

# REQUEST FOR LEGISLATION

Sponsor: Kimberly Moton

Date: 2/2/2022

Request Legislation To: Authorize the Public Works Director to enter into a Job Creation Tax Credit agreement with Ohio Valley Stamping-Assemblies, Inc.

**Mandatory Information:**

For Caucus Meeting Of: 2/15/2022

For First Regular Meeting Of: 2/15/2022

For Second Regular Meeting Of:

For Passage Meeting Of: 2/15/2022

Submitted By: Mayor

Special Instructions:

Related Prior Legislation:

Account / Classification:

Emergency? Yes X No    

Waive Last Reading? Yes X No    

Waive Last Two Reading? Yes X No    

Pass Legislation Same Date As Caucus? Yes X No    

Additional Information Attached? Yes X No    

cc: Mayor; Law Director; Safety Service Director; Public Works Director; Finance Director; Human Resources Director; Clerk of Council; Sponsor; Vice-Chairperson; Committee Member

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Reviewed in accordance with Ordinance #68-032, passed January 16, 1968:

Appointing Authority: 

Date: 2/2/22

Approved: 

Denied:    

Signed: 

Date: 2-2-22

Elected Official

**CITY OF MANSFIELD  
JOB CREATION TAX CREDIT AGREEMENT**

This Municipal Job Creation Income Tax Credit Agreement ("**Agreement**") is made and entered into by and between the **City of Mansfield ("Grantor" or "City")**, located at 30 North Diamond Street, Mansfield, Ohio 44902 and **Ohio Valley Stamping-Assemblies, Inc. ("Grantee")** with respect to Grantee's operations at the Project Location ("**Project**") as further described in Exhibit I, Scope of Work. The Scope of Work is incorporated by reference into this Agreement as if fully set forth herein.

Grantee was awarded a **City of Mansfield Job Creation Tax Credit Agreement** on February \_\_\_\_, 2022, **Ordinance No. 22-\_\_** by Mansfield City Council.

1. **Grantor's Findings:** Pursuant to O.R.C. Section 122.17 and based upon a review of relevant information and the representations made by Grantee to Grantor, Grantor has determined the following:
  - (a) Grantee's Project will increase payroll and income tax revenue in the City;
  - (b) Grantee's Project is economically sound and will benefit the people of this City by increasing opportunities for employment and strengthening the economy of this City; and
  - (c) Receiving the tax credit is a major factor in the Grantee's decision to go forward with the Project.

Grantee affirms such representations and acknowledges that Grantor has relied on such representations to induce Grantor to grant tax credits contemplated by the Agreement.

2. **Term of Tax Credit:** Grantor hereby makes for the benefit of Grantee a grant in the form of a refundable tax credit (the "**Grant**") allowed for the taxable years or periods beginning on the Tax Credit Effective Date and ending on the Tax Credit End Date as set forth on the first page of this Agreement (the "**Term**") for the sole and express purpose of supporting the Project. The amount of the tax credit attributable to the Grant [for each taxable year during the Term, or for each calendar year during the Term that includes a tax period] (the "**Annual Tax Credit**"), shall be based on the amount of Excess Income Tax Revenues received by the City for municipal income taxes withheld by Grantee for employees located at the Project Location during such [taxable year or calendar year, as the case may be] (the "**Municipal Income Tax Revenue**"). Excess Income Tax Revenue shall be calculated as further described in Section 4 of this agreement. The percentage of Excess Income Tax Revenue that will be allowed as the Annual Tax Credit shall be the Tax Credit Percentage set forth on the first page of this agreement. Annual Tax Credits will be refunded to Grantee. Notwithstanding

the foregoing, Grantee shall not be eligible to receive an Annual Tax Credit for any taxable year during the Term, or for any calendar year during the Term that includes a tax period, in which the total payroll of Grantee in the Project or at the Project Location, for the taxable year or calendar year, as the case may be, is less than the **Baseline Payroll**, as set forth on page one of this Agreement.

