

Request for Board of Commissioners' Action

From: Faye Hughes, County Administrator Date: August 14, 2020

Subject: BASF MOU Item Number: VIII-A

Please find the attached the BASF Memorandum of Understanding that will be presented by Howard McClain and Ms. Lisa Collins.

Motion made by _____

Second made by _____

Any discussion: _____

Votes _____ yes _____ no

Motion carried/ failed

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”) is executed this ____ day of August, 2020, among **BASF Corporation**, a Delaware corporation, as party of the first part (the “**Company**”), and **Cook County, Georgia** (the “**County**”), the **City of Adel** (the “**City**”), the **Adel Industrial Development Authority** (the “**Development Authority**”), the **Cook County Economic Development Commission** (the “**EDC**”), the **Cook County Tax Commissioner** (the “**Tax Commissioner**”), the **Board of Education of Cook County School Board** (the “**School Board**”) and the **Cook County Board of Tax Assessors** (the “**Tax Assessors**”), as parties of the second part (collectively, the “**City and County Parties**”).

WHEREAS, the Company has an existing manufacturing facility located in the County and is considering the acquisition and installation in such facility of certain additional equipment (the “**Project**”) which will result in an increase in employment in the County and promote trade, commerce, industry and employment opportunities in the County; and

WHEREAS, the City and County Parties have offered an incentive package to the Company as a material inducement to the Company to locate the Project in the County; and

WHEREAS, the parties propose to enter into this MOU to reflect their understanding regarding the details of the economic development incentive package that has been offered to the Company;

W I T N E S S E T H

NOW, THEREFORE, for and in consideration of the mutual agreements set forth herein, the parties agree as follows:

1. TITLE TO PROJECT

The Company will convey by bill of sale, or cause to be conveyed, to the Development Authority the title to the Project as described in paragraph 2 below. A general description of the Project is attached as Exhibit “A” to this MOU. The Development Authority will lease the Project to the Company under the terms of a lease (the “*Lease*”) with a lease term which extends to December 31 of the 20th complete calendar year following the year in which the Project is placed in service. The Company shall have an option at any time in its sole discretion to terminate the Lease term by purchasing the Project by surrendering the Bonds referred to below to the Development Authority and paying the additional sum of \$10.00. At the end of the Lease Term, the Development Authority promptly will execute a bill of sale conveying its interest in the Project back to the Company. During the term of the Lease, the Development Authority agrees that it will not transfer title to, or any interest in, all or any portion of the Project to any person or entity other than the Company (or its successors or assigns), or create any lien or encumbrance on the Project.

Neither the Development Authority nor any of the City and County Parties shall be responsible for acquiring or installing the Project, or for the Project being sufficient for its intended use.

2. AD VALOREM TAXES; DEVELOPMENT AUTHORITY BONDS; LIMITED OBLIGATIONS.

If the Company chooses to avail itself of certain local government economic development incentives, the Company will work in good faith with the Development Authority to structure a commercially reasonable transaction that satisfies Georgia law relating to local government economic development incentives, and the City and the County Parties agree to cooperate with the Development Authority and the Company to implement the transaction contemplated by this MOU.

The parties anticipate that the Development Authority will issue revenue bonds (the “**Bonds**”) to finance the cost of the Project following the completion of the Project and the Project being placed in service (“**Project Completion**”). Such Bonds shall be in an amount equal to the market value of the Project on the date the Bonds are issued (presently estimated at \$60,000,000), and shall bear interest at a rate determined by the Company in consultation with the Development Authority. The Company expects to commence work to acquire and install the Project in August, 2020, and presently expects to complete such acquisition and installation in mid-2021. While the present expectation is that the Bonds will not be issued until Project Completion, the parties acknowledge and agree that, if the Company should so request, a series of Bonds may be issued to finance the portion of the cost of the Project installed in each year. The Development Authority agrees that such Bonds will only be sold to the Company or to an affiliate of the Company, and the consideration for the purchase of such Bonds by the Company or its affiliate shall be the transfer of title to the Project, or such portion thereof, to the Development Authority.

