXAS; MAKING RELATED FINDINGS; AND PROVIDING FOR SEVERABILITY.

\* \* \* \* \*

WHEREAS, City Council has passed and approved Guidelines and Criteria for Granting Tax Abatement in Reinvestment Zones Created in Missouri City, Texas; and

WHEREAS, pursuant to the Guidelines, the City has received a request for creation of a reinvestment zone and tax abatement; and

WHEREAS, after proper notice, the City held a public hearing where all interested persons were given an opportunity to speak and evidence for and against the creation of Reinvestment Zone No. 4 was gathered; and

WHEREAS, written notice of the hearing was given to all taxing entities where the proposed zone is to be located; and

WHEREAS, the City Council has determined, based on evidence gathered, that the improvements sought to be located in proposed Reinvestment Zone No. 4 are feasible and practical and would be a benefit to the land to be included in the Zone and to the City after the expiration of the tax abatement agreement; and

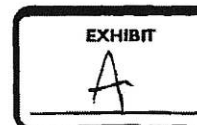
WHEREAS, the creation of Reinvestment Zone No. 4 will be reasonably likely, as a result of its creation, to contribute to the retention or expansion of primary employment or to attract major investment into the Zone that would be a benefit to the property located therein and that will contribute to the economic development of the City of Missouri City; now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MISSOURI CITY, TEXAS:

Section 1. That the facts and recitations set forth in the preamble of this Ordinance are hereby found to be true and correct, and are made a part of this Ordinance for all purposes.

Section 2. That Reinvestment Zone No. 4 is hereby created for the purpose of encouraging economic development through tax abatement. A

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description of the Zone is attached hereto as Exhibit "A" and is made a part hereto for all purposes.

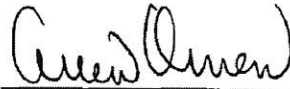
Section 3. This designation shall be effective for five (5) years from the date of final passage of this Ordinance and may be renewed for periods not to exceed five years.

Section 4. All ordinances or parts of ordinances in conflict herewith are repealed to the extent of such conflict only.

Section 5. In the event any clause, phrase, provision, sentence or part of this Ordinance or the application of the same to any person or circumstance shall for any reason be adjudged invalid or held unconstitutional by a court of competent jurisdiction, it shall not affect, impair, or invalidate this Ordinance as a whole or any part or provision hereof other than the part declared to be invalid or unconstitutional; and the City Council of the City of Missouri City, Texas, declares that it would have passed each and every part of the same notwithstanding the omission of any such part thus declared to be invalid or unconstitutional, or whether there be one or more parts.

PASSED and APPROVED on first reading this 7<sup>th</sup> day of May, 2007.

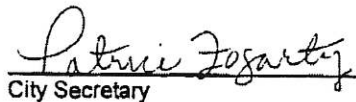
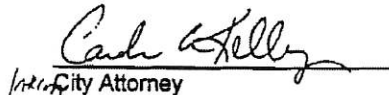
PASSED, APPROVED and ADOPTED on second and final reading this 21<sup>st</sup> day of May, 2007.



Mayor

ATTEST:

APPROVED AS TO FORM:

  
City Secretary  
City Attorney





GREATER FORT BEND  
ECONOMIC DEVELOPMENT  
COUNCIL

ECONOMIC IMPACT STATEMENT QUESTIONNAIRE

**Ben E. Keith Company**  
Missouri City, Fort Bend County

**Please provide a detailed summary statement about your company (its history, type of business and industry, etc.) and clearly describe its operations at the proposed facility in Fort Bend.**

Ben E. Keith began as an innovator in food wholesaling. Early in the twentieth century, commercial distribution of refrigerated foods was rare. In 1906, Keith saw a need to bring fresh produce items to frontier Texas, and before long was delivering lettuce, tomatoes and strawberries from far away fields. Ever since, Ben E. Keith Foods has been a leader in the food industry, always taking advantage of new ideas and technology.

Frozen food storage and delivery was the company's next challenge. Around World War II, Techniques were developed to freeze and store food in large quantities to send food to the troops for the war effort. When the war ended, Ben E. Keith was one of the pioneers in this industry and the first Birdseye Brand Frozen Food distributor in Texas.

