

RESOLUTION NO. 3375

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
APPROVING AMENDMENTS TO ECONOMIC DEVELOPMENT MEMORANDUM
OF UNDERSTANDING WITH NELLO INC. AND PROVIDING FOR CONVEYANCE
OF CERTAIN EQUIPMENT TO NELLO INC.**

WHEREAS, the South Bend Redevelopment Commission (the “Commission”) exists and operates pursuant to I.C. 36-7-14; and

WHEREAS, on June 20, 2014, the Commission and Nello Inc. (“Nello”) entered into that certain Economic Development Memorandum of Understanding (as amended, the “Development Agreement”), and on July 21, 2014, the Commission and Nello entered into that certain Equipment Lease Agreement (as amended, the “Lease”) (collectively, the “Project Agreements”) concerning Nello’s relocation to and expansion of operations in the City of South Bend (the “Project”); and

WHEREAS, pursuant to the provisions of the Project Agreements and in accordance with Resolution No. 3336 dated April 14, 2016, the Commission and Nello approved certain amendments to the Project Agreements, namely the First Amendment to Economic Development Memorandum of Understanding dated April 14, 2016, and the First Amendment to Equipment Lease Agreement dated April 14, 2016, which specified the Year 1 Equipment and the Year 2 Equipment (as respectively defined in the Project Agreements) purchased by the Commission under the terms of the Project Agreements, and the Commission conveyed to Nello ownership of the Year 1 Equipment by the bill of sale dated April 14, 2016 (the “First Bill of Sale”); and

WHEREAS, the Commission, through the South Bend Board of Public Works, has purchased certain portions of the Year 3 Equipment (as defined in the Development Agreement) for Nello in coordination with Nello as agreed under the Development Agreement and anticipates purchasing the remainder of the Year 3 Equipment in like manner; and

WHEREAS, due to delays in the Project, Nello is seeking additional financing from its lender(s) and has requested certain amendments to the Development Agreement to accomplish the early termination of the Lease and the early conveyance of the Year 2 Equipment and the Year 3 Equipment to Nello, which actions are expected to substantially enhance Nello’s ability to obtain additional financing and in turn ensure Nello’s ability to satisfy the Employment Obligation (as defined in the Development Agreement) within the time originally agreed by Nello under the Development Agreement; and

WHEREAS, the Commission has determined that such amendments and actions are reasonable and desirable for the successful completion of the Project, which the Commission has determined will serve the health, welfare, and economic well-being of the City of South Bend and its residents; and

NOW, THEREFORE, BE IT RESOLVED BY THE SOUTH BEND REDEVELOPMENT COMMISSION AS FOLLOWS:

1. The Commission hereby approves, and will execute simultaneously with this Resolution, the Second Amendment to Economic Development Memorandum of Understanding attached hereto as Exhibit 1 (the “Second Amendment”). The Commission hereby authorizes and instructs David Relos of the City of South Bend Department of Community Investment to deliver to Nello the Second Amendment.

2. The Commission hereby approves, and will execute simultaneously with this Resolution, the bill of sale attached hereto as Exhibit 2 (the “Second Bill of Sale”) conveying to Nello ownership of the Year 2 Equipment and the portions of the Year 3 Equipment that have been identified and purchased as of April 13, 2017. The Commission hereby authorizes and instructs David Relos to deliver to Nello the Second Bill of Sale, but only after Nello has delivered to the Commission Daniel J. Ianello’s Certification (as defined in the Second Amendment).

3. As soon as reasonably practicable following the later of (i) the Commission’s receipt of the Certification and (ii) the Commission’s identification and purchase of the Year 3 Equipment not described in the Second Bill of Sale, the Commission will execute an additional bill of sale substantially similar to the Second Bill of Sale (the “Third Bill of Sale”), which Third Bill of Sale will identify and convey to Nello only the Year 3 Equipment not conveyed by the Second Bill of Sale. Effective upon the Commission’s execution of the Third Bill of Sale, the Commission hereby authorizes and instructs David Relos to deliver to Nello the Third Bill of Sale.

4. The Commission further authorizes and instructs David Relos to take on behalf of the Commission all necessary administrative actions to accomplish the purposes of this Resolution, including without limitation the termination of any Uniform Commercial Code financing statement or fixture filing with respect to the Year 2 Equipment or the Year 3 Equipment conveyed to Nello by the Second Bill of Sale.

