

COUNCIL CHAMBER

City of Berea, Ohio

ORDINANCE No. 2019-9

By Nick Haschka Sponsored By Mayor Cyril M. Kleem

AN ORDINANCE

AUTHORIZING THE MAYOR TO ENTER INTO A JOB CREATION TAX CREDIT AND ENERGY GRANT AGREEMENT WITH VOSS INDUSTRIES, LLC, AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the City of Berea approved Ordinance No. 2010-29 on April 20, 2010, authorizing the Mayor or his designee to negotiate a Job Creation Tax Credit Agreement with businesses located in Berea that create new jobs, or businesses located outside of the City that bring new jobs to Berea; and

WHEREAS, in order to qualify for a Job Creation Tax Credit, a business must create at least five (5) new jobs in the City of Berea and maintain an annual payroll of at least One-Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, a Job Creation Tax Credit can rebate up to 60% (1.2% of the 2%) of the local payroll taxes paid to the City of Berea (hereinafter referred to as "CITY") by a business; and

WHEREAS, any Job Creation Tax Credit and Energy Grant Agreement negotiated by the Mayor or his designee shall not be effective unless approved by Berea City Council; and

WHEREAS, VOSS INDUSTRIES, LLC (hereinafter referred to as "VOSS") is a company that specializes in product development and the manufacturing of aerospace technology, equipment, and parts; and

WHEREAS, VOSS intends to move from their current facility located in another community to the facility located at 1000 West Bagley Road, Berea, Ohio 44017; and

WHEREAS, VOSS will move two hundred sixty-seven (267) existing employees with an annual payroll of approximately Fifteen Million, Five Hundred Thousand Dollars (\$15,500,000) to the West Bagley Road facility; and

WHEREAS, VOSS will create at least fifty-eight (58) additional full-time equivalent jobs with an annual payroll of approximately Two Million Five Hundred Thousand Dollars (\$2,500,000) within three (3) years; and

WHEREAS, in order to assist VOSS with offsetting the substantial cost to upgrade the existing facility, including, but not limited to, upgrading the entire electrical system to accommodate specialty equipment, the City wishes to provide an additional Energy Grant; and

WHEREAS, the CITY has determined that VOSS relocating to Berea is in the public interest and VOSS' performance of the Job Creation Tax Credit and Energy Grant development activities will alleviate physical and economic deterioration, eliminate and/or prevent the recurrence of slum and blight, stimulate economic revitalization, improve the declining tax base and create jobs and employment for CITY residents; and

WHEREAS, VOSS and CITY desire to enter into a Job Creation Tax Credit and Energy Grant Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Berea, State of Ohio:

SECTION 1. That the Mayor is hereby authorized to enter into a Job Creation Tax Credit and Energy Grant Agreement with Voss Industries, LLC in substantially the same form of the Agreement attached hereto as Exhibit "A" and incorporated herein.

SECTION 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

COUNCIL CHAMBER

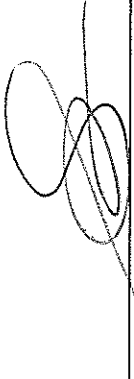
City of Berea, Ohio

ORDINANCE No. 2019-9

By H. Kaschka Sponsored By Mayor Kleem


SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare, or providing for the usual daily operation of a municipal department and for the further reason that said Agreement must be in place before improvements on the property may begin and the improvements are ready to immediately commence upon such approval thereby enhancing business expansion and creating jobs. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise, from and after the earliest period allowed by law.

PASSED: February 19, 2019




President of Council

ATTEST: Alyce Egan
Clerk of Council

APPROVED: February 21, 2019


Mayor

Approved as to form:



Director of Law

Exhibit
"A"

JOB CREATION TAX CREDIT AND ENERGY GRANT AGREEMENT

Between

THE CITY OF BEREA

and

VOSS INDUSTRIES, LLC

This City of Berea Job Creation Tax Credit And Energy Grant Agreement (Agreement") is made and entered into as of ~~February 21~~, 2019 between the CITY OF BEREA, OHIO, ("City" or "Grantor"), a municipal corporation and political subdivision duly organized and validly existing under the Constitution and laws of the State of Ohio, by and through its Mayor, under the authority of Ordinance No. ~~2011-9~~ passed by City Council on ~~February 19~~, 2019 all attached as Exhibit A, and Voss Industries, LLC ("Grantee"), a for-profit corporation to be located at 1000 W. Bagley Road, Berea, Ohio 44017 ("Project Site") organized under the laws of the State of Ohio, by and through its duly authorized officer.

