

AN ORDINANCE 2012-12-13-0969

AUTHORIZING AND APPROVING THE TERMS AND CONDITIONS OF A TAX ABATEMENT AGREEMENT WITH NEXOLON AMERICA, L.L.C. TO EXEMPT ONE HUNDRED PERCENT (100%) OF AD VALOREM TAXES FOR A PERIOD OF TEN (10) YEARS ON PERSONAL PROPERTY IMPROVEMENTS AT AN ESTIMATED VALUE OF \$1,977,811.00 WITHIN THE BROOKS CITY-BASE REINVESTMENT ZONE.

* * * * *

WHEREAS, Nexolon America, L.L.C. (hereinafter referred to as “Nexolon”), a green energy manufacturer, has determined that it will establish a manufacturing facility in San Antonio with an estimated investment of \$80 million in personal property improvements to a facility to be located at Brooks City-Base (the “Facility”) and the creation of approximately 404 manufacturing jobs; and

WHEREAS, in accordance with the City of San Antonio Tax Phase-In Guidelines (the “Guidelines”) property located within a Tax Abatement Reinvestment Zone with an \$80 million investment is eligible for a 100% abatement of ad valorem personal property taxes for a term of up to ten (10) years; and

WHEREAS, the City Council finds that offering Nexolon a Tax Abatement Agreement for its personal property improvements is a reasonable incentive to help induce Nexolon to invest in the Facility and create approximately 404 full-time jobs in San Antonio; and

WHEREAS, the City Council also finds that it is in the best interest of the City to approve a Tax Abatement Agreement with Nexolon to induce the desired and beneficial economic development in the Brooks City-Base Reinvestment Zone; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Council approves the terms and conditions of a Tax Abatement Agreement with Nexolon America L.L.C. granting a one hundred percent (100%), ten (10) year abatement of ad valorem personal property taxes within the Brooks City-Base Reinvestment Zone. A copy of the Agreement, in substantially final form, is attached hereto and incorporated herein as **Exhibit “A”**.

SECTION 2. The City Manager or a designated representative is authorized to execute the Tax Abatement Agreement as approved in Section 1 of this Ordinance.

SECTION 3. This Ordinance shall be effective on and after the tenth day after passage hereof.

RR
12/13/12
Item No. 8B

PASSED AND APPROVED this 13th day of December, 2012.



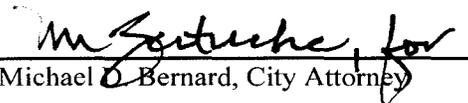
M A Y O R
Julián Castro

ATTEST:

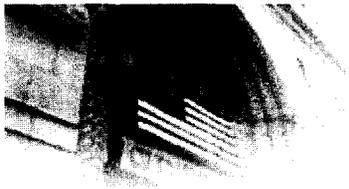


Leticia M. Vaček, City Clerk

APPROVED AS TO FORM:

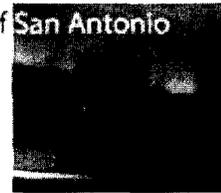


Michael O. Bernard, City Attorney



Request for
COUNCIL
ACTION

City of San Antonio



Agenda Voting Results - 8B

Name:	8B						
Date:	12/13/2012						
Time:	12:50:03 PM						
Vote Type:	Motion to Approve						
Description:	Normal 0 false false false EN-US X-NONE X-NONE MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-priority:99; mso-style-qformat:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:11.0pt; font-family:"Calibri","sans-serif"; mso-ascii-font-family:Calibri; mso-ascii-theme-font:minor-latin; mso-fareast-font-family:"Times New Roman"; mso-fareast-theme-font:minor-fareast; mso-hansi-font-family:Calibri; mso-hansi-theme-font:minor-latin; mso-bidi-font-family:"Times New Roman"; mso-bidi-theme-font:minor-bidi;} An Ordinance approving a 10-year, 100% ad valorem tax abatement on Nexolon's personal property to be located at Brooks City-Base.						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
W. Reed Williams	District 8		x			x	
Elisa Chan	District 9		x				x
Carlton Soules	District 10		x				

EXHIBIT A

STATE OF TEXAS

§
§
§
§

**CITY OF SAN ANTONIO
TAX ABATEMENT AGREEMENT
FOR PERSONAL PROPERTY**

COUNTY OF BEXAR

1. PARTIES

THIS AGREEMENT (the "Agreement") is entered into on this ___ day of December 2012 (the "Effective Date") by and between NEXOLON AMERICA, LLC., a Delaware corporation (hereinafter referred to as "MANUFACTURER"), who holds or intends to hold a leasehold interest in the real property described herein and owns or intends to own personal property located on said real property, and the CITY of SAN ANTONIO, a municipal corporation, (hereinafter referred to as the "CITY"), acting by and through its City Manager under the authority of its City Council.