5. This Resolution will be in full force and effect upon its adoption by the Commission.

[Signature page follows.]

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on April 13, 2017, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT
COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

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EXHIBIT 1

Second Amendment to Economic Development Memorandum of Understanding

[See attached.]

**SECOND AMENDMENT TO ECONOMIC DEVELOPMENT
MEMORANDUM OF UNDERSTANDING**

This Second Amendment to Economic Development Memorandum of Understanding (this "Second Amendment") is entered into as of April 13, 2017, by and between the City of South Bend, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the "Commission"), and Nello Inc., an Indiana corporation with its registered office at 105 E. Jefferson Blvd., Suite 400, South Bend, Indiana 46601 ("Nello") (each, a "Party," and collectively, the "Parties").

RECITALS

WHEREAS, the Parties entered into that certain Economic Development Memorandum of Understanding dated June 20, 2014, as amended by the First Amendment to the Economic Development Memorandum of Understanding dated April 14, 2016 (collectively, the "Development Agreement"); and

WHEREAS, on April 13, 2017, the Commission adopted its Resolution No. 3375 concerning the Parties' mutual desire to amend the terms of the Development Agreement as set forth in this Second Amendment.

NOW, THEREFORE, in consideration of the mutual promises and obligations stated in this Second Amendment and the Development Agreement, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. Section 3.02 of the Development Agreement is deleted in its entirety and replaced by the following:

3.02 Equipment Lease Agreement; Termination; Conveyance of Equipment. Pursuant to this MOU, the Commission and the Company entered into that certain Equipment Lease Agreement dated July 21, 2014, as amended by the First Amendment to Equipment Lease Agreement dated April 14, 2016 (collectively, the "Equipment Lease"). The Equipment Lease is hereby terminated. At the times and in the manner provided in the Commission's Resolution No. 3375, the Commission will convey to the Company ownership of the Year 2 Equipment and the Year 3 Equipment, which conveyances will be accomplished by the Second Bill of Sale and the Third Bill of Sale as such bills of sale are defined in Resolution No. 3375. Within a reasonable time following the Commission's delivery of the Second Bill of Sale to Nello in accordance with Resolution No. 3375, the Commission will terminate any Uniform Commercial Code financing statement or fixture filing with respect to the property conveyed to Nello under the Second Bill of Sale. Resolution No. 3375 is hereby incorporated into this MOU.

2. Section 3.06 of the Development Agreement is deleted in its entirety and replaced by the following: 3.06 Reserved.

3. Section 3.07 of the Development Agreement is deleted in its entirety and replaced by the following: 3.07 Reserved.

4. Section 3.08 of the Development Agreement is deleted in its entirety and replaced by the following:

3.08 The Company will retain the Existing Jobs and create at least five hundred twenty-four (524) additional jobs by the Project Completion Date (the "Employment Obligation"). If the Company fails to complete the Employment Obligation, the Company will pay to the Commission, immediately upon the Commission's demand, a penalty equal to One Thousand Nine Hundred Eight Dollars (\$1,908.00) multiplied by the number of jobs by which the Developer fell short of the Employment Obligation as of the date of the Commission's demand (the "Penalty Amount").

5. Section 3.09 of the Development Agreement is deleted in its entirety and replaced by the following: 3.09 Reserved.

6. In Exhibit B to the Development Agreement, the sentence immediately following the subtitle "YEAR 3 EQUIPMENT" is deleted in its entirety and replaced by the following:

"As of April 13, 2017, the following Year 3 Equipment has been purchased by the Commission:

- (a) Handling System, load beam (Permadur) Series 816 serial# 3550
- (b) Anglemaster, HSFDB/Drill/Plasma Plate (Peddinghaus) (Anglemaster model AFPS 643 Q serial # A002165), (Plate processor model HSFDB-2500C serial# B1472)
- (c) Flextec, Cruiser, Gun & Gable (Lincoln Electric) Lincoln Electric 500P Flextec Ready Pak
- (d) Great Dane 2017 Flatbed Freedom XP Semi Trailers
- (e) Freightliner 2017 CA113DC Semi Tractor, CombiLift SC988 Three Wheel Straddle Carrier
- (f) Two submerged arc semi-automated steel pole welding systems (BSCO) 92" diameter 60' Long Seamers with 60' Transfer (no Serial #s)
- (g) Trailer mounted vapor media blaster (Sherwin Williams) Graco EQ400 T4 serial# 468217UKYF15
- (h) Plural Component Proportioner (Sherwin Williams) EcoQuip XP3 serial# A10900
- (i) Self-supporting tower leg welding automation system (Lincoln Electric)
- (j) Computer equipment defined in Board of Public Works Project No. 116-144, Phase XVII (Y&S Technologies)

Additional Year 3 Equipment having an estimated cost of \$88,871 remains to be purchased and will be purchased by the Commission in a manner consistent with the Commission's past practices with regard to the Project and subject to the terms of this MOU, upon submission of specifications for the same by Nello."

