

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between Monroe County, Indiana (“County”) and TASUS CORPORATION, (“Tasus”), whose parent company is Tsuchiya Co., Ltd., of Nagoya, Japan. The parties acknowledge that this MOU is a legally binding and enforceable contractual agreement, and its provisions are enforceable in a court of law. The Application for Tax Abatement (“Application for Abatement”) submitted by Tasus, which includes the Statement of Benefits for personal property, is attached to this document and is incorporated by reference in its entirety.

### RECITALS

**WHEREAS**, the County wishes to encourage the retention and development of a diverse range of quality job opportunities, with good wages and benefits, for its citizens; and

**WHEREAS**, Tasus, a current employer in Monroe County, has applied for a tax abatement for new machinery that will allow Tasus to meet the needs of its clients, keep current jobs in the County, and add additional jobs to the workforce; and

**WHEREAS**, The Monroe County Council has reviewed the package of benefits offered by Tasus to its employees, and has heard a public presentation by Tasus’s representatives on the same issue;

**WHEREAS**, the Monroe County Economic Development Commission has reviewed the Application for Abatement filed by Tasus and recommended granting a ten year tax abatement to Tasus’s proposed personal property improvements (the “Abatement”); and

**WHEREAS**, Monroe County Redevelopment Commission has reviewed the Application for Abatement filed by Tasus and found that granting a ten year Abatement to the project will not adversely affect the ability of the Richland TIF to meet current bond payment obligations; and

**WHEREAS**, the County wishes to enter into a Memorandum of Understanding with Tasus so that both parties will have a clear understanding of what will constitute substantial compliance with stated goals and benefits as outlined in the Application for Abatement, and what will be the consequences and remedies for either party’s failure to substantially comply with their commitments;

**NOW THEREFORE**, the County and Tasus enter into this Memorandum of Understanding.

### I. Purpose

The purpose of this MOU is to specify the actions and duties of the parties in connection with the grant by the County to Tasus of a ten-year tax Abatement for certain personal property for the project described in Tasus’s Application and Statement of Benefits, and to specify remedies available to the County and to Tasus in the event that a party does not perform the

actions and duties it has promised herein. The MOU becomes binding upon passage by the County of a ten-year tax Abatement in compliance with IC 6-1.1-12.1 *et. seq.*

## **II. Property Covered by this MOU**

### **A. Personal Property:**

The Personal Property covered by this MOU shall include, but not be limited to the items outlined on the Statement of Benefits, attached, with a value of up to **Two Million Two Hundred thousand Dollars (\$2,200,000.00)**, which includes, but is not limited to a 1450 Ton Press, Injection Molding Equipment, and other supporting manufacturing equipment.

## **III. Duties of Monroe County**

If approved by a vote of the County Council, the County shall grant Tاسus an Abatement of ten (10) years' duration, pursuant to the provisions of I.C. 6-1.1-12.1 *et. seq.* on the personal property described in II above.

## **IV. Duties of Tاسus**

### **A. Substantial Compliance**

It is expressly acknowledged by both parties that the purpose of this equipment purchase is to allow Tاسus to retool its manufacturing capabilities in order to meet new and future needs of existing customers. **The equipment on which this tax abatement is being given will require the addition of seven new full-time positions at the Tاسus facility located in Monroe County.**

Tاسus shall be considered in substantial compliance with the terms of this MOU provided that the equipment is purchased, installed and utilized at its Monroe County manufacturing facility throughout the duration of the Abatement, **maintains a total full-time workforce of at least 128 persons, beginning at least by April 15, 2011, and meets the provisions of IV B, below.**

### **B. Salaries and Benefits**

During the term of this Abatement, Tاسus shall meet or exceed the salaries and available benefits outlined in the Application for Abatement submitted to the Monroe County Economic Development Commission, attached as Exhibit A.

## **V. Remedies**

### **A. Remedies and Consequences for Failure to Meet Substantial Compliance**

If in years one through five of the Abatement, Tاسus does not meet the standard of Substantial Compliance stated above, Tاسus shall pay to the County Ninety per cent (90%) of

the value of the Abatement received from the beginning of the Abatement until such time as it comes into compliance with the terms of the MOU. If in years six through ten of the Abatement, Tasus does not meet the standard of Substantial Compliance stated above, Tasus shall pay to the County Sixty-five per cent (65%) of the value of the Abatement received from the beginning of year six of the Abatement until such time as it comes into compliance with the terms of the MOU. Payment shall be made no later than March 1 of the year following any year in which Tasus fails to meet Substantial Compliance with the terms of the MOU.