2. AUTHORIZATION AND FINDINGS

A. This Agreement is entered into pursuant to the following authorities:

1. The Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312, as amended;
2. CITY COUNCIL RESOLUTION No. 89-07-12, dated the 15th day of February 1989, and most recently revised by Ordinance No. 2010-12-16-1105 on December 16, 2010, together which established the City of San Antonio Guidelines and Criteria for Tax Phase-In and Reinvestment Zones, (hereinafter referred to as the "Guidelines and Criteria");
3. CITY COUNCIL ORDINANCE NO. 2012-12-13-___ dated December 13, 2012, which designated the BROOKS CITY-BASE REINVESTMENT ZONE (the "Reinvestment Zone"); and
4. CITY COUNCIL ORDINANCE NO. 2012-12-13-___, dated December 13, 2012, which specifically approved this Agreement and authorized execution hereof.

B. The City Council, by its approval of this Agreement, hereby finds that the terms of this Agreement abide by the Guidelines and Criteria and approving this Agreement will not have any substantial long-term adverse effect on the provision of city services or the City's tax base and the planned use of the Property (defined below) inside the qualifying Reinvestment Zone by MANUFACTURER for the uses contemplated herein will not constitute a hazard to public safety, health or morals.

3. **PROPERTY**

A. MANUFACTURER has or intends to hold a leasehold interest in real property located at or within the boundaries of the Brooks Development Authority (the "Property"), legally described in Exhibit A, attached hereto and incorporated herein. The Property is located within a designated Reinvestment Zone for the purposes of the Texas Property Redevelopment and Tax Abatement Act of 1987, V.A.T.S. Tax Code, Chapter 312.

B. MANUFACTURER has acquired or intends to hold a leasehold interest in the Property in order to locate its corporate headquarters and manufacturing facility and to conduct its "Business Activities" which for the purposes of this Agreement, include the manufacturing of solar panels for use in renewable energy projects and associated business operations.

C. In order for MANUFACTURER to conduct the Business Activities on the Property, it will be necessary for MANUFACTURER to make or cause to be made by its Landlord certain real property improvements (the "Real Property Improvements") and certain personal property improvements (the "Personal Property Improvements"). The Real Property Improvements and Personal Property Improvements are sometimes herein together called the "Improvements"). The actual cost of such Improvements is not currently known, however, the cumulative amount is anticipated to be approximately ONE HUNDRED FIFTEEN MILLION AND NO/100 DOLLARS (\$115,000,000). No Personal Property Improvements subject to this Agreement shall be placed on the Property sooner than the Effective Date of this Agreement.

D. Prior to MANUFACTURER or its Landlord performing the Improvements at the Property and commencing the Business Activities therein, MANUFACTURER shall establish one or more tax accounts with the Bexar Appraisal District for the Personal Property Improvements and shall provide these tax account number(s) and the related entity information to the CITY.

4. **MANUFACTURER'S REPRESENTATIONS**

A. MANUFACTURER represents that it has no knowledge that any interest in the Property is presently owned, held or leased by a member of the San Antonio City Council, Zoning Commission, Planning Commission, the City's Economic Development Department, or any other City officer or employee. MANUFACTURER further represents that it shall not knowingly sell, lease or otherwise convey an interest of any type of kind to a member of the San Antonio City Council, the Zoning Commission, the Planning Commission, the City's Economic Development Department or any other City officer or employee, as long as this Agreement remains in effect.

B. MANUFACTURER represents that there is no litigation pending against MANUFACTURER for any violations under the Occupational Safety and Health Act (“OSHA”) in Bexar County.

