

ORDINANCE NO. 132-14

AN ORDINANCE AUTHORIZING A JOB CREATION GRANT AGREEMENT FOR DISCOUNT DRUG MART, INC., AND DECLARING AN EMERGENCY.

WHEREAS: Ordinance No. 154-07, passed September 24, 2007, adopted a Job Creation Grant Program for the City of Medina, Ohio to provide incentives to businesses to retain, create and expand employment opportunities within the City of Medina without utilizing tax revenues or impacting negatively upon the local school system; and

WHEREAS: As part of said Job Creation Grant Program, a Business Development Committee was established to review applications and annually review each approved grant for adherence to their grant agreement; and

WHEREAS: The Business Development Committee recommended the attached grant agreement for Discount Drug Mart, Inc.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

SEC. 1: That the Job Creation Grant Agreement #JCG09 for Discount Drug Mart, Inc. is hereby authorized.

SEC. 2: That the Mayor is hereby authorized to execute all documentation associated with the Grant.

SEC. 3: That a copy of the Job Creation Grant Agreement is marked Exhibit A, attached hereto and incorporated herein.

SEC. 4: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

SEC. 5: That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason the employee transfer has begun; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: August 25, 2014

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: August 26, 2014

SIGNED: Dennis Hanwell
Mayor

ORD 132-14

PLEASE REVIEW THE EMPLOYMENT AND PAYROLL NUMBERS FOR CONSISTENCY WITH YOUR APPLICATION FORM. THESE NUMBERS WILL BECOME YOUR COMPANY'S COMMITMENT TO THE CITY OF MEDINA.

EXHIBIT A

GRANT# JCG09-Discount Drug Mart14
(Administrative Only)

JOB CREATION GRANT AGREEMENT

This Agreement made and entered into by and between the CITY OF MEDINA, OHIO, a municipal corporation, with its main offices located at 132 North Elmwood Avenue, Medina, Ohio 44256 (hereinafter referred to as "Medina") and Discount Drug Mart, Inc. with its main offices located at 211 Commerce Drive, Medina, Ohio 44256 (hereinafter referred to as "Company"), and is dated as of .

WITNESSETH:

WHEREAS, Medina has encouraged the creation and retention of new job opportunities throughout the City of Medina; and

WHEREAS, Discount Drug Mart, Inc. has acquired Hastings Professional Medical Equipment Company located at 15210 Industrial Parkway, Cleveland, Ohio 44135 and will relocate 25 new full time employees to 211 Commerce Drive, Medina, Ohio 44256 (hereinafter sometimes referred to as the "PROJECT") and \$2,300,000.00 in new payroll within the boundaries of the City of Medina, provided that the appropriate development incentives are available to support the economic viability of said PROJECT; and

WHEREAS, the Council of the City of Medina, Ohio by Ordinance No. 154-07 adopted September 25, 2007 created the Job Creation Grant Program pursuant to Article XVIII, Section 3 and Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, the City of Medina, having the appropriate authority for the stated type of program, is desirous of providing Discount Drug Mart, Inc. with incentives available for the development of the PROJECT; and

WHEREAS, Discount Drug Mart, Inc. has submitted a proposed Agreement application (herein attached as Exhibit A1) to the City of Medina (said application hereinafter referred to as "Application"); and

WHEREAS, Discount Drug Mart, Inc. has remitted the required application fee of \$ 500.00 made payable to the City of Medina; and

WHEREAS, the Business Development Committee of the City of Medina has investigated the application of Discount Drug Mart, Inc. and has recommended the same to Medina City Council on the basis that Discount Drug Mart, Inc. is qualified by financial responsibility and business experience to create employment opportunities in the City of Medina and improve the economic climate of Medina; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Description of the Project.

- A. Discount Drug Mart, Inc. shall relocate 25 full-time employees from a newly acquired company in Cleveland, Ohio to 211 Commerce Drive, Medina, Ohio 44256.

2. Project Investment.

- A. The PROJECT will involve a total investment, plus or minus 10%, by the Property Owner of \$275,000.00(dollars) the PROJECT.

- B. The PROJECT will involve a total investment, plus or minus 10%, by Discount Drug Mart, Inc. as follows:

1. New Machinery and Equipment	\$145,000
2. New Furniture & Fixtures	\$ 95,000
3. Land/Building Acquisition	\$ n/a
4. Construction of facility / improvements	
Of existing building	\$ 35,000
TOTAL	\$275,000

- C. Transfer of employees will begin approximately August 1, 2014 and will be completed approximately September 30, 2014.