Ben E. Keith Foods has become synonymous with extraordinary levels of service and quality to foodservice customers in nine southwestern and central states. Keith has, in fact, become a key to the food service market in the Southwest and is among the top 10 foodservice distributors in the nation. In 1989 Ben E. Keith Foods won the title of Great Distributor Organization, an award that recognizes and secures its position among the movers and shakers of the foodservice distribution industry. Keith serves its more than 14,000 restaurant and other dining locations through a network of six distribution centers. Keith serves all or parts of Arkansas, Oklahoma, Texas, Louisiana, New Mexico, Kansas, Missouri, Colorado and Tennessee.

Today, Ben E. Keith is the ninth largest full-line foodservice distributor in the United States. Its modern trucks deliver groceries, frozen food, fresh produce, non foods, equipment and supplies, fresh and frozen meat from state-of-the-art warehouses to restaurants, hotels, country clubs, hospitals, nursing homes, schools and many other types of eating away from home locations in Arkansas, Kansas, Louisiana, Missouri, Tennessee, New Mexico, Colorado, Oklahoma and Texas.

The Houston area market is currently being served from warehouses in San Antonio and Ft. Worth. Additionally, there is a sales office and truck terminal in Conroe. Due to the increasing sales volume generated in this market, the construction of a new food distribution facility is merited to best serve the Houston area, as well as Louisiana. Ben E. Keith is proposing a new \$46m distribution facility situated on 82 acres in Missouri City. Also, the Ben E. Keith Company has just completed two new facilities of similar capacities in Oklahoma City, OK (Spring 2006) and Amarillo, TX (Fall 2006).

EXHIBIT

B



**1. Information About Your Company**

Company Name: Ben E. Keith Company	
Contact Person: Craig Woodcook	Title: Attorney
Current Address: 601 E. 7 <sup>th</sup> Street, Fort Worth, TX 76113	
Office #: 817-877-5700	Mobile #: 817-983-1305
Fax #: 817-882-9181	Website: www.benekeith.com
Email Address: cawoodcook@benekeith.com	
The Company's Primary SIC Code: 514939	

**2. Type of project (check all that apply):**

- ☐ Existing business in Fort Bend County  
☒ New business to Fort Bend County  
☐ Expansion of existing facility  
☒ Construction of new facility  
☐ Company will lease facility  
☒ Company will own facility  
☐ Corporate/Regional Headquarters

**3. Location of proposed site(s) in Fort Bend (street address, name of Business Park or other development, city, or name of area if unincorporated):**

Phase I & II  
 Beltway Crossing Property (See Attached)  
 Near 16500 Highway 90A, between S. Gessner & Cravens Road  
 Missouri City, TX

**4. Scope of project:**

Size of new facility/expansion:	Phase I: 300,000 - 350,000 SF Phase II: 100,000 SF
Size of existing facility (if applicable):	n/a
Size of lease space in existing facility (if applicable):	n/a
Number of acres at facility site:	82 acres
Type of Construction (tilt wall, metal, concrete, etc.):	Tilt Wall & Insulated Wall Panel

**5. Please give detailed breakdown of operations within the proposed facility (i.e., 20% office; 25% distribution; 15% metal fabrication; 40% warehouse, etc.):**

Office = 8%  
 Refrigerated Warehouse = 40%  
 Dry Warehouse = 45%  
 Truck Maintenance Garage = 7%



6. **Truck traffic to be generated (# daily or weekly):**  
Phase I: Daily inbound trucks= 20; Daily outbound trucks= 30  
Phase II: Daily inbound trucks = 40; Daily outbound trucks = 50
7. **Targeted start of construction:**  
Phase I: October 1, 2008.  
Phase II: On or before January 1, 2017
8. **Targeted start of operations:**  
Phase I: January 1, 2011.  
Phase II: On or before December 31, 2017
9. **Market value (taxable assets) of the firm's property that would be located at the facility in Fort Bend (new property to Fort Bend):**

**Phase I**

Land	Construction Costs of Building Improvements	Furniture & Fixtures	Equipment	Inventory	Total
9,750,000	\$ 46,000,000	\$ 2,000,000	\$ 2,000,000	\$ 7,200,000	\$66,950,000

**Phase II**

Land	Construction Costs of Building Improvements	Furniture & Fixtures	Equipment	Inventory	Total
N/A	\$15,000,000	\$100,000	\$900,000	\$1,800,000	\$17,800,000

10. **Estimated percent of inventory that would be Freeport qualified: 0%**  
*Freeport goods are inventories (raw materials, goods-in-process, and finished products) acquired by a business and held for no more than 175 days before being shipped out of state.*

Currently BEK does not apply for Freeport exemptions; however, BEK may do so in the future.

