



- A. **Affiliate.** The word "Affiliate" means with respect to any specified person or entity, any other person or entity that, directly or indirectly, controls, is under common control with, or is controlled by such specified person or entity. For purposes of this definition, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a person or entity, through ownership of voting securities or through partnership interest.
- B. **Agreement.** The word "Agreement" means this Chapter 381 Economic Development Program Agreement, together with all exhibits and schedules attached to this Agreement.
- C. **Applicant.** The word "Applicant" means **BYK USA, Inc.**, a New York corporation.
- D. **Compliance Statement.** The words "Compliance Statement" means a written document prepared by the Gonzales Economic Development Corporation reflecting the Applicant's satisfactory compliance with the terms of this Agreement.
- E. **County.** The word "County" means the County of Gonzales, Texas.
- F. **Development.** The word "Development" means the **Plant Expansion** as more fully described on Exhibit "A", which is attached hereto and incorporated herein for all purposes.
- G. **Grant.** The word "Grant" means a payment on a yearly basis to Applicant under the terms of this Agreement.
- H. **Grant Submittal Package.** The words "Grant Submittal Package" means the documentation required to be supplied to the Gonzales Economic Development Corporation on behalf of the County on a yearly basis as a condition of receipt of any Grant, with such documentation more fully described in Exhibit "C", which is attached hereto and incorporated herein for all purposes. The Gonzales Economic Development Corporation shall issue a Compliance Statement to the Commissioners Court before grant funding may be approved by the Commissioners Court.
- I. **Phase(s).** The words "Phase(s)" means the three phases of this expansion described in Exhibit A.
- J. **Qualified Expenditures.** The words "Qualified Expenditures" means those costs incurred by Applicant in the acquisition, construction or furnishing of the Development.

## **SECTION 2. TERM AND GRANT PERIOD.**

The term of this Agreement shall be fifteen (15) years from the Effective Date of this Agreement relating to the expansion of the facility to be located at 1212 Church St., Gonzales, TX 78629, including any renewal agreed upon by the parties. The Effective Date of this Agreement shall be the date upon which both parties have fully executed this Agreement, as noted below. However, the Applicant's eligibility for Grant payments shall be limited to eleven (11) consecutive years (the "Grant Period") for each Phase of this expansion within the term of this Agreement. The Grant Period shall begin with the first year being the first tax year that begins after initial investment of each Phase. The Gonzales Economic Development Corporation on behalf of the County shall review Applicant's eligibility for Grant Payments on an annual basis in accordance with Exhibit "B" during the Grant Period. The Gonzales Economic Development Corporation shall issue a Compliance Statement to the Commissioners Court before grant funding may be approved by the Commissioners Court.

## **SECTION 3. OBLIGATIONS OF APPLICANT.**

During the term of this Agreement, Applicant shall comply with the following terms and conditions:

- A. The Applicant shall, or cause its landlord to, commence construction and or improvements of the Development for each Phase per Exhibit A. Moreover, Applicant shall, or cause its landlord to, give a not less than a 50% preference and priority to local manufacturers, suppliers, contractors and labor, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency. Applicant shall certify through an Affidavit that commencement of construction and/or improvements to the Development have been performed in line with Exhibit A. Applicant agrees that it shall make, or cause its landlord to make, Qualified Expenditures of not less than Thirty Million and 00/100 Dollar (\$30,000,000.00) in the Development amongst the three Phases. The County shall be permitted to review Applicant's or its landlord's receipts of Qualified Expenditures to evidence the expenditure of a minimum amount of Thirty Million and 00/100 Dollars (\$30,000,000.00).
- B. Applicant shall provide the Gonzales Economic Development Corporation on behalf of the County with an annual report by March 1<sup>st</sup> of each year during the term of this Agreement, certifying the status of compliance through the preceding year. Such annual report shall include the number of new jobs created and/or retained for the Development, information on any new investments in the Development, and any other information relevant to the Development and the County's economic development goals. Applicant shall also provide the Gonzales Economic Development Corporation on behalf of the County with such other reports as may reasonably be required. The Gonzales Economic Development Corporation shall issue a Compliance Statement to the Commissioners Court before grant funding may be approved by the Commissioners Court.

Applicant, during normal business hours, at its principal place of business in Gonzales, shall allow the County or its agents reasonable access to Applicant's employment records and books, and other records that are related to the economic development considerations and incentives described herein, to verify employment

records and any other records related to the County's economic development considerations and incentives provided herein. In order to protect these records, the Applicant shall identify and segregate under a sealed envelope any matters deemed to be privileged or proprietary, and the Gonzales Economic Development Corporation and County shall maintain the confidentiality of such records in accordance with and subject to commercially reasonable practices and all applicable laws to the extent allowed by the Texas Open Records Act.