RECITALS:

- A. Grantee has applied for a Job Creation Tax Credit and Energy Grant to assist the grantee with offsetting the cost of upgrading the electrical system and building to accommodate specialty equipment; and
- B. City has determined that the Project, as defined in Section 1.01 in this Agreement, is in the public interest and that Grantee's performance of the Job Creation Tax Credit and Energy Grant development activities will alleviate physical and economic deterioration, eliminate and/or prevent the recurrence of slum and blight, stimulate economic revitalization, improve the declining tax base and create jobs and employment for City residents, positive factors and in the best interest of the City; and

THEREFORE, for and in consideration of the promises and mutual obligations set forth below, the City and Grantee agree as follows:

ARTICLE I - UTILITY GRANT PROJECT

SECTION 1.01 Utility Grant Project

Grantee shall accept funds to be used for offsetting the cost of upgrading the electrical system and building to accommodate specialty equipment. Grantee will create over the next three (3) years at least Three Hundred Twenty Five (325) full-time equivalent jobs in the City of Berea or an annual payroll of at least Seventeen Million Dollars (\$17,000,000). Grantee shall incur all costs for acquisition of building located at 1000 W. Bagley Road, Berea, Ohio 44017 (the "Property").

SECTION 1.02 Sources and Uses of Funds For The Project

The total cost of the activities making up the Project is \$5,300,000.00 as defined on attached Exhibit C and shall be partially financed by a Job Creation Tax Credit and Energy Grant in accordance with Article II of this Agreement ("Utility Grant or Funds").

SECTION 1.03 Grantee Job Requirements

A. Job Creation: Grantee will create at least Three Hundred Twenty Five (325) jobs in the City of Berea or a payroll of at least \$17 million within Three (3) Years of the move in date of Jan 1, 2020.

SECTION 1.04 Timetable for Project Activities

Grantee shall perform the Project in accordance with the following schedule:

<u>Activity</u>	<u>Commencement Date</u>	<u>Completion Date</u>
Buildings Renovations	Contract Closing	3 Years after Move-in to Property is Completed
Job Creation	Contract Closing	3 Years after Move-in to Property is Completed
Job Retention	Contract Closing	3 Years after Move-in to Property is Completed

SECTION 1.05 Guarantee of Completion and Repayment

Grantee guarantees timely completion of the Project in accordance with Section 1.04.

SECTION 1.06 Closing Requirements

Prior to execution of the contract with the City of Berea, the Grantee shall provide the following applicable documentation to the City for its review and approval:

- A. Pre-closing Documents - Required 24 hours prior to contract execution
 - 1) A document evidencing the Grantee's federal tax identification number from the Internal Revenue Service; and
 - 2) Any other certificates, documents and instruments required by the City in forms satisfactory to the City's attorneys that are reasonably necessary to support this transaction; and
 - 3) \$75 Application Fee payable to the City of Berea.

B. Documents Required at Closing:

- 1) One original and three duplicate original of this Agreement executed by Grantee and Mayor, and approved by City of Berea's Department of Law authorizing a Utility Grant to Grantee.

