Reso.

2007-0111
INTRODUCED BY: ALBERT D. LAQUE, PARISH PRESIDENT (BOND COUNSEL)

RESOLUTION NO. 5422

A resolution authorizing the Parish President and the Council Secretary of the Parish of St. Charles, State of Louisiana, to execute a preliminary agreement with SilvaGas Taft LLC granting its preliminary approval with respect to the financing of certain industrial facilities; authorizing the publication of a Notice of Public Hearing; and providing for other matters in connection with the foregoing.

WHEREAS, it is the desire of the Parish of Charles, State of Louisiana (the "Parish"), to encourage the location of and addition to industrial enterprises within its jurisdiction under the authority of Sections 991 to 1001, inclusive, of Title 39 of the Louisiana Revised Statutes of 1950, as amended (the "Act"), and other constitutional and statutory authority supplemental thereto; and

WHEREAS, SilvaGas Taft LLC (the "Company"), a limited liability corporation and wholly-owned subsidiary of SilvaGas Corporation, proposes to finance the acquisition, construction and installation of an industrial facility consisting of a biomass-to-syngas facility, constituting nonresidential real property to be located in the geographical limits of St. Charles Parish in the Gulf Opportunity Zone as provided in the Gulf Opportunity Zone Act of 2005, or facilities constituting solid waste disposal facilities, recycling facilities, resource recovery facilities or industrial sewage and wastewater treatment facilities under Section 142 of the Internal Revenue Code of 1986, as amended (collectively, the "Project"), as described in Exhibit A attached to the Preliminary Agreement identified as Supplement I hereto, and has requested that the Parish utilize the aforesaid authority and grant preliminary approval with respect to the financing of the Project through the issuance of its revenue bonds (the "Bonds") in the manner hereinafter provided; and

WHEREAS, this Parish Council has concluded that the acquisition, construction and installation of the Project will benefit the welfare and economy of the Parish and that it is in the public interest to encourage the construction of the Project; and

WHEREAS, prior to the issuance of the Bonds, the Company, directly or through a subsidiary or other related legal entity or operating entity of SilvaGas Corporation, intends to expend its own funds to pay the costs of acquisition, construction and installation of the Project and reasonably expects to reimburse said expenditures from the proceeds of the Bonds; and

WHEREAS, following issuance of the Bonds, the Company intends to use proceeds of the Bonds to fund additional costs of acquisition, construction and installation of the Project and to fund a portion of the costs of issuance of the Bonds; and

WHEREAS, this resolution is intended to be an official action of the Parish and a declaration of intent to reimburse in accordance with the provisions of Treasury Regulations, Section 1.150-2; and

WHEREAS, it is now the desire of this Parish Council to authorize the Parish President and the Council Secretary to execute an appropriate agreement evidencing the understanding of this Parish Council with respect to granting its preliminary approval of the financing of the Project through the issuance of the Bonds hereinafter described;

NOW, THEREFORE, BE IT RESOLVED by the Parish Council of the Parish of St. Charles, State of Louisiana, acting as the governing authority of the Parish of St. Charles, State of Louisiana:

SECTION 1. That pursuant to the authority of the Act, the Project is hereby approved and the Parish Council grants its preliminary approval of the financing of the cost of the acquisition, construction and installation thereof by the Parish through the issuance of its tax exempt revenue bonds in one or more series, such bonds to be in an aggregate amount not exceeding $75,000,000 and to be designated Revenue Bonds (the "Bonds").

SECTION 2. That the Parish President and the Council Secretary be and they are hereby authorized, empowered, and directed to execute, for and on behalf of the Parish, an agreement between the Parish and the Company, with respect to the issuance of the Bonds in one or more series in an amount not exceeding $75,000,000 to finance the cost of the Project, said Agreement to be substantially in the form and to contain substantially the terms and provisions set forth in the Preliminary Agreement attached to this resolution and marked Supplement I for identification herewith.