### **B. Factors beyond the Control of Tasus**

As used in this Agreement, factors beyond the control of Tasus shall only include factors not reasonably foreseeable at the time of the submission of the Application and submission of Statement of Benefits, which are not caused by any act or omission of Tasus and which materially and adversely affect the ability of Tasus to substantially comply with this agreement, and shall include but not be limited to “declines in demand for Tasus’s products or services” as described in Indiana Code 6-1.1-12.1-5.9(b) (collectively known in this Agreement as “Factors Beyond the Control of Tasus”). A decision by Tasus to shift work from a County facility to any other facility owned by Tasus or by any other entity, or to outsource such work to any other company shall not be considered a Factor Beyond the Control of Tasus. Where there has been a Factor Beyond the Control of Tasus that substantially prohibits Tasus’s compliance with this MOU, then that compliance shall not be required.

### **C. Liquidated Damages Clause**

The Parties state that it is their intent in adopting the sliding scale of remedies for any failure by Tasus to remain in compliance with the terms of this MOU, is an effort to arrive at a scale of amounts that will roughly compensate the County for foregone taxes and the value of the public good that might have been achieved with those foregone taxes, weighed against the value achieved by maintaining quality jobs in Monroe County. As such values are difficult or impossible to ascertain with mathematical exactitude, the parties agree to such dollar remedies as are spelled out in this MOU, and the parties state that the dollar amounts are intended to represent Liquidated Damages and do not serve as punitive damages. In the event that the County must resort to litigation in order to enforce any part of this MOU, and in the event that the County prevails in its litigation, Tasus shall be liable for the County’s reasonable legal expenses incurred in enforcing this MOU.

## **VI. MISCELLANEOUS PROVISIONS**

### **A. Jurisdiction of Disputes**

Jurisdiction for settlement of any disputes arising under this MOU shall be the Circuit Courts of Monroe County, Indiana; no change of venue from the Monroe Circuit Courts is permissible. Nothing in this MOU shall be read to restrict the ability of any Monroe Circuit Court judge to recuse himself/herself from hearing any dispute brought in the Monroe Circuit Courts. The terms of this MOU shall be construed and enforced in accordance with the laws of State of Indiana and shall apply without regard to conflicts of laws principles.

**B. Severability**

The provisions of this MOU are independent and severable. If any provision is found by a court of law to be unenforceable, all other provisions shall still stand as binding upon the parties.

**C. Binding on Heirs and Assigns and Merged Entities**

The benefits and obligations of this MOU will be binding upon, and inure to the benefit of any successors in interest of, or assignees of, the parties. The County and GSAC further state that any restructuring of Tasus’s corporate structure by merger with any other entity, or any restructuring of Tasus within its parent corporation shall not affect the binding nature of the benefits and obligation this MOU establishes on the parties.

**D. Waiver**

Neither the failure nor any delay on the part of any party to exercise any right, remedy, power or privilege under this MOU shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege with respect to any occurrence or be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be effective unless it is in writing and is signed by both parties.

**E. Authority to Execute**

Each person executing this MOU warrants that he has full legal authority to do so.

**F. Recording of MOU**

This Memorandum of Understanding shall be recorded in the Office of the Recorder of the County.

**G. Exhibits Attached and Incorporated by Reference**

The following documents are attached as Exhibits and incorporated into this MOU in their entirety by reference:

Exhibit A. The Application for Tax Abatement and Statement of Benefits submitted by Tasus on October 21, 2011.

**MONROE COUNTY COUNCIL**

By: \_\_\_\_\_

Julie Thomas, President  
As Authorized by the County Council at its Meeting of December 13, 2011

**ATTEST:**

\_\_\_\_\_  
Amy Gerstman, Auditor of Monroe County

**TASUS**

By: \_\_\_\_\_

\_\_\_\_\_  
Printed name and Title

STATE OF INDIANA )

) SS:

COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a notary public in and for said county and state, personally appeared \_\_\_\_\_, who acknowledges the execution of the foregoing Memorandum of Understanding for and on behalf of Tasus and states that he/she has been authorized by the corporation to execute the document.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2011.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed Name  
Resident of \_\_\_\_\_ County, Indiana