CITY OF COFFEYVILLE
BOARD OF COMMISSIONERS AGENDA ITEM

MEETING DATE	8-27-13	
RESOLUTION OR ORDINANCE NUMBER	R-13-72	
AGENDA TITLE	**A RESOLUTION TO AUTHORIZE THE EXECUTION OF AN ECONOMIC DEVELOPMENT INDUCEMENT AGREEMENT WITH M&M ENGINEERED PRODUCTS**	
REQUESTING DEPARTMENT	Administration	
PRESENTER	Gary Bradley, City Manager	
FISCAL INFORMATION	Cost as recommended:	$35,000
	Budget Line Item:	
	Balance Available	
	New Appropriation Required:	[]X Yes [ ] No
PURPOSE	The purpose of this resolution is to authorize the execution of an economic development inducement agreement between the City of Coffeyville and M&M Engineered Products.	
BACKGROUND	M&M's owners reside in rural Montgomery County and formerly operated the business in Montgomery County. They relocated to Nowata several years ago because the business was growing and there were no buildings in the area available at that time that met their needs. The company has continued to grow and is now projecting continued growth that makes their present facility inadequate. City staff, Montgomery County Action Council, and Coffeyville Industries have worked with the company to identify a site and secure financing that will enable the company to meet its expected growth and bring new jobs to the community. The $35,000 included in the inducement agreement is substantially less than in the initial request from the company or early discussions with them.	

SPECIAL NOTES	The City expects that $10,000 of the inducement will be provided by Montgomery County to assist in our efforts to bring jobs to the area.
ANALYSIS	$35,000 total for the number of jobs being brought to the community is a fairly low figure, and if the growth that has been projected is achieved, that return on the initial investment is even greater. Staff expects that the investment will have paid for itself in less than three years, even with current levels of employment.
PUBLIC INFORMATION PROCESS	N/A
BOARD OR COMMISSION RECOMMENDATION	N/A
STAFF RECOMMENDATION	Staff recommends approval.
REFERENCE DOCUMENTS ATTACHED	Resolution R-13-72, Economic Development Inducement Agreement

RESOLUTION NO. R-13-72

A RESOLUTION TO AUTHORIZE THE EXECUTION OF AN ECONOMIC DEVELOPMENT INDUCEMENT AGREEMENT WITH M&M ENGINEERED PRODUCTS

Whereas, the City desires to promote economic development and welfare of Coffeyville, Kansas and its environs, to provide employment opportunities for residents and enhance the local economy; and

Whereas, M&M is a growing company that desires to relocate its manufacturing operations to Coffeyville; and

Whereas, M&M will incur certain costs associated with relocating its operations to Coffeyville, and requires assistance in the form of both inducements and loans in order to proceed with such relocation;

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Coffeyville, Kansas, that the Mayor and City Clerk are hereby authorized to execute an Economic Development Inducement Agreement with M&M Engineered Products.

Adopted this 27th day of August 2013.

_____
David George, Mayor

_____
Cindy Price, City Clerk

APPROVED AS TO FORM AND LEGALITY:

_____
Paul Kritz, City Attorney

CITY ECONOMIC DEVELOPMENT GRANT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (the "Agreement") is made as of this _____ day of _____, 2013 (the "Effective Date") by and between the City of Coffeyville, Kansas, a municipal corporation ("City") and M&M Engineered Products, LLC, an Oklahoma limited liability company ("M&M"). The City and M&M may be referred to herein from time to time as a "Party" or collectively as the "Parties".

WITNESSETH:

WHEREAS, the City desires to promote economic development and welfare of Coffeyville, Kansas and its environs, to provide employment opportunities for residents and enhance the local economy; and

WHEREAS, M&M is a growing company that desires to relocate its manufacturing operations to Coffeyville; and

WHEREAS, M&M will incur certain costs associated with relocating its operations to Coffeyville, and requires assistance in the form of both inducements and loans in order to proceed with such relocation; and

WHEREAS, pursuant to terms agreed upon by M&M, Coffeyville Industries will lease to M&M that certain tract of land and improvements commonly known as 407 N. Cline Rd. (the "Leased Property") into which M&M will locate its corporate headquarters and manufacturing facility pursuant to the lease agreement to be entered into between Coffeyville Industries, as landlord, and M&M, as tenant (the "Facility Lease"); and

