

## **ECONOMIC DEVELOPMENT AND PERFORMANCE AGREEMENT BETWEEN THE MANSFIELD ECONOMIC DEVELOPMENT CORPORATION AND BWAY CORPORATION**

This Economic Development Agreement ("Agreement") is made and entered into by and between the MANSFIELD ECONOMIC DEVELOPMENT CORPORATION (the "Corporation"), a nonprofit corporation organized under Title 12, Subtitle C1, of the Texas Local Government Code (the "Act"), and BWAY CORPORATION ("Bway"), a Delaware Corporation, for the purposes and considerations stated below:

### **RECITALS:**

1. Bway is the current lessee of property located at 1500 E. Dallas St., Mansfield, Texas 76063, within the corporate limits of the City of Mansfield ("City") (hereafter referred to as the "Property").

2. Bway intends to make a capital investment in the Property of at least Eight Hundred Seventy Thousand Dollars (\$870,000.00) to convert an existing warehouse into a manufacturing facility on the Property with a total capital expenditure of Three Million, Eight Hundred Seventy-Nine Thousand Dollars (\$3,879,000.00), which will result in the creation of additional Primary Jobs at the Property.

3. The Corporation has determined and found that the requested grant will be used to fund a "project" as defined in Section 501.101 of the Act; specifically, that the expenditure of the Corporation will be used for land, buildings and improvements that are for the creation of primary jobs and that are required or suitable for the development, retention or expansion of a manufacturing and industrial facility.

4. The Corporation, which has determined that substantial economic benefit and the creation of new opportunities of employment will accrue to the City as a result of Bway's capital investment in the Property, desires to have Bway make the capital investment in the Property. This project will increase the taxable value of the Property and will directly result in the creation of Primary Jobs on the Property and will indirectly result in the creation of additional jobs throughout the City. As a consequence, the value of the benefits of the Project (as defined herein) will substantially outweigh the amount of expenditures required of the Corporation under this Agreement.

5. The Corporation, to encourage the development and operation of the Property and to obtain the benefits stated in this Agreement, desires to participate in the funding of the cost of certain improvements (hereinafter defined) which are necessary in order for Bway to make the capital investment in the Property and to operate the Facility as hereinafter set forth, which will aid and promote economic development in the City.

NOW THEREFORE, in consideration of the mutual benefits and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Authorization.**

This Agreement is authorized by the Act.

2. **Definitions.**

CAPITAL INVESTMENT means the actual cost incurred related to the conversion of the Facility, including the actual construction costs of all buildings, renovations, site preparation, structures, infrastructure, utilities, landscaping and onsite improvements, including labor and materials, engineering costs, surveying costs, fees of consultants, permit and inspection fees, and business personal property located on the Property after the date of this Agreement that is subject to ad valorem taxes. It does not include insurance costs, marketing costs or any interest paid to finance the cost of Capital Investment.

CERTIFICATE OF OCCUPANCY means the document issued by the City of Mansfield for the Facility certifying the building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupying.

CITY means the City of Mansfield, Texas.

FACILITY means an approximately 13,500 square foot warehouse that Bway will convert into a manufacturing facility, for its use.

FTE means any employee on a forty (40) hour or more per week schedule or the combination of two (2) or more employees on part-time schedules equaling at least forty (40) hours without regard to whether individuals in those positions are the same as those in previous counts.

PRIMARY JOBS means FTE's performing the type of jobs defined in Section 501.002 of the Texas Local Government Code.

PROJECT means the reimbursement by the Corporation to Bway of up to Two Hundred Twenty Thousand Dollars (\$220,000.00) toward the cost of the Reimbursable Improvement Costs.

PROPERTY has the meaning set forth in the Recitals.

REIMBURSABLE IMPROVEMENT COSTS means the costs for a fire suppression system and electrical upgrade for the Facility incurred in conjunction with the conversion of the Facility.

**3. Term.**

This Agreement shall be effective as of the date of execution of all parties. The term of this Agreement will commence on the date that a Certificate of Occupancy is issued for the Facility and will continue to be in force and effect for a term of five (5) years from such date.