SECTION 3. That the Parish President and the Council Secretary are authorized and empowered to take any and all further action and to sign any and all documents, instruments and writings as may be necessary to carry out the purposes of this resolution and to file, on behalf of the Parish, with any governmental board or entity having jurisdiction over the Project, such applications or requests for approval thereof as may be required by law, including, without limitation, a request for a volume cap allocation to the State Bond Commission and Executive Counsel to the Governor and to the State Bond Commission for approval of the financing if any portion of the Bonds will be issued as exempt facility bonds.

SECTION 4. That application be and the same is hereby made to the State Bond Commission, Baton Rouge, Louisiana, for consent and authority to issue, sell and deliver the Bonds and for approval of the sale agreement and trust indenture for the Bonds.

SECTION 5. That application is hereby made to the Governor of the State of Louisiana for a designation of all or a portion of the Bonds as "Qualified Gulf Opportunity Zone Bonds" pursuant to Executive Order KBB 2006-9, and the Parish is authorized to submit such documentation, including a certified copy of this resolution, as shall be necessary to obtain such designation.

SECTION 6. That the Parish hereby authorizes the publication of a Notice of Public Hearing and does hereby further authorize and approve the conducting of a public hearing in accordance with the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

SECTION 7. That this resolution is intended to be an official action and a declaration of intent to reimburse in accordance with the provisions of Treasury Regulations, Section 1.150-2.

SECTION 8. That by virtue of the Parish's application for, acceptance and utilization of the benefits of the State Bond Commission's approval requested herein, the Parish understands and agrees that such approval is expressly conditioned upon, and further understands, agrees and binds itself, its successors and assigns, to full and continuing compliance with the "State Bond Commission Policy on Approval of Proposed Use of Swaps, or other forms of Derivative Products, Hedges, Etc.," adopted by the Commission on July 20, 2006, as to the borrowing and other matters subject to the approval, including subsequent application and approval under said Policy of the implementation or use of any swaps or other products or enhancements covered thereby.

SECTION 9. That it is recognized, found and determined that a real necessity exists for the employment of Bond counsel in connection with the issuance of the Bonds and, accordingly, the employment of Foley & Judell, L.L.P., New Orleans, Louisiana, as bond counsel to the Parish to do and to perform comprehensive, legal and coordinate professional work with respect to the issuance and sale of the Bonds is hereby ratified and approved. Bond counsel shall (i) prepare and submit to the Parish for adoption all of the proceedings incidental to the authorization, issuance, sale and delivery of the Bonds, (ii) counsel and advise the Parish with respect to the issuance and sale of the Bonds and (iii) furnish their opinion covering the legality of the issuance thereof. The fee to be paid bond counsel shall be an amount based on the Attorney General's then current Bond Counsel Fee Schedule and other guidelines for comprehensive, legal and coordinate professional work in the issuance of revenue bonds applied to the actual aggregate principal amount issued, sold, delivered and paid for at the time Bonds are delivered, together with reimbursement of out-of-pocket expenses incurred and advanced in connection with the issuance of the Bonds, and shall be payable out of the proceeds of the Bonds or funds provided by the Company, subject to the Attorney General's written approval of said employment.

SECTION 10. It is hereby further found and determined that a real necessity exists for the employment of local special counsel to the Issuer in connection with the issuance of the Bonds and, accordingly, Robert L. Raymond, Esq., of Destrehan, Louisiana, be and he is hereby employed as special counsel to the Issuer to do and to perform all legal services as local counsel in connection with the issuance of the Bonds. The fee to be paid said local counsel shall be computed at an hourly rate not exceeding the amount provided by the guidelines for such services as approved by the Attorney General of the State of Louisiana, plus out-of-pocket expenses. The fee herein described shall be payable out of the proceeds of the

Bonds or funds provided by the Company, subject to the Attorney General's written approval of said employment.

This resolution having been submitted to a vote, the vote thereon was as follows:

YEAS: MARINO, FAUCHEUX, HILAIRE, FABRE, RAMCHANDRAN, WALLS, DUHE, MINNICH

NAYS: NONE

ABSENT: BLACK

And the resolution was declared adopted on this 2nd day of April, 2007, to become effective five (5) days after publication in the official journal.

