

RESOLUTION NO. 2013-175R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH CORVAC COMPOSITES, L.L.C. PROVIDING INCENTIVES IN THE FORM OF ANNUAL REFUNDS OF 80 PERCENT OF PERSONAL PROPERTY TAXES PAID OVER TEN YEARS TO LOCATE AUTOMOTIVE RELATED MANUFACTURING OPERATIONS TO AN EXISTING 100,000 SQUARE FOOT FACILITY LOCATED AT 2350 CLOVIS BARKER ROAD; AUTHORIZING THE CITY MANAGER TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Chapter 380 Economic Development Incentive Agreement (the "Agreement") is hereby approved.

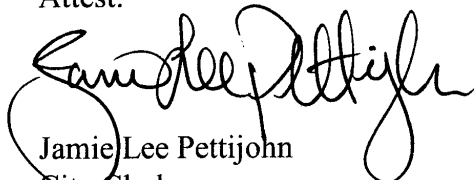
PART 2. The City Manager is authorized to execute the Agreement on behalf of the City.

PART 3. This Resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on November 25, 2013.


Daniel Guerrero
Mayor

Attest:


Jamie Lee Pettijohn
City Clerk

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

As of November 19, 2013 (the “*Effective Date*”) this Chapter 380 Economic Development Incentive Agreement (the “*Agreement*”) is entered into between the City of San Marcos, Texas (the “*City*”), a Texas municipal corporation, and Corvac Composites, L.L.C., a Michigan limited liability company (“*Corvac*”). The City and Corvac may also be referred to collectively as the “*Parties*” or individually as a “*Party*”.

PART 1. RECITALS

Section 1.01. Corvac is one of the largest, global automotive thermoforming suppliers in the world concentrated on providing air, noise and water management solutions. Corvac’s core product line consists of wheel arch liners, under engine covers, belly pans and underbody aero covers for automotive applications. Corvac is a product leader in providing low weight, low cost solutions to Toyota, Honda, Chrysler, and Fiat.

Section 1.02. The company intends to locate a manufacturing facility in the Central Texas region and seeks an inducement from the City to locate such facility in San Marcos rather than in another locale.

Section 1.03. The City wishes to induce Corvac to locate its manufacturing facility in the City, as doing so would benefit the City by creating new jobs and generating revenues for the City from increased ad valorem tax assessments.

Section 1.04. The City is authorized under Chapter 380 of the Texas Local Government Code (“*Chapter 380*”) to offer certain economic development incentives for public purposes, including the promotion of local economic development and the stimulation of business and commercial activity in the City.

Section 1.05. The City has determined that entering into and providing economic development incentives under this Agreement will promote local economic development and stimulate business and commercial activity in the City.

Section 1.06. For the reasons stated in these Recitals and in consideration of the mutual benefits to and promises of the Parties set forth below, the Parties want to enter into this Agreement and agree to the terms and conditions set forth in this Agreement.

ARTICLE II DEFINITIONS

Section 2.01. “*Business*” means all manufacturing and related business activities of Corvac conducted in the City of San Marcos, Texas on the Land (as defined below), including, but not limited to the manufacturing and distribution of wheel arch liners, under engine covers, belly pans and underbody aero covers for automotive applications.

Section 2.02. “*Grant Payments*” means the City’s payments to Corvac once per year of an amount equal to 80 percent of the Property Taxes generated by Corvac’s operation of the Business on the Land and assessed in each of the years 2015 through 2024.

Section 2.03. “*Land*” means the 6.5 acre parcel of real property and improvements located at 2350 Clovis Barker Road within the city limits of the City of San Marcos, Texas upon which the Business will be operated. A legal description for the Land, together with a map, plat or survey showing existing improvements is attached as Exhibit “A” of this Agreement and made a part of this Agreement for all purposes.

Section 2.04. “*Personal Property*” means all furniture, fixtures, materials, supplies, equipment, inventory or other personal property attributable to the Business on the Land subject to ad valorem tax assessments.