The Lease shall be executed and delivered in connection with the initial series of such Bonds, and if the Bonds are issued in multiple series, shall be supplemented to reflect each additional series. The Lease shall provide for the payment of rental payments at such times, and in such amounts, as will match the payments due on the Bonds. The Development Authority will transfer and assign to the owner of the Bonds its rights under the Lease to receive such rental payments. The Bonds will be limited obligations of the Development Authority, payable solely from the rental payments assigned to the payment of the Bonds, and will not be a debt or a general obligation of the State of Georgia, the City or the County Parties, but will be a limited obligation payable by the Development Authority solely from rental payments made under the Lease. The

Bonds and the security for the Bonds will be the subject of validation proceedings to be commenced in the Superior Court of Cook County, as provided by Georgia law.

By virtue of the Development Authority's ownership of title to the Project subject to the Lease, the interest of the Development Authority in the personal property comprising the Project will be exempt from ad valorem taxation. The County parties agree that no ad valorem tax bill or assessment will be sent to the Company or be due from the Company as to the Project during the term of the Lease. Beginning with the first full calendar year after Project Completion, the Company shall pay to the Development Authority an amount equal to five percent of the ad valorem taxes which would ordinarily be due in such year to the various taxing agencies as a payment in lieu of taxes. Such amount shall be paid on the regularly scheduled due date on which ad valorem taxes are due to be paid in the County.

Beginning with the second full calendar year after commencement of operations of the Project, through the termination of the Lease, an additional five percent of what the ad valorem taxes for such year would have been for such year shall be added. As an example, the schedule for fees in lieu of taxes to be paid is as follows (assuming that the operations commence during calendar year 2021):

Calendar Year	Percent of Ad Valorem Taxes Ordinarily Due in such year
2021	5%
2022	10%
2023	15%
2024	20%
2025	25%

Calendar Year	Percent of Ad Valorem Taxes Ordinarily Due in such year
2026	30%
2027	35%
2028	40%
2029	45%
2030	50%
2031	55%
2032	60%
2033	65%
2034	70%
2035	75%
2036	80%
2037	85%
2038	90%
2039	95%
2040	100%

The schedule for the acquisition and installation of the Project, and for the Project being placed in service, shall be completely in the discretion of the Company. If the Project Completion does not occur in 2021, the parties to this MOU acknowledge that the commencement and final term of the Lease shall be adjusted so that the Lease will commence in the year of Project Completion, and the years in which the percentages above are applicable shall be similarly adjusted.

The parties to this MOU acknowledge and agree that some portion of the Project may be acquired during calendar year 2020, and such portion may be subject to ad valorem taxation in 2021 (and in other years prior to Project Completion) as “construction in progress.” The Company agrees that it will pay ad valorem taxes on such construction in progress without regard to this MOU. Regardless of such treatment, the parties to this MOU acknowledge that the value of the Company’s leasehold interest in the Project during the term of the Lease (commencing after Project Completion) will be determined as provided in the table above.

Beginning with the full calendar year following the year in which the Lease is terminated, the Project shall be promptly transferred by the Development Authority to the Company and placed on the tax digest of the County in the name of the Company and shall be taxed on the basis of any other similar property on the basis of its then fair market value. The parties agree that, in consideration of the Company’s decision to locate the Project in the County, the only taxes, fees, charges or assessments in the nature of property taxes or in lieu of such taxes to be paid by the Company during the term of the Lease are the payments referred to above. The City and the County Parties shall be responsible for any allocation and distribution of the payments made by the Company to the Development Authority pursuant to this paragraph.

The parties acknowledge that once the value of the Project is placed on the tax digest of the County following termination of the Lease, the assessed value of such property will be its depreciated value, as determined in accordance with the regulations of the Georgia Department of Revenue. The assessed value of all property in Georgia is set at forty percent (40%) of its market value.

