

CITY OF HUNTSVILLE/ZINC POINT MANUFACTURING/STILL AMERICAN, LLC

CHAPTER 380

ECONOMIC DEVELOPMENT AGREEMENT

This Chapter 380 Economic Development Agreement ("*Agreement*") is made and entered into by and between Zinc Point Manufacturing/Still American, Inc. a for profit corporation qualified to do business in Texas ("*Company*"), and the CITY OF HUNTSVILLE, TEXAS, a home rule city and municipal corporation (*the "City"*).

RECITALS

A. The City is authorized by Chapter 380 of the Texas Local Government Code to make grants of money to promote state and local economic development and to stimulate business and commercial activity in Huntsville.

B. Company intends to increase its capacity at its existing Property and to relocate equipment for installation on the Property.

C. "Property" means the real property located 500 SH 19, Huntsville, Texas, 77340, and more generally described in the attached Exhibit "A".

D. The City has determined that substantial economic benefit, including the generation of additional property taxes and the creation of new opportunities of employment, will accrue to the City as a result of Company's development and continued use of the Property, the installation of additional equipment, and the development and operation of Company's business on the Property.

E. The City has authorized the City Manager to make a grant of services to Company to (i) relocate to Huntsville equipment on the Property and make capital investments in the City, and (ii) to create new full and part-time jobs at the facility (together, the "*Project*").

F. Increasing Company's capacity in and relocating equipment to Huntsville will promote economic development and stimulate business and commercial activity in Huntsville, will create jobs, and will expand the tax base.

G. The Project will consist of the consolidation of other manufacturing operations to Huntsville, Texas. This includes the investment of roughly \$7 million to upgrade and expand the existing facility, the installation of roughly \$5 million in machinery & equipment, and the creation of roughly 40 net new jobs to Huntsville, Texas.

H. Company accepts the City's grant of services in the form of waiver of development related fees, a financial grant equivalent to property taxes owed by the company due to the Project and a financial incentive for job creation and agrees that if Company chooses Huntsville for its Project, it will be in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits and promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Company agree as follows:

I.

Authority and Condition Precedent

1.1 City Authority. The City represents that its execution of this Agreement is authorized by Chapter 380 of the Texas Local Government Code and constitutes a valid and binding obligation of the City.

1.2 Company Authority. Company represents that its execution and performance of this Agreement constitutes a valid and binding obligation of Company in the event Company proceeds to construct the Project in Huntsville. The City acknowledges that Company is acting in reliance upon the City's performance of its obligations under this Agreement, among other consideration, in making its decision to invest its funds and expand employment in Huntsville.

1.3 Condition Precedent. Company and the City agree that all obligations stated in this Agreement shall be contingent upon Company's selection of Huntsville for consolidation of certain manufacturing operations.

II. Company Obligations

2.1 Commencement. After the Effective Date (defined in **Section 4.1**). Company shall begin development on the Project on the Property.

2.2 Creation and Maintenance of New Full and Part-Time Jobs.

(a) Company shall create at least 40 "New Full and Part-Time Jobs" by December 31, 2023 and shall maintain at least such number of New & Existing Full and Part-Time Jobs until December 31, 2025. For purposes of this Agreement, "*New Full and Part-Time Jobs*" means full and part-time jobs created in or relocated to the City during or after the completion of the consolidation and installation of new equipment.

(b) If Company does not timely satisfy the job creation and maintenance provisions for any year as set forth in the preceding **Section 2.2(a)**, then Company shall have a cure period of 90 days after the end of the applicable year to create the requisite number of Full and Part-Time Jobs. Additional time may be granted by the City for good cause as determined by the City.

2.3 Local Business Participation. In an effort to further stimulate and positively impact the local economy, Company shall use commercially reasonable efforts to provide local small businesses and minority-, women- and veteran-owned businesses, an equal opportunity to participate as suppliers for materials and services purchased by Company for use at the Project site.

2.4 Compliance with City Regulations. For the construction of the Project, Company will comply with all City Code regulations applicable to the Project as of the Effective Date. For any future construction or remodeling, Company will comply with all City Code regulations applicable to such construction or remodeling as of the date of such work.