Section 2.05. “*Property Taxes*” are the City’s share of the ad valorem taxes received from the Hays County Tax Assessor-Collector on the value of all Personal Property on the Land during the Term of this Agreement beginning with the ad valorem taxes received for Personal Property assessed as of January 1, 2015.

Section 2.06. The “*Term*” of this Agreement shall commence on the Effective Date and continue until December 31, 2024 (unless terminated sooner as provided in this Agreement), except that Corvac’s obligation to submit a compliance certification for the year 2024 as provided under section 7.02 and the City’s obligation, if any, to complete the Grant Payments due under this Agreement for the year 2024 shall continue subject to the limitations of this Agreement.

ARTICLE III CORVAC’S OBLIGATIONS

Section 3.01. Job Creation. On or before December 31, 2014 Corvac shall have hired and, thereafter, continually during the Term, employ at least 30 full-time employees to fully operate the Business. The minimum annual average wage or salary for all of Corvac’s employees working at the Business shall at all times be at least \$30,000.00. Corvac shall provide health benefits to all full-time employees. Corvac agrees to ensure that no discrimination will occur in the hiring and employment of persons on the basis of race, creed, color, national origin, sex or disability or other characteristics for which protection is available under applicable local, state and federal anti-discrimination laws.

Section 3.02. Manufacturing Facility. On or before February 1, 2014, Corvac shall have leased the approximately 100,000 square foot facility on the Land and shall begin construction and installation of any improvements to such facility for purposes of operating the Business. Commencement of construction for purposes of this Agreement shall be the date upon

which a building permit is issued by the City of San Marcos for the improvements to the 100,000 square foot facility. Corvac shall complete construction and installation of all improvements no later than May 31, 2014. Completion of the improvements shall be evidenced by a certificate of occupancy issued by the City of San Marcos. The total capital investment by Corvac under this section shall be at least \$3,650,000.00. The timelines for performance under this section may only be extended due to events of *force majeure* (defined below).

Section 3.03. Operation of Business. Corvac shall begin operation of the Business on the Land, on or before June 1, 2014 and be operating at full capacity of the facility by February 1, 2015. Corvac shall, thereafter, continuously operate, maintain and manage the Business for the duration of the Term. If events of *force majeure* cause delays in the completion of improvements under section 3.02 such that Corvac is unable to begin operating the Business as provided under this section, the time for beginning such operation may be extended to the date such improvements are finally completed.

Section 3.04. Compliance with Laws. In performing its obligations under this Article, Corvac shall comply with all applicable laws, regulations and ordinances.

ARTICLE IV GRANT PAYMENTS FROM THE CITY

Section 4.01. Grant Payments. Subject to the requirements and limitations of this Article, other terms and conditions of this Agreement and Corvac's compliance with this Agreement, the City will make Grant Payments to Corvac in the manner set forth in this Article.

Section 4.02. Ten-Year Payment Period. Provided Corvac has timely commenced and completed construction of the improvements to the facility on the Land and begins and continuously operates the Business on the Land in accordance with Article III, the City shall make an initial Grant Payment to Corvac of an amount equal to 80 percent of Property Taxes

generated by the Business on the Land and collected by the City for Personal Property assessed in the year 2015. Provided Corvac continuously operates the Business on the Land and remains in compliance with this Agreement during the Term, the City will shall make nine additional Grant Payments to Corvac once per year for the remainder of the Term.

Section 4.03. Time for Payment. Grant Payments will be made by the City on or before March 31 of the calendar year immediately following the year in which the Property Taxes upon which the Grant Payment amount is based are assessed. For example, Personal Property on the Land as of January 1, 2015 will be assessed in 2015 and the Grant Payment due to Corvac from the City based on such assessment will be paid by the City on or before March 31, 2016. Notwithstanding the foregoing, the City shall not be required to make a Grant Payment during any applicable year unless and until:

- (a) Corvac has submitted all information required under this Agreement necessary to verify its compliance with the Agreement;
- (b) the Property Taxes for the prior year are received by the City from the Hays County Tax Assessor-Collector; and
- (c) funds are appropriated by the San Marcos City Council for the specific purpose of making a Grant Payment under this Agreement as part of the City's ordinary budget and appropriations approval process.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF CORVAC

As of the Effective Date, Corvac represents and warrants to the City, as follows:

Section 5.01. Organization. Corvac is a Michigan limited liability company duly organized, validly existing and in good standing under the laws of the State of Michigan and

authorized to conduct business in the State of Texas. The activities that Corvac proposes to carry on at the Land may lawfully be conducted by Corvac.