WHEREAS, the City is authorized under the Statutes of the State of Kansas to provide incentives of public money to promote local economic development and to stimulate business and commercial activity in the City; and

WHEREAS, the City seeks to induce M&M to create or locate full-time jobs in the City, in connection with the Facility Lease, which jobs shall promote state and local economic development and stimulate business and commercial activity in the City and greatly benefit the City and County; and

WHEREAS, Montgomery County, Kansas has indicated a desire to be included in such partnership with the Parties in order to promote state and local economic development and stimulate business and commercial activity in the County and greatly benefit the City and County; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW THEREFORE, in consideration of the foregoing and the mutual agreements, covenants and payments herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 **Defined Terms**. Wherever used in this Agreement, the following terms shall have the meanings ascribed to them:

“Agreement” shall mean this City Economic Development Grant Agreement.

“Basic Term” shall be the initial term set forth in Article II herein.

“City” shall mean the City of Coffeyville, Kansas, a municipal corporation organized and existing under the laws of the State of Kansas.

"City Commission" means the City Commission of the City of Coffeyville, Kansas.

"Event of Bankruptcy or Insolvency" shall mean the dissolution or termination of M&M's existence as an ongoing business, insolvency, appointment of receiver for any significant part of M&M's property and such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against M&M and such proceeding is not dismissed within ninety (90) days after the filing thereof.

"Facility Lease" shall mean a binding agreement by and between M&M and Coffeyville Industries for the real property commonly known as 407 N. Cline Rd., Coffeyville, Kansas.

"Governmental Authority" means any Federal, State, or local governmental entity having jurisdiction.

"Governmental Rule" means any applicable law, rule or regulation of a Governmental Authority.

"Grant(s)" shall have the meaning ascribed to it in Section 5.1.

"Leased Property" shall me the real property commonly known as 407 N. Cline Rd., Coffeyville, Kansas.

ARTICLE II

OBLIGATIONS, WARRANTIES, AND REPRESENTATIONS

2.1 M&M represents and warrants that it is a limited liability company duly organized and existing under the laws of the State of Oklahoma and it is duly authorized to do business within the State of Kansas, with lawful power and authority to enter into this legally enforceable agreement, acting by and through its duly authorized officers as evidenced by the company Resolution submitted to the City of Coffeyville for review and record keeping

(a) M&M has executed the Lease on the manufacturing facility.

(b) M&M represents and warrants that throughout the term of the Agreement, the manufacturing facility shall be primarily operated and utilized in the fabrication and manufacturing of attachments for light and heavy equipment, including but not limited to sheers, mowers/trimmers, and other skid steer attachments.

2.2 **Purpose.** The specific purpose of this Agreement is to grant economic benefits to M&M as necessary to induce M&M to locate its corporate headquarters onto the Leased Property. This action will be a significant contribution toward a broader purpose to stimulate and encourage business and industrial activity in the City, to create more job opportunities, build the local employment base, and promote a partnership with the private sector businesses that will bring additional economic development projects into the City.

2.3 **Term.** The term of this Agreement shall begin on the date of execution of this agreement and continue for a period of one (1) year thereafter, unless sooner terminated as provided herein.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

3.1 **Representations of M&M.** M&M hereby makes the following representations, warranties and covenants to City as of the Effective Date unless another date is expressly stated to apply:

(a) Authorization. The execution, delivery and performance by M&M of this Agreement have been duly authorized by all necessary action and will not violate the organizational documents of M&M or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which M&M is a party or by which M&M or its material assets may be bound or affected. The execution of this Agreement by M&M does not require any consent or approval that has not been obtained, including without limitation the consent or approval of any Governmental Authority.

(b) Enforceable Obligations. Assuming due authorization, execution and delivery by each signatory Party hereto and thereto, this Agreement, all documents executed by M&M pursuant hereto and all obligations of M&M hereunder and thereunder are enforceable against M&M in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).

(c) No Legal Bar. The execution and delivery of this Agreement and the performance of its obligations hereunder by M&M will not conflict with any provision of any law, regulation or Governmental Rules to which M&M is subject or conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which M&M is a party or by which it is bound or any order or decree applicable to M&M.