3. **Job Creation and Payroll:** As a condition of the Grant, Grantee shall undertake and accomplish the Project and activities as set forth in **Exhibit I**. Within three (3) years of the Project's initial operations, Grantee shall (a) employ at the Project Location at least the total number of Full-Time Equivalent Employees set forth on the first page of this Agreement as "to be created" and "to be retained" and (b) generate at least the amount of New Payroll to be created as set forth on the first page of this Agreement. New Payroll shall be calculated by subtracting the Baseline Payroll, as set on the first page of this Agreement, from the total annual payroll of the Project generated at the Project Location ("**New Payroll**") as reported by Grantee and verified by the City's Income Tax Director and Finance Director. To remain eligible for an Annual Tax Credit, Grantee shall thereafter maintain at least **Six Hundred and Sixty Thousand Dollars (\$660,000)** of New Payroll throughout the Term of this agreement. Throughout the Term, Grantee shall pay its Full-Time Equivalent Employees an average of at least one hundred fifty percent (150%) of the federal minimum wage. Also, within three years of the Project's initial operations, Grantee must demonstrate to Grantor that Grantee has hired minority and disadvantaged persons as defined in Paragraphs (F) and (L) of the Ohio Administrative Code ("**O.A.C.**") Rule 122:7-1-01 at the Project Location in Percentage of Minority and Disadvantaged Hiring set forth on the first page of this Agreement. Grantee shall maintain the Percentage of Minority and Disadvantaged Hiring during the Term of this Agreement.
  
4. **Excess Income Tax Revenue:**
  - (a) **Excess Income Tax Revenue Defined:** Subject to the other provisions of Section 3 of this Agreement, Excess Income Tax Revenue shall be calculated as follows: (x) the Municipal Income Tax Revenue attributed to Full-Time Equivalent Employees employed by Grantee in the Project, minus (y) the Baseline Income Tax Revenue, as adjusted annually. For each year during the Term, the Baseline Income Tax Revenue for such year shall be increased from the prior year by an amount equal to the (n/a) Baseline Income Tax Revenue for immediately preceding year, times (N/A) the Pay Increase Factor as set forth on the first page of this Agreement.
  
  - (b) **Pro-rated Application of the Baseline Income Tax Revenue:** If Grantee becomes eligible for the credit after the first day of Grantee's taxable year or after the first day of the calendar year that includes the tax period, the Baseline Income Tax Revenue shall be reduced for such partial year pursuant to division (A)(2) of Section 122.17 of O.R.C.

- (c) **Failure to Execute Agreement:** If Grantee failed to enter into this Agreement within sixty (60) days after having received this Agreement from the City, then Grantor shall amend the Baseline Income Tax Revenue to reflect the Municipal Income Tax Revenue based on the Full-Time Equivalent Employees during the most recent twelve-month period prior to the execution of this Agreement. The revised Baseline Income Tax Revenue shall be adjusted annually for each calendar year as described in Section 4(a) above.
- (d) **Calculation of the Annual Tax Credit:** The Annual Tax Credit shall be the product of the Excess Income Tax Revenue multiplied by the Tax Credit Percentage for the calendar year reporting period set forth on the first page of this Agreement.
5. **Submission of Annual Progress Reports.** During the term, Grantee shall submit to the Finance Director an Annual Progress Report. The Annual Progress Report shall specify the number of full-Time Equivalent Employees (as defined in the State Tax Credit Agreement) first employed by Grantee as a result of the Project, the total number of Full-Time Equivalent Employees employed by Grantee at the Project, the total payroll of Grantee at the Project, the total Municipal Income Tax Revenue and the Excess Income Tax Revenue withheld in connection with the employees at the Project for the preceding taxable or calendar year, the average hourly base wage of the Full-Time Equivalent Employees, and any other information the Finance Director deems appropriate to perform the Finance Director's duties pursuant to this agreement. Grantee's Annual Progress Report shall be received by the Finance Director on behalf of the Grantor, no later than March first of each year. The Chief Executive Officer, Chief Financial Officer, or any other Officer of the company authorized to sign tax returns of Grantee shall certify to Grantor in writing the accuracy of the information contained in the Annual Progress Report with respect to such Grantee. Failure of Grantee to submit a complete Annual Progress Report shall be a default under this agreement and shall permit Grantor to exercise the remedies, including but not limited to termination, set forth in section 13 of this agreement. All reports shall be undertaken at the sole expense of Grantee.
6. **Certificate of Verification:** The Finance Director shall verify the amounts reported pursuant to Section 5 of this Agreement and, if the Finance Director determines such amounts to be supported by the Annual Progress Report, shall issue a Certificate of Verification to Grantee stating the amounts have been verified.
7. **Conditions of Grant:**
- (a) **Fee Reservations:** Grantee's receipt of the Grant is contingent upon Grantee's payment to Grantor of the appropriate servicing fees as set forth in O.A.C. Rule 122:7-1-04.