11. **Employment information:**

**Phase I**

Number of new jobs to Fort Bend County (employees to be hired)	Number of existing jobs that would be relocated from outside of Ft. Bend County to the proposed facility	Number of existing jobs to be retained (if company currently located in Fort Bend) at the new or expanded facility	Total Number of Jobs
107	103	n/a	210



**Phase II**

Number of new jobs to Fort Bend County (employees to be hired)	Number of existing jobs that would be relocated from outside of Ft. Bend County to the proposed facility	Number of existing jobs to be retained (if company currently located in Fort Bend) at the expanded facility	Total Number of Jobs
90	n/a	210	300

**Future Employment Growth:**

Year 2 – 225; Year 3 – 250; Year 4 – 275; Year 5 – 300.

**12. Average salary (before benefits):**

The average annual salary without benefits will be approximately \$45,000. Employee benefits are approximately 35% of salary. Thus, the approximate average salary with benefits will be \$60,750.

**13. Amount of initial, annual local payroll to be created:**

The initial annual local payroll will be approximately \$10,000,000.

**14. The firm's estimated annual amount of taxable sales (that generate sales taxes) if the site will be located within the city limits of a Fort Bend County city:**

\$10,000,000 - \$20,000,000. This number is difficult to calculate because BEK is a wholesale distributor and most sales tax is captured by BEK's customers (restaurants) at the retail level. However, BEK must capture the tax on items actually used by it customers and not resold. For example, cleaning chemicals.

**15. Will the company's local business practices necessitate business travel that will bring clients or employees to the Fort Bend facility, resulting in hotel/motel bookings? If so, what is the estimated number of hotel/motel stays per year that will be booked locally:**

Yes, during the approximate 18 month construction period, multiple teams of contractors and tradesmen will stay in hotels throughout the area to work full-time. The company also hosts Food Shows which brings together its local customers and national vendors. BEK's own representatives will also travel to the area. Once actually operating, the facility should result in approximately 200 nights of annual hotel/motel bookings.

**16. Current owner of real property (land/building) at the time of application:**

BC Business Park LP.



17. Have you received or are you currently receiving tax abatement in Fort Bend:  
☐ Yes ☒ No

18. Is this land currently under Agriculture Exemption: ☒ Yes ☐ No

Part of the land is Ag exempt.

19. If so, what will be the increase in taxes paid annually to taxing authorities:

GFBEDC: Prior to the purchase of the land, taxes on the land were being paid based on an approximate \$1.28 million valuation (\$6,329 in city taxes and \$6,614 in county taxes). After the purchase, the land valuation has already increased and taxes will be paid on an approximate \$3.75 million valuation (\$18,543 in city taxes and \$19,377 in county taxes).

20. What is the value of roll back taxes to be collected as a result of being taken out of Ag Exemption:

Roll back taxes were paid in the amount of \$137,000 (total).

21. What is the expected increase in value of the land once it is sold? (to be answered by GFBEDC)

GFBEDC: The land has already been purchased by BEK. If they build a facility on the land, we expect the value of the land to more than double.

22. Productive life of proposed improvements and/or initial term of lease:

BEK will build its own facility and purchase its own plant, machinery, and equipment. Generally, buildings and improvements have a depreciable life of 39 years.

23. Time of day activities will be taking place (i.e., # of shifts):

BEK operates 24 hours a day, 7 days a week.

24. The costs to be incurred by local government to provide facilities or services directly resulting from the new improvements: TBD

The City of Missouri City has pledged approximately \$3,500,000 for road, intersection, and infrastructure improvements.

25. If located in the city limits, do you (or your construction company) agree to declare "situs" for construction sales taxes at the construction site:

Yes. When purchasing construction materials for the new facility from a company that is situated outside the city where the new facility will be located, the builder agrees to declare the situs (point of sale) of the materials as the construction site address so the local city receives the sales tax revenue.



26. **Please provide wastewater information, including activities, facilities, plant processes, products, services, chemicals, materials, and hazardous substances that may be used or that may result from the activities to be conducted within the proposed improvements:**

BEK will utilize an Ammonia refrigeration system. BEK will build a "Truck Wash" facility that employs a "closed" water treatment system. BEK will also build a fueling station. However, the use of environmentally unfriendly substances is minimal and BEK will employ appropriate safeguards.

27. **Explain any proposed pretreatment of wastewater prior to discharge into the sanitary sewer system:**

There are "No heavy metals" being discharged into the sanitary sewer system from our condensers. The "Truck Wash" utilizes a "closed" water treatment system.