ARTICLE II

UTILITY GRANT

SECTION 2.01 Utility Grant

Subject to the terms and conditions of this Agreement, the City agrees to give Grantee Five Hundred Sixty-One Thousand Dollar (\$561,000.00); payable over ten (10) years, as follows:

Upon submission of costs in 2019	\$100,000
2020	\$47,000
2021	\$46,000
2022	\$46,000
2023	\$46,000
2024	\$46,000
2025	\$46,000
2026	\$46,000
2027	\$46,000
2028	\$46,000
2029	\$46,000
Total	\$561,000

SECTION 2.02 Conditions of Forgiveness

- A. Grantee's obligation to repay the Funds shall be released provided that Grantee has sought and received written confirmation from the Mayor or his designee, three (3) years from the date of Grantee's final move-in to the Property, but no later than December 31, 2023, that all of the following conditions exist (collectively "Conditions"):
- (1) The Grantee is not in default of any requirement as set forth in this Agreement; and
 - (2) The Grantee has performed the Project in accordance with the schedule as set forth in Section 1.04;
 - (3) That evidence of project completion, to the satisfaction of the Mayor or his designee, is received within 30 (thirty) days of the project completion date.
 - (4) That Grantee's is in compliance with the Job Requirements as set forth in Section 1.03.

SECTION 2.03 Disbursement of Utility Grant

A. Requirements Prior to a Request for Disbursement:

The Utility Grant funds shall not be disbursed until Grantee has submitted to the City, and the same has been accepted and approved by the City, any certificates, documents and instruments required by this Agreement or the Utility Grant Documents in forms satisfactory to the City and its attorneys.

B. Requests for Disbursement:

Upon the closing of this Agreement, and upon the City's receipt of Exhibits B-1, B-2 and B-3, the City shall disburse the requested funds to the Grantee. Within thirty (30) days of certification and disbursement of grant funds, Grantee shall submit proof of payment to the City of Berea disbursement and no later than 30 days from the project completion date eligible project cost, of documentation demonstrating that Grantee has incurred all eligible Project costs conforming to Exhibit C, together with copies of supporting documentation of invoices and cancelled checks and any other forms of documentation.

C. City to Disburse Funds to Grantee:

Upon receipt of the above information, documents and any other requirement described in this Agreement, the City shall disburse Utility Grant funds.

D. Disbursement Checks:

The disbursement check shall be made payable to the Grantee and shall be mailed to the following address until otherwise specified in writing by Grantee to:

Voss Industries, LLC
2186 W. 25th St.
Cleveland, OH 44113

SECTION 2.04 Post-Closing Requirements

Grantee shall provide to the City an annual job creation report during the Job Creation period as designated in Section 1.04 of this Agreement. Within thirty (30) days of the project completion date, Grantee shall provide evidence satisfactory to the City of project costs as reflected within Exhibit C.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

SECTION 3.01 Organization

Grantee is a Limited Liability Corporation, validly existing, and in good standing under the laws of the State of Ohio and has power to carry on its business as it is presently being conducted, to enter into and observe the provisions of the Agreement.

SECTION 3.02 Authorization

Grantee's entering into and performance of this Agreement and the execution and delivery of all of the documents, forms, and information required by this Agreement (collectively, "Utility Grant Documents") have been duly authorized by all necessary corporate action and shall not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect and having applicability to Grantee or any provision of Grantee's Articles of Incorporation, Regulations or By-Laws, or result in a breach of or constitute a default under any indenture, bank Utility Grant, credit agreement or any other agreement or instrument to which Grantee is a party or by which it or its property may be bound or affected.

SECTION 3.03 Enforceability

When this Agreement is executed by both Grantee and the City, certified by the City's Director of Finance and approved by the City's Director of Law, and when the Utility Grant Documents are executed and delivered by Grantee for value, each such instrument shall constitute the legal, valid, and binding obligation of the Grantee in accordance with its terms.

SECTION 3.04 Litigation

There are no legal actions, suits, or proceedings pending, or, to the knowledge of Grantee, threatened against Grantee before any court or arbitrator, or administrative agency, which, if determined adversely to Grantee, would have an adverse effect on the financial condition or businesses of Grantee which have not been disclosed to the City.

SECTION 3.05 Absence of Default

Grantee is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.

SECTION 3.06 Tax Returns and Payments

Grantee has filed all required tax returns and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments levied against Grantee or its personal or real property by any federal, state or local taxing agency. Neither the Internal Revenue Service, nor any other taxing agency (federal, state or local), has asserted any tax liability against Grantee for taxes materially in

excess of those already provided for, and Grantee knows of no basis for any such deficiency assessment.

