

CITY OF HIGHLAND HEIGHTS
ORDINANCE NO. 11 -2017

INTRODUCED BY: Mayor Coleman and Council as a Whole

MOTION BY: Council Representative Edwin V. Hargate

SECONDED BY: Council Representative Chuck Brunello, Jr.

AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF AN ECONOMIC DEVELOPMENT GRANT AGREEMENT WITH ALLOY BELLOWS AND PRECISION WELDING INC. AND DECLARING AN EMERGENCY.

WHEREAS Alloy Bellows and Precision Welding Inc. (the "Company") currently owns and occupies a facility located in Highland Heights, Ohio (the "Existing Site") and plans to continue and expand its operations in the City (hereinafter referred to as the "Project") at its facility located at 653 Miner Road (the "Project site") provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, The Project will maintain and create jobs and employment opportunities and improve the economic welfare of the people of the City; and

WHEREAS, in consideration of and in order to maintain and create jobs, the City has agreed to make annual economic development grant payments to the Company upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HIGHLAND HEIGHTS, OHIO, THAT:

Section 1. This Council does hereby find and determine, that the Project is consistent with the purposes of Section 13 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio.

Section 2. To assist the Company in the financing of the Project and in furtherance of the purposes of Section 13 of Article VIII of the Constitution, this Council hereby agrees to make grant payments to the Company pursuant to the Grant Agreement. The Grant Agreement is hereby approved in the form on file with the Clerk of Council and the Mayor and the Director of Finance are hereby authorized and directed to execute the Grant Agreement, in substantially the form on file with the Clerk of Council, with such changes as are not materially adverse to the City as such officers and the Law Director may approve, such execution being conclusive evidence of approval of any such changes.

Section 3. The Council finds and determines that all formal actions of this Council and of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or any of its committees, and that deliberations of this Council and any committees that resulted in those formal actions were in meetings open to the public, in compliance with the law.

Section 4. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and welfare and safety and for the further reason that this Ordinance must be immediately effective in order to proceed promptly with the development of the Project in order to create and preserve jobs and advance and promote commercial and economic development within the boundaries of the City; wherefore this Ordinance shall be in force and effective immediately upon its passage and approval by the Mayor.

First Reading: 05/09/2017

Cathis Marzoff
President of Council

Second Reading: 05/23/2017

Third Reading: 06/13/2017

Filed with Mayor: 06/13/2017

PASSED: June 13, 2017

APPROVED: 06/13/17

ATTEST: Regina Cahill
Clerk of Council

[Signature]
Mayor

EFFECTIVE: 06/14/2017

APPROVED AS TO FORM: [Signature]
Timothy G. Paluf, Director of Law

**CITY OF HIGHLAND HEIGHTS
ECONOMIC DEVELOPMENT GRANT AGREEMENT**

THIS ECONOMIC DEVELOPMENT GRANT AGREEMENT (the "Agreement"), entered into as of June 13 2017, between the City of Highland Heights, Ohio (the "City"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio, and Alloy Bellows & Precision Welding Inc., a corporation organized and existing under the laws of the State of Ohio and authorized to do business in the State of Ohio (together with its permitted successors and assigns, the "Company"), in furtherance of the public purposes of Section 13 of Article VIII, Ohio Constitution, to create or preserve jobs and employment opportunities and to improve the economic welfare of the people of the State under the following circumstances:

WHEREAS, the Company currently occupies a facility at 653 Miner Road in Highland Heights, Ohio (the "Existing Site") and plans to continue and expand its operations in the City within the existing facility (the "Project Site") to be used to manufacture bellows (hereinafter referred to as the "Project") provided that the appropriate development incentives are available to support the economic viability of the Project; and

WHEREAS, the Project will maintain and create jobs and employment opportunities and improve the economic welfare of the people of the City;

The City has agreed to make annual economic development grant payments to the Company upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto covenant, agree and bind themselves as follows (provided that any obligation of the City created by or arising out of this Agreement shall not be a general debt on its part nor give rise to any pecuniary liability of the City but shall be payable solely from Non-tax Revenues):

Section 1. DEFINITIONS

"Annual Payments" means the annual economic development grant payments to be made by the city to the Company pursuant to Section 4 of this Agreement.

"Annual Payments Date" means June 1 of each year beginning with January 1, 2018 and ending December 31, 2024.

"Annual Payroll" means the Company's annual employee payroll at the Project Site for the applicable Collection Year, as reported to the Regional Income Tax Agency (or successor entity) for that year.

"Collection Year" means with respect to each Annual Payment Date, the calendar year preceding that Annual Payment Date.

"Municipal Income Tax Receipts" means those municipal income taxes received by the city during the applicable collection year derived from the employees of the Company located at the Project Site.

"Non-tax Revenues" means all moneys of the City which are not moneys raised by taxation, to the extent available for the purpose of making the Annual Payments required hereunder, including, but not limited to the following: (a) grants from the United States of America and the State; (b) payments in lieu of taxes now or hereafter authorized by State statute to the extent not pledged to pay debt charges on other City indebtedness; (c) fines and forfeitures which are deposited in the City's General Fund; (d) fees deposited in the City's General Fund for services provided and from properly imposed licenses and permits; (e) investment earnings on the City's General Fund; (f) investment earnings on other funds of the City that are credited to the City's General Fund; (g) proceeds from the sale of assets which are deposited in the City's General Fund; (h) gifts and donations; and (i) all rental payments which are deposited in the City's General Fund.

Section 2. THE PROJECT

The Company shall maintain and/or expand the existing facilities at the Project Site.