- C. Unless otherwise agreed by the County and Applicant, each Grant Submittal Package shall be in the form provided in Exhibit "C". If Applicant fails to timely submit a Grant Submittal Package for a particular year, the Gonzales Economic Development Corporation shall give Applicant written notice of its failure to timely submit such Grant Submittal Package, and Applicant shall have thirty (30) calendar days from the date on which such written notice is given in which to submit such Grant Submittal Package. A failure by Applicant to timely submit a Grant Submittal Package in accordance with this paragraph is a waiver by the Applicant to receive a Grant for the period covered by the late Grant Submittal Package. The Gonzales Economic Development Corporation shall make a determination of the amount of the Grant payment due to Applicant and said determination shall be final unless challenged and amended by the Commissioners Court; provided, however, that the Applicant may make the determination of the Grant amount may be appealed to the Gonzales County Commissioners Court within thirty (30) days of payment. The Commissioners Court shall hear the appeal within thirty (30) days of request for appeal and the Commissioners Court's determination of the amount of the Grant payment shall be final. Nothing herein shall limit (or be construed to limit) Applicant's rights and remedies as described in Section 5 of this Agreement.
- D. Applicant or its landlord shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on the Development. The Applicant shall pay by January 31 of each year all of the real and business personal ad valorem taxes due for the previous tax year on any other property owned by the Applicant with the County of Gonzales.

Applicant and its landlord shall have the right to contest the appraised value of the Development as provided by law.

#### **SECTION 4. OBLIGATIONS OF COUNTY.**

During the term of this Agreement and so long as an event of default has not occurred and is not continuing as set forth herein (provided, however, an event of default hereunder shall not be deemed to have occurred until after the expiration of the applicable notice and cure period), County shall comply with the following terms and conditions:

- A. The County agrees to approve or reject any Grant Submittal Package within thirty (30) days after receipt of the Compliance Statement. The County agrees to process any Grant Payments to Applicant within thirty (30) days after approval of the Applicant's Grant Submittal Package.

- B. The County shall affirm or amend the determination of the total amount of Grant payments due to the Applicant, if any, on an annual basis as provided in Exhibit "B".

## **SECTION 5. EVENTS OF DEFAULT.**

Each of the following shall constitute an Event of Default under this Agreement:

- A. **Failure to Maintain Development.** Applicant's failure or refusal to operate the Development pursuant to this Agreement through the Grant Period of this Agreement, and Applicant's failure or refusal to cure within sixty (60) days after written notice from the Gonzales Economic Development Corporation or the County describing such failure, shall be deemed an event of default. However, if such failure cannot be cured by its nature within such sixty (60) day period and the Applicant has commenced such cure within such sixty (60) day period and continuously thereafter diligently prosecute the cure of such failure, such actions or omissions shall not be deemed an event of default.
- B. **False Statements.** In the event the Applicant provides any written warranty, representation or statement under this Agreement or any document(s) related hereto that is/are false or misleading in any material respect, either now or at the time made or furnished, and Applicant fails to cure same within thirty (30) days after written notice from the Gonzales Economic Development Corporation or the County describing the violation shall be deemed an event of default. If such violation cannot be cured within such thirty (30) day period in the exercise of all due diligence, and Applicant commences such cure within such thirty (30) day period and continuously thereafter diligently prosecute the cure of such violation, such actions or omissions shall not be deemed an event of default. Further, if Applicant obtains actual knowledge that any previously provided warranty, representation or statement has become materially false or misleading after the time that it was made, and Applicant fails to provide written notice to the Gonzales Economic Development Corporation or the County of the false or misleading nature of such warranty, representation or statement within thirty (30) days after Applicant learns of its false or misleading nature, such action or omission shall be deemed an event of default. In the event this Agreement is terminated pursuant to this Section 5B, the Grant Payment provided by the County in the most recent year pursuant to this Agreement shall be recaptured and repaid by Applicant within sixty (60) days from the date of such termination.
- C. **Insolvency.** The dissolution or termination of Applicant's existence as a going business or concern, Applicant's insolvency, appointment of receiver for any part of Applicant's portion of the Property, any assignment of all or substantially all of the assets of Applicant for the benefit of creditors of Applicant, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Applicant shall all be deemed events of default. However, in the case of involuntary proceedings, if such proceedings are discharged within sixty (60) days after filing, no event of default shall be deemed to have occurred.
- D. **Construction of Development.** Applicant's failure to comply with its construction obligations set forth in this Agreement and Applicant's failure to cure same within ninety

(90) days after written notice from the Gonzales Economic Development Corporation or the County shall be deemed an event of default. If such failure cannot be cured within such ninety (90) day period and Applicant fails or refuses to commence such cure within such ninety (90) day period, except to the extent such failure is caused by any act or failure to act on the part of the County, such actions or omissions shall be deemed events of default.