SECTION 3.07 **NO ADVERSE CHANGE**

Since the date of application for the Utility Grant, there has been no adverse change in the financial condition, organization, operation, business prospects, fixed assets or personnel of Grantee.

SECTION 3.08 **MATERIAL FACTS**

No representation or warranty contained or made in this Agreement and no certificate, schedule or other document furnished or to be furnished in connection with this Agreement contains or will contain a misstatement of material fact or omits or will omit a material fact required to be stated herein or therein.

SECTION 3.09 **PROHIBITION OF CONFLICT OF INTEREST**

No individual who is an employee, officer, agent, or consultant of the City, and no elected public official, member of City Council or appointed City public official, who exercises or has exercised any functions or responsibilities with respect to any activities that are connected with this Project or who is in a position to participate in a decision-making process or to gain inside information with regard to the Project, may obtain a personal or financial interest or benefit from the Project.

Also, the aforementioned individuals may not have a financial interest in any contract, subcontract, or agreement with respect to the Project or the Funds, either for themselves or for those with whom they have family or business ties. The above restrictions shall apply to all activities comprising the Project, and shall cover any such interest or benefit during, or at any time after, such person's tenure and for one year thereafter.

SECTION 3.10 **PERFORMANCE OF OTHER CONTRACTS WITH THE CITY**

Grantee and its subsidiaries shall perform all other contracts they may have with the City in a timely and workmanlike manner.

ARTICLE IV

CONDITIONS OF UTILITY GRANT

The obligation of the City to make the Utility Grant shall be subject to the fulfillment to the City's satisfaction on the Closing Date of each of the following requirements set forth in this Article.

SECTION 4.01 **GOVERNMENTAL APPROVAL**

Grantee shall secure all approvals, permits and consents of governmental bodies having jurisdiction with respect to any Project activities.

SECTION 4.02 APPROVAL OF OTHERS

Grantee shall secure all necessary approvals and consents required with respect to this transaction by any creditor or other party having any financial interest in Grantee or its operations.

SECTION 4.03 INCUMBENCY CERTIFICATE

The City may conclusively rely upon Grantee's organizational documents until it receives a new organizational document from Grantee's organizational documents until it receives a new organizational document from Grantee's Secretary canceling or amending the prior organizational documents and submitting the signatures of the officers named in, and/or authorized pursuant to, such new organizational documents.

SECTION 4.04 CERTIFICATE OF NO EVENT OF DEFAULT AND REPRESENTATIONS AND WARRANTIES

There shall exist as of the Closing Date no event or condition that constitutes an Event of Default as defined in Article VII, or that, after notice or lapse of time or both, would constitute such an Event of Default and no such event shall occur as a result of such borrowing. The representations and warranties contained in this agreement shall be true and correct as of the Closing Date.

ARTICLE V

AFFIRMATIVE COVENANTS

Grantee shall comply with the following covenants if applicable.

SECTION 5.01 MAINTAIN EXISTENCE

Grantee agrees to maintain its legal existence, rights, privileges, and franchises within the City of Berea in full force and effect.

SECTION 5.02 INFORMATION

Grantee shall keep and maintain records, books of account and other documents relating directly to all matters covered by this Agreement, including its receipt and disbursement of Recoverable Grant Funds, in which complete entries will be made reflecting all of its business and financial transactions, and such entries to be made in accordance with generally accepted accounting principles consistently applied. Grantee shall provide statements, records, data and information, and execute and deliver any and all additional documents as may be reasonably requested by the City or its attorneys.

SECTION 5.03 DISCLOSURE OF DOCUMENTS

All of the records, information, data, reports, etc., prepared or assembled by Grantee under this Agreement are confidential and Grantee does covenant and does agree that those

items shall not be made available to any individual or organization, other than an agency of the United States Government, without the prior written approval of the City. Disclosure of documents, which are in the possession of the City, shall be governed by the applicable federal, state and local laws.