(d) Litigation. There are no legal actions or proceedings pending or, to the knowledge of M&M, threatened against M&M which, if adversely determined, would materially and adversely affect the ability of M&M to fulfill its obligations under this Agreement or the financial condition, business or prospects of M&M.

(e) Documents. All documents made available by M&M to City including without limitation all financial documents relating to M&M are true, correct and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein.

(f) Knowledge. M&M has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by M&M under this Agreement are in any way inaccurate, incomplete or misleading.

3.2 **Representations of City**. City hereby makes the following representations, warranties and covenants to M&M as of the Effective Date unless another date is expressly stated to apply:

(a) Existence. City is a municipality of the First Class of the State of Kansas, situated in Montgomery County.

(b) Power and Authority. Pursuant to applicable State Statutes, City has all requisite corporate power and authority to enter into this Agreement and perform all of its obligations hereunder. The execution and performance by City of this Agreement has been duly authorized by Resolution No. R-13-72_ and does not require the consent or approval of any other person which has not been obtained, including, without limitation, any Governmental Authority.

(c) No Legal Bar. The execution and performance by City of this Agreement does not and will not violate any provisions of any contract, agreement, instrument or current Governmental Rule to which City is a party or is subject.

(d) Litigation. There are no legal actions or proceedings pending known to City which, if adversely determined, would materially and adversely affect the ability of City to fulfill its obligations under this Agreement.

(e) Enforceable Obligations. Assuming (i) due authorization, execution and delivery by each Party hereto and thereto, (ii) the enforceability of the Agreement and the actions of City, this Agreement, each document executed by City pursuant hereto and all obligations of City hereunder and thereunder are enforceable against City in accordance with their terms.

3.3 **Disclaimer**. M&M ACKNOWLEDGES THAT, EXCEPT FOR CITY's REPRESENTATIONS CONTAINED WITHIN THIS AGREEMENT, NEITHER CITY NOR ANY AFFILIATE OF CITY NOR ANY RELATED PARTY OF CITY HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE LEASED PROPERTY THE SUBJECT MATTER OF THIS AGREEMENT OR ANY EXHIBIT HERETO, OTHER THAN THE OBLIGATIONS EXPRESSLY CONTAINED IN THIS AGREEMENT.

ARTICLE IV

CONDITIONS TO GRANT

4.1 **Conditions**. The obligation for City to pay the Grant hereunder shall be conditioned upon compliance with and satisfaction of each of the conditions set forth below:

(a) Payment. Payment of any Grant hereunder shall not occur until after (i) the Commencement Date, and (ii) the execution of the facility lease.

(b) Prohibition on Default. M&M shall not have an uncured breach or default of this Agreement

ARTICLE V

ECONOMIC DEVELOPMENT GRANT

5.1 **Grants**. Subject to the terms and conditions set forth herein, the City will:

Provide a grant of $35,000 to assist with relocation costs. The balance of relocation costs will be financed upon terms agreeable to M&M through the Montgomery county Action Council or other private parties or economic development partners.

5.2 **Limit of Obligation**. Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City from property and sales taxes collected or anticipated to be collected in a given budget period. Consequently the City shall have no obligation or liability to pay any Grants unless the City appropriates funds to make such payment during the tax year in which such Grant is payable, provided, however, that the City acknowledges its current intent to make such appropriations when Grants are required to be paid hereunder. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. Further, the City shall not be obligated to pay any commercial bank, lender or similar institution for any loan or credit agreement made by M&M.

5.3 **Other Agreements**. The City's inducement payment to M&M is made with the understanding of and reliance upon the influx of capital by Sutterfield Financial that will enable M&M to meet project growth and thus warrant the investment of municipal funds in this project. Further, the City's investment of funds for this project is based upon an understanding that M&M will maintain if not increase the role of Sutterfield Financial in the financial management of the M&M.

M&M agrees that it will not have any violations, municipal or otherwise, of environmental laws, property maintenance or general nuisance codes, and will not be in arrears for ad valorem taxes, business license, or municipal debt including but not limited to municipal utilities.

