

CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT

This **CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT** (this "**Agreement**") is entered into to be effective as of the _____ day of _____, 2011 (the "**Effective Date**"), by and between the City of Alvin, Texas (the "**City**"), a Texas municipal corporation, and Alvin R/E Venture, a Limited Partnership (the "**Developer**").

RECITALS

WHEREAS, the Developer wants to construct a Steel Products Business, including fixed equipment (the "**Facility**") on the approximately 2 +/- -acre tract of real property located at 3539 N. Bypass 35, Alvin, Brazoria County, Texas, described on **Exhibit "A"** attached hereto (the "**Site**"); and

WHEREAS, operation of the Facility is expected to create new jobs and tax value for the City, and will promote local economic development and stimulate business and commercial activity in the City; and

WHEREAS, the Developer has advised the City that a contributing factor that would induce the Developer to develop the Facility would be the making of an economic development grant to defray a portion of the costs to be incurred by the Developer as a consequence of developing and constructing the Facility; and

WHEREAS, under Chapter 380 of the Texas Local Government Code, the City has adopted an economic development program to promote local economic development and stimulate business and commercial activity within the City; and

WHEREAS, the City and the Developer want to set forth in this Agreement the terms and conditions of the grant to Developer of certain City funds as an incentive for Developer's construction and use of the Facility on the Site; and

WHEREAS, the parties recognize that all agreements of the parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof.

WHEREAS, the owner/developer commits to using all possible local suppliers of goods and services and will provide the City of Alvin with a report of same.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
PURPOSE AND INTERPRETATION

The Developer wants to develop the Facility in the City, and has designated the Site as the location for the Facility. The City wants to promote the job creation and expansion of its tax base that construction and operation of the Facility on the Site would generate. Subject to the terms and conditions of this Agreement, including Developer’s satisfaction of the Benchmarks, the City will make the Grant to the Developer during the term of this Agreement (as the terms “Benchmarks” and “Grant” are defined below).

ARTICLE II
CALCULATION OF GRANT PAYMENTS

SECTION 2.1. “*Real Property Taxes*” means the City’s share of the ad valorem taxes assessed by the Brazoria County Appraisal District on the assessed value of the Site and the Facility for any calendar year during the term of this Agreement.

SECTION 2.2. “*Baseline Taxes*” means the Real Property Taxes for calendar year 2011.

SECTION 2.3. “*Increased Taxes*” means the Real Property Taxes for any calendar year during the term of this Agreement, less the Baseline Taxes.

SECTION 2.4. “*Grant Payments*” means the City’s rebate payments hereunder in the amount of the annually reducing percentage of the Increased Taxes for the years during the term of this Agreement as set out below, provided that for purposes of the Grant Payments hereunder, the maximum amount of Increased Taxes for any year during the term is an amount based on \$800,000 in increased assessed value. For the following calendar years during the term of this Agreement the percentages of the Increased Taxes that will constitute Grant Payments are:

2012	50%
2013	50%
2014	50%

For example, if (a) the assessed value of the Site and Facility for the baseline year 2011 is \$100,000, and the City's ad valorem tax rate is \$0.80/100, resulting in Baseline Taxes of \$800, and (b) the assessed value of the Site and Facility for calendar year 2013 is \$700,000, resulting in Real Property Taxes (assuming the same rate) of \$5,600 for 2013, then (c) the Increased Taxes are $\$5,600 - \$800 = \$4,800$, and (d) the Grant Payment will be 80% of that amount, or \$3,840. However, if the assessed value for 2013 is \$1,000,000, which is \$900,000 more than the \$100,000 assessment in the baseline year, then only the maximum \$800,000 of increased assessed value will be used to calculate the Increased Taxes, so (assuming the same rate) the Grant Payment would be 80% of $(\$6,400 - \$800 =)\$5,600$, or \$4,480. As an additional example, with that same assessed value of \$1,000,000 and the same tax rate in the year 2014 (instead of 2012), only 60% of the Increased Taxes would be paid as the Grant Payment $(\$5,600 \times 60\% =)$ \$3,360.