THE CITY SHALL CONSIDER ALL INFORMATION PROVIDED BY GRANTEE UNDER THIS SECTION TO BE A PUBLIC RECORD ABSENT CLEAR EVIDENCE THAT THE INFORMATION SUBMITTED IS NOT TO BE RELEASED, PURSUANT TO OHIO REVISED CODE §149.43.

SECTION 5.04 INSPECTION

Grantee shall permit the City or any other appropriate governmental official at all reasonable hours, upon reasonable notice and as often as reasonably requested, to: (i) inspect Grantee's books of account (and to make copies of and/or extracts therefrom); and (ii) discuss with Grantee's agents and employees Grantee's affairs, employment and contracting goals, finances, accounts and its compliance with the terms of this Agreement. Grantee shall provide the City statements, records, and data, and free access and entry to any portion of Grantee's premises for the purposes of such inspections and discussions until the terms of the Agreement have been complied with and fulfilled.

SECTION 5.05 NOTICE OF DEFAULT

Grantee shall provide written notice to the City within ten days of any event that constitutes an Event of Default, as defined in Article VII, or that would, with notice or lapse of time or both, constitute an Event of Default under any of the Utility Grant Documents.

SECTION 5.06 INDEMNIFICATION

Grantee shall be fully responsible and shall indemnify, defend, and hold harmless the City, its officials, employees and agents against all liability, claims, demands, losses, damages, delays and costs arising from any act or omission by or negligence of Grantee and its officers, agents, employees, contractors, and subcontractors, and any of their officers, agents, employees, and subcontractors, while engaging in the performance of this Agreement; including, without limitation, any and all claims, actions, fines, penalties, costs and liabilities, including reasonable attorneys' fees, incurred in connection with the investigation, remediation, removal, response, abatement, disposal, containment, closure, restoration or monitoring of any "hazardous substances" or "hazardous materials" (as those terms are defined in federal and site environmental laws) or underground storage tanks. Also, no member, official or employee of the City or of its agents or contractors shall be personally liable to Grantee in the event of any default or breach of the Agreement by the City.

SECTION 5.07 EXPENSE OF COLLECTION OR ENFORCEMENT

In the event Grantee defaults on any provision or obligation contained in the Utility Grant Documents, Grantee shall pay the City an amount equal to the City's costs and expenses of collection, enforcement or correction of such default in addition to any other amounts that may be due from Grantee on the Utility Grant.

SECTION 5.08 **EQUAL EMPLOYMENT OPPORTUNITY AND MBE/FBE PARTICIPATION (If Applicable)**

The Grantee, its officers, agents, employees and any other persons over whom the Grantee has control shall comply with all present and future laws and ordinances of the City, Federal, State and other local governmental bodies, applicable to or affecting directly or indirectly the Grantee or its operations and activities on or in connection with the Project, including but not limited to:

ARTICLE VI

NEGATIVE COVENANTS

Unless the City otherwise consents in writing, Grantee from the Effective Date until full disbursement of Utility Grant, shall not (i) act or fail to act; (ii) enter into any agreement; or (iii) make any commitment, which the performance of or failure of performance would constitute a breach of any of the covenants contained in the Utility Grant Documents including, but not limited to, the following covenants in this Article VI.

SECTION 6.01 **[NOT USED]**

SECTION 6.02 **[NOT USED]**

SECTION 6.03 **ABSENCE OF RELATIONSHIPS**

The execution and delivery of the Agreement, the receipt by Grantee of the Recoverable Grant and the performance by Grantee of its obligations under the Utility Grant Documents shall not be deemed to create any relationship between Grantee and the City as a third-party beneficiary, partner, joint venturer, shareholder, agent, principal or otherwise. The City is in no way lending its aid and credit to Grantee. Grantee shall make no representation or statement to any party to such effect.

