

STATE OF TEXAS §

COUNTY OF BRAZOS §

**CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT
AMERICAN LUMBER**

This Agreement entered into on this the ____ day of _____, 2021 by and between **THE CITY OF BRYAN, TEXAS**, a Texas home rule municipal corporation, acting herein by and through its duly elected City Council, (“City”), and The American Trade Group, Inc. and its’ affiliated entities including American Lumber, Inc., **4H TEXAS PROPERTIES, LLC, The Zenith Company, LLC and Zenith QOZB, LLC** and operating under the laws of the State of Texas, collectively the (“Company”); collectively referred to as “**PARTIES.**”

WHEREAS, Article III, Section 52 of the Texas Constitution prohibits any City, or other political subdivision, from lending its credit or granting public money to any individual, association or corporation whatsoever without a valid public purpose for doing so, but under Section 52-a the definition of public purpose specifically includes economic development and diversification, elimination of unemployment and underemployment, stimulation and growth of agriculture, and the expansion of state transportation and commerce; and

WHEREAS, Chapter 380 of the Texas Local Government Code was passed to implement the provisions of 52-a and permits the governing body of a municipality to establish and provide for the administration of one or more programs, to promote state or local economic development and to stimulate business and commercial activity within the city limits; and

WHEREAS, Company is a lumber company that is currently located within the Bryan Industrial Park in Bryan, Texas, that needs to expand its operations and desires to move its corporate headquarters to Bryan, resulting in expansion of the existing Bryan facility as well as further development of an adjacent tract; and

WHEREAS, Company intends to invest approximately \$8,000,000 to \$12,000,000 in improvements to the property and the purchase of new equipment, as well as bringing twelve (12) new employment positions to the City with an approximate annual payroll of \$660,000; and

WHEREAS, in exchange for the increase in taxable value and new employment positions created within the deadlines set forth herein, the City is willing to waive permit fees and provide reimbursement of a portion of the taxable value generated on the property during the term of this Agreement as set forth below; and

WHEREAS, the City strongly desires to have this employer locate its headquarters in Bryan, as well as expanding the City’s tax base and encouraging the creating of new employment opportunities for Bryan citizens and the City Council finds that it is in the best interests of the community to use this Agreement to encourage that growth; and

NOW, THEREFORE, in consideration of the mutual benefits and promises contained herein and for good and other valuable consideration, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

A. PERFORMANCE REQUIREMENTS

1. Company will commence the renovation and development of the properties addressed as 600 and 602 Liberty Drive, Bryan, Brazos County Texas, more particularly described as Lots 2 and 3, Block 5, Bryan Industrial Park Phase 2, as shown on the plat of same recorded in Volume 847, Page 403 of the Deed Records of Brazos County Texas (collectively "Property") within six (6) months. Commencement of renovation means a building permit for the structures depicted on **Exhibit A** has been issued. Developer will complete the renovation within twenty-four (24) months of the effective date of this Agreement. Completion of renovation and development means (i) obtaining a certificate of occupancy for the buildings shown on **Exhibit A**, including an approximately 31,000 square foot expansion to the existing facility as well as three storage buildings and (ii) obtaining final approval for all related development permits, including but not limited to electrical, mechanical, and plumbing permits. The date of the Completion of renovation and development ("Completion Date") shall be the date the final approval of all the foregoing is issued and there are no more open or expired permits for the Property.
2. In the first full calendar year following the Completion Date, the ad valorem taxable value of the Property, including any taxable personal property accounts with the same situs, must attain a minimum value of \$8,000,000 as appraised by the Brazos Central Appraisal District ("BCAD"). Company shall ensure the Property maintains this BCAD value until termination of this Agreement.
3. By the end of the first full year following the Completion Date, Company shall have created twelve (12) new full-time employment positions with an average annual salary of \$55,000. Company shall continue to maintain such employment positions until the termination of this Agreement.
4. Completion of the renovation and development of the Property must have been in compliance with City Codes and Ordinances, and Company must maintain compliance with all City Codes and Ordinances.

B. GRANTS, WAIVERS, AND OTHER BENEFITS

1. City agrees to waive up to \$15,000.00 in fees for building, mechanical, electrical, and plumbing permits issued for the renovation and development of the Property.
2. City agrees to "fast track" the project's development process.
3. Provided that the Company has met the Performance Requirements set forth in Sections A(1)-A(4) above, beginning the first full calendar year following the Completion Date, the Company is entitled to request a rebate of fifty percent (50%) of the City's share of ad valorem taxes paid for the increased value of the Property for that year, and each subsequent year of this Agreement, until termination. The increased value means the BCAD value for a given year less the BCAD value of the Property as of 2021, \$3,910,507, collectively including both real property and business personal property accounts. A request for rebate ("Request") must be in writing and include a certificate of compliance affirming that Company is in compliance with this Agreement as well as documentation providing proof, including tax receipt(s) showing payment of that year's ad valorem taxes for the Property, and copies of the preceding year's "Reimbursing Employer's Quarterly Reports" (or similar reports by whatever name) required by be filed with the Texas

Workforce Commission (or successor agency) for purposes of administering the Texas Unemployment Compensation Act (Tex. Labor Code, Ch. 201 et. seq. as may be amended). If the City has not received a complete Request, including all required documentation, by March 30th of a given year, Company waives any claim to the rebate for the prior year. The rebate obligation under this section may survive termination, but in all cases expires on the earlier of March 30th, 2029 or when the aggregate amount of taxes rebated under this Agreement totals \$250,000.

4. This Agreement is subject to annual appropriation for same by the City Council. All funds to be paid by the City are payable from lawfully available funds.