SECTION 2.5. The "*term*" of this Agreement (herein so called) shall include, and extend until the end of, calendar year 2014, plus the period of time after December 31, 2015 required for the City to receive the Increased Taxes (if any) for 2015 and make any Grant Payment due to the Developer for 2015.

ARTICLE III **DEVELOPER'S OBLIGATION**

SECTION 3.1. In its development of the Facility, the Developer will make capital improvements to the Site valued at \$350,000. For each year during the term of this Agreement for which the Facility is open and operating for at least six months, the Facility will have at least 3 full-time with average salary of \$30,960. The foregoing requirements for capital improvements to the Site, fixed capital equipment at the Facility, and full-time employees are collectively, the "*Benchmarks*" hereunder. Beginning with a report in January 2011 for calendar year 2011, the Developer shall deliver to the City a Benchmarks report by January 31 of each year stating (i) the value of capital improvements made and fixed capital equipment installed at the Facility during the prior year, (ii) the number of full-time employees employed at the Facility during the preceding calendar year, including reasonable detail regarding how many months such employees were employed, and the average number of employees per month in instances where there has been turnover during the year, and (iii) the amount of ad valorem taxes paid by the Developer with regard to the Facility for the immediately preceding calendar year, including, if known, the amount of such taxes that are constitute the Real Property Taxes.

SECTION 3.2. The payment of all indebtedness and obligations incurred by the Developer in connection with the development and construction of the Facility and the operation of the Facility shall be solely the obligations of the Developer. The City shall not be obligated to pay any indebtedness or obligations of the Developer.

SECTION 3.3. Developer is obligated to make timely payment of the Real Property Taxes, including, without limitation, during the term of this Agreement.

ARTICLE IV
PAYMENT OF GRANT

SECTION 4.1. CITY’S OBLIGATION. The duty of the City to make Grant Payments to Developer for any purpose under this Agreement is limited in its entirety by the provisions of this Article, and is expressly conditioned on both the Developer’s timely payment of the Real Property Taxes during the term of this Agreement, and the Developer’s satisfaction of the Benchmarks.

SECTION 4.2. TAX FUND. The City will provide for the payment of Grant Payments to be made pursuant to this Agreement by establishing a separate fund at the City, or a subaccount of any existing fund or account in the City treasury, into which the Real Property Taxes received by the City will be deposited during the term of this Agreement (the “*Tax Fund*”). As and when Real Property Taxes are received by the City from the relevant assessor-collector, the City shall make Grant Payments to the Developer promptly to the extent that such Grant Payments are due hereunder. Any amounts left in the Tax Fund after a Grant Payment for a calendar year has been made may be transferred by the City to any other account in the City treasury. The City may maintain or abolish the Tax Fund, in its sole discretion, after the term of this Agreement has ended.

ARTICLE V
COVENANTS

SECTION 5.1. COVENANTS OF DEVELOPER. During the term of this Agreement, Developer shall comply with the following covenants.

SECTION 5.1.1. OPERATION OF FACILITY. The Facility shall be operated, maintained and managed directly by the Developer or any successor in a first class manner, consistent with the operation and management for other similar facilities, and in compliance with all applicable laws, including by obtaining and keeping in effect all time all permits, licenses and contractual arrangements as may be necessary to meet the standard of operation described in the foregoing sentence. The foregoing shall not be construed to create an obligation of continuous operations during the term of this Agreement; provided, however, that once the Facility has opened, if Developer thereafter ceases all business activity at the Facility for a period of at least twelve (12) continuous months for any reason other than remodeling, repair, or an event of force majeure, then

the City shall have the right to terminate this Agreement effective sixty (60) days after delivery of notice thereof unless Developer has recommenced business activity in the Facility prior to the expiration of such 60-day cure period.