- E. **Property Taxes.** In the event Applicant allows any property taxes owed to the County to become delinquent and fails to timely and properly follow the legal procedures for protest and/or contest of such taxes and to cure such failure or post a satisfactory bond within thirty (30) days after written notice thereof from the Gonzales Economic Development Corporation or the County and/or Gonzales County Appraisal District, such actions or omissions shall be deemed an event of default. Subject to the restrictions noted herein, Applicant shall have the right to contest the appraised value of the Development.
- F. **Other Defaults.** Failure of Applicant or County to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any related documents, and Applicant or County fails to cure such failure within sixty (60) days after written notice from the other party describing such failure shall be deemed an event of default. If such failure cannot be cured within such sixty (60) day period in the exercise of all due diligence, and Applicant or County commences such cure within such sixty (60) day period and continuously thereafter diligently prosecute the cure of such failure, such act or omission shall not be deemed an event of default.
- G. **Failure to Cure.** If any event of default by Applicant or County shall occur, and after Applicant or County fails to cure same in accordance herewith, then this Agreement may be terminated without any further action required of the Applicant or County and the Applicant's or County's obligations end at that time. If a default has not been cured within the time frame stated herein, the non-defaulting party shall have all rights and remedies under the law or in equity.
- H. **Liability.** In no event will either party be liable to the other party for any indirect, special, punitive, exemplary, incidental or consequential damages. In no event shall the liability of either party exceed the value of Grant Payments issued hereunder. This limitation will apply regardless of whether or not the other party has been advised of the possibility of such damages.

#### **SECTION 6. TERMINATION OF AGREEMENT BY COUNTY WITHOUT DEFAULT OF APPLICANT.**

The County may terminate this Agreement for its convenience and without the requirement of an event of default by Applicant, which shall become effective immediately if any state or federal statute, regulation, case law, or other law renders this Agreement ineffectual, impractical or illegal, including any case law holding that a Chapter 381 Economic Development Agreement such as this Agreement is an unconstitutional debt.

## SECTION 7. MISCELLANEOUS PROVISIONS.

The following miscellaneous provisions are a part of this Agreement:

- A. **Amendments.** This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by both parties.
- B. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Gonzales County, Texas. Venue for any action arising under this Agreement shall lie in the state district courts of Gonzales County, Texas.
- C. **Assignment of Applicant's Rights.** Applicant understands and agrees that the County expressly prohibits Applicant from selling, transferring, assigning or conveying in any way any rights to receive the Grant proceeds without the County's prior written consent. Any such attempt to sell, transfer, assign or convey without the County's prior written consent is void and may result in the immediate termination of this Agreement, with no ability for the Applicant to cure.
- D. **Applicant's Sale or Transfer of the Development.** Prior to any sale or other transfer of ownership rights in the Development, Applicant shall notify the County in writing of such sale or transfer within thirty (30) business days of the Applicant's knowledge of effectiveness of such sale or transfer. This provision is a material term of this Agreement and the failure to notify the County of such sale or transfer within the applicable period shall constitute an event of default.
- E. **Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. County warrants and represents that the individual executing this Agreement on behalf of County has full authority to execute this Agreement and bind County to the same. The individual executing this Agreement on Applicant's behalf warrants and represents that he or she has full authority to execute this Agreement and bind Applicant to the same.
- F. **Completion of Development.** As consideration for the agreements of the County as contained herein, Applicant agrees that it will diligently and faithfully in a good and workmanlike manner pursue the completion of the Development and that the construction of same will be in accordance with all applicable federal, state and local laws and regulations.
- G. **Confidentiality Obligations.** The confidentiality of such records, employment records and any other records related to the County's economic development considerations and incentives provided herein will be maintained in accordance with and subject to all applicable laws, including the Public Information Act, Chapter 552, Texas Government Code. Specifically, the County will maintain the confidentiality of any proprietary information to the extent permitted by law and agrees that, as required by the Public Information Act, it will notify Applicant if a request relating to such proprietary

information is received. Applicant represents that it understands that the Public Information Act excepts disclosure of trade secret and confidential commercial information and that it will need to assert the proprietary interest of Applicant as a basis for nondisclosure. Applicant shall identify and segregate under a sealed envelope any matters deemed to be privileged or proprietary, and the Gonzales Economic Development Corporation and the County shall, within the requirements of state law, seek to preserve the confidentiality of such records.

