

**ORDINANCE NO. 128-16**

**AN ORDINANCE AMENDING ORDINANCE NO. 41-15,  
PASSED APRIL 13, 2015, RELATIVE TO THE JOB  
CREATION GRANT AGREEMENT WITH ALLFASTERNERS  
USA, LLC.**

**WHEREAS:** Ordinance No. 41-15, passed April 13, 2015, authorized the Mayor to enter into a Job Creation Grant Agreement with Allfasteners USA, LLC for the company to relocate to the City of Medina at 959 Lake Road and create 25 full-time jobs; and

**WHEREAS:** That during our Job Creation Grant Monitoring, Allfasteners discovered that the annual payroll estimated in the initial application had been miscalculated and have requested that their grant agreement be amended to reflect the annual payroll of \$1,280,000 and 24 full-time positions.

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

**SEC. 1:** That the Job Creation Grant Agreement #JCG-11, authorized in Ordinance No 41-15, passed April 13, 2015, is hereby amended to reflect the annual payroll of \$1,280,000 and 24 full-time positions.

**SEC. 2:** That a copy of the amended agreement is marked Exhibit A, attached hereto and incorporated herein.

**SEC. 3:** 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. 4:** That this Ordinance shall be in full force and effect at the earliest period allowed by law.

**PASSED:** September 26, 2016

**SIGNED:** John M. Coyne, III  
President of Council

**ATTEST:** Kathy Patton  
Clerk of Council

**APPROVED:** September 27, 2016

**SIGNED:** Dennis Hanwell  
Mayor

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.

ORD. 128-16  
Exh. A

EXHIBIT B

GRANT# JCG11

(Administrative Only)

AMENDED 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 Allfasteners USA LLC with its main offices located at 15401 Commerce Park Drive, Brook Park, Ohio 44142 (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, Allfasteners USA LLC is desirous of relocating in the city with the acquisition of a building located at 959 Lake Rd., Medina, Ohio 44256 for the purpose of manufacturing steel plates and structural fabrication and wholesale of fastener products for the cell communications industry and to create 24 new full time employment opportunities (hereinafter sometimes referred to as the "PROJECT") 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 Council of the City of Medina, Ohio by Ordinance No. 194-14 adopted November 24, 2014 new Guidelines and Application for 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 Allfasteners USA LLC with incentives available for the development of the PROJECT; and

WHEREAS, Allfasteners USA LLC 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, Allfasteners USA LLC 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 Allfasteners USA LLC and has recommended the same to Medina City Council on the basis that Allfasteners USA LLC 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. Allfasteners USA LLC shall acquire a building in Medina for the purpose of setting up a new CNC machine to fabricate and machine structural steel plates for the cell communications industry creating 25 new permanent full time positions.

2. Project Investment.

- A. The PROJECT will involve a total investment, plus or minus 10%, by the Property Owner of \$2,300,000(dollars) the PROJECT.
- B. The PROJECT will involve a total investment, plus or minus 10%, by Allfasteners USA LLC as follows:

1. New Machinery and Equipment	\$ 300,000
2. New Furniture & Fixtures	\$ 100,000
3. Land/Building Acquisition	\$1,450,000
4. Construction of facility / improvements	\$ 100,000
5. Inventory	\$ 350,000
<b>TOTAL</b>	<b>\$2,300,000</b>

- C. The project will begin approximately March 2015 and will be completed approximately 2017.

3. Job Creation and Retention.

- A. Allfasteners USA LLC shall create in the City of Medina within a time period not exceeding **36** months after the occupation of the aforesaid facility, the equivalent of **24** new full-time permanent job opportunities in the City of Medina.

- 1) Allfasteners USA LLC's schedule for hiring permanent full time employees is as follows:

<u>Year</u>	<u>Number of Jobs New to Medina</u>
1	16
2	5
3	3

- B. The job creation period begins approximately 2015 and all jobs will be in place by 2017.
- C. The Company currently has 0 employees at the project site. The Company currently has 0 employees in the City of Medina. In total, the Company currently has 14 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 \$ 1,280,000 of additional annual payroll in the City of Medina when the projected maximum employment level is achieved.
- E. The company will maintain its current annual payroll of \$ 1,070,000.