ACTING CHAIRMAN:

SECRETARY: Barbara Jacob Tucker

DLVD/PARISH PRESIDENT: April 3 2007

APPROVED: ✓ DISAPPROVED:

PARISH PRESIDENT: Albert D. Laque

RETD/SECRETARY: April 3, 2007

AT: 2:25 pm RECD BY: BJT

SUPPLEMENT I

<u>**PRELIMINARY AGREEMENT**</u>

This **PRELIMINARY AGREEMENT** is between the **PARISH OF ST. CHARLES, STATE OF LOUISIANA** (the "Issuer"), and **SILVAGAS TAFT LLC**, a limited liability corporation (the "Corporation"):

WITNESSETH:

1. <u>Preliminary Statement</u>. Among the matters of mutual understanding which have resulted in the execution of this Agreement are the following:

(a) The Issuer is a political subdivision of the State of Louisiana and is authorized by the provisions of Sections 991 to 1001, inclusive, of the Louisiana Revised Statutes of 1950, as amended (the "Act"), and other constitutional and statutory authority supplemental thereto, to issue its revenue bonds to finance, acquire, purchase, construct or improve industrial facilities.

(b) The Corporation proposes to finance the acquisition, construction and installation of an industrial facility consisting of a biomass-to-syngas facility, constituting nonresidential real property to be located in the geographical limits of the Issuer, or facilities constituting solid waste disposal facilities, recycling facilities, resource recovery facilities or industrial sewage and wastewater treatment facilities (the "Project"), including without limitation those items more particularly described in <u>**Exhibit A**</u> attached hereto. The Issuer intends this Agreement to be its binding commitment to issue its tax exempt revenue bonds in one or more series (the "Bonds") in an aggregate amount agreed to by the Issuer and the Corporation up to $75,000,000 and to expend the proceeds thereof to finance the cost of the Project, including without limitation, the costs of planning, designing, acquiring, constructing, installing and equipping the Project and all costs of the Issuer in connection with the issuance of the Bonds, including legal fees and expenses and printing, engraving, and publication costs (the "Cost of the Project"). The Issuer shall be furnished satisfactory financial information, including audits and such other items as the Issuer may request, relative to the financial matters of the Corporation and the marketability of the Bonds proposed to be issued.

(c) The Issuer considers that the issuance and sale of the Bonds for the purpose hereinabove set forth will be appropriate and consistent with the objectives of the Act. This commitment is an affirmative official action of the Issuer and a declaration of intent to reimburse in accordance with the laws of Louisiana and the United States Treasury Regulations, Section 1.150-2.

2. <u>Undertakings on the Part of the Issuer</u>. Subject to the terms hereof, the Issuer agrees as follows:

(a) The Issuer will cause the authorization of the issuance of the Bonds in an aggregate principal amount not to exceed the estimated Cost of the Project.

(b) Contingent upon the delivery of the Bonds and the receipt of the proceeds thereof, the Issuer will acquire the Project by purchase or by lease from the Corporation, at a price equal to its actual costs of planning, acquiring, financing, constructing and equipping the Project (including interest on the Bonds during construction and issuance expenses) or the net proceeds of the Bonds available to the Issuer for such purposes, whichever is less. Contemporaneous with such purchase or lease, the Issuer will sell, lease or sublease the Project to the Corporation. The terms and conditions with respect to the purchase or lease of the Project from and the sale, lease or sublease of the Project to the Corporation shall be established by an agreement or agreements (the "Finance Agreement") which shall be entered into by and between the Issuer and the Corporation. The Corporation's obligations to make payments under the

Finance Agreement shall be sufficient to enable the Issuer to pay the principal of, premium, if any, and interest on the Bonds as well as paying agent fees, trustees' fees, and all other costs and charges in connection with the servicing of the Bonds.

