

**CHAPTER 380
ECONOMIC DEVELOPMENT AGREEMENT
BY AND BETWEEN
CITY OF HUTTO, TEXAS
TITAN HUTTO I, LLC AND
AND WESTERN INDUSTRIES CORPORATION**

This Chapter 380 Economic Development Agreement (“**Agreement**”) is entered into as of this 20th day of February, 2020 (the “**Effective Date**”), by and between the City of Hutto, Texas, a Texas home rule municipal corporation acting by and through its duly authorized City Manager or his designee (the “**City**”), Titan Hutto I, LLC (the “**Owner**”), a Texas limited liability company, and Western Industries Corporation, an Oklahoma corporation, qualified to do business in Texas (the “**Company**”), (individually “**Party**,” together, the “**Parties**”).

WHEREAS, the City is authorized by Chapter 380 of the Texas Local Government Code to make grants of money in order to promote State and local economic development to stimulate growth, business, and commercial activity in the area;

WHEREAS, the City has authorized the City Manager to make a grant of money to Company to: (i) relocate its light manufacturing facility operations to Hutto, Texas and make capital investments in the Desired Development Zone; and (ii) create new full-time jobs at the light manufacturing facility; (taken together the “**Project**”);

WHEREAS, the purpose of this Agreement is to promote economic development as contemplated by Chapter 380 of the Texas Local Government Code;

WHEREAS, the City hereby establishes and authorizes the making of economic development grants to the Company in recognition of the positive economic benefits to the City;

WHEREAS, the Owner owns that real property containing approximately 8.048 acres within Innovation Business Park more particularly described on Exhibit A-1 and depicted in Exhibit A-2, each attached hereto and made a part hereof (the “**Property**”);

WHEREAS, the Owner has constructed upon the Property a building containing approximately one hundred forty-eight thousand seven hundred twenty (148,720) square feet and located at 10500 New Technology Blvd., Suite 100, Hutto, TX 78634 (“**Building**”);

WHEREAS, the Owner and Company have entered into a 122-month lease for the occupancy and use of a portion of the Building containing approximately seventy-nine thousand (79,000) square feet to serve as the Company’s south Texas facility for light manufacturing, and for which Company will agree to pay rent and other charges to the Owner;

WHEREAS, the Company has relocated its business onto the Property and is currently operating its business in a portion of the Building;

WHEREAS, the City has agreed to reimburse the Company twenty percent (20%) of the yearly, City-imposed ad valorem property tax collected by the City on the Property, Building, and any other improvements thereon by method of paying Owner, with the benefit going to Company (the “**Incentive**”) not to exceed seventy thousand dollars (\$70,000) for a period of ten (10) years (the “**Incentive Period**”); and

WHEREAS, the Parties intend for Owner to have limited obligations and liability under this Agreement, and that the incentives under this Agreement shall be provided solely for the benefit of the Company.

NOW, THEREFORE, and in consideration of the foregoing premises and mutual covenants hereinafter set forth, the Parties agree as follows:

1. **Authority.** The City's execution of this Agreement, as authorized by Chapter 380 of the Texas Local Government Code, constitutes a valid and binding obligation of the City upon compliance by Company of the obligations as described herein below.
2. **Term.** This Agreement shall become enforceable upon its Effective Date. This Agreement shall terminate upon the final payment of the Incentive, unless otherwise extended as provided for in this Agreement.
3. **Rights and Obligations of Company.**

In consideration of the City's compliance with this Agreement, Company agrees as follows:

- 3.1 Compliance with Development Regulations and Other Ordinances. With respect to the construction of tenant improvements within the Building ("Tenant Improvements"), Company shall comply with the City's development approval processes consistent with City ordinances, City-approved design plans, and other applicable City development requirements.
- 3.2 Permits and Permission. The Company will make timely application to the City for permits and approvals necessary for construction of the Tenant Improvements.
- 3.3 Company Operations. Western Industries Corporation, with headquarters in Oklahoma City, has operated a light manufacturing facility in the Austin metro area for 25+ years. This Project represents the relocation of operations to an even more business friendly and cost effective environment. Western Industries Corporation is a manufacturer of engineered packaging products and the customer base of this facility includes many other manufacturing companies in the Austin, Texas and San Antonio, Texas region.
- 3.4 Anticipated Costs. The Company anticipates that it will spend in excess of \$3.4 million on the total development cost of the Tenant Improvements.
- 3.5 Requests by the Company. The Company has requested assistance from the City for certain economic incentives to develop the Project, without which the Project would lack economic justification.
- 3.6 Company Employment. At the commencement of the Incentive Period, the Company will have at least sixty-four (64) employees and will grow to approximately one hundred and forty-five (145) employees within ten (10) years of said Incentive Period.
- 3.7 Financial Statements. The Company will provide quarterly financial statements

directly to the City commencing as of the first calendar quarter of the Incentive Period. The City will maintain the financial statements in a confidential manner and will enter into a confidentiality agreement with the Company if requested by the Company.