5. **MANUFACTURER’S OBLIGATIONS**

A. Notwithstanding all other obligations and/or duties imposed on MANUFACTURER by any other incentive agreements it has entered into with the State of Texas, Bexar County and/or the City of San Antonio, MANUFACTURER is required to accomplish the following in order to receive the full amount of tax abatement provided in this Agreement:

- 1) own, hold an interest in or otherwise control the Real Property Improvements and Personal Property Improvements that are the subject of this Agreement; and
- 2) invest, or cause to be invested, approximately THIRTY FIVE MILLION AND NO/100 DOLLARS (\$35,000,000.00) in Real Property Improvements by December 31, 2013, and approximately EIGHTY MILLION AND NO/100 DOLLARS (\$80,000,000.00) in Personal Property Improvements by December 31, 2015; and
- (3) No later than January 1, 2014, locate on the Property and continuously use the Property for Business Activities for the Term of this Agreement (the “Term of this Agreement” is defined in Article 6, Paragraph A); and
- (4) Prior to January 1, 2014, enter into an agreement with Alamo Colleges (“AC”) to contribute ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) annually for a total of five (5) consecutive years with the first annual payment prior to January 31, 2014 to the Alamo Area Academies to help support the development and execution of a customized training program to support the creation and sustainment of a skilled workforce in renewable energies and advanced solar panel manufacturing (or to be used for such other purposes as may be determined jointly between MANUFACTURER, AC, and the Alamo Area Academies) with a copy of said agreement to be provided to the City upon execution by MANUFACTURER and AC; and
- 5) create and maintain FOUR HUNDRED FOUR (404) full-time jobs in accordance with Table 1 below and maintain said full-time jobs for the remaining Term of this Agreement.

TABLE 1

Prior to January 1, 2014	MANUFACTURER shall create and maintain FORTY (40) Full-Time Jobs at its permanent or temporary headquarters located within the City of San Antonio..
Prior to January 1, 2015	MANUFACTURER shall create and maintain an additional ONE HUNDRED SIXTY (160) full-time jobs for a cumulative total of TWO HUNDRED (200) full-time jobs at the Property and/or at its permanent or temporary headquarters located within the City of San Antonio.
Prior to January 1, 2016	MANUFACTURER shall create and maintain an additional TWO HUNDRED FOUR (204) full-time jobs for a cumulative total of FOUR HUNDRED FOUR (404) full-time jobs at the Property and/or at its permanent or temporary headquarters located within the City of San Antonio.
From January 1, 2016 until end of Term	MANUFACTURER shall maintain a cumulative total of FOUR HUNDRED FOUR (404) full-time jobs at the Property and/or at its permanent or temporary headquarters located within the City of San Antonio subject to Section 7(D) of this Agreement; and

6) comply with all other applicable provisions of this Agreement.

B. MANUFACTURER will be required to covenant and agree to pay one hundred percent (100%) of its new employees employed for the Business Activities at the Property and/or its permanent or temporary headquarters located within the City of San Antonio the City's effective prevailing "living" wage as determined by the City Council in its Tax Abatement Guidelines, which is ELEVEN AND 08/100 DOLLARS (\$11.08) per hour. Commencing on the first anniversary of the date on which the Improvement have been completed, seventy percent (70%) of all new and existing employees working at the Property and/or its permanent or temporary headquarters located within the City of San Antonio must earn at least THIRTEEN AND 97/100 DOLLARS (\$13.97) per hour.

C. For the purposes of this Agreement, a "Full-Time Job" shall constitute one position that performs a minimum of two thousand and fifteen (2,015) straight-time paid hours in

a fiscal year. It is agreed by the parties that for the purposes of meeting the required job numbers for all purposes under this Agreement, "Full-Time Jobs" shall be calculated using both filled and open positions, including those positions that may be subject to labor actions including, but not limited to, strikes or lock-outs, so long as MANUFACTURER is actively recruiting to fill such open positions or otherwise engaged in a bona fide labor dispute as to such positions.

D. MANUFACTURER will covenant and agree that it shall offer all of its Full-time employees employed for the Business Activities at the Property and/or its permanent or temporary headquarters located within the City of San Antonio substantially similar employee benefits as those employee benefits offered to similarly situated employees of MANUFACTURER in the United States under similar circumstances.

E. MANUFACTURER will covenant and agree that it shall comply with all applicable federal and state laws governing the employment relationship between employers and employees in all material respects.

F. MANUFACTURER will covenant and agree that it shall conduct its Business Activities (as defined in Article 3, Paragraph A) at the Property in accordance with all applicable federal, state and local laws in all material respects.