3. Job Creation and Retention.

- A. Discount Drug Mart, Inc. shall transfer employees into the City of Medina within a time period not exceeding 36 months, the equivalent of 25 new full-time permanent job opportunities in the City of Medina.

- 1) Discount Drug Mart, Inc.'s schedule for hiring permanent full time employees is as follows:

<u>Year</u>	<u>Number of Jobs New to Medina</u>	<u>Payroll Created</u>
2014	25	\$2,300,000

1 yr. total: 25 employees \$2,300,000 in payroll

- B. The job creation period begins approximately August 1, 2014 and all jobs will be in place by September 30, 2014.

- C. The Company currently has 276 employees at the 211 Commerce Drive site. The Company currently has 276 employees in the City of Medina. In total, the Company has 1,777 full-time permanent employees in the State of Ohio.
- D. The increase in the number of employees new to the City of Medina will result in approximately \$2,300,000 of additional annual payroll in the City of Medina when the projected maximum employment level is achieved after the three year period.
- E. The retention of the existing jobs in Medina will maintain the current annual payroll in Medina of \$14,672,000.00.

4. Issuance of Grant.

- A. The City of Medina hereby grants a Job Creation Grant based upon the creation of new payroll and jobs in the City of Medina, and the implementation of the PROJECT, according to the schedules contained herein in Section 4(C).

<u>Years</u>	<u>Amount of Grant as a Percentage of Payroll Taxes New to Medina</u>
10	40%

Funding for the grant issued herein shall only be from the following non-tax revenue sources: interest income, permit fees, activity fees, service charges, and tax incentive application and monitoring fees.

- B. For purposes of calculating the amount of the grant, the new payroll upon which the grant is based may not exceed 25% above the maximum payroll projected in Section 3(D) above. The grant amount shall be based on the current 1.25% income tax rate. The maximum amount of the grant in any year shall be \$14,375.00 (maximum NEW PAYROLL projection x 125% X 1.25% x 40% of grant)
- C. To receive a grant in any given year, Discount Drug Mart, Inc. must retain full time permanent jobs existing in Medina prior to the Agreement.

- (1) If Discount Drug Mart, Inc. does not achieve at least 90% of new payroll projections, Discount Drug Mart, Inc. shall receive reduced incentives according to the schedule below:

<u>% of New Payroll Projection Achieved</u>	<u>Amount of Grant as a Percentage of Payroll Taxes New to Medina</u>
90-100%	full grant
85-89%	reduce grant by 5% (Ex.: 40% grant reduced to 35%)
80-84%	reduce grant by 10% (Ex.: 40% grant reduced to 30%)
75-79%	reduce grant by 15%
Less than 75%	no grant for that year; and

- (2) If Discount Drug Mart, Inc. fails to meet 75% of new payroll or new employment projections in any given year, the grant shall not be awarded for that year.
- (3) If Discount Drug Mart, Inc. has multiple locations in the City of Medina and new employment and new payroll projections are met at any combination of locations in the City of Medina, Discount Drug Mart, Inc. will receive its annual grant payment.
- (4) New payroll is defined as that amount in excess of the amount in Section 3(E) above.

5. Grant Payments.

A. Initial Grant Payment.

- (1) Year 1 projections must be met by December 31, 2014. The initial grant payment shall be made by approximately June 30th, 2015 (following year), provided that Discount Drug Mart, Inc. files its Reconciliation of City Income Tax Withheld Form S-W3 by February 28, 2015, and reconciliation is confirmed by the City of Medina Finance Department.
- (2) If the project start or occupancy of the project facility is delayed, Year 1 may be extended to the following year and the Year 1 projections deadline adjusted accordingly, upon written request by Discount Drug Mart, Inc. to the Economic Development Director, provided that the extension is approved by the Economic Development Director with notice to the Business Development Committee.
- (3) If the project or occupancy of a project facility begins in the third or fourth quarter of the year and Discount Drug Mart, Inc. is not able to meet its Year 1 projections by December 31st of that year, Year 1 will be considered the first full year of occupancy, and the first grant payment will occur in the year following the first full year of the project or occupancy of the project facility.