- 3.8 Ceasing to Do Business. If the Company ceases to do business on the Property or at an alternative location within the City limits, within the Incentive Period, the Company will repay to the City any economic incentive benefits received by the Company prior to the date of ceasing to operate within thirty (30) days after demand by the City.

4. Rights and Obligations of the City.

In consideration of the Company's compliance with this Agreement, the City hereby agrees as follows:

- 4.1 Incentive Period. The Incentive Period shall (a) commence on the first day of the second month following the start of operation, (b) extend for 120 consecutive months thereafter, and (c) terminate as of close of business on the last day of the 120th such month.
- 4.2 Incentive Payments. Conditioned upon the payment by the Owner of City-imposed ad valorem property taxes on the Property, Building, and other improvements on the Property, within thirty (30) days after receipt of the Property tax payment, commencing August 1, 2019, the City will reimburse the Company, in the form of a pass-through payment to the Owner for the benefit of the Company, twenty percent (20%) of ad valorem taxes paid by the Owner, not to exceed seventy-thousand (\$70,000) collected by the City on the Property during the Incentive Period. These pass-through payments shall be made by the City to the Owner under a Local Government Code Chapter 380 agreement.

5. Miscellaneous.

- 5.1 Mutual Assistance. The Parties will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist each other in carrying out such terms and provisions in order to put each other in the same economic condition contemplated by this Agreement regardless of any changes in public policy, the law, or taxes or assessments attributable to the Project or the Company's property thereon. Notwithstanding the foregoing, the City and Company understand and agree that Owner's sole obligation herein is to pay ad valorem taxes assessed on the Property, and upon delivery of an Incentive payment from City to Owner, to pass such Incentive payment to Company.
- 5.2 Representations and Warranties of Company.
- (a) Authorization. Company is a company duly organized, validly existing, and in good standing under the laws of the State of Oklahoma with authority to perform its obligations under this Agreement.

- (b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which Company is a party or by which Company may be bound.
- (c) Execution. The execution and delivery by Company of, and Company's performance under, this Agreement are within Company's powers and have been duly authorized by all requisite organizational action. The Person executing this Agreement on behalf of Company has the authority to do so. This Agreement constitutes the legal, valid and binding obligation of Company enforceable in accordance with its terms.
- (d) Litigation. Company has not received written notice and has no actual knowledge of any litigation pending or threatened against Company that might adversely affect the Project or Company's ability to perform its obligations under this Agreement.

5.3 Representations and Warranties of City.

- (a) Authorization. The City is a municipal corporation with full right and authority to enter into this Agreement and to consummate the transactions described in this Agreement.
- (b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which the City is a party or by which the City may be bound.
- (c) Execution. The execution and delivery of, and the City's performance under, this Agreement are within the City's powers and have been duly authorized by all requisite municipal action. Each of the Persons executing this Agreement on behalf of the City is duly authorized to do so. This Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms.

5.4 Representations of Owner:

- (a) Authorization. Owner is a company duly organized, validly existing, and in good standing under the laws of the State of Texas with authority to perform its limited obligations under this Agreement.
- (b) Performance. Performance of this Agreement will not result in any breach of, or constitute any default under, any agreement or other instrument to which the Owner is a party or by which the Owner may be bound.
- (c) Execution. The execution and delivery of, and the Owner's performance under, this Agreement are within the Owner's powers and have been duly authorized by all requisite organizational action. Each of the Persons executing this Agreement on behalf of the Owner is duly authorized to do so. This Agreement constitutes the legal, valid and binding limited obligations of the Owner enforceable in accordance with its terms.
- (d) Litigation. Owner has not received written notice and has no actual knowledge of any litigation pending or threatened against Owner that might adversely affect the

Project or Owner's ability to perform its limited obligations under this Agreement.

5.5 Mutual Agreements.

- (a) Notwithstanding anything herein to the contrary, the City and Company each agree that this Agreement and the benefits conferred hereunder to Company shall not in any way affect or prohibit third party tenants who take possession of or lease other parts of the Building from seeking and obtaining similar incentives provided by this Agreement.
- (b) Notwithstanding anything herein to the contrary, the City and Company each agree that Owner shall not be responsible for any obligation whatsoever on the City's behalf or Company's behalf, and any failure to perform or actions performing such obligations by City or Company shall not trigger non-compliance under this Agreement under any circumstance. Owner's sole obligations under this Agreement is to pay ad valorem taxes assessed against the Property and to pass through to the Company any Incentive payments Owner receives from the City in accordance with the terms of this Agreement.
- (c) Notwithstanding anything herein to the contrary, the City and Company agree that Owner shall not be required to pay back or return any Incentive payments made to the Company under this Agreement under any circumstances, including due to Company's default under this Agreement or because Company ceases to do business as set forth in Section 3.8 herein. The City and Company further agree that Owner shall not be liable in any form or fashion for any Incentive overpayment made by the City for benefit of the Company.
- (d) The City and Company agree that any and all inquiries, requests, demands and protests shall be made or done solely and directly by the Company to the City for any matters or disputes regarding reimbursements or payments under this Agreement.