2.5 Certificate of Compliance and Inspection.

(a) "Certificate of Compliance" means the written certification by Company under which it warrants to the City that it is in full compliance with each of its obligations under this Agreement, including the number of Full and Part-time Jobs maintained by Company for the preceding calendar year under Section 2.2 of this Agreement. The Certificate

shall be substantially in the form and contain the information specified in the sample Certificate attached to this Agreement as Exhibit "B".

- (b) Company shall deliver to the City before April 1 of each year, beginning on April 1, 2022, during the term of this Agreement, a Certificate of Compliance utilizing the form attached to this Agreement as Exhibit "B". The last Certificate of Compliance report shall be due April 1, 2027.
- (c) In the Certificate of Compliance, Company shall warrant to the City that it is in full compliance with each of its obligations under this Agreement.
- (d) The City, and/or its representative(s) including third-parties contracted by the City, has the right to inspect all relevant records of Company as are reasonably necessary to verify compliance with all requirements of this Agreement, provided the City and its representatives use their best efforts to minimize any interference or disruption in Company's business operations and agree to the confidentiality requirements set forth in Section 4.16 below. Inspections shall be preceded by at least two weeks' notice in writing to Company and shall be conducted during Company's normal business hours or at such other time as may be mutually agreed to by the parties.

2.6 Texas Government Code Chapter 2264. In accordance with Chapter 2264 of the Texas Government Code, Company agrees not to employ any person who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("*Undocumented Worker*"). During the term of this Agreement, Company shall notify City of any complaint brought against Company alleging that Company has employed Undocumented Workers. If Company is convicted of a violation under 8 U.S.C. Section 1324a(f), the total amount of economic development grants it has received pursuant to this Agreement, together with interest at the rate of 5% per annum from the date of each payment of an economic development grant, shall be repaid by Company to the City not later than the 120th day after the date the City notifies Company of the violation. Company shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate, contractor, consultant, unrelated third-party vendor or supplier or franchisee, or by a person with whom Company contracts.

2.7 Failure to Meet Obligations. In the event that Company defaults in its obligations under the performance terms above, after receipt of notice and expiration of the cure period described in Sections 2.2 (b) and Section 4.4, the City may, at as its sole and exclusive remedy, terminate this Agreement, whereupon the City shall not be required to perform, and Company shall not be entitled to receive any further performance by the City under this Agreement, provided, however that Company shall repay the City for all grants already issued by the City before the termination of this Agreement.

III. City Obligations

3.1 Economic Development Incentive. In consideration of Company performance of each of its obligations under this agreement, the City shall provide the following:

1. Inspections and permitting (including, without limitation, a certificate of occupancy, if applicable) without cost to the Company during the construction and until the issuance of an inspection report for all trades indicating final inspections for the Project have passed;
2. Jobs Grant to Company for hiring Walker County residents in the amount of \$2,000 per new job up to an aggregate grant of \$200,000 on or before 2023 (up to a total of 100 new jobs

created and maintained thru 2025).

3. A grant to Company in the amount of one-half the cost of environmental remediation up to \$75,000;
 4. A grant to Company equivalent to property taxes paid to the City on all property tax accounts for amounts above and beyond 2021 values for each property tax account according to the following schedule:
 - a. Years 1-6 = 100% (2022-2027)
 - b. Year 7 = 90% (2028)
 - c. Year 8 = 80% (2029)
 - d. Year 9 = 70% (2030)
 - e. Year 10 = 60% (2031)
 5. The first payment under sections 3.1.2 and 3.1.4 will not be due until the requirements of Section 2.2a. have been met. The payments in Section 3.1(4) are only calculated on the property inside the City limits.
- 3.2 **Payments.** Under this agreement payments shall be made by the City with thirty (30) days of
- (a) the receipt of Company's written verification of the completion of the environmental remediation for project; and
 - (b) the receipt of the completion of the annual Certificate of Compliance as shown in Exhibit "B," however payment shall not be due before April 1st of each year.