- (b) Sufficient Funding to Complete Project: Grantee warrants and represents to Grantor that Grantee has obtained sufficient funding, in addition to the financial benefit of Annual Tax Credits, to complete the Project.
8. Grantee's Location: Grantee shall maintain operations at Project Location for the greater of **(a) six (6) years from the Tax Credit Effective Date or (b) the term of the Grant plus six (6) years.** On or before March first of each year following the Term of the Grant and continuing for the period Grantee is required to maintain operations (the "**Post-Term Reporting Period**"), Grantee shall provide Grantor with a written certification that Grantee has maintained operations at the Project Location. The written certification shall be signed by Grantee's Chief Executive Officer, Chief Financial Officer, or other Officer authorized to sign the Grantee's tax returns.
9. Effect of Failure:
- (a) Effect of Failure to Create or Retain Jobs and Payroll. In the event Grantee fails to achieve and maintain the number of Full-Time Equivalent Employees and New Payroll in amounts set forth on the first page of this Agreement, or if Grantor finds that Grantee failed to comply with any term set forth in this Agreement, Grantor may reduce the percentage of the Grant and/or Term. Any such reduction shall take effect in any taxable year or tax period.
- (b) Effect of Failure to Maintain Operations: If Grantee fails to maintain operations at the Project Location, during the Term and through the Post-Term Reporting Period, Grantee may be required by the City to refund to the City up to the amount of credit received to date, as determined by the City. In determining the amount of the Grant, if any, to be refunded to the City, Grantor shall consider the effect of market conditions on the Project.
10. Non-Discrimination:
- (a) Minority Hiring Requirement: Grantee shall make a good faith effort to hire minority persons in the completion and operation of the Project in the same percentage as the average percentage of minority persons represented in the population of the County in which the Project is located and the contiguous Ohio Counties.
- (b) Equal Employment Opportunity. Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, veteran status, disability or age. Grantee shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, ancestry, veteran status, disability or age.

11. **Records Maintenance and Access:**

- (a) **Maintenance of Records:** Grantee shall establish and maintain for at least four (4) years after the end of the Post-Reporting Period, or such earlier termination of this Agreement, such records as are required by Grantor in Section 5 above and all relevant supporting documentation. The parties further agree that the records required by Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between Grantor and Grantee shall be maintained for the time needed for resolution of such issue and that in the event of early termination of this agreement, or if any other reason Grantor shall require a review of the records related to the Project, Grantee shall, at its own expense, segregate all such records related to the Project from its other records of operation. Grantee shall maintain and organize its records in such form so that, in case of review of its records or an audit, Grantee is able to verify and document the information it provides in its Annual Progress Reports pursuant to Section 5 of this agreement.
- (b) **Inspection and Copying:** At any time during the normal business hours upon written notice and as often as Grantor may reasonably deem necessary, Grantee shall make available to Grantor for examination all of its records with respect to matters covered by this Agreement including, but not limited to, records of personnel and terms of employment, and Grantee shall permit Grantor to audit, examine and make excerpts or transcripts from such records.