G. Any construction MANUFACTURER will perform or cause to be performed at the Property shall be in all material respects in accordance with all applicable federal, state and local laws including, but not limited to, Texas Commission on Environmental Quality regulations, Bexar County and City of San Antonio laws, Building Codes and ordinances, Historic Preservation and Urban Design ordinances, flood, subdivision, building, electrical, plumbing, fire and life safety codes and regulations, current and as amended.

I. Except as provided herein, MANUFACTURER will covenant and agree that it shall use the Property only to conduct its Business Activities. Without additional consent or approval by the City Council, a parent, subsidiary or affiliate organization of MANUFACTURER or new entity created as a result of a merger, acquisition, or other corporate restructure or reorganization of MANUFACTURER, or any component thereof (hereinafter "Related Organization") may occupy and use the Property for such Related Organization's normal business activities. To be eligible for the tax abatements as provided in this Agreement, such Related Organization must agree in writing to fully comply with all applicable terms of this Agreement. Except as authorized above, MANUFACTURER covenants and agrees during the term of this Agreement not to change the principal use of the Property without prior approval by the City Council, as evidenced in a duly approved City Ordinance.

J. MANUFACTURER will covenant and agree that it shall maintain the Property and any constructed improvements in good repair and condition during the Term of this Agreement, normal wear and tear and damage by fire or other casualty not caused as a result of the intentional act or misconduct of MANUFACTURER excepted. Compliance

with the maintenance obligations imposed herein shall be presumed if MANUFACTURER follows its normal and customary maintenance procedures and schedules.

K. MANUFACTURER will covenant and agree that, upon five business days prior notice received by it from the CITY, MANUFACTURER shall allow designated representatives of the CITY access to the Property during normal business hours for inspection for the sole purpose of determining if the terms and conditions of this Agreement are being met. This inspection is independent of CITY's police powers to inspect for purposes of assuring compliance with applicable City Codes and Ordinances. The CITY's access to MANUFACTURER's books and records will be limited to information needed to verify that MANUFACTURER is and has been conducting Business Activities, and to verify the number of full-time employees at the Facility; provided, however, that the CITY shall not have the ability to obtain copies of MANUFACTURER's records or remove any information or documents from MANUFACTURER's files. Similarly, CITY shall not have the ability to obtain copies of MANUFACTURER's records or files that are protected by the trade secret privilege, the attorney-client privilege, as attorney work product, or by any applicable law, statute, regulation, or ordinance, however, for the purposes of ensuring compliance with this Agreement, City may receive from MANUFACTURER copies of information detailing MANUFACTURER's investment in personal property, hiring of employees and employee salaries. Should any good faith dispute or question arise as to the validity of the data provided, the CITY reserves the right to require MANUFACTURER to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of MANUFACTURER. CITY representatives may be accompanied by MANUFACTURER representatives and such inspections shall be conducted in such a manner as to (a) not unreasonably interfere with the operation of the Property or the Facility; and (b) comply with MANUFACTURER's reasonable security and confidentiality requirements. Any information provided by MANUFACTURER shall be subject to applicable law or regulation, may be marked confidential and proprietary as appropriate, and if appropriately marked protected from further disclosure pursuant to applicable law or regulation.

L. During the Term of this Agreement, MANUFACTURER will covenant and agree to furnish each year, as applicable, the Chief Appraiser of Bexar Appraisal District with information outlined in Chapter 22, V.A.T.S. Tax Code, as amended, as may be necessary for the tax phase-in and for appraisal purposes.

M. MANUFACTURER will covenant and agree to provide the CITY's Director of Economic Development or designated representative with a semi-annual certification from an officer of MANUFACTURER attesting to the number of full-time jobs maintained at the Property, as well as wages paid, by MANUFACTURER at the Property. MANUFACTURER shall also submit this information to the CITY upon request, as deemed necessary at the sole discretion of the CITY, during the Term of this Agreement. The information provided shall be on the forms set forth in, or substantially

similar to the forms set forth in, Exhibit "C" (attached hereto and incorporated herein), as amended.

N. MANUFACTURER will covenant and agree to notify CITY in writing at least 30 days prior to any sale, transfer or sub-lease of the Property during the Term of this Agreement. CITY shall not unreasonably withhold approval of any requests for Assignment of this Agreement by MANUFACTURER under Article 11 and any new purchaser or transferee requesting Assignment shall be bound by same. Failure to provide the required notification under this Article 5, Paragraph N shall render MANUFACTURER subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

O. MANUFACTURER will covenant and agree to notify CITY in writing at least 30 days prior to Relocating or Ceasing its Business Activities (as defined in Article 7, Paragraphs B and C). Failure to provide the required notification under this Article 5, Paragraph O shall render MANUFACTURER subject to the termination and recapture provisions under Article 7 without benefit of the Cure Period (as defined in Article 7, Paragraph E).

