

Resolution authorizing Amendment No. 1 to Chapter 380 Economic Development Agreement between the City of Corpus Christi, Texas voestalpine Texas LLC, and the Port of Corpus Christi Authority of Nueces County, Texas, relating to the development of property.

WHEREAS, the City of Corpus Christi (“City”) entered into a Chapter 380 agreement with voestalpine Texas LLC (“voestalpine”) and the Port of Corpus Christi Authority (the “Port”) on April 23, 2013;

WHEREAS, the Parties wish to add additional terms to the Chapter 380 agreement under Chapter 212 of the Texas Local Government Code and wish to make additional changes to the agreement related to changes in state law; and

WHEREAS, the City finds that it is in the best interest of the City to enter into the amendment with voestalpine and the Port to make these necessary changes to the Chapter 380 agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CORPUS CHRISTI, TEXAS:

SECTION 1. That the findings of the City Council and its actions approving this Resolution taken at the council meeting are hereby approved and adopted.

SECTION 2. That the City Manager, or designee, is authorized to execute **Amendment No. 1 to Chapter 380 Economic Development Agreement between the City of Corpus Christi, Texas voestalpine Texas LLC, and the Port of Corpus Christi Authority of Nueces County, Texas.** A copy of said agreement is attached hereto.

PASSED AND APPROVED on the _____ day of _____, 2019:

Joe McComb _____

Roland Barrera _____

Rudy Garza _____

Paulette M. Guajardo _____

Gil Hernandez _____

Michael Hunter _____

Ben Molina _____

Everett Roy _____

Greg Smith _____

ATTEST:

CITY OF CORPUS CHRISTI

Rebecca Huerta
City Secretary

Joe McComb
Mayor

AMENDMENT NO. 1 TO CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT BETWEEN THE CITY OF CORPUS CHRISTI, TEXAS, voestalpine Texas LLC, and THE PORT OF CORPUS CHRISTI AUTHORITY OF NUECES COUNTY, TEXAS.

THIS AMENDMENT NO. 1 TO CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT, dated as of _____, 2019 (this "Amendment No. 1") entered into between and among the city of Corpus Christi, Texas a home rule city (the "City"), voestalpine Texas LLC, a Delaware limited liability company (the "Company"), and Port of Corpus Christi Authority of Nueces County, Texas, a political subdivision of the State of Texas (the "Port") and amends that Chapter 380 Economic Development Incentive Agreement dated April 23, 2013 between and among the Company, the City and the Port (as amended, the "Agreement"). Capitalized terms used herein and not specifically defined shall have the meaning in the Agreement.

Whereas, the Agreement is governed by both Chapter 380 of the Texas Local Government Code and Section 212.172 of the Texas Local Government Code;

Whereas, the City annexed the entire Property on May 21, 2019, and to resolve any outstanding disagreements regarding such annexation, the City and the Company desire by this Amendment No. 1 to provide a process for the City to disannex the portion of the Property described in **Amendment No. 1 - Attachment 1**;

Whereas, the Company agrees to enter into an Industrial District Agreement or similar agreement after the termination of the Term of the Agreement;

Whereas, the City and the Company agree that additional changes are needed to the Agreement as a result of the foregoing; and

Whereas, the Port is a party to this Amendment No. 1 only for the purposes stated in Section 4.2 of the Agreement;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1) Section 4.2 of Article IV of the Agreement is hereby amended and restated in its entirety to read as follows:

"4.2 Annexation by City; Industrial District Agreement Requirement:

(A) The City (i) shall disannex all of the Property that was not included in the City limits prior to the May 21, 2019 annexation (the "De-annexation Tract") no later than December 31, 2019 and (ii) shall not, in the interim period before disannexation, enforce any regulations, zoning ordinances and other requirements of the City related to or affecting the De-annexation Tract. The De-annexation Tract is depicted in the attached **Amendment No. 1 - Attachment 1**.