12. **Indemnification:** Grantee agrees to hold Grantor Harmless from any and all liabilities or claims caused by or resulting from Grantee's performance of the obligations or activities in furtherance of the Project and activities set forth in the Scope of Work. Grantee will reimburse Grantor for any judgements arising from Grantee's performance hereunder which may be obtained against Grantor, including, but not limited to, judgements for infringements of patents or copyrights. Grantee agrees to reimburse Grantor for all costs incurred by Grantor in defending against any such claims or legal actions if called upon by Grantor to do so.

13. **Default and Remedies:**

- (a) **Default:** Grantee shall be in default of this Agreement if Grantee fails to perform any of its obligations under this Agreement and such failure to perform continues uncured for more than thirty (30) days after written notice (a "**Default Notice**") from Grantor. Grantee shall also be in default of this Agreement if Grantee is in default of any other agreement between Grantor and Grantee and such default continues beyond applicable period of cure or grace.

(b) Remedies: Following a default by Grantee, Grantor may exercise one or more of the following remedies:

- (i) Reduction of Percent or Term: Grantor may reduce the percentage and/or Term of the Grant.
- (ii) Termination: Grantor may terminate this Agreement. Pursuant to Section 9(b) of this Agreement, Grantor may require Grantee to refund to the City an amount equal to all or a portion of the Annual Tax Credits received under this Agreement.
- (iii) Other Legal Remedies: Grantor may pursue any other legal or equitable remedies Grantor may have under this Agreement of applicable law.

14. Conflict of Interest: No personnel of Grantee, any subcontractor of Grantee or public official who exercises any functions or responsibilities in connection with the review or approval of the work completed under this Agreement shall, prior to completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Any such person who, prior to or after the execution of this Agreement, acquires any personal interest, involuntarily or voluntarily, shall immediately disclose his interest to Grantor in writing. Thereafter, he shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his participation in any such action would not be contrary to the public interest.

15. Adherence to State and Federal Laws, Regulations:

- (a) General: Grantee agrees to comply with all applicable federal, state, and local laws related to the Project and the operations of Grantee's business in the State. Grantee accepts full responsibility for payment of all unemployment compensation, insurance premiums, worker's compensation premiums, all income tax withholdings, social security withholdings, and any and all other taxes or payroll withholdings required for all employees engaged by Grantee on the performance of the Project.
- (b) Outstanding Liabilities: Grantee represents and warrants to Grantor that Grantee does not owe: (1) any delinquent taxes to the State or a political subdivision of the State; (2) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; or (3) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.
- (c) Falsification of Information: Grantee represents and warrants to Grantor that Grantee, any parent company of such Grantee, and any other related entity or member have

made no false statements to Grantor in the process of obtaining this Grant. If Grantee, any parent company of Grantee, or other related entity, officer, director or equity holder has knowingly made a false statement to Grantor to obtain this Grant, Grantee shall be required to immediately pay to Grantor an amount equal to the aggregate of all Annual Tax Credits and shall be ineligible for any future economic development assistance from the State, any State agency or political subdivision pursuant to Section 9.66 (C)(1) of O.R.C. Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Section 2921.13(F)(1) of the O.R.C., which is punishable by a fine of not more than \$1,000.00 and/or a term of imprisonment of not more than six months.

(d) Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization: If applicable, Grantee must certify compliance with Section 2909.33 of the O.R.C.

(e) Public Records: Grantee acknowledges that this Agreement and other records in the possession or control of Grantor regarding the Project, including financial information of Grantee, are public records under Ohio Revised Code §149.43 and are open to public inspection unless a legal exemption, such as trade secret exception, applies.

16. Notices: All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if delivered personally, or by facsimile with confirmation, and regular United States mail, or sent by United States mail, registered or certified, return receipt requested, postage prepaid, or commercial delivery service to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice in accordance with this provision.