IV. General Terms

4.1 **Effective Date and Term.** This Agreement shall become enforceable and be effective upon the final date of execution by both parties (the "*Effective Date*"). Unless this Agreement is terminated earlier in accordance with its terms, Company obligations to perform under this Agreement shall be completed by December 31, 2023. If the consolidation of the Project has not been completed by December 31, 2023, then the City's sole and exclusive remedy shall be to terminate this Agreement and to receive from Company payment for all inspections and permits already issued by it for the Project and any payments made pursuant to Section 2.2(a). This Agreement shall terminate on December 31, 2031.

4.2 This Agreement shall not be construed as a commitment, issue, pledge or obligation of any specific taxes or tax revenues for the provision of services to Company.

(a) The payments to be made to Company or other expenditures under this Agreement, if paid, shall be made solely from annual appropriations of the City as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 380 of the Local Government Code or any other economic development or financing program authorized by statute or home rule powers of the City under applicable Texas law, subject to any applicable limitations or procedural requirements.

4.3 **Representations and Warranties.** The City represents and warrants to Company that the Program and this Agreement are within its authority, and that it is duly authorized and empowered to establish the Program and enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction. Company represents and warrants to the City that it has the requisite authority to enter into this Agreement.

4.4 Default. Subject to Company's right to cure under **Section 2.2(b)**, if either the City or Company should default in the performance of any of their respective obligations of this Agreement, the other party shall provide such defaulting party written notice of the default, and a minimum period of 90 days after the receipt of said notice to cure such default, prior to instituting an action for breach or pursuing any other remedy for default. If Company defaults on any obligation under this Agreement, the City's sole and exclusive remedy shall be to terminate this Agreement and receive from Company payment for all grants already issued by City for the Project.

4.5 Entire Agreement. This Agreement contains the entire agreement between the parties. All prior negotiations, discussions, correspondence, and preliminary understandings between the parties and others relating hereto are superseded by this Agreement. This Agreement may only be amended, altered or revoked by written instrument signed by the City and Company.

4.6 Binding Effect This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

4.7 Assignment. Except as provided below, Company may not assign all or part of its rights and obligations to a third party without prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary, Company may assign all or part of its rights and obligations without the prior consent of the City (i) to an affiliate of Company and , (ii) to a third-party lender advancing funds for the acquisition, construction or operation of Company's facilities, or (iii) to a third-party acquiring Company or substantially all of the assets of Company.

4.8 Termination. In the event Company elects not to proceed with the Project as contemplated by this Agreement, Company shall notify the City in writing, and this Agreement and the obligations on the part of both parties shall be deemed terminated and of no further force or effect. Notwithstanding anything herein to the contrary, Company may terminate this Agreement at any time upon written notice to the City. In such event, the parties shall have no further rights or obligations hereunder other than those accruing prior to such termination, subject to Company having to repay the City for all grants already issued by the City prior to any termination.

4.9 Notice. Any notice or statement required to be delivered pursuant to this Agreement must be in writing and shall be deemed delivered by actual delivery, by facsimile with receipt of confirmation, or by depositing the same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses:

Zinc Point Manufacturing/Still American LLC
3445 CR 807
Cleburne, TX 76031
Attn: Mr. Adolfo Vivas
Chief Executive Officer
Phone: (786)732-7142
adolfo@zincpoint.com

With a copy to:
Ronald B. Parent
Harris, Finley & Bogle, P.C.
777 Main Street, Suite 1800
Fort Worth, Texas 76102
Phone: (817)870-8700
rparent@hfbllaw.com

CITY:

City Manager
1212 Avenue M
Huntsville, Texas 77340
Phone: 936-291-5401
Fax: 936-291-5409

Either party may designate a different address at any time upon written notice to the other party.

4.10 Interpretation. Each of the parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute regarding its meaning or application, be interpreted fairly and reasonably and neither more strongly for, nor against any party.

4.11 Applicable Law. This Agreement is made, and shall be construed and interpreted, under the laws of the State of Texas and venue shall lie in the State courts of Walker County, Texas.

4.12 Severability. In the event any provisions of this Agreement are illegal, invalid or unenforceable under present or future laws, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected. It is also the intention of the parties that in lieu of each clause and provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable so as to maintain for the parties their respective economic benefits hereunder.

