

**AD VALOREM TAX EXEMPTION PERFORMANCE AGREEMENT
BETWEEN POLK COUNTY AND
NOVAPHOS DEVELOPMENT, LLC
(PROJECT BAY)**

THIS AGREEMENT is entered into as of the Effective Date (as defined in Section 11), by and between Polk County, a political subdivision of the State of Florida (the “County”) and Novaphos Development, LLC, a Florida limited liability company (the “Company”).

WITNESSETH

WHEREAS, Article VII, Section 3, of the Florida Constitution and Section 196.1995, Florida Statutes, authorize the County to grant Economic Development Ad Valorem Tax Exemptions to New Businesses and Expansions of Existing Businesses, as defined in Florida Statutes, Section 196.012(14) and (15), subject to voter approval. On November 3, 2020, Polk County electors approved a referendum authorizing such exemptions, and on October 4, 2022, the Board of County Commissioners (the “Board”) adopted a master ordinance, Ordinance 2022-069 (the “Ordinance”) authorizing the granting of such exemptions; and

WHEREAS, the Ordinance sets forth guidelines and procedures for implementing the Economic Development Ad Valorem Tax Exemption Program (the “Program”); and

WHEREAS, pursuant to the Ordinance, the Company submitted an application (the “Application”) requesting an exemption under the Program based on estimated employment figures and capital investments (the “Exemption”), and the County approved the Exemption on February 6, 2024 by adoption of Ordinance 2024- _____ (the “Exemption Ordinance”); and

WHEREAS, as a condition of the Exemption being granted, the Company is required to enter into an agreement with the County to ensure that the business satisfies all requirements associated with the creation of jobs in the County, the fulfillment of other

representations made in applying for the Exemption, and the granting of the Exemption by the County.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, hereby acknowledged by the parties, the Company and the County agree as follows:

1. **Incorporation.** The recitals set forth above are incorporated herein in their entirety.

2. **Business Maintenance and Continuing Performance Conditions Requirement.** Pursuant to representations made by the Company in the Application, and in consideration of the County granting the Exemption, the Company agrees to:
 - a. invest, or cause to be invested on behalf of the Company, by the end of the second (2nd) year of the Exemption Period (hereinafter defined), at least Twenty-Five Million Dollars (\$25,000,000) in real property improvements and the purchase of equipment to facilitate the construction and operation of a 40,000 square foot commercial phosphoric acid manufacturing plant and processing facility (the "Facility") located at 3220 State Road 630 West, and 0 Highway 630, both in Fort Meade, Florida, 33841, Parcel ID No.'s: 25-31-30-000000-022020 and 25-31-30-000000-021010; and

 - b. create, by the end of the third (3rd) year of the Exemption Period, at least ten (10) new full time jobs in Polk County, paying an average annual wage equal to or in excess of 115% of the 2023 average annual wage for Polk County which is \$55,574; and

 - c. use commercially reasonable efforts to hire employees living in Polk County, Florida and to use local suppliers for its goods and services where practicable; and

 - d. apply green technologies to the extent feasible and where practicable.

3. Annual Filings. Pursuant to Florida Statutes, Section 196.1995, the Ordinance, and the Exemption Ordinance, the Company shall:

a. Inform the County in writing within ten (10) days as to any changes in ownership of the Company which have the cumulative effect of altering more than fifty (50%) of the ownership of the Company;

b. Before March 1 of the year in which the Exemption will first take effect, submit (or cause to be submitted) an amended DOR Form 418 to the Program Administrator. Additionally, the Company shall submit (or cause to be submitted), before March 1 of each year of the Exemption Period, an amended DOR Form 418 to the County's Property Appraiser, as required by Section 196.011, Florida Statutes, for annual renewals of tax exemptions;

c. Submit an annual report and renewal statement (the "Annual Report"), the form of which will be provided by the County, to the Program Administrator on or before March 1 of each year of the Exemption Period, which shall be defined as six (6) tax years commencing with Tax Year 2027 through Tax Year 2032.

(1) The Annual Report shall certify either that (A) the information provided in the Application has not changed, or (B) in the event the information has changed, the Annual Report shall set forth the changes in detail and any supporting documentation that may be necessary.

(2) The Annual Report shall provide an update of the Company's compliance with the Business Maintenance and Continuing Performance Conditions set forth in Section 2 herein.