28. **Will there be any proposed monitoring of wastewater discharge into the sanitary sewer system:**

N/A.

29. **Public improvements to be made by the Company in which the public may benefit (please list if any):**

BEK does not anticipate any public improvements. However, BEK takes great pride in the aesthetics of its buildings and surrounding property.

30. **Will this business compete with existing businesses in the county?**

No major competitors within the County are known to BEK.

31. **Are there possibilities for local businesses to become suppliers? Any new retail opportunities?**

The nature of BEK's business necessitates national suppliers, and to the extent such suppliers are located locally, there are opportunities. Most other local opportunities would be available to local service providers such as landscaping, security, janitorial, and such similar services.

32. **Do you anticipate your relocation to attract other new businesses to the area? Please explain:**

Not directly. However, by purchasing land in Beltway Crossing Business Park, the market value of surrounding land has increased substantially and will attract other companies to the business park. When BEK begins construction, the Business Park will be even more attractive.



33. Does the business produce any type of emissions or are there any other environmental matters for the city/county to consider:

BEK utilizes an ammonia refrigeration system with approximately 25,000 lbs of ammonia within a closed system. A refrigeration computer control system monitors everything within the system 24 hours a day. As a distribution company, BEK employs a large fleet of trucks; however, these are well maintained in order to minimize emissions.

34. The company agrees to participate in the continuing economic development process in Fort Bend County by becoming a Trustee member of the GFBEDC for a minimum period coinciding with the term of any abatement granted by the County:  
☒ Yes ☐ No

The County Commissioners' Court has placed this requirement in their evaluation process to require new companies to join in the continuance of the economic development process. A Trustee membership is \$6,000 a year.

**Please provide the additional information as an addendum to the EIS Questionnaire:**

- A. Site Plans & Legal Description of the Property: City Council and Commissioners Court will not place a value-added tax abatement request on their agenda without first having a copy of the project site plan, including a metes and bounds description of the site to be designated as the reinvestment zone.

See Exhibit A for Metes & Bounds description. Based on other facilities in the state, BEK anticipates this project may expand up to 800,000sf. The size of the site will allow expansion up to 1,000,000sf.



**CERTIFICATION:**

1. Ben E. Keith Company does hereby certify that all statements and representations made herein are accurate to the best of their knowledge and agree to comply with these terms.

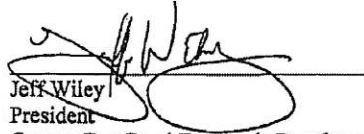
By Authorized Representative:

  
Signature

Sept. 4, 2007  
Date

Print Name: Keith Pittman  
Title: Sr. VP. of Branch Management.  
Company: Ben E. Keith Company

2. The Greater Fort Bend Economic Development Council certifies that Ben E. Keith Company has met the standard requirements and is qualified for value added tax abatement in Fort Bend County.

  
Jeff Wiley  
President

Sept 18, 2007  
Date

Greater Fort Bend Economic Development Council



**Ben E. Keith Company - Phase I**  
Abatement Analysis - Missouri City, TX - Fort Bend County

**Annual Taxes Collected @ 75% Abatement:**

(Based on assumption of 10-year agreement) - New Improvements (City, County & WCID#2)

Location: Beltway Crossing Business Park, Missouri City (300,000 sf)

	Est. Value	City	County	***WCID#2	HCC	FBISD
New Improvements (80% of Construction Costs)	\$36,800,000	\$45,932	\$47,540	\$24,509	\$35,024	\$460,000
Personal Property & Equipment	\$4,000,000	\$19,970	\$20,670	\$7,200	\$3,807	\$50,000
Inventory	\$7,200,000	\$35,847	\$37,205	\$12,960	\$6,853	\$90,000
Land (Not Abateable)	\$9,750,000	\$48,678	\$50,382	\$17,550	\$9,280	\$121,875
<b>Total</b>	<b>\$57,750,000</b>	<b>\$160,627</b>	<b>\$166,797</b>	<b>\$62,219</b>	<b>\$54,964</b>	<b>\$721,875</b>

\* Based on 2007 proposed tax rates

\*\* Abatement on New Property Improvements Only

\*\*\* WCID#2 offers a set, stair step abatement over 10 years totaling 630%. A 63% annual average was used for this calculation.

