

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO  
A JOB CREATION GRANT AGREEMENT WITH YXLON  
INTERNATIONAL; AND DECLARING AN EMERGENCY.

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

WHEREAS, Yxlon International (the "Company") is desirous of establishing operations and offices by leasing approximately 11,185 square feet of office space in Hudson to create employment opportunities within the boundaries of the City of Hudson, provided that the appropriate development incentives are available to support the economic viability of the project; and

WHEREAS, this Council, by Resolution No. 05-39 adopted May 4, 2005, created the Job Creation Grant Program pursuant to Article XVIII, Section 3 and Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, the City of Hudson, having the appropriate authority for this type of program, is desirous of providing the Company with incentives available for the development of the project; and

WHEREAS, the Economic Development Incentive Committee of Hudson has investigated the application of the Company and has recommended the same to this Council on the basis that the Company is qualified by its financial responsibility and business experience to create employment opportunities in Hudson and improve the economic climate of Hudson.

NOW, THEREFORE, BE IT RESOLVED by the Council of Hudson, Summit County, State of Ohio, that:

Section 1. The City Manager is authorized and directed to enter into a Job Creation Grant Agreement with Yxlon International, a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

Section 2. This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary in order to further job creation and economic development within the City; wherefore, this Resolution shall be in effect immediately upon its passage provided it

receives the affirmative vote of five members of Council, except that six affirmative votes shall be required if all members are present; otherwise, it shall be in full force and effect from and after the earliest period allowed by law.

PASSED: \_\_\_\_\_

\_\_\_\_\_  
William A. Currin, Mayor

ATTEST:

\_\_\_\_\_  
Elizabeth Slagle, Clerk of Council

I certify that the foregoing Resolution was duly passed by the Council of said Municipality on \_\_\_\_\_, 2014.

\_\_\_\_\_  
Elizabeth Slagle, Clerk of Council

**EXHIBIT A**

**JOB CREATION GRANT AGREEMENT**

This agreement made and entered into by and between the CITY OF HUDSON, OHIO, a municipal corporation, with its main offices located at 115 EXECUTIVE PARKWAY SUITE 400, HUDSON, OHIO 44236 (hereinafter referred to as "Hudson") and YXLON INTERNATIONAL, a corporation, qualified to do business in Ohio, with its main offices located at 100 Trap Falls Road, Shelton CT. 06484, (hereinafter referred to as "Company"), and is dated as of \_\_\_\_\_, 2014 (the "Agreement").

**WITNESSETH:**

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

WHEREAS, the Company is desirous of leasing approximately 11,185 square feet of office space at 5675 Hudson Industrial Parkway to create employment opportunities (hereinafter sometimes referred to as the "Project") within the boundaries of the City of Hudson, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the Council of Hudson by Resolution No. 05-39 adopted May 4, 2005 created the Job Creation Grant Program pursuant to Article XVIII, Section 3 and Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, the City of Hudson, having the appropriate authority for the stated type of program, is desirous of providing the Company with incentives available for the development of the Project; and

WHEREAS, the Company has remitted the required application fee of \$500.00 made payable to Hudson; and

WHEREAS, the Economic Development Incentive Committee of Hudson has investigated the application of the Company and has recommended the same to Hudson City Council on the basis that the Company is qualified by financial responsibility and business experience to create employment opportunities in Hudson and improve the economic climate of Hudson;

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. The Company shall lease and equip approximately 11,185 square feet of office space at 5675 Hudson Industrial Parkway, Hudson, Ohio to house its operation and associated office facilities.

2. Job Creation.

A. The Company shall cause to be created through a lease at the Project in Hudson by December 31, 2015, the equivalent of 15 full-time permanent job opportunities. Full-time employment is hereby defined as an employee that works 25 hours or more each week.