(B) If, after the disannexation required by Section 4.2(A) is complete, the City, at any time during the Term, attempts again to annex all or any portion of the De-annexation Tract, then, subject only to Section 4.2(H) below, Company and the City shall enter into an Industrial District Agreement (which must contain terms and provisions comparable in all material respects to the most favorable terms and provisions contained in any Industrial District Agreement then in effect to which the City is a party at such time) or into a separate agreement (“Development Agreement”) that will give each Party the same rights, benefits and responsibilities as this Agreement, including, by way of example and not by limitation, an agreement under Section 212.172 of the Texas Local Government Code, rather than allow any portion of the De-annexation Tract to be annexed by the City. The City hereby covenants and agrees to send written notification of the proposed annexation of all or any portion of the De-annexation Tract during the Term of this Agreement to the Company by certified mail, return receipt requested, in addition to any notice required to be sent to the Port or the then-owner of the De-annexation Tract, of its determination to annex the De-annexation Tract, within the notice period required by statute for notice to “property owners” being annexed. The Company will notify the City within 20 days of its receipt of the first notification of the proposed annexation of its desire to enter into an Industrial District Agreement in accordance with this provision. If the Company requests that the Project be placed in an industrial district pursuant to this paragraph and enters into an Industrial District Agreement with the City, then the Port will execute or consent to the resulting Industrial District Agreement as the owner of the land covered by the resulting Industrial District Agreement pursuant to Section 42.044 of the Texas Local Government Code, if it owns such land at that time. If the Company enters into a Development Agreement with the City pursuant to this paragraph, then the Port will execute or consent to such Development Agreement as the owner of the land covered by such Development Agreement, if it owns such land at that time; provided, however, that (1) the Port will not be responsible for making any payments to the City under such Development Agreement, and (2) if the Company fails to make the payments to the City required under such Development Agreement, the City shall be entitled to have a lien on the Company’s leasehold estate, but not on the Port’s land covered by such Development Agreement.

(C) If, under any circumstance, the Company is a party to an Industrial District Agreement with the City related to the De-annexation Tract effective during the Term of this Agreement, any payments made under the terms of an Industrial District Agreement shall be reimbursed in accordance with Section 5.1 herein as though such payments were City Tax. In no event shall the foregoing release the Company from paying the amounts of any Agreed Upon Payments which come due under the terms of Section 5.4, and such amounts paid by Company under Section 5.4 shall not be a Reimbursement Amount.

(D) Prior to the expiration of the Term or earlier termination of this Agreement, subject only to Section 4.2(H) below, the City and the Company shall enter into an Industrial District Agreement provided by the City with respect to any portion of the De-annexation Tract for which the Company has not already entered

into an Industrial District Agreement. The Port will execute or consent to the resulting Industrial District Agreement between the City and the Company as the landowner of the land covered by the resulting Industrial District Agreement pursuant to Section 42.044 of the Texas Local Government Code, if it owns such land at that time. The Industrial District Agreement with the City (a) must contain terms and provisions comparable in all material respects to the most favorable terms and provisions contained in any Industrial District Agreement then in effect to which the City is a party; and (b) must be effective on the earlier of (i) the termination of this Agreement, or (ii) January 1, 2034.

(E) Notwithstanding the foregoing provisions of Section 4.2(D), the City and the Company may, in lieu of entering into an Industrial District Agreement under such provisions, enter into a Development Agreement, so long as such agreement is approved and executed prior to the effective date of the expiration or earlier termination of this Agreement. If the Company enters into a Development Agreement with the City pursuant to this paragraph, then the Port will execute or consent to such Development Agreement as the owner of the land covered by such Development Agreement, if it owns such land at that time; provided, however, that (1) the Port will not be responsible for making any payments to the City under such Development Agreement, and (2) if the Company fails to make the payments to the City required under such Development Agreement, the City shall be entitled to have a lien on the Company's leasehold estate, but not on the Port's land covered by such Development Agreement.