(c) The Issuer will cooperate with the Corporation with respect to the issuance and sale of the Bonds, and will take such action and authorize the execution of such documents and the taking of such further action as may be necessary or advisable for the authorization, issuance and sale of the Bonds by the Issuer, all as shall be authorized or permitted by law and as shall be mutually satisfactory to the Issuer and the Corporation. It is specifically understood that the obligation of the Issuer to acquire the Project through the purchase or leasing thereof, if Bonds be issued therefor, is limited solely to the payment therefor out of Bond proceeds, and the purchase price or rental, as the case may be, to be paid by the Issuer to the Corporation for the Project shall not exceed the cost of the Project, which cost may include issuance fees and expenses and interest on the Bonds during construction, or the net proceeds of the Bonds available to the Issuer for such purpose, whichever is less.

(d) In authorizing the issuance of the Bonds pursuant to this Agreement, the Issuer will make no warranty, either express or implied, that the proceeds of the Bonds will be sufficient to pay the Cost of the Project or that the Project will be suitable for the Corporation's purposes or needs. The Corporation will agree that should the Cost of the Project exceed the amount of the Bond proceeds, the Corporation will ensure that it will complete the Project and shall not be entitled to any reimbursement for any excess either from the Issuer, the Bondholders or the Trustee.

(e) The Bonds shall specifically provide that they are payable solely from the income and revenues derived from the sale, lease or other disposition of the Project, except to the extent payable out of amounts attributable to Bond proceeds. The Bonds shall not constitute an indebtedness or pledge of the general credit of the Issuer, within the meaning of any constitutional or statutory limitation of indebtedness.

(f) The Issuer will take such further action as may be required to implement its aforesaid undertakings as it may deem appropriate in pursuance thereof.

3. Undertakings on the Part of the Corporation. Subject to the terms hereof, the Corporation agrees as follows:

(a) The Corporation will use reasonable efforts to find one or more purchasers for the Bonds upon such terms and conditions as shall be mutually satisfactory to the Issuer and the Corporation.

(b) Prior to or contemporaneously with the sale of the Bonds, the Corporation will enter into the Finance Agreement providing for the completion of the Project and the sale thereof to the Issuer under the terms of which the Corporation will obligate itself to purchase, lease or sublease the Project and all parts thereof from the Issuer and to pay to the Issuer (or the trustee, as the case may be) sums sufficient in the aggregate to pay the principal of and interest and redemption premium, if any, on the Bonds as and when the same shall become due and payable, all paying agent fees, trustees' fees, and other costs and charges in connection with the servicing of the Bonds. The Finance Agreement will contain such other provisions as may be required or permitted by law and as shall be mutually acceptable to the Issuer and the Corporation.

(c) In addition to the payments required to pay the principal of, premium, if any, and interest on the Bonds, the Corporation will obligate itself to pay all costs of maintenance and operation of the Project, and casualty and property damage insurance and all taxes, governmental charges and other such charges, if any, which may be assessed or levied against or with respect to the Project.

(d) The operation of the Project will comply with all federal and state laws and regulations and the Corporation will obtain all necessary approvals and permits required thereunder.

(e) The Corporation agrees (i) to protect and insulate the Issuer, the Parish Council and their members individually, from any and all financial responsibility or liability whatsoever with respect to the Project and the financing thereof; and (ii) to indemnify, defend and hold the Issuer and the aforesaid other parties harmless against any loss or damage to property or any injury or death of any person or persons occurring in connection with the construction, equipping and operation of the Project. Such indemnity shall be superseded by a similar indemnity in the Finance Agreement and in the event the Bonds are not delivered, said indemnity shall extend to causes of action arising prior or subsequent to the termination of this Agreement.

(f) The Corporation will agree to make such additional payments in such amounts and in such manner as may be provided for by agreement of the parties.

(g) The Corporation will reimburse the Issuer for all reasonable expenses incurred by the Issuer in connection with the financing of the Project, which expenses may be paid out of Bond proceeds.

(h) The Corporation will pay the reasonable out-of-pocket expenses, if any, of members of the Parish Council and the Corporation will also pay the reasonable fees for rendered legal services of bond counsel or special legal counsel related to the Project, which fees may be paid out of Bond proceeds.