(3) Prior to submittal of the Annual Report, the Company shall allow the Program Administrator to conduct an on-site inspection of the Facility in conjunction with his/her annual review of the project; provided, however, that the Program

Administrator shall provide 10 business days' advance written notice of any such inspection.

- (4) The parties acknowledge and agree that nothing contained in this Agreement, including, without limitation, this Section 3, shall require the Company to provide the County with any confidential, personal or otherwise sensitive employee information, including, without limitation, employee social security numbers or salaries identified by individual names.
- (5) The Company further agrees to cooperate with the County's auditor, or any outside agency providing auditor services on behalf of the County, and timely respond to and comply with any request for additional information, subject to the limits provided herein, in order to ensure compliance with the Program, the Ordinance, the Exemption Ordinance and this Agreement.

4. **Compliance with Ordinance Requirements.** The Company shall materially comply with all terms and conditions set forth in the Ordinance and the Exemption Ordinance, as they may be amended from time to time, as well as any policies, procedures and guidelines adopted by the County from time to time related to the Program; provided, however, that the County must provide prior written notice to the Company of any such policies and procedures, and the Company shall have the right to terminate this Agreement if the Company determines at its sole discretion that it cannot reasonably comply with any such policies and procedures without prejudice. The parties acknowledge and agree that if this Agreement is terminated pursuant to the immediately preceding sentence, the County shall have the right to revoke the Exemption Ordinance immediately without further notice to the Company.

5. County Revocation.

- a. In the event the Company fails to satisfy the Business Maintenance and Continuing Performance Conditions set forth in Section 2 of this Agreement, or otherwise fails to comply with the terms of this Agreement, the Ordinance, or the Exemption Ordinance, the County may adopt an ordinance revoking the Exemption or take such other action as it deems appropriate; provided, however, that the County will provide the Company with written notice of any such failure and permit the Company a reasonable period of time to cure any such failure (in no event less than 30 days) before any such failure will constitute grounds for termination of this Agreement. In the event of such revocation by the County, this Agreement shall automatically terminate and be of no further force or effect, except for those provisions herein which are specifically stated to survive termination.
- b. Upon revocation, the County shall immediately notify the Property Appraiser.
- c. If it is determined that for any year within the Exemption Period the Company was not entitled to receive the Exemption, the Company shall be subject to payment of all taxes exempted for such year as a result of this Agreement and the Exemption Ordinance.
- d. This Section 5 shall survive expiration or any earlier termination of this Agreement.

- 6. Assignment Estoppel.** The rights and privileges granted to the Company pursuant to the Ordinance, the Exemption Ordinance and this Agreement are not assignable or transferable in any manner without the prior written consent of the County; provided however, that notwithstanding anything herein contained to the contrary, the Company may assign or transfer all or any portion of its interest in this Agreement to an Affiliate of the Company without the County's consent. An "Affiliate"

shall mean any entity controlling the Company, controlled by the Company or under common control with the Company.

7. **Controlling Law.** This Agreement is entered into pursuant to the laws of the State of Florida and shall be construed and enforced thereunder. In the event of litigation for any alleged breach of this Agreement, exclusive jurisdiction and venue for such litigation shall be in the Circuit Court of the Tenth Judicial Circuit, in and for Polk County, Florida.
8. **Notice.** Any notices required under this Agreement shall be in writing and be addressed to the parties as shown below. Notices shall be delivered by certified or registered first class mail or by commercial courier service, and shall be deemed to have been given or made as of the date received.

AS TO THE COUNTY: County Manager

Administration Building

330 W. Church St.

Bartow, Florida 33830

WITH A COPY TO:

AVTE Program Administrator

Budget and Management Services Division

Administration Building

330 W. Church St.

Bartow, Florida 33830

AS TO THE COMPANY: Novaphos Development, LLC

Attn: Mark Vignare

3200 CR 630 West

Fort Meade, FL 33841

WITH A COPY TO:

Charlie Ramos

3200 CR 630 West

Fort Meade, FL 33841

9. **Force Majeure.** Notwithstanding anything contained in this Agreement to the contrary, and subject to the terms of this Section, the Company's failure to perform its obligations under this Agreement, other than with respect to the payment of money or the giving of any notice required hereunder, shall not be a default, and no disqualification shall occur as a result thereof, if any such failure or delay is due in whole or in part to acts of God; acts of public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strikes, lockouts or other labor or industrial disturbance (whether or not on the part of agents or employees of either party hereto engaged in renovation or construction at the Facility); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the Company, over the renovation or construction anticipated to occur thereon or over any uses thereof, or by delays in inspections or in issuing approvals by private parties or permits by governmental agencies not occasioned by the Company.
10. **Conflicting Laws; Severability.** If a conflicting law is enacted after the Effective Date, then the County and the Company shall meet and confer in

good faith for a period of no less than thirty (30) and no more than ninety (90) days to seek to effectuate an amendment to this Agreement providing the County and the Company with the rights and remedies intended to be provided herein. Nothing herein shall preclude either the County or the Company from challenging the validity of any conflicting laws. Each provision in this Agreement is severable. If any such provision is determined to be invalid or illegal, the validity and enforceability of the remainder of this Agreement shall be unaffected.

11. **Term; Effective date.** The term of this Agreement shall commence on the date of the last signatory hereto (the "Effective Date") and, unless sooner terminated, shall continue in force through the last day of the Exemption Period. In the event that the Company elects not to proceed with the expansion of the Facility and/or the purchase of qualifying tangible personal property as set forth in the Application, the Company shall notify the County in writing of such election, and upon receipt of such notice, this Agreement shall automatically terminate and be of no further force or effect, except for those provisions herein which are specifically stated to survive termination. In such event, the County may, without any further notice to the Company, adopt an ordinance revoking the Exemption, or take such other action as it deems appropriate, in accordance with Section 5a.
12. **Amendments.** Except as otherwise provided herein regarding termination, this Agreement shall not be modified or amended except by written instrument signed by all of the parties.
13. **Limitation of Liability.**

IN NO EVENT, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOSS OF PROFIT, WHETHER FORESEEABLE OR NOT, ARISING OUT OF OR RESULTING FROM THE NONPERFORMANCE OR BREACH OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, COMMON

LAW, WARRANTY, TORT, STRICT LIABILITY, CONTRIBUTION, INDEMNITY OR OTHERWISE.

14. Binding Effect and Effectiveness; Representations and Warranties.

a. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns, notwithstanding changes in corporate or other governance.

b. The Company represents and warrants to the County that as of the date hereof and throughout the term of this Agreement:

i. The Company is a limited liability company, duly organized under the laws of the State of Florida, maintains a place of business within the State of Florida, and is validly existing and doing business in the State of Florida as Novaphos Development, LLC;

ii. The Company has the power and authority to own its properties and assets and to carry on its business as now being conducted and has the power and authority to execute and perform this Agreement;

iii. This Agreement (a) is a lawful, valid and binding agreement of the Company in its corporate name enforceable against the Company in accordance with its terms; (b) does not violate any order of any court or other agency of government binding on the Company, the charter documents of the Company, or any provisions of any indenture, agreement or other instrument to which the Company is a party; and (c) does not conflict with, result in a breach of, or constitute an event of default, or an event which, with notice or lapse of time, or both, would constitute an event of default, under any material indenture, agreement or other instrument to which the Company, in its corporate name, is a party;

iv. The Company has not received written notice of any action having been filed against the Company that challenges the validity of the Agreement or the Company's right and power to enter into and perform this Agreement; and

v. The signatory hereto has the authority to execute this Agreement and to bind the Company to the terms and conditions set forth herein.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

ATTEST:

STACY M. BUTTERFIELD, Clerk

POLK COUNTY, a political subdivision of the State of Florida

By: _____
Deputy Clerk

By: _____

W.C. Braswell, Chair
Board of County Commissioners

Approved as to form and legal sufficiency:

Sandra B. Harf 1/24/24
County Attorney's Office Date

Date: _____

WITNESSES:

Novaphos Development, LLC, a Florida limited liability company

Myse Thompson
(Print Name) MY THOMPSON

By: _____
Name: Evgeny Fedoseev
Title: COO

[Signature]
(Print Name) Charlie Rams

Date: 1/22/2024

**STATE OF FLORIDA
COUNTY OF POLK**

The foregoing instrument was acknowledged before me by means of [] physical presence or [] online notarization, this 22 day of January, 2024, by Evgeny Fedoseev, as Chief Operating Officer of Novaphos Development, LLC, a Florida limited liability company, on behalf of the company. He/she is [] personally known to me or [] has produced N/A as identification.

Mark Vignovic
Notary Public