\*\*\*\* Company States no Freeport qualifying inventory

**Annual Taxes Collected After Abatement Expires:**

Location: Beltway Crossing Business Park, Missouri City (300,000 sf)

	Est. Value	City	County	WCID#2	HCC	FBISD
New Improvements	\$36,800,000	\$183,728	\$190,160	\$68,240	\$35,024	\$460,000
Personal Property & Equipment	\$4,000,000	\$19,970	\$20,670	\$7,200	\$3,807	\$50,000
Inventory	\$7,200,000	\$35,847	\$37,205	\$12,960	\$6,853	\$90,000
Land	\$9,750,000	\$48,678	\$50,382	\$17,550	\$9,280	\$121,875
<b>Total</b>	<b>\$57,750,000</b>	<b>\$288,323</b>	<b>\$298,417</b>	<b>\$103,950</b>	<b>\$64,964</b>	<b>\$721,875</b>

\* Calculations based on 2007 proposed tax rates

\*\* Company states no Freeport qualifying inventory

Estimated Annual COMPANY Savings During Abatement: \$142,620 (County)  
Estimated Annual COUNTY Taxes Collected During Abatement: \$155,797



Greater Fort Bend Economic Development Council  
Date Printed: 10/29/2007

**Ben E. Keith Company - Phase II**  
Abatement Analysis - Missouri City, TX - Fort Bend County

**Annual Taxes Collected @ 75% Abatement:**

(Based on assumption of 10-year agreement) - New Improvements (City, County & WCID#2)

Location: Beltway Crossing Business Park, Missouri City (300,000 sf)

	Est. Value	City	County	***WCID#2	HCC	FBISD
New Improvements (80% of Construction Costs)	\$12,000,000	\$14,978	\$15,502	\$7,992	\$11,421	\$150,000
Personal Property & Equipment	\$1,000,000	\$4,993	\$5,167	\$1,800	\$952	\$12,500
Inventory	\$1,800,000	\$8,987	\$9,301	\$3,240	\$1,713	\$22,500
Land (Not Abateable)	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$14,800,000</b>	<b>\$28,957</b>	<b>\$29,971</b>	<b>\$13,032</b>	<b>\$14,086</b>	<b>\$185,000</b>

\* Based on 2007 proposed tax rates

\*\* Abatement on New Property Improvements Only

\*\*\* WCID#2 offers a set, stair step abatement over 10 years totaling 630%. A 63% annual average was used for this calculation.

\*\*\*\* Company States no Freeport qualifying inventory

**Annual Taxes Collected After Abatement Expires:**

Location: Beltway Crossing Business Park, Missouri City (300,000 sf)

	Est. Value	City	County	WCID#2	HCC	FBISD
New Improvements	\$12,000,000	\$59,811	\$62,009	\$21,800	\$11,421	\$150,000
Personal Property & Equipment	\$1,000,000	\$4,993	\$5,167	\$1,800	\$952	\$12,500
Inventory	\$1,800,000	\$8,987	\$9,301	\$3,240	\$1,713	\$22,500
Land	\$0	\$0	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$14,800,000</b>	<b>\$73,890</b>	<b>\$76,478</b>	<b>\$26,840</b>	<b>\$14,086</b>	<b>\$185,000</b>

\* Calculations based on 2007 proposed tax rates

\*\* Company states no Freeport qualifying inventory

Estimated Annual COMPANY Savings During Abatement: \$48,507 (County)  
Estimated Annual COUNTY Taxes Collected During Abatement: \$29,971



Greater Fort Bend Economic Development Council  
Date Printed: 10/29/2007







**EXHIBIT D**

**REVISED PHASE II TAX ABATEMENT SCHEDULE**

Pursuant to Section 7(d) of the Tax Abatement Agreement by and between Fort Bend County and Ben E. Keith Company approved by Fort Bend County's Commissioners Court on November 6, 2007 (the Tax Abatement Agreement), the Fort Bend County Central Appraisal District is hereby notified that the Phase II Improvements, as defined in the Tax Abatement Agreement, will be subject to tax abatement in the following amounts and according to the following adjusted schedule:

TAX YEAR	PERCENTAGE ABATEMENT
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%
_____	75%

**FORT BEND COUNTY**

\_\_\_\_\_  
Patsy Schultz, Tax Assessor Collector

Approved as to form:

\_\_\_\_\_  
Assistant County Attorney

Recorded in the Minutes of the  
Fort Bend County Commissioners Court on: \_\_\_\_\_.  
Agenda item # \_\_\_\_\_