P. If, during the Term of this Agreement MANUFACTURER fails to create and retain at least the minimum number of full-time jobs required under Article 5, Paragraph A (5) of this Agreement over a period of two consecutive reporting periods, or MANUFACTURER fails to pay at least the minimum wages required under Article 5, Paragraph B of this Agreement, then the termination and recapture provisions of Article 7 of this Agreement shall apply against MANUFACTURER.

6. TAX ABATEMENT

A. In the event MANUFACTURER meets all obligations of Article 5 Paragraph A of this Agreement and otherwise performs all obligations set forth in this Article 6, the City shall give MANUFACTURER a ONE HUNDRED PERCENT (100%) tax abatement for the Personal Property Improvements at the Property for a term of ten (10) years commencing on January 1, 2014 (this ten (10) year abatement period is the "Term of this Agreement"). This Agreement only provides for the abatement of taxes on the Personal Property Improvements brought onto the site after the execution of this Agreement.

B. At the commencement of the Term of this Agreement, MANUFACTURER shall own, have an interest in or otherwise control the Property and shall be conducting its Business Activities on a daily basis and continuously throughout the Term of this Agreement.

7. DEFAULT/TERMINATION/RECAPTURE

A. For purposes of this section, "Relocation" or "Relocate" shall mean MANUFACTURER, or a Related Organization which has taken the place of

MANUFACTURER, transferring substantially all Business Activities to a location outside the designated Reinvestment Zone.

B. Should MANUFACTURER occupy and use the Property for its Business Activities and subsequently Relocate (as defined in this Article 7, Paragraph A) during the Term of this Agreement, unless such Relocation is caused by a Force Majeure, as defined in Article 8, then CITY shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless MANUFACTURER presents credible evidence to clearly indicate a date of Relocation, CITY's determination shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY (pursuant to the calculation set forth in Article 7, Paragraph G) and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies MANUFACTURER in writing of termination of this Agreement.

C. If MANUFACTURER occupies and uses the Property for its Business Activities and subsequently ceases conducting Business Activities (or a substantial portion thereof) at the Property for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure as defined in Article 8, then the CITY shall have the right to terminate this Agreement. Said terminations shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Unless MANUFACTURER presents credible evidence to clearly indicate a date of cessation, CITY's determination of a date of cessation shall be final and conclusive.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY (pursuant to the calculation set forth in Article 7, Paragraph G) and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies MANUFACTURER in writing of termination.

D. If MANUFACTURER, a Related Organization or City-approved assignee fails to hire and retain the number of Full-Time jobs as required in Article 5 Paragraph A(5) and Table 1 of this Agreement, calculated by the averaging of the two most current semi-annual Employee Wage Information for Tax Abatement Request Forms, or substantially similar form (Exhibit "E") for such calendar year of noncompliance, then for each such calendar year of noncompliance, the tax abatement shall be reduced in the following tax year by the same percentage as the deficiency in the Full-time Jobs requirement. For example, if MANUFACTURER hires and retains ninety percent (90%) of the Full-Time Jobs required in this Agreement at the Property or, if applicable, at its permanent or temporary headquarters in a given year, MANUFACTURER shall be entitled to ninety percent (90%) of the ad valorem personal property tax abatement for the Property for the following year. However, should MANUFACTURER fail to hire and retain at least fifty percent (50%) of the Full-Time Jobs requirement at the Property or, if applicable, at its

permanent or temporary headquarters in a given year then, at the option of CITY, this failure may be grounds for termination of this Agreement. Said termination shall be effective for the calendar year during which the Full-Time Jobs requirement as stated herein has not been met as required.

Upon termination, any and all taxes otherwise abated for that calendar year and all previously abated taxes under this Agreement shall be recaptured by CITY (pursuant to the calculation set forth in Article 7, Paragraph G) and CITY shall be entitled to the payment of such recaptured taxes within sixty (60) calendar days from the date it notifies MANUFACTURER in writing of termination of this Agreement.