5.6 Liability and Indemnity. Company shall indemnify and hold Owner harmless from and against all losses, expenses, damages, claims, liabilities, attorney's fees, or obligations of any nature whatsoever to the extent related to or arising from Company, or its officers', directors', employees' or agents' negligent or willful conduct or breach of the Agreement or obligations arising therefrom. To the extent, if at all, any indemnity or hold harmless provision of this Agreement is invalidated pursuant to the terms of any applicable law, the remaining indemnity and hold harmless provisions of this Agreement shall remain in full force and effect.

5.7 Default. If any Party should default in the performance of any obligations of this Agreement, the other Parties shall provide such defaulting Party written notice of the default, and a minimum period of thirty (30) days to cure such default, or such longer period as may be reasonably necessary to effectuate a cure, provided that a cure is commenced within such cure period and diligently prosecuted to resolution, prior to instituting an action for breach or pursuing any other remedy for default. If the City remains in default after notice and opportunity to cure, the Company shall have the right to pursue any remedy at law or in equity for the City's breach. If the Company remains in default after notice and opportunity to cure, the City's remedy shall be limited to a termination of any City obligation to reimburse property taxes as described above.

- 5.8 Attorney's Fees. In the event any legal action or proceeding is commenced between the City and the Company to enforce provisions of this Agreement and recover damages for breach, the prevailing Party in such legal action shall be entitled to recover its reasonable attorney's fees and expenses incurred by reason of such action, to the extent allowed by law.
- 5.9 Entire Agreement. This Agreement contains the entire agreement between the Parties and may only be amended as set forth in Section 5.12 herein below.
- 5.10 Binding Effect. This Agreement shall be binding on and inure to the benefit of the Parties, their respective successors and assigns.
- 5.11 Assignment. Company may assign all or part of its rights and obligations to a third party upon thirty (30) days written notice to the City and Owner. Owner may assign all or part of its rights and obligations to a third party.
- 5.12 Amendment. This Agreement may be amended, altered or revoked only by written instrument signed by the Parties.
- 5.13 Notice. All notices and other communications hereunder shall be in writing and shall be delivered by hand delivery, expedited courier delivery or mailed (if mailed, by registered or certified mail, return receipt requested, postage prepaid) addressed as follows, and shall be effective upon actual delivery if delivered by hand or by expedited courier delivery or, if mailed, three days after deposit in the United States mail:

If to the City, to:

City Manager
500 West Live Oak Street
Hutto, Texas 78634
Phone: (512) 759-4030

With a copy to:

William H. Bingham
McGinnis Lochridge & Kilgore, L.L.P.
600 Congress Avenue, Suite 2100
Austin, Texas 78701
Phone: (512) 495-6000
Facsimile: (512) 495-6093

If to the Owner, to:

Titan Hutto I, LLC
Attn: Kevin L. Reid
9601 McAllister Fwy, Suite 1120
San Antonio, Texas 78216

With a copy to:

Titan Development
Attn: Christopher M. Pacheco, Esq.
6300 Riverside Plaza Ln, NW Suite 200
Albuquerque, New Mexico 87120

If to the Company, to:

Western Industries Corporation
Attn: Chief Financial Officer
5500 South Hattie Avenue
Oklahoma City, OK 73129
Phone: (405) 419-3100
Facsimile: (405) 419-3160

Any Party may designate a different address at any time upon written notice to the other Parties.

- 5.14 Interpretation. Each Party has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. The Parties agree that this Agreement is to be constructed as being jointly drafted. Accordingly, this Agreement will be constructed according to the fair meaning of its language, and the rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement.
- 5.15 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 Williamson County, Texas.
- 5.16 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 of this Agreement 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.
- 5.17 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.
- 5.18 No Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.
- 5.19 No Joint Venture. It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create any partnership or joint venture among the Parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any

responsibilities or liabilities to any third party in connection with the development of the Project or the design, construction or operation of any portion of the Project.

- 5.20 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

[SIGNATURE PAGE IMMEDIATELY FOLLOWING]

EXECUTED to be effective as of the 20th day of February, 2020.

WESTERN INDUSTRIES CORPORATION,
An Oklahoma corporation

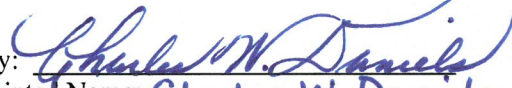
By: 
Print: Chris A. Bruehl, Chief Financial Officer

TITAN HUTTO I, LLC
a Texas limited liability company

By: Titan Property Management, LLC
Its Manager

By: 
Kevin L. Reid, Manager

CITY OF HUTTO, TEXAS
a TX home rule city and municipal corporation

By: 
Printed Name: Charles W. Daniels
Title: Interim City Manager

Approved as to Form:

By: 
Attorney for the City of Hutto
Print: Alecia Mosadomi

EXHIBIT A-1

Property

LEGAL DESCRIPTION

Lot 1, Titan Innovation Business Park Unit 1, a subdivision in Williamson County, Texas, according to the map or plat thereof recorded in Document No. 2018006109 Official Public Records of Williamson County, Texas.

DEPICTION

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