1) The Company's schedule for hiring permanent full time employees is as follows:

<u>Year</u>	<u>Number of Jobs in Hudson</u>
No later than December 31, 2014	14
No later than December 31, 2015	1

B. The job creation period begins approximately August 1, 2014 and all jobs will be in place by December 31, 2015.

C. The increase in the number of employees new to Hudson will result in approximately \$1,340,000.00 of additional annual payroll in Hudson when the maximum employment level is achieved.

3. Issuance of Grant.

A. Hudson hereby grants a Job Creation Grant to the Company based upon the creation of new payroll and jobs in Hudson, according to the schedule below.

<u>Years</u>	<u>Amount of Grant as a Percentage of Payroll Taxes New to Hudson</u>
1-5	30%

B. For purposes of calculating the amount of the grant, the payroll upon which the grant is based may not exceed 150% of the maximum payroll projected in Section 2(C) above. Accordingly, the maximum payroll upon which the grant is based shall be \$2,010,000.00.

C. Grant payments will be made according to the parameters below:

<u>Year</u>	<u>Minimum New * Employment to Receive Grant</u> (75% projected)	<u>Min. New * Payroll to Receive Full Grant</u> (90% projected)	<u>Minimum Payroll to Receive Any Grant</u> (75% projected)	<u>Max. Eligible New Payroll</u> (150% of maximum projected in final yr. of grant)
1	10	\$1,102,500	\$ 986,000	\$1,837,500
2-5	11	\$1,206,000	\$1,005,000	\$2,010,000

(2) If the Company does not achieve at least 90% of payroll projections, the Company shall receive reduced incentives according to the schedule below:

<u>% of Payroll Projection Achieved</u>	<u>Amount of Grant as a Percentage of Payroll Taxes to Hudson</u>
90-100%	30%
85-89%	25%
80-84%	20%
75-79%	15%

(3) If the Company fails to meet 75% of payroll in any given year, the grant shall not be awarded for that year.

#### 4. Grant Payments.

##### A. Initial Grant Payment.

(1) Year 1 projections must be met by January 1, 2015. The initial grant payment shall be made by April 15, 2015, provided that the Company files its Reconciliation of Return of Income Tax Withheld Form 17 by February 28, 2015 and meets the eligibility requirements.

(2) If the project start or occupancy of the project facility is delayed, Year 1 may be extended to the following year and the Year 1 projections deadline adjusted accordingly and all subsequent deadlines shall be extended by one (1) year, upon written request by the Company to the Director of Economic Development, provided that the extension is approved by the Director of Economic Development with notice to the Economic Development Incentive Committee.

(3) If the project or occupancy of the project facility begins in the third or fourth quarter of the year and the Company is not able to meet its Year 1 projections by December 31st of that year, Year 1 will be considered the first full year of occupancy, and the first grant payment will occur in the

year following the first full year of the project or occupancy of the project facility.

- B. Timing of Annual Grant Payments. Annual grant payments shall be made by April 15th, provided that the Company files its Reconciliation of City Income Tax Withheld Form S-W3 by February 28th of said year. If the Company requests an extension for filing of its S-W3 form, the City shall make the grant payment within three months of the extended filing date. It is the responsibility of the Company to advise the Director of Economic Development of the filing extension.
- 5. Payment of Taxes and Filing Reports and Returns. The Company shall pay such real and tangible personal property taxes as are charged against such property and shall file all tax reports and returns as required by law. If the Company fails to pay such taxes or file such returns and reports, all incentives granted under this agreement are terminated beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.
- 6. Information for Annual Review. The Company shall timely provide to the City any information reasonably required by the City to evaluate the Company's compliance with the Agreement.
- 7. Maintenance of Grant.
  - A. Hudson shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain incentives granted under this Agreement including, without limitation, joining in the execution of all documentation and providing necessary information to maintain the incentives granted hereunder.
  - B. If for any reason the Job Creation Grant Program is discontinued, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless the Company or the Company materially fails to fulfill their obligations under this Agreement and Hudson terminates or modifies the incentives granted under this Agreement.
- 8. Certification as to Payment of Taxes. The Company certifies that at the time this Agreement is executed, the Company 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 the Company is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code, or, if such delinquent taxes are owed, the Company 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 the Company. 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.