**In case of Grantor, to:**

City of Mansfield  
30 North Diamond Street  
Mansfield, Ohio 44902  
Attn: Economic Development Director  
Phone No.: (419) 755-9794

**In case of Grantee, to:**

Ohio Valley Stamping-Assemblies, Inc.  
500 Newman Street  
Mansfield, Ohio 44902  
Attn: Terri Brown, Owner  
Phone No.: (940) 841-4260

17. **Miscellaneous:**

- (a) **Governing Law:** This Agreement shall be governed by the laws of the State as to all matters, including but not limited to matters of validity, construction, effect and performance.
- (b) **Forum and Venue:** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in the State of Ohio, in any action or proceeding arising out of or related to this Agreement. Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to this Agreement shall be brought only in a court in the State of Ohio.
- (c) **Entire Agreement:** This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this agreement.
- (d) **Severability:** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.
- (e) **Amendments or Modifications:** Grantor, on the one hand, or Grantee on the other hand, may at any time during the Term request amendments or modifications to this Agreement, but such amendments or modifications shall not be effective until a written amendment is executed by each of the parties to this Agreement. Requests for amendment or modification of this Agreement shall be in writing and shall specify the requested changes and the justification for such changes. The parties shall review the request for modification taking into consideration the statute, regulations and goals relating to the Project. Should the parties agree in principle to modify this Agreement, then an amendment shall be prepared, approved, and executed in the same manner as the original Agreement.

- (f) Forbearance Not a Waiver: No act of Forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights hereunder.
- (g) Pronouns: The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.
- (h) Headings: Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.
- (i) Assignment: Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned or subcontracted by Grantee without prior express written consent of Grantor. Such consent shall not be unreasonably withheld.
- (j) Successor of Interest: Where Grantor has consented to an assignment as provided in division (i) of this Section 17, each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of not only Grantee, but to its respective successors and assigns.
- (k) Survival: Any provisions of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement, including, without limitation, any indemnification obligation, shall so survive and shall benefit the parties and their respective successors and permitted assigns.

**Signature:** Each of the parties has caused this Grant Agreement to be executed by its authorized representatives as of the dates set forth below their respective signatures effective as of the Tax Credit Effective Date:

**GRANTEE:**

Ohio Valley Stamping-Assemblies, Inc.  
 500 Newman Street  
 Mansfield, Ohio 44902

By: \_\_\_\_\_

Printed Name: **Terri Brown**

Title: Owner

**GRANTOR:**

City of Mansfield, Ohio  
 30 North Diamond Street  
 Mansfield, Ohio 44902

By: \_\_\_\_\_

Printed Name: **David Remy**

Title: Public Works Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
John Spon  
Law Director

### **CERTIFICATE OF FISCAL OFFICE**

The undersigned, fiscal officer of the City of Mansfield, hereby certifies that the monies required to meet the obligations of the City for calendar year 2017 under this agreement have been lawfully appropriated by Mansfield City Council 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.

\_\_\_\_\_  
Linn Steward  
Finance Director  
City of Mansfield

**EXHIBIT 1**  
**SCOPE OF WORK**  
**Ohio Valley Stamping-Assemblies, Inc.**  
**City of Mansfield, Richland County**

On February \_\_\_\_, 2022 the Mansfield City Council approved a 50 percent, six (6) Year tax credit to Ohio Valley Stamping-Assemblies, Inc. for the creation of \$936,000.00 in new payroll as the result of the company's project in the City of Mansfield, Richland County. As part of the tax credit agreement, the City of Mansfield requires the company to maintain operations at the project site for at least 12 years.

Ohio Valley Stamping-Assemblies, Inc. is a privately held stand-alone company. The company will be financially self-sufficient. Ohio Valley Stamping-Assemblies, Inc. will produce fabricated metal products for the automotive industry at the new facility.

The Job Creation Tax Credit is a major factor in Ohio Valley Stamping-Assemblies, Inc.'s decision to expand their operations in Mansfield, Ohio.

The project includes the purchase of the 137 Touby Court and 137 W. Sixth Street properties for the purpose of expanding their manufacturing capacity to meet their continued growth. In addition to the property acquisition, the company will invest in new equipment and additional inventory for the new facility. The company proposes to hire management, supervisors, and production employees to staff the new facilities.

The company will create 30 full-time equivalent employees generating \$936,000.00 in annual payroll at the project location within three years of the project's initial operations and maintain them for the term of the tax credit.

The tax credit will begin \_\_\_\_\_, 2022 and will end \_\_\_\_\_, 2028.