E. During the Term of this Agreement, CITY may declare a default if MANUFACTURER fails to comply with any of the terms of this Agreement. Should CITY determine MANUFACTURER is in default under any of the terms of this Agreement; CITY will notify MANUFACTURER in writing at the address below in Article 9. If said default is not cured within sixty (60) calendar days from the date of such notice (hereinafter the "Cure Period"), then CITY shall have the right to terminate this Agreement. In the event that a default by MANUFACTURER cannot be cured within sixty (60) days after the date on which MANUFACTURER has received notice of such default, then the CITY shall not have the ability to terminate this agreement based on such default so long as MANUFACTURER has commenced to cure such default within the sixty (60) day cure period and such cure is being diligently pursued to its completion. If the Agreement is terminated as a result of default, all taxes abated shall be due for the tax year during which the termination occurred and shall accrue without further abatements for all tax years thereafter; in addition, CITY shall have the right to recapture from MANUFACTURER all previously abated property taxes under this Agreement (pursuant to the calculation set forth in Article 7, Paragraph G) and said taxes shall be paid by MANUFACTURER within sixty (60) calendar days of receiving CITY's written notification of recapture.

F. Other Remedies Available. CITY shall have the right to seek any remedy at law to which it may be entitled, in addition to termination and/or recapture, if MANUFACTURER defaults under the terms of this Agreement. However, such termination and/or recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which MANUFACTURER may be entitled. The termination and/or recapture of taxes provided in this Article 7 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as MANUFACTURER, a Related Organization or its CITY-approved successor or assignee continues conducting Business Activities or other authorized activities at the Property as provided hereinabove.

G. Calculation of Taxes Subject to Recapture. If MANUFACTURER fails to comply with any of its obligations under this Agreement, then the City Council shall have the right to recapture from MANUFACTURER a percentage of the abated taxes based on the following table:

TERM YEAR	TOTAL TAXES PREVIOUSLY ABATED
During the Term of this Agreement	100%
First year after termination Term of this Agreement	100%
Second year after termination Term of this Agreement	80%
Third year after termination Term of this Agreement	60%
Fourth year after termination Term of this Agreement	40%
Fifth year after termination Term of this Agreement	20%

FORMULA: The recapture formula shall be:

	Applicable Percentage		Amount to be
Total Taxes Abated	X	=	Recaptured
	from above Schedule		

CITY shall recalculate the amount of recapture pertaining to each tax year utilizing the above formula. A bill for each year will then be sent to MANUFACTURER.

8. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)

For purposes of this Article, “Force Majeure” is defined as an act of God, natural disaster, acts of public enemies, failures to act by any Governmental Authority, riots, perils of the sea, or any other extraordinary cause beyond the reasonable control of MANUFACTURER. It also includes explosion or other casualty or accident which is not the result of negligence, intentional act or misconduct on the part of MANUFACTURER. In addition to relief expressly granted in this Agreement, CITY may grant relief from performance of this Agreement if MANUFACTURER is prevented from compliance and performance by an event of Force Majeure. The burden of proof for the need for such relief shall rest upon MANUFACTURER. To obtain release based upon this Article 8, MANUFACTURER must file a written request with the CITY’s Economic Development Department for processing to City Council for a decision, authorized by a duly approved Ordinance.

9. **NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective upon its deposit into the custody of the United States Postal Service or such nationally recognized delivery service as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO MANUFACTURER:

- (Whether personally delivered or mailed):

Nexolon America, LLC
Attn: President
7330 San Pedro, Suite 400
San Antonio, Texas 78216

TO CITY:

- If mailed:

Economic Development Department
Attn: Director
P.O. Box 839966
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

Economic Development Department
Attn: Director
City Hall, 4th Floor
Military Plaza
San Antonio, Texas 78205

10. **CONDITION**

This Agreement is conditioned entirely upon the approval of the San Antonio City Council, as evidenced by duly approved Ordinance Number 2012-10-__ - ____, dated December ____, 2012.