SECTION 6.04 **POLITICAL ACTIVITY PROHIBITED**

The Funds, materials, property, or services provided directly or indirectly under this Agreement shall not be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

SECTION 6.05 **LOBBYING PROHIBITED**

The Funds provided under this Agreement shall not be used for publicity or propaganda designated to support or defeat legislation pending before Congress.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01 EVENTS OF DEFAULT

This Article shall apply until the completion of the Project per the schedule listed in Section 1.04. The repayment of all Funds received plus any penalties or fees shall become immediately due and payable upon the written demand of the City, without any other notice or demand of any kind of presentment or protest, if any one of the following events ("Event of Default") occurs and is continuing at the time of such demand, whether it is voluntarily or involuntarily or, without limitation, occurring or brought about by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body:

- A. **Voluntary Insolvency** -- if Grantee becomes insolvent or ceases to pay its debts as they mature or voluntarily files a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidator for Grantee or a substantial portion of its assets to effect a plan or other arrangement with creditors, or is adjudicated bankrupt, or makes a voluntary assignment for the benefit of creditors;

- B. **Involuntary Insolvency** -- if an involuntary petition is filed against Grantee under any bankruptcy, insolvency or similar law seeking the reorganization of or the appointment of any receiver, trustee or liquidator for Grantee, or of a substantial part of the property of Grantee, or a writ or warrant of attachment or similar process is issued against a substantial part of the property of Grantee, and such petition is not dismissed, or such writ or warrant of attachment or similar process is not released or bonded within 30 days after the filing or levy;

- C. **Incorrect Representations or Warranties** -- if any representation or warranty contained in or made in connection with the execution and delivery of this Agreement or in any certificate furnished pursuant hereto shall prove to have been incorrect or untrue in any material respect when made;

- D. **Default in Covenants** -- if Grantee defaults in the performance of any other term, covenant or agreement contained in the Recoverable Grant Documents and such default shall continue unremedied for 30 days after the earlier of either: (1) the default becomes known to an executive officer of Grantee; or (2) written notice thereof was given to Grantee by the City;

- E. **Grantee Relocation** -- if Grantee relocates its operations outside of the City of Berea or closes all or a portion of its operations prior to December 31, 2023

SECTION 7.02 REMEDIES

In addition to the City's rights as provided elsewhere in this Agreement, if Grantee defaults and fails to cure as set forth in Section 7.01 of this Agreement within 180 days after receiving written notice of default, then the City shall have the right to exercise concurrently or successively any one or more of the following rights or remedies:

- A. Wholly or partially terminate this Agreement and the rights given to Grantee in it;
- B. Temporarily or permanently withhold or reduce funds not yet paid;
- C. Recover funds previously paid to Grantee;
- D. Disallow all or part of the cost of a noncompliant activity;
- E. Wholly or partially suspend the Agreement; and
- F. Exercise all additional rights the City may have in law or equity.

Termination pursuant to clause A., above, shall be effective five days after the date the City has given written notice to Grantee of such termination. If the City chooses any of the other remedies outlined, that remedy is effective immediately upon default of any of the obligations pursuant to this Agreement.

In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by Grantee under this Agreement, at the option of the City, shall become the property of the City and Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents; provided, however, that such compensation may be reduced in the event the City determines that any money owed the City by Grantee has not been paid.

ARTICLE VIII

JOB CREATION TAX CREDIT AGREEMENT

SECTION 8.01 CONDITIONS

The followings are the terms and conditions of the Job Creation Tax Credit Agreement between VOSS and CITY.