B. Timing of Annual Grant Payments. Annual grant payments shall be made by June 30th of the following year, provided that Discount Drug Mart, Inc. files its Reconciliation of City Income Tax Withheld Form S-W3 by February 28th and reconciliation is confirmed by the City of Medina Finance Department. If Discount Drug Mart, Inc. requests an extension for filing of its S-W3 form, the City of Medina shall make the grant payment within three months of the extended filing date. It is the responsibility of Discount Drug Mart, Inc. to advise the Economic Development Director of the filing extension.

C. Use of Grant Payments. Grants shall be allocated by Discount Drug Mart, Inc. for land acquisition, building acquisition, purchase of machinery/equipment, purchase of furniture/fixtures, and/or other non-construction related and non-installation related costs of the project.

6. Payment of Taxes and Filing Reports and Returns. Discount Drug Mart, Inc. shall pay all taxes and shall file all tax reports and returns as required by law. If Discount Drug Mart, Inc. fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement are terminated beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

7. Information for Annual Review. Discount Drug Mart, Inc. shall provide to the City of Medina in a timely manner, any information reasonably required by the City of Medina to evaluate Discount Drug Mart, Inc.'s compliance with the Agreement.

8. Maintenance of Grant.
 - A. Medina shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain incentives granted under this Agreement including, without limitation, joining in the execution of all documentation and providing necessary information to maintain the incentives granted hereunder.
 - B. If for any reason the Job Creation Grant Program is discontinued, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless **Discount Drug Mart, Inc.** materially fails to fulfill its obligations under this Agreement and Medina terminates or modifies the incentives granted under this Agreement.
9. Certification as to Payment of Taxes. **Discount Drug Mart, Inc.** certifies that at the time this Agreement is executed, **Discount Drug Mart, Inc.** does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which **Discount Drug Mart, Inc.** is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or, if such delinquent taxes are owed, **Discount Drug Mart, Inc.** currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against **Discount Drug Mart, Inc.** For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.
10. Non-Discrimination Hiring. Medina has developed a policy to ensure recipients of Job Creation Grants practice non-discriminatory hiring in its operations. By executing this Agreement, **Discount Drug Mart, Inc.** is committing to following non-discriminatory hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
11. Transfer and Assignment. This Agreement is not transferable or assignable without the express, written approval of Medina. The City of Medina acknowledges that it would be unreasonable to withhold such consent in the event of a proposed transfer or assignment to any parent, subsidiary or affiliate of **Discount Drug Mart, Inc.** or to any third party so long as with respect to all or any of such proposed transfers or assignments, the proposed transferee or assignee adequately and sufficiently demonstrates to the City of Medina, to the City of Medina's reasonable satisfaction, its financial ability, business experience and intentions to continue its operations of the Facility and Project in a manner similar to that of **Discount Drug Mart, Inc.** in all pertinent respects.

12. Termination or Modification of Incentives.

- A. If **Discount Drug Mart, Inc.** fails to meet 75% of new payroll or new employment projections in any given year, the grant shall not be awarded for that year.
- B. If **Discount Drug Mart, Inc.** fails to meet 75% of new payroll or new employment projections for three consecutive years, this Agreement shall be terminated by the City of Medina.
- C. If the project does not proceed as specified in Section 5(A)(1) of the Agreement or within the approved one year extension period, the City of Medina may terminate the Agreement upon recommendation of the Business Development Committee.
- D. If **Discount Drug Mart, Inc.** fails to submit required information and/or reports as set forth in Section 7 above, the City of Medina may terminate or modify this Agreement and deny or modify future grants heretofore granted from the date of **Discount Drug Mart, Inc.**'s breach or default.

In the case as provided in this Subsection D, the City of Medina's termination or modification of this Agreement may be instituted only if **Discount Drug Mart, Inc.** fails to cure any breach of any term of this Agreement as determined by the City of Medina within ten (10) days of receiving written notice of such failure from the City of Medina or, if cure of the breach cannot be completed within ten (10) days, if **Discount Drug Mart, Inc.** has not made a good faith start of the cure, and/or not diligently pursued same.

- E. Nothing contained in Sections 12(A), 12(B), 12(C), or 12(D) shall permit the City of Medina to recapture or otherwise deny **Discount Drug Mart, Inc.** the benefit of a grant in respect of any period prior to the date of such termination or modification by the City of Medina.
- F. The City of Medina may terminate or modify this Agreement and may also require the repayment of the full amount of grant payments awarded under this Agreement, upon the occurrence of any of the following:
 - 1) the City of Medina determines that the certification as to delinquent taxes required by this Agreement is fraudulent, or
 - 2) **Discount Drug Mart, Inc.** vacates the Facility and/or moves the Project out of the City of Medina or terminates its operations at the Facility altogether during a 10 (numeral) year period beginning on the effective date of this Agreement.