(F) If the Company refuses to enter into the Industrial District Agreement provided by the City in accordance with Section 4.2(D) within one hundred and twenty (120) days after the Company receives the Industrial District Agreement, the Company and the Port will be deemed to have made a petition for annexation of all of the De-annexation Tract in accordance with Chapter 43 of the Texas Local Government Code, or its successor, and any such deemed petition by the Company shall also be binding on any other owner of the De-annexation Tract at such time. Payment of any fees under Section 5.4 of this Agreement will not invalidate or revoke the petition for annexation if the Company does not sign the Industrial District Agreement, as herein provided. The City may collect the required payment in accordance with this Agreement and proceed with annexation should the Company not sign the Industrial District Agreement, but in no event shall the Company be liable (financially or otherwise) for any breach or failure to perform by the Port under the terms of this Agreement, nor shall the Port be liable (financially or otherwise) for any breach or failure to perform by the Company under the terms of this Agreement.

(G) The agreement of the Company to enter into an Industrial District Agreement or other similar agreement in accordance with this Section 4.2 is hereby consented to by the Port and shall be a continuing obligation of the owner of the De-annexation Tract as long as this Agreement is in effect, and such obligation will be a covenant running with the land. As provided in Section 6.8 of this Agreement, the Company shall not be liable for the refusal of its successors, grantees, trustees, or assigns which have been approved in writing by the City to

comply with the requirement under this Section 4.2 to enter into an Industrial District Agreement, including the provisions of Section 5.4.

(H) Notwithstanding the foregoing, if during the Term the City notifies the Company in writing that there is a bill before the Texas Legislature that would, in the sole but reasonable opinion of the City, prohibit the annexation of an area within the City's industrial districts, then upon the Company's receipt of such notice, the obligation of the City under Section 4.2(B) and elsewhere in this Section 4.2 to enter into an Industrial District Agreement shall be suspended and/or terminated, as applicable, and the City and the Company shall commence negotiating in good faith an alternative to an industrial district agreement that will give each Party the same rights, benefits and responsibilities as intended by this Agreement ("Alternate Agreement"), prior to such pending legislation, to the fullest extent lawfully permissible. If the Company enters into an Alternate Agreement with the City pursuant to this paragraph, then the Port will execute or consent to such Alternate Agreement as the owner of the land covered by such Alternate Agreement, if it owns such land at that time; provided, however, that (1) the Port will not be responsible for making any payments to the City under such Alternate Agreement, and (2) if the Company fails to make the payments to the City required under such Alternate Agreement, the City may claim to have a lien on the Company's leasehold estate, but shall not be entitled to a lien on the Port's land covered by such Alternate Agreement. Unless the City and the Company can reach mutual agreement on an Alternate Agreement prior to such pending legislation becoming effective, the City may at any time after delivery of written notice under this Section 4.2(H) proceed with annexation, but any annexation by the City under this Section 4.2(H) in advance of pending legislation shall not relieve the City of its good faith obligations, which shall survive annexation under this Section 4.2(H), and should the pending legislation not pass and go into effect during the Term of this Agreement, the City shall once again disannex the portion of the De-annexed Tract annexed under this Section 4.2(H), and the provisions of this Section 4.2 shall continue to apply to the re-disannexed portion of the De-annexed Tract."

2) Article IV of the Agreement is further amended to add the following Section 4.2.1 between Sections 4.2 and 4.3:

"4.2.1 Annexation by Another Entity. If any attempt to annex any portion of the Project or Property is made by another municipality, or if the incorporation of any new municipality should attempt to include within its limits the Project or Property, the City shall seek a temporary and permanent injunction against the annexation or incorporation, with the cooperation of the Company, and shall take any other legal action necessary or advisable under the circumstances. The cost of the legal action shall be borne equally by the Parties hereto; provided, however, the fees of any special legal counsel shall be paid by the Party retaining same. The Company agrees to provide City with prompt notice of any such attempted annexation received by the Company in writing."

3) Article V of the Agreement is amended to add the following Section 5.4 at the end of such Article V:

“5.4 Additional Payment Requirement.