3. PAYMENT OF FEES AND EXPENSES RELATING TO TAX ABATEMENT TRANSACTION.

The Company and the Development Authority shall each be responsible for the payment of the fees and expenses of their respective counsel (including, in the case of the Development Authority, the fees and expenses of any counsel to the City or any of the County Parties) in connection with the implementation of the transactions contemplated by this MOU. In addition, the Company shall be responsible for the payment of the costs of validation of the Bonds and related publication costs in the Superior Court of Cook County. None of the Development Authority, the City or the County Parties will impose, and the Company will not be responsible for, any other costs, fees or administrative charges associated with the tax abatement transaction contemplated herein.

4. RESPONSIBILITY FOR INSURANCE, MAINTENANCE AND OTHER COSTS UNDER LEASE

Under the terms of the Lease, the Company will be responsible for the acquisition and installation of the Project. The Company will also be responsible for all costs of insuring the Project, all costs of maintenance and repairs or replacements of the Project, and for all risk of loss from any source whatsoever relating to the Project. The Company will also be responsible for all utilities and other similar costs associated with operating the Project. Neither the Development Authority nor any of the other City and County Parties shall have any responsibility or rights with respect to the operation of the Project.

5. INVESTMENT AND JOB CREATION

The Company projects that its capital investment in the Project shall be approximately \$60,000,000, and the Company further projects as of the date of this MOU that the acquisition and installation of the Project will create twenty full-time permanent jobs in Cook County relating to the Project within two complete calendar years of commencement of operations of the Project. The Company agrees and represents that the aforementioned projected investment and employment opportunities (collectively, the “*Economic Development Goals*”) constitute good faith, reasonable expectations for the Project, on which the Development Authority, the City and County Parties may rely for the purposes of this Memorandum of Understanding. The Company covenants to exercise its commercially reasonable efforts to achieve the Economic Development Goals as to the Project within two complete calendar years of commencement of operations. So long as the Company is complying with its obligation to exercise commercially reasonable efforts to achieve the Economic Development Goals, the failure of the Company to actually achieve such goals on or before the date specified in this paragraph shall not constitute a breach or default on the part of the Company under this Memorandum of Understanding or any other definitive documents between the Company and the Development Authority or any City and County Party, and the City and County Parties’ obligations to provide the incentives contained herein shall continue in full force and effect.

6. PARTICIPATION AND ASSISTANCE WITH STATE GOVERNMENTAL AGENCIES AND DEPARTMENTS

As a further incentive for the Company to locate the Project in Adel, Cook County, Georgia, local and state governmental officials will assist the Company in aggressively pursuing and negotiating the very best possible QuickStart Training Program and/or other training programs utilizing the facilities and services of Wiregrass Georgia Technical College.

Assistance shall also be given, as needed, to secure the Georgia Jobs Tax Credit, which for Cook County is \$3,000 per new job created by the Company at the forecasted pay scale. Such credits can be applied to the Company's state corporate income tax. Also, pursuant to Georgia Law, any credits claimed, but not used, can be carried forward for ten years from the close of the taxable year in which the qualified jobs were created. The parties generally agree to cooperate and provide each other assistance with application preparation, supplying of data and sharing of information, as needed, for any program or agency which will benefit the parties with the Project.

In addition, the City and County Parties will make all reasonable efforts to assist the Company in obtaining, and will, at the Company's request, aggressively pursue any other County or State incentive programs that the Company may pursue for the Project, for any future expansion of the Project, or for future projects in the County. Such assistance may include, for example, REBA or EIP grants administered by the Georgia Department of Community Affairs. The City and County further will make every effort to assist the Company in resolving any Department of Transportation ("***DOT***") issues, including DOT funding or DOT project support (e.g., traffic signals or speed limits) that may arise out of the acquisition and installation of the Project or out of the operation of the Company's facility.

The City and County Parties will make all reasonable efforts to assist the Company in obtaining, and will at the Company's request, aggressively pursue any other County or State incentive programs that the Company may pursue, including obtaining, to the extent applicable, a freeport exemption for the operations of the Company at the industrial site of which the Project is a part. The Company acknowledges and agrees that it must apply annually for any freeport exemption, currently between January 1 and April 1 of each year.

7. PERMITTING AND INSPECTIONS

The Development Authority will assist with local and state permitting as requested by the Company. All local permitting fees are waived.