ARTICLE VI

TERMINATION

6.1 **Termination**. This Agreement shall terminate upon the occurrence of any one or more of the following:

(a) the Expiration Date;

(b) the execution by all Parties of a written agreement terminating this Agreement;

(c) at the option of a Party in the event the other Party breaches any of the terms or conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof, or, if such breach is not susceptible of cure within 30 days, such period of time thereafter as the breaching party diligently pursues the cure thereof, but in any event if such breach is not cured within one hundred eighty (180) days after written notice thereof;

(d) at the option of the City, if M&M suffers an Event of Bankruptcy or Insolvency;

(e) any subsequent Federal or State legislation or any decision by a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

ARTICLE VII

INDEMNIFICATION, ATTORNEYS FEES, & OTHER REMEDIES

7.1 M&M COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS THE CITY AND THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY, DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO M&M's ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY ACTS OR OMISSIONS OF M&M, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT, CONTRACTOR OR SUBCONTRACTOR OF M&M, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES, WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER KANSAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER KANSAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. M&M SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR M&M KNOWN TO M&M RELATED TO OR ARISING OUT OF M&M's ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT M&M'S COST. THE CITY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING M&M OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH. M&M FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, ANY CLAIM OR LITIGATION BROUGHT AGAINST THE CITY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES, IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE. M&M's OBLIGATIONS UNDER THIS SUBSECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7.2 **Independent Contractor.** It is expressly understood and agreed that M&M is and shall be deemed to be an independent company, exercising its own business judgments subject to M&M's agreement to increase Sutterfield Financials' role as provided in Section 5.3.

7.3 **Attorney Fees and Expenses.** In the event that M&M should default under any of the provisions of this Agreement and the City should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation or agreement on the part of M&M herein contained, M&M agrees to pay to the City reasonable fees of such attorneys and such other expenses so incurred by the City.

7.4 **Non Waiver of Remedies.** No remedy herein conferred upon or reserved to the City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

7.5 **Waiver of Consequential Damages.** M&M waives all present and future claims for consequential damages against City and the appointed or elected officials, members, agents, employees, officers, directors and representatives of City arising from or related to this Agreement, and such waiver shall survive any termination of this Agreement.

ARTICLE VIII

MISCELLANEOUS

8.1 **Binding Agreement; Assignment.** The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties hereto. This Agreement may not be assigned by M&M without the prior written consent of the City.

8.2 **Limitation on Liability.** It is understood and agreed among the parties that M&M and the City, in satisfying the conditions of this Agreement, have acted independently, and assume no responsibilities or liabilities to third parties in connection with these actions.

8.3 **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

8.4 **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed received (i) three (3) days after deposit into the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the Party at the address set forth below or (ii) on the day actually received if sent by courier or otherwise hand delivered.

M&M	M&M Engineered Products, LLC. _____ _____ Attn:
With a copy to:	_____ _____ _____ Attn:
City	City of COFFEYVILLE 102 W. 7th Street P.O. Box 1629 COFFEYVILLE, Kansas 67337 Attn: City Manager
With a copy to:	City of COFFEYVILLE 102 W. 7th Street P.O. Box 1629 COFFEYVILLE, Kansas 67337 Attn: City Attorney

8.5 **Conflict.** If there is any conflict between this Agreement and the Master Agreement, the terms of this Agreement shall control.

8.6 **Governing Law.** This Agreement shall be governed by the laws of the State of Kansas; and venue for any action concerning this Agreement shall be exclusively in the State District Court of Montgomery County, Kansas. The Parties agree to submit to the jurisdiction of said courts.

8.7 **Amendment.** This Agreement may only be amended by a written agreement executed by the Parties.

8.8 **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity,

illegality, or unenforceability shall not affect other provisions, and it is the intention of the Parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall 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.

8.9 **Captions.** All descriptive headings and captions herein are inserted for convenience only and shall not be considered in interpreting or construing this Agreement.

8.10 **Exhibits.** The exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

8.11 **Survival of Covenants.** Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement (specifically including Section 7.1 of this Agreement) shall survive termination.

8.12 **Counterparts.** This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

EXECUTED in multiple originals as of the Effective Date.

City of Coffeyville	M&M Engineered Products
By: _____	By: _____
Name: David George	Name:
Title: Mayor, City of Coffeyville	Title:
ATTEST:	ATTEST:
Cindy Price City Clerk City of Coffeyville	
APPROVED AS TO FORM:	
_____ Paul Kritz, City Attorney City of Coffeyville	