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>
4	<b>\$6,400</b>

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 grant amount in any year shall be **\$8,000.00. (maximum NEW PAYROLL projection x 125% X 1.25% x 40% of grant)**

C. To receive a grant in any given year, **Allfasteners USA LLC** must retain full time permanent jobs existing prior to the Agreement.

(1) If **Allfasteners USA LLC** does not achieve at least 90% of new payroll projections, **Allfasteners USA LLC** 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 **Allfasteners USA LLC** 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 **Allfasteners USA LLC** 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, **Allfasteners USA LLC** 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 3 projections must be met by December 31, 2017. The initial grant payment shall be made by approximately June 30<sup>th</sup>, 2018 (After year 3), provided that **Allfasteners USA LLC** 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 3 projections deadline adjusted accordingly, upon written request by **Allfasteners USA LLC** to the Economic Development Director, provided that the extension is approved by the Economic Development Director with notice to the Business Development Committee.



9. Certification as to Payment of Taxes. **Allfasteners USA LLC** certifies that at the time this Agreement is executed, **Allfasteners USA LLC** 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 **Allfasteners USA LLC** is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or, if such delinquent taxes are owed, **Allfasteners USA LLC** 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 **Allfasteners USA LLC**. 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, **Allfasteners USA LLC** 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 **Allfasteners USA LLC** 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 **Allfasteners USA LLC** in all pertinent respects.
12. Termination or Modification of Incentives.
  - A. If **Allfasteners USA LLC** 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 **Allfasteners USA LLC** 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 **Allfasteners USA LLC** 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 **Allfasteners USA LLC**'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 Allfasteners USA LLC 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 Allfasteners USA LLC 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 Allfasteners USA LLC 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

In the event that Allfasteners USA LLC vacates the Facility and/or moves the Project out of the City of Medina or terminates its operations at the Facility altogether during a 7 (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 Allfasteners USA LLC 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 Allfasteners USA LLC moves the Project out of the City of Medina or terminates its operations at the Facility altogether during the 7 year period beginning on the effective date of this Agreement; or within ten (10) days from the date Allfasteners USA LLC is notified by the City of Medina that any tax certification is fraudulent.

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

and if any of these events affects the ability of Allfasteners USA LLC or its successor entity to perform substantially the obligations of Allfasteners USA LLC under this Agreement and to meet the employment and payroll projections anticipated herein. "Control of Allfasteners USA LLC " 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 Allfasteners USA LLC's board of directors.

- H. Each provision for modification or termination hereunder shall not affect Allfasteners USA LLC 's obligations or the City of Medina's rights under any other provision of this Agreement.
13. Fees. Allfasteners USA LLC shall pay an annual fee of \$ 500 (five hundred dollars) in each year that Allfasteners USA LLC maintains a grant agreement. 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 Allfasteners USA LLC \_\_\_\_\_ to:

Mick Strange  
Allfasteners USA LLC  
15401 Commerce Park Drive  
Brook Park, Ohio 44142

or such other address as may be noticed.

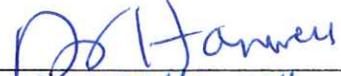
15. Condition Precedent. Allfasteners USA LLC and Medina acknowledge that this Agreement must be approved by formal action of the legislative authority of the City of Medina as a condition for the Agreement to take effect.

IN WITNESS WHEREOF, the City of Medina, Ohio, by Dennis Hanwell, its Mayor, and pursuant to Ordinance No. 154-07 and Allfasteners USA LLC, by Mick Strange its Owner, have caused this instrument to be executed on the 27<sup>th</sup> day of September, 2016

WITNESSED BY:

  
\_\_\_\_\_

CITY OF MEDINA

By:   
Dennis Hanwell  
Title: Mayor 9-27-16

WITNESSED BY:

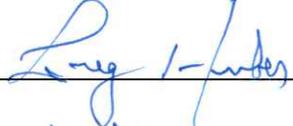
Kimberly Marshall  
\_\_\_\_\_  
Kimberly Marshall  
\_\_\_\_\_

ALLFASTENERS USA LLC

By: Michael Strange  
\_\_\_\_\_  
Title:   
CEO

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

DIRECTOR OF LAW- CITY OF MEDINA

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

Date: 9/28/16  
\_\_\_\_\_