- H. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
- I. **Employment of Undocumented Workers.** During the term of this Agreement, Applicant agrees not to knowingly employ any undocumented workers as defined in Texas Government Code Section 2264.001. If convicted of a violation under 8 U.S.C. Section 1324a(f), Applicant shall notify the Gonzales Economic Development Corporation and the County of such conviction, and repay the amount of the Grant payments received by Applicant from the County as of the date of such violation not later than one hundred twenty (120) days after the date Applicant is convicted. Failure to notify the County of such conviction shall be a material breach and subject the Agreement to default. In event of such a conviction, the County shall receive, in addition to any penalty assessed under relevant state or federal statutes, to an additional payment based upon the amount of the Grant payments for that year interest from the date the Grant payment(s) was paid to Applicant, at the rate of five percent (5%) per annum. The interest will accrue from the date the Grant payment(s) were paid to Applicant until the date the reimbursement payments are repaid to County. County may also recover court costs and reasonable attorney's fees incurred in an action to recover the Grant payment(s) subject to repayment under this section. Applicant is not liable for a violation by its subsidiary, affiliate, or franchisee, or by a person which whom Applicant contracts.
- J. **Execution of Agreement.** The Gonzales County Commissioners Court has authorized the County Judge to execute this Agreement on behalf of the County.
- K. **Force Majeure.** It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed beyond such party's reasonable control by reason of war, civil commotion, acts of God, severe weather, fire or other casualty, or court injunction, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation or requirement shall be extended for a period of time equal to the period such party was reasonably delayed.
- L. **Notices.** All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown below. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the



purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

COUNTY: County of Gonzales  
County Judge  
414 St. Joseph St., Suite 200  
Gonzales, Texas 79901

Copy To: Gonzales Economic Development Corporation  
President/CEO  
820 St. Joseph St.  
Gonzales, Texas 78629

Copy To: County Auditor  
414 St. Joseph St, Suite 400  
Gonzales, Texas 78629

APPLICANT: BYK USA, Inc.  
Plant Manager  
1212 Church St.  
Gonzales, Texas 78629

- N. **Ordinance Applicability.** The signatories hereto shall be subject to all regulations of the County, whether now existing or in the future arising; provided however no regulation shall reduce or diminish the contractual obligations contained herein. This Agreement shall confer no vested rights on the Development unless specifically enumerated herein.
- O. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

(SIGNATURES BEGIN ON THE FOLLOWING PAGE)

of Oct, 2017. **IN WITNESS WHEREOF**, the parties have executed this Agreement on this 25 day

**COUNTY OF GONZALES, TEXAS**

David Bird  
County Judge David Bird

**APPROVED AS TO FORM:**

Paul S. Watkins  
Paul Watkins  
County Attorney

**APPROVED AS TO CONTENT:**

Genora C. Young  
Genora C. Young, President/CEO  
Economic Development Corporation

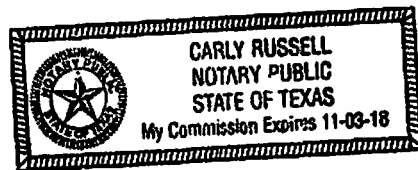
**ACKNOWLEDGMENT**

STATE OF TEXAS §  
  §  
COUNTY OF GONZALES §

This instrument was acknowledged before me on the 7 day of November, 2017, by David Bird, as County Judge of the County of Gonzales, Texas (COUNTY).

Carly Lynn Russell  
Notary Public, State of Texas

My Commission Expires:  
11-03-18



[SIGNATURES CONTINUE ON FOLLOWING PAGE]

APPLICANT: BYK USA, Inc.

[Signature]  
Name: J. A. J. Avery  
Title: PRESIDENT + CEO

[Signature]  
USTRINK  
CFO  
11/16/17

ACKNOWLEDGMENT

STATE OF Connecticut §  
New Haven  
COUNTY OF GENESSEE §

This instrument was acknowledged before me on the 16 day of November, 2017,  
by Ute Trink, as CFO of BYK USA, Inc.  
(APPLICANT).