1. Starting with the third financial quarter of 2019 and ending in the third financial quarter of 2029, VOSS will receive a rebate in the amount equivalent to 60% (1.2% of the 2%) of the local payroll taxes paid to the CITY by the employees of VOSS.
2. All rebates shall be issued to VOSS quarterly based upon the payroll amount paid to the CITY through the Regional Income Tax Agency (hereinafter referred to as "RITA"), or any subsequent entity that collects local payroll tax for CITY, following receipt of said payroll taxes by the CITY from RITA or any subsequent local payroll collecting entity.
3. Rebates shall be issued to VOSS no later than 90 days following the conclusion of the financial quarter.
4. The continuance of this Job Credit-Energy Grant Agreement is conditioned upon VOSS maintaining at least two hundred (200) jobs or an annual payroll of at least \$11,000,000.00. If the annual payroll falls below \$11,000,000.00 for any given year, the CITY may revoke this Job Credit-Energy Grant Agreement.
5. This Job Credit-Energy Grant Agreement is not assignable except with the approval of the City, which shall not be unreasonably withheld, conditioned or delayed. Grantee shall have the right to assign this Agreement to any entity that purchases all or substantially all of Grantee's assets located at the Property provided that (a) such purchaser agree in writing to assume all of the obligations of Grantee under this Agreement and (b) a copy of the written assignment and assumption of this Agreement is delivered to the City.
6. There shall be no requirement that rebate dollars be returned, should VOSS fail to satisfy either of the job or payroll minimums established in Section 4 of this Job Credit-Energy Grant Agreement.
7. This Job Credit-Energy Grant Agreement is subject to approval by Berea City Council.
8. This Job Credit-Energy Grant Agreement shall be reviewed annually by the Berea Board of Income Tax Review to evaluate compliance with the terms of this Job Credit-Energy Grant Agreement and to recommend either continuance or termination of this agreement, to Berea City Council, who shall make the final determination.

9. VOSS agrees to comply with the City of Berea Zoning Code, Exterior Maintenance Code; Rubbish Regulations and all other applicable laws.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01 WAIVER OF NOTICE

The City's failure or delay in exercising any right, power or remedy hereunder shall not operate as a waiver thereof. Also, the City's single or partial exercise of any such right, power or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

In addition, no modification or waiver of any provision of the Utility Grant Documents, nor any consent to any departure by Grantee, shall in any event be effective or established by a court, custom or course of dealing unless the same is in writing and executed by Grantee and the City. Further, such waiver or consent shall be effective only for the specific purpose for which it was given or limited to the particular breach so waived. Moreover, notice to or demand on Grantee in one instance shall not entitle Grantee to any other further notice or demand in other circumstance.

SECTION 9.02 ENTIRE AGREEMENT, AMENDMENTS, WAIVERS

This Agreement embodies the entire agreement and understanding between the City and Grantee and supersedes all prior agreements and understandings relating to the subject matter hereof. Grantee and the City expressly reserve all rights to amend or consent to or waive departure from any provisions of the Utility Grant Documents; provided, however, that Grantee must receive the prior written approval of the City, or City Council if applicable, and that all such amendments shall be in writing and executed by the City and Grantee.

SECTION 9.03 NOTICES AND COMMUNICATIONS

All notices, consents, requests, demands and other communications required hereunder shall be in writing and shall be deemed to have been duly given to a party hereto if mailed by certified mail, prepaid:

by Grantee to the City at:

Attn: Director Matt Madzy
City of Berea
Department of Economic Development
11 Berea Commons
Berea, Ohio 44017

and at:

Attn: Director Barbara L. Jones
City of Berea
Department of Law

11 Berea Commons
Berea, Ohio 44017

by the City to Grantee at:

[Prior to Move-in at the Property]

Voss Industries, LLC
2186 W. 25th St.
Cleveland, OH 44113
Attn: President James Callan

[After Move-in at the Property]

Voss Industries, LLC
1000 W. Bagley Road
Berea, Ohio 44017
Attn: President James Callan

SECTION 9.04 SURVIVAL OF REPRESENTATIONS AND WARRANTIES

All agreements, representations and warranties made by Grantee in connection with the Utility Grant or the Utility Grant Documents shall survive the delivery of the Utility Grant Documents and shall continue in full force and effect so long as there are funds to disburse.

SECTION 9.05 SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of Grantee and the City. When used herein, the terms "Grantee" and "City" shall include any successors and permitted assignees or any entity designated by either party to carry out the obligations of the party regarding the Project.

SECTION 9.06 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

SECTION 9.07 ARTICLE AND SECTION HEADINGS

Article and section headings are for convenience only and shall not affect the interpretation of this Agreement.