8. MISCELLANEOUS PROVISIONS

The following miscellaneous provisions shall apply to this MOU:

- a. This writing contains the entire agreement reached between the parties hereto and may be amended only in writing duly executed by the parties.
- b. This MOU has been drafted and shall be interpreted under the laws of the State of Georgia, and in the event any provision is found to be unenforceable or unconstitutional, all other provisions shall remain in full force and effect.
- c. The parties acknowledge that the foregoing incentive package represents a binding contractual agreement between the parties, and the Company is acting in reliance upon the incentives, exemptions and other governmental benefits provided for herein in its decision to locate the Project in Adel, Cook County, Georgia, and the City and the County Parties are granting the incentives provided herein in reliance on the Company's agreements herein.
- d. The contractual commitments provided for herein, and made by the City and County Parties, shall be deemed to continue into the future, and remain binding upon future elected officials, unless prohibited by law.
- e. In the event any statute adopted by the Georgia General Assembly, or any ruling of any court of competent jurisdiction prohibits the carrying out of any incentives committed to herein or limits the value of such incentives, then in such event the parties shall have no further obligations as to such prohibited portion, and the applicable portion of this agreement shall become null and void.

f. This MOU is subject to approval by each party's respective governing board. This Memorandum of Understanding is not binding upon any party unless it is approved by each party's respective governing board and may be terminated by any party prior to such approval in its sole discretion.

g. The terms of this MOU are independent of each other if any term or clause of this Memorandum of Understanding is deemed void or unenforceable, all other terms and conditions contained in this MOU will remain valid and enforceable.

h. This MOU will be binding upon and inure to the benefit of the parties, their successors and permitted assigns.

i. The Company may, without the City and County Parties' consent or the consent of the Development Authority, assign this Memorandum of Understanding to its Affiliate, or in connection with its merger, consolidation, or change in control, or a transfer or sale of all or substantially all of its business or operations. No such assignment will be effective until the Company gives the other parties to this MOU written notice, and the assignee assumes in writing the Company's obligations under this Memorandum of Understanding. For purposes of this subsection, "*Affiliate*" means any party that directly or indirectly controls, is controlled by, or is under common control with the Company where, "control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

j. Each of the parties agrees to maintain the confidentiality of this MOU and of the details concerning the transactions contemplated hereby and, unless otherwise required by law (including applicable open records and open meetings laws), will not disclose such information to third parties without the prior written consent of the other Parties. The parties shall coordinate any announcements, press releases or publications concerning this MOU or the Project contemplated

by this MOU and each Party shall have the opportunity to have its representative actively participate in any function related to the release of any information related to the commencement of this Project or its expected impact on the County.

IN WITNESS WHEREOF, the parties hereto have executed this MOU on the day and year first written above.

(signature pages following)

AUTHORITY:

ADEL INDUSTRIAL DEVELOPMENT AUTHORITY

By: _____
Chairman

COMPANY:

BASF CORPORATION

By: _____

Name:

Title:

COOK COUNTY, GEORGIA

By: _____
Chairman, Board of Commissioners

Attest: _____
Clerk, Board of Commissioners

(SEAL)

CITY OF ADEL, GEORGIA

By: _____
Mayor

BOARD OF EDUCATION OF COOK COUNTY

By: _____
Superintendent

**BOARD OF TAX ASSESSORS OF
COOK COUNTY**

By: _____
Title:

**COOK COUNTY ECONOMIC
DEVELOPMENT COMMISSION**

By: _____
Title:

COOK COUNTY TAX COMMISSIONER

By: _____
Title:

EXHIBIT A

General Description of Project

The Company is constructing a new manufacturing plant to produce seed treatment formulations. The scope includes engineering, procurement & construction and installs the following equipment: several ASME agitated vessels, several bulk bag ingredient charging systems, several pumps, a heat exchanger pump-around cooling loop, a hot box for raw materials, material elevators, mills, a chiller system, a steam boiler system, instrument air compressor system, QC Lab equipment, piping, and related equipment.