9. Non-Discrimination Hiring. Hudson has developed a policy to ensure recipients of Job Creation Grants practice non-discriminatory hiring in their operations. By executing this agreement, the Company 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.
10. Transfer and Assignment. This Agreement is not transferable or assignable without the express, written approval of Hudson. Hudson 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 the Company 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 Hudson, to Hudson'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 the Company in all pertinent respects.
11. Termination or Modification of Incentives.
  - A. If the Company fails to meet 75% of payroll in any given year, the grant shall not be awarded for that year.
  - B. If the Project does not proceed as specified in Section 4(A)(1) of the Agreement or within the approved one year extension period as specified in Section 4(A)(2), Hudson may terminate the Agreement upon recommendation of the Economic Development Incentive Committee.
  - C. If the Company fails to submit required information and/or reports as set forth in Section 6 above, Hudson, after thirty (30) days notice of said default and failure to cure, may terminate or modify this Agreement and deny or modify future grants heretofore granted from the date of the Company's breach or default.

In the case as provided in this Subsection D, Hudson's termination or modification of this Agreement may be instituted only if the Company fails to cure any breach of any term of this Agreement as determined by Hudson within thirty (30) days of receiving written notice of such failure from Hudson or, if cure of the breach cannot be completed within thirty (30) days, if the Company has not made a good faith start of the cure, and/or not diligently pursued same.
  - D. Hudson 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) Hudson determines that the certification as to delinquent taxes required by this Agreement is fraudulent, or

- 2) The Company vacates the Facility and moves the Project out of Hudson or terminates its operations at the Facility altogether during a five (5)-year period beginning on the effective date of this Agreement.

Hudson may, absent any legislative action, resolution or court-ordered mandate to the contrary, collect any and all grant payments awarded under this Agreement, and the Company shall pay directly to Hudson or its authorized agent any and all grant payments awarded under this Agreement due on the date the Company moves the Project out of Hudson or terminates its operations at the Facility altogether during the five (5)-year period beginning on the effective date of this Agreement; or within ten (10) days from the date the Company is notified by Hudson that any tax certification is fraudulent.

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

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

- F. Each provision for modification or termination hereunder shall not affect the Company's obligations or Hudson's rights under any other provision of this Agreement.
12. 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:	City of Hudson 115 Executive Parkway Suite 400 Hudson, OH 44236 Attention: City Manager
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With a copy to: Solicitor – City of Hudson  
c/o Walter | Haverfield LLP  
The Tower at Erieview  
1301 East Ninth Street, Suite 3500  
Cleveland, OH 44114-1821  
Attention: R. Todd Hunt

If to the Company to: Yxlon International  
3400 Gilchrist Road  
Mogadore, Ohio 44260-1221  
Attn: Ray Kramer, General Manager

or such other address as may be noticed.

13. Condition Precedent. The Company and Hudson acknowledge that this Agreement must be approved by formal action of the legislative authority of Hudson as a condition for the Agreement to take effect.

IN WITNESS WHEREOF, the City of Hudson, Ohio, by Scott N. Schroyer, its Interim City Manager, and pursuant to Resolution No. 14-\_\_\_\_, and Yxlon International, by \_\_\_\_\_, its \_\_\_\_\_, have caused this instrument to be executed on the \_\_\_\_ day of \_\_\_\_\_, 2014.

WITNESSED BY:

CITY OF HUDSON

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Scott N. Schroyer  
Title: Interim City Manager

WITNESSED BY:

YXLON INTERNATIONAL

\_\_\_\_\_  
\_\_\_\_\_

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

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

SOLICITOR – CITY OF HUDSON

By: \_\_\_\_\_  
R. Todd Hunt

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