(i) The Corporation will take such further action as may be required to implement its aforesaid undertakings as it may deem appropriate in pursuance thereof.

4. General Provisions. This Agreement may be cancelled unless the following events shall have occurred not later than three (3) years from the date hereof, or such other later date as shall be mutually satisfactory to the Issuer and the Corporation:

(a) The Issuer and the Corporation shall have agreed on mutually acceptable terms for the Bonds and of the sale and delivery thereof and mutually acceptable terms and conditions of the agreements and documents referred to in section 3 and the action referred to in sections 2 and 3 hereof.

(b) Such orders, rulings, approvals, consents, certificates or opinions of counsel as to such matters with respect to the Bonds, the Project, the Finance Agreement, any guaranty agreement(s) and trust instrument(s) securing the Bonds shall be obtained from such governmental, as well as non-governmental, agencies and entities as may have or assert competence or jurisdiction over or interest in matters pertinent thereto and to the Project, and shall be in full force and effect at the time of the issuance of the Bonds. If the events set forth in section 4 do not take place within the time set forth or any extension thereof, it is agreed that this Agreement may be cancelled at the option of the Issuer or the Corporation to be evidenced in writing, in which event neither party shall have any rights against the other party except the Corporation will reimburse the Issuer for all reasonable and necessary direct out-of-pocket expenses which the Issuer may incur arising from the execution of the Agreement and the performance by the Issuer of its obligations hereunder; provided, however, that the indemnity provided for in section 3(e) hereof shall continue in full force and effect.

5. Upon the delivery of the Bonds, the provisions of the Agreement shall have no further effect (except with respect to section 3(e) hereof), and, in the event of any inconsistency between the terms of the Agreement and the terms of the Finance Agreement and trust instrument(s) securing the Bonds, the provisions of the Finance Agreement and the trust instrument(s) shall control.

6. All covenants and agreements herein contained by or on behalf of the Issuer and the Corporation shall bind and inure to the benefit of the respective successors and assigns of the Issuer and the Corporation whether so expressed or not.

7. It is recognized and agreed that the Corporation may exercise its rights hereunder and perform its obligations hereunder through or in conjunction with a wholly owned subsidiary or other related legal entity or operating entity of SilvaGas Corporation, and all references herein to the Corporation shall be deemed to include the Corporation acting directly through itself or through or with any wholly-owned subsidiary, other related legal entity or operating entity.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement through their representatives duly authorized as of the 2nd day of April, 2007.

PARISH OF ST. CHARLES,
STATE OF LOUISIANA

By: Albert D. Laque
Parish President

ATTEST:

By: Barbara Jacob Tucker
Council Secretary

[SEAL]

SILVAGAS CORPORATION

By: ______________________
Title:

EXHIBIT A

PROJECT DESCRIPTION

Project Overview

SilvaGas Taft LLC is currently developing a 10,200 MMBtu per day, biomass-to-syngas facility to be located adjacent to the Dow Chemical facility in Taft, Louisiana (the "Project"). The Project will generate syngas using the proven SilvaGas® biomass gasification technology, and will convert nearby forest products, agricultural waste, construction and industrial waste, and/or energy crops into a direct substitute for natural gas. The syngas will be sold to the Dow Chemical Company under a long-term Gas Purchase Agreement currently under negotiation.

The Project will be owned by SilvaGas Taft LLC, which is a subsidiary of the SilvaGas Corporation, and the design will be based on proven, proprietary technology. The Project will be constructed pursuant to a fixed-price, turnkey, engineering, procurement and construction agreement, and will be operated and maintained the under a third-party O&M Agreement with an experienced biomass gasification system operator.

Project Sponsor

The SilvaGas Corporation (the "Company") is a renewable energy technology company engaged in the development of clean energy and waste disposal solutions. The Company is the owner and exclusive licensee to the patented SilvaGas® process.