The City of Medina may, absent any legislative action, resolution or court ordered mandate to the contrary, collect any and all grant payments awarded

under this Agreement, and Discount Drug Mart, Inc. shall pay directly to the City of Medina or its authorized agent any and all grant payments awarded under this Agreement due on the date Discount Drug Mart, Inc. moves the Project out of the City of Medina or terminates its operations at the Facility altogether during the 10 year period beginning on the effective date of this Agreement; or within ten (10) days from the date Discount Drug Mart, Inc. is notified by the City of Medina that any tax certification is fraudulent.

- G. Discount Drug Mart, Inc. or successor entity shall promptly notify the City of Medina if any of the following events occur:
- (i) If control of Discount Drug Mart, Inc. or substantially all of its assets located at the Project site is obtained by another entity or shareholders or
 - (ii) If Discount Drug Mart, Inc. merges with another entity or
 - (iii) If Discount Drug Mart, Inc. substantially restructures itself through an acquisition or divestiture or otherwise

and if any of these events affects the ability of Discount Drug Mart, Inc. or its successor entity to perform substantially the obligations of Discount Drug Mart, Inc. under this Agreement and to meet the employment and payroll projections anticipated herein. "Control of Discount Drug Mart, Inc." for the purposes of this subsection means that persons and/or entities owning the majority of Company's outstanding voting stock at the date of this Agreement cease to own such or cease to have the unconditional right to elect a majority of Discount Drug Mart, Inc.'s board of directors.

- H. Each provision for modification or termination hereunder shall not affect Discount Drug Mart, Inc.'s obligations or the City of Medina's rights under any other provision of this Agreement.
13. Fees. Discount Drug Mart, Inc. shall pay an annual fee of \$ 500 (five hundred dollars) in each year that Discount Drug Mart, Inc. receives a grant payment upon notification that such payment is due. The proceeds will be used to defray costs of program administration and to help fund the program.
14. Any notices, statements, acknowledgements, consent approvals, certificates, or requests required to be given on behalf of either party shall be made in writing addressed as follows:

If to the City to: Dennis Hanwell, Mayor
Medina City Hall
132 N. Elmwood Avenue
Medina, Ohio 44256

With a copy to: Director of Law- City of Medina
Gregory Huber
Medina City Hall
132 N. Elmwood Avenue
Medina, Ohio 44256

If to Discount Drug Mart, Inc. to:

Tom McConnell
Chief Financial Officer
Discount Drug Mart, Inc.
211 Commerce Drive
Medina, Ohio 44256

or such other address as may be noticed.

15. Condition Precedent. Discount Drug Mart, Inc. and Medina acknowledge that this Agreement must be approved by formal action of the legislative authority of the City of Medina as a condition for the Agreement to take effect.

IN WITNESS WHEREOF, the City of Medina, Ohio, by Dennis Hanwell, its Mayor, and pursuant to Ordinance No. 154-07 and Discount Drug Mart, Inc., by Tom McConnell, its Chief Financial Officer, have caused this instrument to be executed on the 26th day of August, 2014.

WITNESSED BY:

Dennis Hanwell
Kathy Patton

WITNESSED BY:

CITY OF MEDINA

By: Dennis Hanwell

Title: Mayor

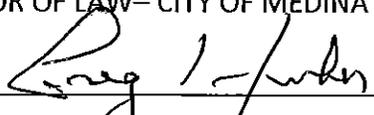
DISCOUNT DRUG MART, INC.

By: Tom McConnell

Title: CFO

The legal form and correctness of the within instrument is hereby approved.

DIRECTOR OF LAW— CITY OF MEDINA

By: 

Date: 8/27/14

**CITY OF MEDINA
JOB CREATION GRANT PROGRAM
APPLICATION**

IMPORTANT: FINAL APPROVAL IS NECESSARY BEFORE PROJECT CAN BEGIN

PROPOSED AGREEMENT for the Job Creation Grant Program between
Discount Drug Mart, Inc. located in the County of Medina
and The City of Medina

1. A. Name of property owner, home or main office address, contact person, and telephone number (attach additional pages if multiple enterprise participants).