**4. Covenants of Bway.**

a. In consideration of Corporation agreeing to reimburse Bway monies in accordance with the terms and conditions of this Agreement, Bway agrees to:

- (1) Make a total Capital Investment in the Facility on or before January 31, 2018 in an amount of no less than Three Million Eight Hundred Seventy Nine Thousand Dollars (\$3,879,000.00), with at least Eight Hundred Seventy Thousand Dollars (\$870,000.00) spent on the conversion of the Facility;
- (2) Obtain a Certificate of Occupancy for the Facility no later than January 31, 2018;
- (3) Create a minimum of eight (8) Primary Jobs by January 31, 2018 and retain them for the Term of this Agreement;
- (4) Render the Property and the Facility to the Tarrant County Appraisal District and remain current on all ad valorem taxes for the Term of this Agreement;
- (5) Provide documentation for the Capital Investment and Reimbursable Improvement Costs in a manner acceptable to the City; and
- (6) Operate the Facility as a manufacturing business for the term of this Agreement.

b. Should Bway fail to comply with any term of this Agreement, Bway shall have thirty (30) days after written notice from the Corporation to come into compliance. If the noncompliance is not cured within that period, or an agreement on a time frame to come into compliance is not reached with the Corporation, Bway will forfeit its right to reimbursement by the Corporation. In the event Bway's uncured noncompliance occurs after a grant of funds is received, Bway shall immediately upon demand repay the Corporation an amount equal to the grant of funds received by Bway under this Agreement plus ten percent (10%) interest per annum which shall accrue from the date of default until the date the debt is repaid in full.

c. Bway covenants and certifies that it does not and will not knowingly employ an undocumented worker as that term is defined by Section 2264.01(4) of the Texas Government Code. In accordance with Section 2265.052 of the Texas Government Code, if Bway is convicted of a violation under 8 U.S.C. Section 1324a (f), Bway shall repay to the Corporation the full amount of all payments made under Section 5 of this Agreement, plus ten percent (10%) interest per annum from the date such payment was made until the date of full repayment. Repayment shall be paid within one hundred twenty (120) days after the date Bway receives a notice of violation from the Corporation.

**5. Payments by Corporation.**

Provided Bway is in compliance with each term of this Agreement, the Corporation shall reimburse Bway for the cost of the Reimbursable Improvement Costs, not to exceed Two Hundred Twenty Thousand Dollars (\$220,000.00) to be paid to Bway, subject to demonstration by Bway of proof of costs equaling or exceeding such sum. Corporation shall pay the reimbursement to Bway within 30 days of receipt of proof of costs.

**6. Improvements.**

Bway shall be solely responsible for the design of the Facility and shall comply with all building codes and other ordinances of the City applicable to the Reimbursable Improvement Costs.

**7. Indemnification.**

BWAY, IN PERFORMING THE OBLIGATIONS UNDER THIS AGREEMENT, IS ACTING INDEPENDENTLY, AND THE CORPORATION ASSUMES NO RESPONSIBILITIES OR LIABILITIES TO THIRD PARTIES IN CONNECTION WITH THE PROPERTY OR IMPROVEMENTS. BWAY AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CORPORATION, ITS OFFICERS, AGENTS, EMPLOYEES, AND VOLUNTEERS IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, CAUSES OF ACTION, AND LIABILITY OF EVERY KIND, INCLUDING, BUT NOT LIMITED TO, EXPENSES OF LITIGATION OR SETTLEMENT, COURT COSTS, AND ATTORNEYS FEES WHICH MAY ARISE DUE TO ANY DEATH OR INJURY TO A PERSON OR THE LOSS OF USE, OR DAMAGE TO PROPERTY, ARISING OUT OF OR OCCURRING AS A CONSEQUENCE OF THE PERFORMANCE BY BWAY OF THE OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING ANY ERRORS OR OMISSIONS, OR NEGLIGENT ACT OR OMISSION OF BWAY, OR THE OFFICERS, AGENTS OR EMPLOYEES.

## **8. Access to Information.**

Bway agrees to provide the Corporation access to information related to the Project during regular business hours upon reasonable notice. The Corporation shall have the right to require Bway to submit any reasonably necessary information, documents, invoices, receipts or other records to verify Bway's compliance with this Agreement.