(A) In addition to any other Agreed Upon Payments, if the Company refuses to enter into the Industrial District Agreement provided by the City in accordance with Section 4.2(D), then within one hundred and twenty (120) days after the expiration or earlier termination of this Agreement, the Company will make an additional payment to the City in an amount equal to the following, whichever is applicable:

(i) if the expiration or earlier termination of this Agreement occurs on or after January 1, 2029, an aggregate amount equal to the sum of one hundred percent (100%) of the Agreed Upon Payments for each of the ten (10) calendar tax years immediately preceding the calendar tax year that includes the date of the expiration or earlier termination of this Agreement; or

(ii) if the expiration or earlier termination of this Agreement occurs before January 1, 2029, an aggregate amount equal to the sum of one hundred percent (100%) of the Agreed Upon Payments for each calendar tax year from and including the calendar tax year 2019 through and including the calendar tax year that includes the date of the expiration or earlier termination of this Agreement, with such payment being due on the later of (a) one hundred and twenty (120) days after the expiration or earlier termination of this Agreement or (b) if the taxable value of the extraterritorial jurisdiction land and/or the portion of the Project (excluding personal property and inventory) located on the extraterritorial jurisdiction land for the calendar tax year that includes the date of the expiration or earlier termination of this Agreement has not been determined by the relevant appraisal district within ninety (90) days following the expiration or earlier termination of this Agreement, ninety (90) days after such taxable values of the extraterritorial jurisdiction land and/or the portion of the Project (excluding personal property and inventory) located on the extraterritorial jurisdiction land have been determined by the relevant appraisal district.”

(B) The obligations contained in this Section 5.4 shall survive the expiration or earlier termination of this Agreement until paid in full, and for the avoidance of any doubt, in no event shall the Company be liable (financially or otherwise) for any breach or failure to perform by the Port (or any other party as expressly provided in Section 6.8) under the terms of this Agreement.”

4) Article VI of the Agreement is amended to add the following to the end of Section 6.8 of the Agreement:

“Notwithstanding the provisions of this Section 6.8, should the City consent in writing to any requested assignment by the Company, then in such event the Company shall be released from its obligations under Section 5.4, and shall not be liable for any failure or refusal of its successors, grantees, trustees, or assigns to comply with the requirement under Section 5.2(D) to enter into an Industrial District Agreement, including for any resulting liability under Section 5.4.”

5) Amendment No. 1 - Attachment 1 attached to this Amendment is deemed to be attached to the Agreement as “Amendment No. 1 - Attachment 1.”

6) The City will file a copy of this Amendment No. 1 with San Patricio County.

7) All other terms and conditions of the previously executed Agreement between the Parties which are not inconsistent herewith shall continue in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

EXECUTED IN DUPLICATE ORIGINALS effective as of this _____ day of August, 2019, by the authorized representative of the Parties.

City of Corpus Christi

Peter Zaroni
City Manager
Date: _____

Attest:

Rebecca Huerta
City Secretary

Approved as to Legal Form on _____ of _____, 20____.

Aimee Alcorn-Reed, Assistant City Attorney

STATE OF TEXAS §
 §
COUNTY OF NUECES §

This instrument was acknowledged before me on the _____ day of _____, 2019, by Peter Zaroni, City Manager, on behalf of City of Corpus Christi.

Notary Public, State of Texas
My commission expires: _____

voestalpine Texas LLC

By: _____
Title: _____
Date: _____

ATTEST:

By: _____
Title: _____
Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

 This instrument was acknowledged before me on the _____ day of
_____, 2019, by _____, as
_____, on behalf of voestalpine Texas LLC.

Notary Public, State of Texas
My commission expires: _____

Port of Corpus Christi Authority of Nueces County, Texas

By: _____
Title: _____
Date: _____

ATTEST:

By: _____
Title: _____
Date: _____

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2019, by _____, as _____, on behalf of Port of Corpus Christi Authority of Nueces County, Texas.

Notary Public, State of Texas
My commission expires: _____

Amendment No. 1 – Attachment 1