11. **ASSIGNMENT**

Except as otherwise expressly provided herein, this Agreement may be assigned or otherwise transferred only with City Council's prior approval (which approval shall not be unreasonably withheld), as reflected in a duly adopted ordinance. MANUFACTURER must submit a written request to CITY for approval of the proposed assignment or other transfer at least thirty (30) days prior to the effective date of the assignment or transfer of any part of the Property; however, no City Council consent is required for an assignment or transfer to a parent of MANUFACTURER, a subsidiary of MANUFACTURER, an affiliate entity of MANUFACTURER, or to any new entity created as a result of a merger, acquisition or other corporate restructure or reorganization of MANUFACTURER. However, MANUFACTURER shall give CITY prior written notice of all assignments or other transfers that do not require City Council consent, as required under Article 5, Paragraph P. All future assignees shall be bound by all terms and/or provisions and representations of this Agreement.

12. **GENERAL PROVISIONS**

A. None of the property improvements described in this Agreement are financed by tax increment bonds.

B. This Agreement is entered into subject to the rights of the holders of outstanding bonds of the CITY related to this project. No bonds for which the CITY is liable have been used to finance this project.

C. No amendment, modification, or alteration of the terms hereof shall be binding unless in writing dated subsequent to the date of this Agreement and duly authorized by the parties. MANUFACTURER acknowledges that City Council approval is required for any and all of these actions.

13. **SEVERABILITY**

In the event any article, section, subsection, paragraph, subparagraph, sentence, phrase or work herein is held invalid, illegal or unenforceable, the balance of this Agreement shall stand, shall be enforceable and shall be read as if the parties intended at all times to delete said invalid section, subsection, paragraph, subparagraph, sentence, phrase or word. In such event there shall be substituted for such deleted provisions a provision as similar as possible in terms and in effect to such deleted provision that is valid, legal and enforceable. This Agreement constitutes the entire Agreement between the parties hereto relating to the subject matter contained herein and supersedes all prior, oral or written agreements, commitments or understandings with respect to the matters provided for herein.

14. ESTOPPEL CERTIFICATE

Any party hereto may request an estoppel certificate related to this project (hereafter referred to as "Certificate") from another party hereto so long as the Certificate is requested in connection with a bona fide business purpose. The Certificate, which if requested, will be addressed to a subsequent purchaser or assignee of MANUFACTURER or other party designated by MANUFACTURER which shall include, but not necessarily be limited to, statements that this Agreement is in full force and effect without default, if such is the case, the remaining Term of this Agreement, the levels of tax abatement in effect, and such other matters reasonably requested by the party(ies) to receive the Certificate.

15. OWNER STANDING

MANUFACTURER, as a party to this Agreement, shall be deemed a proper and necessary party in any litigation questioning or challenging the validity of this Agreement or any of the underlying ordinances, resolutions, or City Council actions authorizing same, and MANUFACTURER shall be entitled to intervene in said litigation.

16. APPLICABLE LAW

This Agreement shall be construed under the laws of the State of Texas and is performable in Bexar County, Texas, the location of the Reinvestment Zone.

17. CONFLICTS OF INTEREST

A. CITY warrants and undertakes that no council member, employee or agent of CITY will receive from or give to any director, employee or agent of MANUFACTURER any commission, fee, rebate, or any gift or entertainment of significant cost or value in connection with this Agreement except as expressly provided for in the Agreement. CITY shall promptly notify MANUFACTURER of any breach of this Article and any consideration received as a result of such breach shall be paid over or credited to MANUFACTURER, without prejudice to the right of MANUFACTURER to seek compensation or claim damages or any other rights that MANUFACTURER may have under applicable law.

B. CITY shall maintain and retain complete and accurate records of this transaction for the current calendar year plus the next preceding two (2) calendar years, to enable MANUFACTURER to exercise its rights under this Article. MANUFACTURER shall have the right, at its expense, upon reasonable prior written notice to CITY, to audit the records of CITY relevant to this Agreement during CITY's normal business hours solely for the purpose of confirming CITY's compliance with this Article, and for no other purpose. For purposes of this Article, "records" shall mean all records relevant to this Agreement and the intent of this Article.

18. **DUPLICATE ORIGINALS**

This Agreement shall be executed in two duplicate originals, with a duplicate original going to each party.

EXECUTED and **AGREED** to as of the ___ of _____, 2012.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

NEXOLON AMERICA, LLC.
a Delaware Limited Liability
Company

Sheryl L. Sculley
CITY MANAGER

Name
Title

ATTEST:

Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

Michael D. Bernard
CITY ATTORNEY

EXHIBIT A: PROPERTY DESCRIPTION

EMPLOYMENT C: NUMBER OF JOBS AND WAGE INFORMATION FORM