The US Department of Energy ("DOE") and private investors have provided over $64 million in funding to develop the SilvaGas process. The process was first tested at a ten ton-per-day pilot scale plant for over 22,000 hours of operation on a broad range of biomass feedstocks. Following the conclusion of pilot testing, the SilvaGas Process was demonstrated at commercial size at the McNeil Generation Station in Burlington, Vermont, one of the largest wood-fired power generation plants in the world. The Vermont Gasification Project (the "Vermont Project"), which is capable of processing over 300 tons-per-day, was constructed to demonstrate the commercial scale viability of the technology. The operational results to date from this full-scale pilot plant have exceeded projections. Based on the results of the testing in Vermont, the Company is currently focusing on project development efforts of SilvaGas plant sizes equivalent to 5,100-20,400 MMBtu's in size (400 to 1,600 dry tons per day).

The Company is based in Atlanta, Georgia. Its staff is highly experienced with the development, design, construction, financing, and operation of projects using both the SilvaGas technology and for energy projects overall.

Proven Technology

The SilvaGas process is a gasification system which converts forest residues, municipal solid waste, agricultural waste, and/or energy crops into a product gas which is directly substitutable for natural gas. Historically, biomass gasification technologies have been based on coal gasification designs, which do not take advantage of the high chemical reactivity of biomass. The SilvaGas process, however, was specifically designed to gasify biomass and take advantage of its high chemical reactivity.

In conjunction with the US Department of Energy ("DOE"), the Battelle Memorial Institute originally developed the "Low Gas Inlet Velocity High Throughput Gasification Process", now known as the

SilvaGas process, in the early 1980's. The original test equipment converted 1,000 lbs. per day of biomass into syngas, but as testing progressed a pilot plant designed to convert ten tons of biomass per day was built and was operated for approximately 22,000 hours. In the mid-1990's, the Future Energy Resources Company (FERCO) was created and acquired all of the rights to the patented technology. In 1998, again in conjunction with the DOE, the SilvaGas technology was scaled up to a 300 ton-per-day facility which was installed at the McNeal Station in Burlington Vermont. When construction was completed in 2001, testing began and was carried out until early 2002. The testing regime completed by the DOE and Battelle demonstrated the large scale commercial viability of the SilvaGas technology.

In addition to the extensive study of the technology at Battelle labs, the National Renewable Energy Laboratory ("NREL") continues to use the SilvaGas process as a model for lifecycle and techno-economic studies of biomass gasification and energy technology, and for the production of higher value chemicals. NREL uses its Thermochemical Users Facility (TCUF) to test the performance of the SilvaGas process on a variety of feedstocks. SilvaGas has the NREL TCUF facility available for any testing which may be necessary for unique feedstocks that need evaluation for a project, including the Project itself.

The scientific community recognized the value of the SilvaGas process in 1998 by awarding it with the prestigious "R & D 100 Award". Other awards and endorsements of the SilvaGas process include the State of Vermont Governor's Award for Excellence in Pollution Prevention, as well as direct support from the President of the Unites States and the Secretary of Energy.

Project Site

The Project site will require approximately 20 acres of land, which will be provided to the Project by Dow under a long-term lease agreement. The site will be located on the southwestern side of the Union Pacific railway line which runs parallel to the Dow facility. Depending on wetlands issues, the Project may also require a biomass receiving area of up to 40 acres, which would be located elsewhere in St. Charles Parish. All biomass deliveries by truck would be delivered the site via Hwy 3127, with the Project access road being immediately off Hwy 3127 or Hwy 3141. This would insure that the biomass supply would not be visible from either highway, while also assuring residents that any additional truck traffic in St. Charles Parish would be contained to larger highways.

Project Construction Timeline, Costs, and Local Hiring

Construction is expected to commence after the permitting process for the Project is completed, which is anticipated to take place during the third quarter of 2007. The construction schedule will be approximately 12-14 months, with operations commencing by December 2008. SilvaGas Taft expects that construction labor at its peak will total approximately 300 employees, with 15 permanent hires expected to operate the plant. SilvaGas Taft will make it a priority to hire local employees for all positions. Total construction costs are not expected to exceed $70 million.