SECTION 5.1.2. BUSINESS OF THE DEVELOPER. The Developer shall conduct all operations within the Facility in compliance with all federal and state laws and City ordinances.

SECTION 5.2. COVENANT OF THE CITY. During the term of this Agreement, the Tax Fund shall remain a separate, unencumbered fund or account containing only the Property Taxes (and accumulated interest, if any) to be deposited into the Tax Fund.

SECTION 5.3 FURTHER ACTIONS. The City and the Developer will do all things reasonably necessary or appropriate to carry out the objectives, terms and provisions of this Agreement and to aid and assist each other in carrying out such objectives, terms and provisions.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES

SECTION 6.1. REPRESENTATIONS AND WARRANTIES OF DEVELOPER. The Developer represents and warrants to the City, as of the Effective Date, as follows:

SECTION 6.1.1. ORGANIZATION. The Developer is a Limited Partnership, duly organized, validly existing and in good standing under the laws of the State of Texas, and authorized to do business in the State of Texas. The business that Developer proposes to carry on at the Facility may lawfully be conducted by the Developer.

SECTION 6.1.2. AUTHORITY. The execution, delivery and performance by the Developer of this Agreement is within the Developer's powers and have been duly authorized by all necessary action of the Developer.

SECTION 6.1.3. NO CONFLICTS. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein contemplated, nor compliance with the terms and provisions hereof will contravene the organizational documents of the Developer or any provision of law, statute, rule or regulation to which the Developer is subject or any judgment, decree, license, order or permit applicable to the Developer, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the Developer pursuant to the terms of any indenture, mortgage, deed of trust, agreement or

other instrument to which the Developer is a party or, to the knowledge of the Developer, by which the Developer is bound, or to which the Developer is subject.

SECTION 6.1.4. NO CONSENTS. No consent, authorization, approval, order or other action by, and no notice to or filing with, any court or governmental authority or regulatory body or third party is required for the due execution, delivery and performance by the Delivery of this Agreement or the consummation of the transactions contemplated hereby or thereby.

SECTION 6.1.5. VALID AND BINDING OBLIGATION. This Agreement is the legal, valid and binding obligation of the Developer, enforceable against the Developer in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

SECTION 6.1.6. NO PENDING LITIGATION. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of the Developer, threatened against or affecting the Developer or any subsidiaries of the Developer, questioning the validity or any action taken or to be taken by the Developer in connection with the execution, delivery and performance by the Developer of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the Developer hereof, wherein an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of the Developer to perform, its obligations under this Agreement or (ii) would have an adverse effect on the consolidated financial condition or results of operations of the Developer or on the ability of the Developer to conduct its business as presently conducted or as proposed or contemplated to be conducted (including the operation of the Facility).

SECTION 6.1.7. NO DEFAULTS. The Developer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the Developer is a party or by which the Developer or any of its property is bound that would have any material adverse effect on the Developer's ability to perform under this Agreement.

SECTION 6.2. REPRESENTATION AND WARRANTIES OF THE CITY. The City represents and warrants to the Developer, as of the Effective Date, as follows:

SECTION 6.2.1. AUTHORITY. The execution, delivery and performance by the City of this Agreement is within its respective powers and have been duly authorized by all necessary action.

SECTION 6.2.2. NO CONFLICTS. Neither the execution and delivery of this Agreement, nor the consummation of any of the transactions herein or therein contemplated nor compliance with the terms and provisions hereof or thereof will contravene the governing documents of the City or any provision of law, statute, rule or regulation to which the City is subject or any judgment, decree, license, order or permit applicable to the City, or will conflict or be inconsistent with, or will result in a breach of any of the terms of the covenants, conditions or provisions of, or constitute a delay under, or result in the creation or imposition of a lien upon any of the property or assets of the City pursuant to the terms of any indenture, mortgage, deed of trust, agreement or other instrument to which the City is a party or by which the City is bound, or to which the City is subject.