Section 5.02. Authority. The execution, delivery and performance by Corvac of this Agreement are within Corvac's powers and have been duly authorized.

Section 5.03. Valid and Binding Obligation. This Agreement is the legal, valid and binding obligation of Corvac, enforceable against Corvac 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 5.04. No Defaults. Corvac is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which Corvac is a party or by which Corvac or any of its property is bound that would have any material adverse effect on Corvac's ability to perform under this Agreement.

Section 5.05. Full Disclosure. Neither this Agreement nor any schedule or exhibit attached hereto in connection with the negotiation of this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to keep the statements contained herein or therein, in the light of the circumstances in which they were made, from being misleading.

ARTICLE VI PERSONAL LIABILITY OF PUBLIC OFFICIALS AND LIMITATIONS ON CITY OBLIGATIONS

Section 6.01. Personal Liability of Public Officials. No employee or elected official of the City shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 6.02. Limitations on City Obligations. The Grant Payments made and any other financial obligation of the City hereunder shall be paid solely from lawfully available funds that have been budgeted and appropriated each year during the Term by the City as provided in this Agreement. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Consequently, notwithstanding any other provision of this Agreement, the City shall have no obligation or liability to pay any Grant Payments or other payments unless the City budgets and appropriates funds to make such payments during the City's fiscal year in which such Grant Payment(s) or other payments are payable under this Agreement. If the City fails to appropriate funds for a Grant Payment, Corvac may, at its option, terminate this Agreement effective upon written notice to the City.

Section 6.03. No Recourse. Corvac shall have no recourse against the City for the City's failure to budget and appropriate funds during any fiscal year to meet the purposes and satisfy its obligations under this Agreement.

ARTICLE VII INFORMATION

Section 7.01. Information. Corvac shall, at such times and in such form as the City may reasonably request from Corvac, provide information concerning the performance of Corvac's obligations under this Agreement.

Section 7.02. Annual Certification Related to Jobs and Compliance With Agreement. Beginning in the year 2015 and continuing each year thereafter during the Term, Corvac shall submit to the City, on or before January 31, a certified statement acceptable to the city manager of the City, signed by an authorized officer or employee of Corvac, providing the following information:

(a) the total number of persons hired and employed in the preceding calendar year and cumulatively since the Effective Date;

(b) a statement that it is in full compliance with its obligations under this Agreement or, if not in full compliance, a statement disclosing the nature of any non-compliance and any reasons therefor.

After receiving a timely submitted certified statement, the City shall have 60 calendar days to notify Corvac in writing of any questions that the City may have concerning any of the information provided by Corvac, and Corvac shall diligently work in good faith to respond to such questions to the City's reasonable satisfaction.

Section 7.03. Review of Corvac Records. Corvac agrees that the City will have the right to review the business records of Corvac that relate to Corvac's compliance with the terms of this Agreement at any reasonable time and upon at least seven days' prior notice to Corvac in order to determine compliance with this Agreement. To the extent reasonably possible, Corvac shall make all such records available in electronic form or otherwise available to be accessed through the internet.