## **9. General Provisions.**

a. **Mutual Assistance.** Bway and the Corporation shall do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

b. **Representations and Warranties.** Bway represents and warrants to the Corporation that it has the requisite authority to enter into this Agreement. Bway represents and warrants to the Corporation that it will not violate any federal, state or local laws in operating the business, that all proposed Improvements shall conform to the applicable building codes, zoning ordinances and all other ordinances and regulations.

c. **Section or Other Headings.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

d. **Entire Agreement.** This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein.

e. **Amendment.** This Agreement may only be amended, altered, or revoked by written instrument signed by Bway and the Corporation.

f. **Successors and Assigns.** This Agreement shall be binding on and insure to the benefit of the parties, their respective successors and assigns. Bway may assign all or part of its rights and obligations hereunder only upon prior written approval of the Corporation, subject to reasonably satisfactory guaranties are provided to insure compliance with all terms of this Agreement. Upon written approval by Corporation of such assumption, assignment or transfer, Bway shall thereafter be released from its obligations hereunder.

g. **Notice.** Any notice required or permitted to be delivered by this Agreement shall be deemed delivered by depositing same in the United States mail, certified with return receipt requested, postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the parties in writing:

BWAY: Bway Corporation  
1501 E. Dallas St.  
Mansfield, Texas 76063  
Attn: Matthew C. Gifford, \_\_\_\_\_

CORPORATION: Mansfield Economic Development Corporation  
301 South Main Street  
Mansfield, Texas 76063  
Attn: Director

With a copy to: City Attorney  
City of Mansfield  
1200 East Broad Street  
Mansfield, Texas 76063

h. **Interpretation.** Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any party.

i. **Applicable Law/Venue.** This Agreement is made, and shall be construed and interpreted under the laws of the State of Texas; venue for any legal action regarding this Agreement shall lie in Tarrant County, Texas.

j. **Severability.** In the event any provision of this Agreement is ruled illegal, invalid, or unenforceable by any court of proper jurisdiction, under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

k. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

l. **No Joint Venture.** Nothing contained in this Agreement is intended by the parties to create a partnership or joint venture between the parties.

m. **Default.** If a party should default (the "Defaulting Party") with respect to any of its obligations hereunder and should fail, within thirty (30) days after delivery of written notice of such default from the other party (the "Complaining Party") to cure such default, the Complaining Party, by action or proceeding at law or in equity, may be awarded its actual but not consequential damages and/or specific performance for such default.

n. **Covenant Running with the Land.** All rights, covenants, restrictions, burdens, privileges and charges, set forth in this Agreement shall exist at all times as long as this Agreement is in effect, among all parties having any right, title or interest in any portion of all of the Property.

o. **Force Majeure.** If either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder (other than the payment of money) by reason of strikes, lockouts, inability to procure materials, failure of power, governmental moratorium or other governmental action or inaction (including, failure, refusal or delay in issuing permits, approvals or authorizations), injunction or court order, terrorist attacks, riots, insurrection, war, fire, earthquake, flood or other natural disaster or other reason of a like nature not the fault of the party delaying in performing work or doing acts required under the terms of this Agreement (but excluding delays due to financial inability), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided that the foregoing shall not be applicable to any payment obligation of either party under this Agreement.

p. **Attorney's Fees.** In the event it should become necessary to take legal action to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled to recover from the non-prevailing party reasonable attorney's fees and costs of court.

**MANSFIELD ECONOMIC  
DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Larry Klos, Board President

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

ATTEST:

\_\_\_\_\_  
Board Secretary

**BWAY CORPORATION**

By: \_\_\_\_\_  
Matthew C. Gifford, \_\_\_\_\_

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

## ACKNOWLEDGEMENT

BEFORE ME, the undersigned authority, on this date personally appeared Matthew C. Gifford, who after being duly sworn stated that he is the \_\_\_\_\_ of BWAY Corporation, and that he signed the foregoing instrument on behalf of said entity for the purposes expressed therein.

\_\_\_\_\_  
Notary Public, in and for the State of Texas

My commission expires: \_\_\_\_\_

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