C. TERM, BREACH, AND TERMINATION

1. The term of this Agreement shall be from the effective date, which is when signed by all parties on the date the last party signs, through December 31, 2028.
2. If Company fails to comply with any provision of this Agreement, the City may notify Company of the breach in writing, at which point Company shall have thirty (30) days to cure same. It is presumed that thirty (30) days will be sufficient time to cure unless the parties agree in writing to a longer period. Failure to timely cure a breach shall be an event of default and City may terminate this Agreement.
3. In the event of a default by Company, in addition to any other remedies available at law or in equity, the City shall be entitled to withhold any payments not yet made and the Company shall repay City all amounts rebated plus the amount of permit fees waived pursuant to this Agreement. This provision survives termination for default.

D. MISCELLANEOUS

1. Disclosure of Interested Parties. Per Section 2252.908 of the Texas Government Code, Company must fill out a conflict of interest form (“Disclosure of Interested Parties”) at the time the Agreement is signed. For further information please go to the Texas Ethics Commission website via the following link: <https://www.ethics.state.tx.us/filinginfo/1295/>.
2. Boycotts Israel. Company represents and warrants that it is a “Company” that does not Boycott Israel, as those terms are defined by Texas Government Code Chapter 2271, at the time of the execution of this Agreement and that, except to the extent otherwise required by applicable federal law, will not Boycott Israel during the term of this Agreement.
3. Employment of Undocumented Workers. During the term of this Agreement, Company agrees not to knowingly employ any Undocumented Workers and if convicted of a violation under 8 U.S.C. Section 1324a (t), Company shall repay the amount of any Public Subsidy conferred by this Agreement, within 120 days after the date Company is notified by the City of such violation, plus interest at the rate of five percent (5%) compounded annually from the date of violation until paid. Company is not liable for a violation of this section by a subsidiary, affiliate, or franchisee, or by a person with whom Company contracts. The terms Undocumented Worker and Public Subsidy shall have the meaning assigned by Texas Government Code section 2264.001.
4. Government Code Chapter 2252 Subchapter F. Company represents and warrants that it is not a Company with which the City is barred from entering into a Governmental Contract pursuant to

Texas Government Code sections 2252.152 and/or 2252.153 as those terms are defined in section 2252.151.

5. Notices. Any notices sent under this Agreement shall be deemed served when delivered via certified mail, return receipt requested to the addresses designated herein or as may be designated in writing by the parties:

CITY

City of Bryan, City Manager
P.O. Box 1000
Bryan, Texas 77805-1000

COMPANY

Barry Hendler, President
PO Drawer 5220
Uvalde, Texas 778802

6. Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns. Company shall not assign this Agreement without the written approval of the City Council, with the understanding that an assignment to a subsidiary or affiliate company of Company shall not be prohibited under the section.
7. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective while this Agreement is in effect, such provision shall be automatically deleted from this Agreement and the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and in lieu of such deleted provision, there shall be added as part of this Agreement a provision that is legal, valid and enforceable and that is as similar as possible in terms and substance as possible to the deleted provision.
8. Texas law to apply. This Agreement shall be construed under and in accordance with the laws of the State of Texas and the obligations of the parties created hereunder are performable by the parties in the City of Bryan, Texas. Venue for any litigation arising under this Agreement shall be in a court of appropriate jurisdiction in Brazos County, Texas.
9. Sole Agreement. This Agreement constitutes the sole and only Agreement of the Parties hereto respecting the subject matter covered by this Agreement, and supersedes any prior understandings or written or oral agreements between the parties.
10. Amendments. No amendment, modification or alteration of the terms hereof shall be binding unless the same shall be in writing and dated subsequent to the date hereof and duly executed by the parties hereto.
11. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by either party shall not preclude or waive its right to use any and all other legal remedies. Said rights and remedies are provided in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
12. No Waiver. City's failure to take action to enforce this Agreement in the event of Company default or breach of any covenant, condition, or stipulation herein on one occasion shall not be treated as a waiver and shall not prevent City from taking action to enforce this Agreement on subsequent occasions.
13. Incorporation of Recitals. The determinations recited and declared in the preambles to this Agreement are hereby incorporated herein as part of this Agreement.

14. Headings. The paragraph headings contained in this Agreement are for convenience only and do not enlarge or limit the scope or meaning of the paragraphs.
15. Duplicate Originals. The parties may execute this Agreement in duplicate originals, each of equal dignity. If the parties sign this Agreement on different dates, the later date shall be the effective date of this Agreement for all purposes.
16. Gender and Number. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural and vice versa, unless the context requires otherwise.
17. Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance by either Party of any obligation hereunder is delayed by reason of an event of Force Majeure, the Party so obligated or permitted shall be excused from doing or performing the same for the time and to the extent necessary to allow the affected Party to overcome the event of Force Majeure and resume performance thereof. The Party claiming delay of performance as a result of an event of Force Majeure shall deliver written notice of the commencement of such delay to the other Party as soon as reasonably practicable after the claiming Party becomes aware of the same, and if the claiming Party fails to so notify the other Party of delay caused by a Force Majeure event, the claiming Party shall not be entitled to extend the time for performance as provided herein.
18. Basic Safeguarding of Information Systems. Company shall apply basic safeguarding requirements and procedures to protect the Company's information systems whenever the information systems store, process or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016). The substance of this clause shall be included in any subcontracts entered into in which the subcontractor may have City contract information residing in, or transmitting through, its information system.

ATTEST:

CITY OF BRYAN, TEXAS

Mary Lynne Stratta, City Secretary

Andrew Nelson, Mayor

Date: _____

APPROVED AS TO FORM:

Thomas A. Leeper, Interim City Attorney

The American Trade Group, Inc.



Derek Stogner, VP of Finance & Corporate Development

Date: 12/1/2021