4.13 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.

4.14 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

4.15 No Joint Venture. It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past and future officers, elected officials, employees and agents do not assume any responsibilities or liabilities to any third party in connection with Company or the Project.

4.16 Public and Confidential Information. Information provided by or on behalf of Company under or pursuant to or in connection with this Agreement (including, but not limited to, the terms of this Agreement and any and all non-public information provided by Company) shall be maintained as confidential to the extent allowed by law. If Company's proprietary, financial or trade secret information is requested under the Texas Public Information Act, the City shall promptly notify Company of such request and shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests. Other public records and information provided to the City and its representatives to verify compliance with this Agreement shall be available for public inspection.

4.17 Exhibits. The following Exhibits are attached and incorporated by reference for all purposes.

Exhibit "A"	Description of Property
Exhibit "B"	Certificate of Compliance Form

4.18 Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute but one and the same instrument, which may be sufficiently evidenced by one counterpart.

EXECUTED by the authorized representatives of the parties on the dates indicated below to be effective as of the Effective Date _____.

THE CITY OF HUNTSVILLE

By: Aron Kulhavy, City Manager

ATTEST:

APPROVED AS TO FORM:

Terri Johnson, Interim City Secretary

Leonard Schneider, City Attorney

Company

ZINCPOINT

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

STATE OF TEXAS §

§

COUNTY OF _____ §

Before me, the undersigned authority, on this day personally appeared _____, who after first being by me duly sworn, acknowledged and stated the witness has executed the above and foregoing document for the purposes and consideration therein expressed, and in the capacity therein expressed, and with full authority to so act, on this, the _____ day of _____, 2021.

Notary Public in and for the State of Texas

My commission expires: _____

EXHIBIT “A”

Description of Property (Survey)

Exhibit "B"

CERTIFICATE OF COMPLIANCE

CITY OF HUNTSVILLE / ZINCPOINT/STILL AMERICAN, INC (TOGETHER WITH
ITS AFFILIATES AND SUBSIDIARIES) CHAPTER 380 ECONOMIC
DEVELOPMENT AGREEMENT DATED _____ (THE AGREEMENT)

COMPANY: ZincPoint/Still American Inc.

REPORTING YEAR: January 1 through December 31, _____

YEAR # _____ (up to Year 4)

1.0 Employment

1.1 Total number of Full and Part-Time Jobs at facility for reporting year _____. The Agreement requires 40 Full and Part-Time Jobs by December 31, 2023 and the same number thereafter for the following three full years.

- _____ a. Number of New & Existing Full and Part-Time Jobs by _____:
- _____ b. Number of New Jobs that are Walker County Residents by _____.

1.2 At _____ did the number of New Full-time and Part-time Jobs and number of Existing Jobs fall below the numbers required under Sections 2.2 of the Agreement?

☐ Yes ☐ No

If the company answered yes to question 1.2, did the company re-establish or replace the required numbers of Full-time and Part-time Jobs within 90 days after the date of the termination or elimination that caused the number of New Full-time Jobs and/or Existing Jobs to fall below the required amounts?

☐ Yes ☐ No

2.0 Local Business Participation

2.1 Is the Company in compliance with using commercially reasonable efforts to provide local small businesses and minority owned and veteran owned businesses an equal opportunity to participate as suppliers for materials and services purchased by Company?

☐ Yes ☐ No

3.0 Texas Government Code Chapter 2264

3.1 Is the Company in compliance with Section 2.6 of the Agreement?

☐ Yes ☐ No

4.0 Additional Covenants

4.1 Is the Company in compliance with the other provisions of the Agreement?

☐ Yes

☐ No

I, _____ the authorized representative for _____, hereby certify that the above information is correct and accurate pursuant to the terms of the Agreement. I further certify that _____ complied fully with the Chapter 380 Economic Development Agreement during the reporting year, including Section 2.4 regarding compliance with City Regulations and Section 2.6 regarding Texas Government Code Chapter 2264.

Signature: _____

Printed Name: _____

Title: _____

Date: _____