SECTION 6.2.3. VALID AND BINDING OBLIGATION. This Agreement is the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms except as limited by applicable relief, liquidation, conservatorship, bankruptcy, moratorium, rearrangement, insolvency, reorganization or similar laws affecting the rights or remedies of creditors generally, as in effect from time to time.

SECTION 6.2.4. NO PENDING LITIGATION. There is no action, proceeding, inquiry or investigation, at law or in equity, before any court, arbitrator, governmental or other board or official, pending or, to the current actual knowledge of the City, threatened against or affecting the City, threatened against or affecting the City, questioning the validity of any proceedings taken or to be taken by the City in connection with the execution, delivery and performance by the City of this Agreement or seeking to prohibit, restrain or enjoin the execution, delivery or performance by the City hereof, whether an unfavorable decision, ruling or finding (i) would adversely affect the validity or enforceability of, or the authority or ability of the City to perform its obligations under this Agreement.

SECTION 6.2.5. NO DEFAULTS. The City is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which the City is a party or by which the City is bound that would have any material adverse effect on the City's ability to perform under this Agreement.

**ARTICLE VII
PERSONAL LIABILITY OF PUBLIC OFFICIALS**

No employee of the City, nor any councilmember or agent of the City, shall be personally responsible for any liability arising under or growing out of this Agreement. The Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

**ARTICLE VIII
INFORMATION**

The Developer shall, at such times and in such form as City may require, furnish periodic information concerning the status of the performance of its obligations under this Agreement as may be requested in writing by the City.

**ARTICLE IX
MISCELLANEOUS**

SECTION 9.1. ENTIRE AGREEMENT. This Agreement, including exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

SECTION 9.2. AMENDMENT. This Agreement may only be amended, altered, or revoked by written instrument signed by all parties.

SECTION 9.3. SUCCESSORS AND ASSIGNS. In this Agreement, unless a clear contrary intention appears, reference to any party includes such party's successors and assigns, and reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns. Developer may assign this Agreement to any affiliate of Developer. For purposes of this Agreement, "*Affiliate*" means any person, entity or group of persons or entities that controls the Developer, which the Developer controls or which is under common control with the Developer. Except as just stated, this Agreement and is not assignable without the prior written permission of the other parties thereto.

SECTION 9.4. WAIVER. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel to enforce any provision of this Agreement, except by written instrument of the party charged with such waiver or estoppel.

SECTION 9.5. REMEDIES. Upon breach of any of the covenants contained in Article V or the representations and warranties contained in Article VI, in addition to any other remedies expressly set forth in this Agreement with respect to such breach, the aggrieved party shall have such remedies as are available in law or equity for breach of contract; provided, however, that no party shall be liable to any other party for incidental or consequential damages.

SECTION 9.6. NOTICES. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the parties set forth below, or at such other address furnished in writing to the other parties thereto:

DEVELOPER: Alvin R/E Venture, L. P.
156 Pizarro Dr.
Hot Springs Village, AR 71909
Attn: Jim Robinson

CITY: City of Alvin
216 W. Sealy St.
Alvin, Texas 77511
Attn: City Manager
Facsimile: (281) 331-7215

SECTION 9.7. 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 State courts located in Brazoria County, Texas.

SECTION 9.8. SEVERABILITY. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

SECTION 9.9. NO JOINT VENTURE. Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either party as an agent of the other for any

purpose whatsoever. Except as otherwise specifically provided herein, neither party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

SECTION 9.10. COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which constitute one instrument.

SECTION 9.11. FORCE MAJEURE. Means an event beyond the reasonable control of a party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes, lockouts, major equipment failure or the failure of any major supplier to perform its obligations.

EXECUTED to be effective as of the Effective Date.

ATTEST:

CITY OF ALVIN

By: _____
Thomas W. Peebles, City Secretary

By: _____
Gary Appelt, Mayor

DEVELOPER

By: _____

Name: _____

Title: _____

EXHIBIT A

Site