[Signature]  
Notary Public, State of CT

My Commission Expires:  
May 31, 2020

CLAIRE WONG-OSTAPOWICZ  
NOTARY PUBLIC  
MY COMMISSION EXPIRES MAY 31, 2020

## **EXHIBIT A**

### **[Development]**

The proposed Development is an expansion of an existing manufacturing operation of the Applicant at 1212 Church St., Gonzales, Texas. This Development is broken into three phases.

The Development is estimated to require approximately 62,000 square feet of industrial facility. The Applicant estimates it will invest a minimum of \$30,000,000 into real and personal property at the overall Development. Subject to several uncontrollable economic impacts or added operational efficiencies, Applicant anticipates the hiring of 22 new jobs by 12/31/2021. Applicant anticipates the retention of 140 jobs with an anticipated gross payroll of \$8,000,000. A summary of each Phase is provided.

**Phase I Improvements:** Phase I Improvements shall be subject to the following timing considerations and include the following Investments in New Construction and Equipment.

- Commencement of Construction or Business Activity: Phase shall commence on or before November 1, 2017.
- Substantial Completion: Phase shall reach Substantial Completion on or before December 31, 2018.
- New Construction and Equipment: Shall include: Boilers, Quat Tanks, Centrifuges, Dry Mill Silos, Dust Collectors and Misc. Equipment.

**Phase II Improvements:** Phase II Improvements shall be subject to the following timing considerations and include the following Investments in New Construction and Equipment.

- Commencement of Construction or Business Activity: Phase shall commence on or before June 1, 2018.
- Substantial Completion: Phase shall reach Substantial Completion on or before December 31, 2019.
- New Construction and Equipment: Shall include: Garamite Plant Building, Locker Room Building, Mechanical Equipment, Piping, Electrical, Instrumentation, Waste Water Treatment facility and Misc. Equipment.

**Phase III Improvements:** Phase III Improvements shall be subject to the following timing considerations and include the following Investments in New Construction and Equipment.

- Commencement of Construction or Business Activity: Phase shall commence on or before January 1, 2019.
- Substantial Completion: Phase shall reach Substantial Completion on or before December 31, 2019.
- New Construction and Equipment: Shall include: Research & Development Building.

## **EXHIBIT B**

### **[Grant Payment Eligibility]**

#### **SECTION 1. ELIGIBILITY FOR GRANT PAYMENTS.**

The Applicant's eligibility for Grant Payments and any subsequent Grant Payments made by the County to the Applicant shall be determined pursuant to and in accordance with the following:

Grant Payments shall be made equivalent to seventy-five percent (75%) of the total value of the COUNTY's portion of the incremental ad valorem property tax revenue generated by the subject property for the Development for the given tax year during the Grant Period for ten years for each phase, upon request by the Applicant. Each phase of investment will be tracked in its own Gonzales County Appraisal District Property Account. County shall make such payment to Applicant within thirty (30) days of the receipt of the Compliance Statement and grant determination amount from the Gonzales Economic Development Corporation, subject to amendment by the Commissioners Court and any appeal by the Applicant.

EXHIBIT C

[Grant Submittal Package Form]

BYK USA, Inc. believes that it has substantially met its obligations under the Chapter 381 Agreement dated the 16 day of November, 2017 and signed by Ute Trink of BYK USA, Inc. Pursuant to the Agreement, BYK USA, Inc. submits this Grant Submittal Package Form in compliance with the Agreement and in anticipation of receiving the Grant payments referenced in the Agreement in consideration for its obligations met therein.

As required by the Agreement, the following information is submitted.

- 1. Annual Report (as referenced within the Agreement).
2. Property Tax Payment Receipt(s) of payment for tax year \_\_\_\_\_.

It is understood by BYK USA, Inc. that the County of Gonzales has up to thirty (30) days to process this request and reserves the right to deny the Grant claim if the terms of the Agreement have not been complied with.

BYK USA, Inc.

Signature: [Handwritten Signature]
Name: J. A. ST. AVERY
Title: PRESIDENT & CEO
UTRINK
UTRINK
CTO

ACKNOWLEDGMENT

STATE OF Connecticut §
COUNTY OF New Haven §

This instrument was acknowledged before me on the 16 day of November, 2017, by Ute Trink, as CTO of BYK USA, Inc., (APPLICANT).

Signature: [Handwritten Signature]
Notary Public, State of CT

My Commission Expires: May 31, 2020

CLAIRE WONG-OSTAPOWICZ
NOTARY PUBLIC
MY COMMISSION EXPIRES MAY 31, 2020