If the Company does not continue to operate the Project at the Project Site for at least 5 full years it shall, immediately upon ceasing operations at the Project Site, reimburse the City of Highland Heights for all incurred legal and administrative costs associated with this agreement and the project, not to exceed \$25,000.

Section 3. JOB OPPORTUNITIES AND RESULTING PAYROLL

The employee positions to be retained at the Project Site shall result in an aggregate annual payroll of at least \$3,295,319 each Collection Year.

Section 4. ECONOMIC DEVELOPMENT INCENTIVE GRANT

In consideration of the Company's Agreement contained in Sections 2 and 3 hereof, the City agrees to give an economic development incentive grant to the Company by making Annual Payments to the Company on each Annual Payment Date from City Non-tax Revenues equal to 50% of the Municipal Income Tax Receipts for Collections Years in excess of the municipal income tax paid over the base payroll of \$3,295,319 provided that (a) no Annual Payment shall be due hereunder with respect to any Year of this agreement in which any of the aforementioned taxes are not paid; (b) no Annual Payment with respect to any Collection Year shall exceed the lesser of \$100,000 or the amount of available non-tax revenues.

Nothing herein shall be construed as requiring the City to use or apply to the payment of Annual Payments any fund or revenues from any source other than Non-tax Revenues; provided, however, that nothing herein shall be deemed to prohibit the City, of its own volition, from using, to the extent that it is authorized by laws to do so, any other resources for the fulfillment of any of the terms, conditions or obligations of this Agreement. The obligation to make Annual Payments hereunder shall terminate immediately if the Company ceases operations of the Project or if the Company fails to fulfill its obligations under this Agreement.

Section 5. PLACE OF PAYMENTS

The Annual Payments shall be made by check placed in the U.S. regular mail on or before the Annual Payment Date made in the name of the Company to the notice address provided in Section 9 below.

Section 6. REPORTS

The Company agrees to provide the City with a copy of each Employer's Municipal Tax Withholding Statement (or similar document) filed with the Regional Income Tax Agency with respect to employees at the Project Site within 30 days of following such filing for all years of this agreement. The Company also agrees to provide to the City any other information reasonably requested by the City to evaluate the Company's compliance with this Agreement.

Section 7. INDEMNIFICATION

The Company agrees to defend, indemnify and hold the City and any and all officials thereof harmless against any and all loss, cost, expense, claims or actions arising out of the company's negligence or willful misconduct arising from or connected with the execution of this Agreement and the consummation of the transactions provided for herein and contemplated hereunder, if caused by company negligence or willful misconduct.

The Company releases the City from, agrees that the City shall not be liable for, and shall indemnify the City against, all liabilities, claims, costs, and expenses, including attorneys fees and expenses, imposed upon, incurred or asserted against the City on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, construction, installation, equipping, maintenance, operation or use of the Project, except to the extent such loss or damage is the result of the City's negligence or willful misconduct; (b) any breach or default of this contract on the part of the Company arising from any act or failure to act by the Company, or any of the Company's agents, contractors, servants, employees, or licensees; and (c) any claim, action or proceeding brought with respect to the matters set forth in (a) or (b).

Section 8. ASSIGNMENT

The Company may not assign its rights under this Agreement without the express written consent of the City.

Section 9. NOTICES

A notice, demand, or other communication unless otherwise requested in writing under this Agreement by any party to the other shall be sufficiently given or delivered if it is mailed by registered or certified mail, postage prepaid, return receipt requested, or delivered personally and, unless otherwise requested in writing,

1. in the case of the Company is addressed to or delivered personally to the Company at:

Alloy Bellows & Precision Welding Inc.
653 Miner Road
Highland Heights, Ohio 44143
Attention: Michael Canty

With a copy to:

2. in the case of the City, is addressed to or delivered personally to the City at:

City of Highland Heights
5827 Highland Road
Highland Heights, OH 44143
Attention: Mayor

Section 10. CAPTIONS

The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 11. GOVERNING LAW

This Agreement shall be governed exclusively by and construed in accordance with the laws of the State of Ohio.

Section 12. COMPLIANCE WITH APPLICABLE LAWS

The Company hereby agrees to comply with all applicable federal, state and local laws, regulations and ordinances in connection with construction of the Project and operation thereof and otherwise in connection with carrying out its obligations under this Agreement.

Section 13. COUNTERPARTS

This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but altogether shall constitute only one and the same instrument.

IN WITNESS WHEREOF, the City, pursuant to Ordinance No. 11-2017 duly enacted on June 13, 2017 by its Council, has caused this Agreement to be executed, and the Company has caused it to be executed, all as of the day and year first above written.

ALLOY BELLOWS & PRECISION WELDING

By _____
Title:

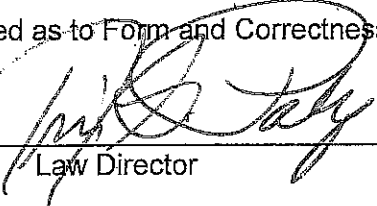
By _____
Title:

CITY OF HIGHLAND HEIGHTS, OHIO

By 
Mayor


By 
Director of Finance

Approved as to Form and Correctness:


Law Director

CERTIFICATE OF FISCAL OFFICER

The undersigned, fiscal officer of the City, hereby certifies that the moneys required to meet the obligations of the City during the year 2017 under the Agreement have been lawfully appropriated by the Council of the City for such purposes and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.



Joseph G. Filippo, Director of Finance
City of Highland Heights, Ohio

Date: 5/5/17