SECTION 9.08 PROHIBITION AGAINST ASSIGNS

Intentionally deleted

SECTION 9.09 SEVERABILITY

In the event that any provisions of the Utility Grant Documents or the application thereof is declared null and void, invalid or illegal, or is held for any reason to be unenforceable by a court of competent jurisdiction, the remainder of each of the Utility Grant Documents shall remain in full force and effect and shall not be in any way effected, impaired or invalidated by those provisions. All covenants, conditions and agreements contained in the Utility Grant Documents are deemed and agreed to be separate.

SECTION 9.10 CITY APPROVALS

Any provision of this Agreement requiring the approval or consent of the City, shall be interpreted as requiring written action by the Director of Economic Development and City Council, if applicable, authorizing or expressing such approval or consent, unless such provision expressly provides otherwise.

SECTION 9.12 CHOICE OF LAW

This Agreement shall be deemed to have been executed and delivered within the State of Ohio, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Ohio without regard to principles of conflicts of laws.

AFTER DUE AUTHORIZATION, the parties have each caused this Agreement to be duly executed as of the day of and year first written above.

CITY OF BEREA

By: _____

MAYOR

Date: _____

By: _____

PRESIDENT

Date: _____

Legal form and correctness
of this instrument is approved.

Director of Law

By: _____

Assistant Director of Law

EXHIBIT A
Ordinance No. _____

EXHIBIT B-1

UTILITY GRANT DISBURSEMENT REQUEST FORM

Under the Utility Grant Agreement by and between the CITY OF BEREA, OHIO (the "City") and VOSS INDUSTRIES, LLC ("Grantee"), the undersigned hereby requests, on behalf of Grantee, the payment to the _____ of that amount from the Utility Grant (as defined in the Utility Grant Agreement) shown below, that amount shall be applied to the cost of the Project as equity as defined in the Utility Grant Agreement.

In connection with the foregoing request, the undersigned hereby certifies on behalf of Grantee that:

Grantee will have expended and/or incurred costs within 30 days in the aggregate amount of \$ _____ on the Project, as evidenced by copies of the invoices and canceled checks (or other documentation acceptable to the City) attached hereto. Grantee requests disbursement of \$ _____ of Funds.

By: _____

Date: _____

EXHIBIT B-2

SCHEDULE OF DOCUMENTATION

Adequate documentation of expenditures shall be provided by Grantee to the City. The documentation shall consist of invoices for the Project. The invoices* shall contain the following: The subcontractor's or vendor's name and address, the job name and location, a detailed description of work performed or material purchased (date, quantity, etc.), and a detailed itemization of costs incurred, including extensions. The invoices should be prenumbered, and show the date of payment. A copy of the canceled check or cash receipt shall be attached to the appropriate invoice and submitted with a schedule incorporating the following format:

<u>EXPENSE</u> <u>LINE</u> <u>ITEM</u>	<u>VENDOR</u> <u>SUBCONTRACTOR'S</u> <u>NAME</u>	<u>DATE</u>
	<u>CHECK#</u>	<u>AMOUNT</u>

* In the case where direct labor is being used, time cards with similar detail should be provided.

EXHIBIT B-3

CREDIT COMPLIANCE CERTIFICATION

The undersigned, under the Utility Grant Agreement dated _____, 2019 by and between VOSS INDUSTRIES, LLC and the CITY OF BEREA ("City"), certifies that:

- (a) All prior draw requests under the Utility Grant Agreement have been fully disbursed, as approved by the City; and
- (b) Evidence of cash disbursements, in accordance with Section 2.05, Disbursement of Utility Grant of the Agreement, evidencing disbursement of the funds received from the City under the Utility Grant Agreement within three days of receipt for all prior draw requests, are attached hereto or have been forwarded to and accepted by the City; and
- (c) Funds received by Grantee under the draw request accompanying this certification shall be disbursed by Grantee within three days of receipt.

I have set my hand this _____ day of _____, **2019**.

By: _____

Date: _____

Exhibit C

Construction	\$2,405,000
Utility and to support new equipment	\$500,000
Equipment	\$1,495,000
Moving costs	\$900,000
Total Project Costs	\$5,300,000

EXHIBIT D

RESOLUTION OF MEMBERS