Discount Drug Mart, Inc.	Tom McConnell
Enterprise Name	Contact Person
211 Commerce Drive	330-725-2340
	Telephone number
Medina, Ohio 44256	330-723-5103
Address	Fax number

- B. Project Site:

211 Commerce Drive	Tom McConnell
	Contact Person
Medina, Ohio 44256	330-725-2340
	Telephone number
	330-723-5103
Address	Fax Number

2. A. Nature of commercial/industrial activity (manufacturing, warehousing, wholesale or retail stores, or other) to be conducted at site.

corporate office- home health care division

- B. List primary 4 digit NAICS# 4461
Business may list other relevant NAICS numbers. _____

- C. If a consolidation, what are the components of the consolidation? (must itemize the location, assets, and employment positions to be transferred) (please feel free to attach additional sheets identifying the above).

Acquisition of Home Health Care Company- relocation of 25 employees

- D. Form of business of enterprise (corporation, partnership, proprietorship, or other).

Corporation

3. Name of principal owner(s) or officers of business.

Donald Boodjeh Douglas Boodjeh

John Gans Tom McConnell

4. A. State the enterprise's current employment level at the proposed project site:

276

- B. Will the project involve the relocation of employment positions or assets from one Ohio location to another?

Yes X No

- C. If yes, state the locations from which employment positions or assets will be relocated and the location to where the employment positions or assets will be located:

Locations from: 15210 Industrial Parkway Cleveland Ohio 44135
4120 Shuffel Street NW North Canton Ohio 44720

Location to: 211 Commerce Drive Medina Ohio 44256

- D. State the enterprise's current employment level in Ohio (itemized for full and part-time and permanent and temporary employees):

1,777 full time permanent

1,614 part time permanent

185 part time seasonal

8 temporary

E. State the enterprise's current employment level for each facility to be affected by the relocation of the employment positions or assets:

40

F. What is the projected impact of the relocation, detailing the number and type of employees and/or assets to be relocated?

employees (25 full-time) to relocate to corporate office

no assets to be transferred

5. Does the Property Owner owe:

A. Any delinquent taxes to the State of Ohio or a political subdivision of the state?

Yes No

B. Any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State?

Yes No

C. 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?

Yes No

D. If yes to any of the above, please provide details of each instance including but not limited to the location, amounts and/or case identification numbers (add additional sheets if necessary).

B. Indicate separately the amount of existing annual payroll relating to any job retention claim resulting from the project: \$ 14,672,000.00

10. An estimate of the amount to be invested by the enterprise to establish, expand, renovate or occupy a facility:

A. Acquisition of Buildings:	\$ n/a
B. Additions/New Construction:	\$ n/a
C. Improvements to existing buildings:	\$ 35,000.00
D. Machinery & Equipment:	\$ 145,000.00
E. Furniture & Fixtures:	\$ 95,000.00
F. Inventory:	\$ n/a
TOTAL NEW PROJECT INVESTMENT	\$ 275,000.00

11. Business's reasons for requesting tax incentives (be quantitatively specific as possible)
The acquisition of a home health company is important to our business going forward. Continued growth in medical equipment and being better able to serve
our customers with durable medical equipment is essential to our operations.
The tax incentives associated with the project will allow us to better compete
with the national chain drug stores (e.g. Walgreens, Rite Aid). We are a local
family run business with headquarters and a warehouse in Medina. The Medina
location employs 276 people. We operate 71 store locations throughout Ohio
employing over 3,500 people.

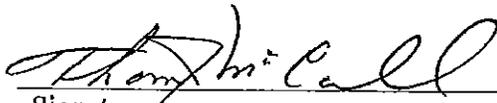
Submission of the application expressly authorizes The City of Medina
(Name of Local Jurisdiction)

to contact the Ohio Environmental Protection Agency to confirm statements contained within this application including item #5 and to review applicable confidential records. As part of this application, the property owner may also be required to directly request from the Ohio Department of Taxation, or complete a waiver form allowing the Department of Taxation to release specific tax records to the local jurisdiction considering the request. The applicant agrees to supply additional information upon request.

The applicant affirmatively covenants that the information contained in and submitted with this application is complete and correct and is aware of the ORC Sections 9.66(C)(1) and 2921.13(D)(1) penalties for falsification which could result in the forfeiture of all current and future economic development assistance benefits as well as a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

Discount Drug Mart, Inc.
Name of Property/Business Owner

6/1/2014
Date


Signature

Tom McConnell
Chief Financial Officer
Typed Name and Title