ARTICLE VIII DEFAULT, TERMINATION AND REMEDIES

Section 8.01. Notice of Default. At any time during the Term of this Agreement that Corvac is not in compliance with its obligations under this Agreement, the City may send notice of such non-compliance to Corvac. If such non-compliance is not cured within 60 days after Corvac's receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 60 days and a cure is not begun within such 60-day period and thereafter continuously and diligently pursued to completion (in either event, a "*Cure*"), then the City may, at its option, terminate this Agreement or withhold Grant Payments otherwise due for the year or years in

which the non-compliance occurs. If the City elects to withhold Grant Payments under this section rather than to terminate the Agreement, then, upon a Cure by Corvac, Corvac will be eligible to receive Grant Payments in future years for the remainder of the Term. However, the Grant Payment withheld by the City for any years during which Corvac is not in compliance shall be deemed forfeited by Corvac and the City shall not be liable for later payment of such Grant Payments. For example, if Corvac fails to satisfy its hiring and employment obligations in the year 2017, it will not receive a Grant Payment in 2018. It will, however, be eligible to receive a Grant Payment in 2019 for compliance in 2018. Except as to circumstances arising from an event of *force majeure*, the Term shall not be extended as a result of any cure period under this section.

Section 8.02. Remedies. Upon breach of any obligation under this Agreement, 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. Notwithstanding the foregoing, the City, in entering this Agreement does not waive its immunity from suit or any other limitations on its liability, contractual or otherwise, as granted by the Texas Constitution or applicable laws of the State of Texas.

Section 8.03. Offset. The City may deduct from any Grant Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City.

Section 8.04. Force Majeure. An event of *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.

Section 8.05. Indemnification. The City shall not be obligated to pay any indebtedness or obligations of Corvac. Corvac hereby agrees to indemnify and hold the City, and the City's elected officials and employees, harmless from and against (i) any indebtedness or obligations of Corvac, or any other loss, claim, demand, lawsuit, liability or damages arising from the negligence or intentional misconduct of Corvac in the performance of its obligations under this Agreement, and (ii) breach of any representation, warranty, covenant or agreement of Corvac contained in this Agreement, without regard to any notice or cure provisions. Corvac's indemnification obligation hereunder shall include payment of the City's costs of defense, reasonable attorneys' fees, litigation and court costs and expenses with respect thereto.

ARTICLE IX MISCELLANEOUS


Section 9.01. Entire Agreement. This Agreement, including any exhibits hereto, contains the entire agreement between the parties with respect to the transactions contemplated herein.

Section 9.02. Amendments. This Agreement may only be amended, altered, or terminated by written instrument signed by all parties.

Section 9.03. Assignment. Corvac may not assign any of its rights, or delegate or subcontract any of its duties under this Agreement, in whole or in part, without the prior written consent of the City.

Section 9.04. 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 9.05. 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, messenger, telecopy, or 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:

Corvac: Corvac Composites, L.L.C.,
Attn: John Huber
~~10485 Enterprise drive~~ 223 Industrial Drive 5 
~~Davisburg, MI 48350~~ Morgantown, KY 42261
Telephone: ~~(616) 281-4218~~ (616) 526-8701

City: City of San Marcos
630 E. Hopkins
San Marcos, Texas 78666
Attn: City Manager
Telephone: (512) 393-8101
Facsimile: (512) 396-4656

Section 9.06. Applicable Law and Venue. This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings shall lie in State courts located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

Section 9.07. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceability under the applicable present or future laws, then, and in that event, it is the intention of the Parties 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.

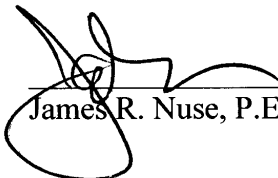
Section 9.08. Third Parties. The City and Corvac intend that this Agreement shall not benefit or create any right or cause of action in or on behalf of any third-party beneficiary, or any individual or entity other than the City and Corvac or permitted assignees of the City and Corvac, except that the indemnification and hold harmless obligations by Corvac provided for in this Agreement shall inure to the benefit of the indemnitees named therein.

Section 9.09. 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.

EXECUTED in duplicate originals to be effective as of the Effective Date.

CITY OF SAN MARCOS, TEXAS

By: 
James R. Nuse, P.E., City Manager

CORVAC COMPOSITES, L.L.C.

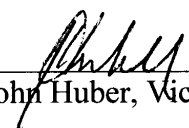
By: 
John Huber, Vice President - Manufacturing

EXHIBIT "A"

2350 Clovis Barker, San Marcos, TX 78666



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