7. In consideration of the amendments to the Development Agreement made hereby and the other obligations of the Commission hereunder, Nello represents and warrants that it is engaged in seeking additional financing from one or more new lenders and/or investors in furtherance of the Project in an amount sufficient to recapitalize its operations associated with the Project and to satisfy or settle all of its existing debt obligations owing to its principal lender as of April 13, 2017 (the "Additional Financing").

8. The Commission agrees that the amendments to the Development Agreement stated in this Second Amendment shall be in full force and effect upon receipt of a document signed by Daniel J. Ianello of Nello certifying that Nello has obtained the Additional Financing (the "Certification"). The amendments to the Development Agreement stated in this Second Amendment and the Commission's obligations thereunder shall be of no force or effect until Nello delivers the Certification.

9. Unless expressly modified by this Second Amendment, the terms and provisions of the Development Agreement remain in full force and effect.

10. Capitalized terms used in this Second Amendment will have the meanings set forth in the Development Agreement unless otherwise stated herein.

IN WITNESS WHEREOF, the Parties hereby execute this Second Amendment to Economic Development Memorandum of Understanding to be effective as provided in Section 8 above.

SOUTH BEND REDEVELOPMENT
COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

NELLO INC., an Indiana corporation

Daniel Ianello, President

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EXHIBIT 2

Form of Second Bill of Sale

[See attached.]

BILL OF SALE

This Bill of Sale is made by the City of South Bend, Indiana, Department of Redevelopment, acting by and through its governing body, the South Bend Redevelopment Commission (the "Seller"), in favor of Nello Inc., an Indiana corporation (the "Buyer").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller hereby conveys to the Buyer all of the Seller's right, title, and interest in and to the following personal property (collectively, the "Equipment"):

- (a) BSCO, Inc. Steel Pole Welding Operation, Serial Nos. BS15.92.001, BS15.92.002, BS15.60fttrans, BS15.SQP.1236.10, BS15.10.001, BS15.SP.100H, BS15.0109, BS.BH48.001, BS.BH48.002
- (b) ALLTRA HG30-11S Precision Gantry Shape Cutting Machine, Serial No. 6624
- (c) CC-10-120-PWR Power Medium Turning Roll and CC-10-120-IDL Idler Unit with Hand Wheel, Serial Nos. 2015-171 through 2015-203
- (d) Advance Floor Scrubber, Serial No. 1000061087
- (e) Handling System, load beam (Permadur) Series 816 serial# 3550
- (f) Anglemaster, HSFDB/Drill/Plasma Plate (Peddinghaus) (Anglemaster model AFPS 643 Q serial # A002165), (Plate processor model HSFDB-2500C serial# B1472)
- (g) Flextec, Cruiser, Gun & Gable (Lincoln Electric) Lincoln Electric 500P Flextec Ready Pak
- (h) Great Dane 2017 Flatbed Freedom XP Semi Trailers
- (i) Freightliner 2017 CA113DC Semi Tractor, CombiLift SC988 Three Wheel Straddle Carrier
- (j) Two submerged arc semi-automated steel pole welding systems (BSCO) 92" diameter 60' Long Seamers with 60' Transfer (no Serial #s)
- (k) Trailer mounted vapor media blaster (Sherwin Williams) Graco EQ400 T4 serial# 468217UKYF15
- (l) Plural Component Proportioner (Sherwin Williams) EcoQuip XP3 serial# A10900
- (m) Self-supporting tower leg welding automation system (Lincoln Electric)
- (n) Computer equipment defined in Board of Public Works Project No. 116-144, Phase XVII (Y&S Technologies)

The Seller hereby conveys the Equipment to the Buyer in accordance with Seller's Resolution No. 3375 dated April 13, 2017, and subject to the terms and provisions of the Economic Development Memorandum of Understanding by and between the Seller and the Buyer dated June 20, 2014, as amended by the First Amendment to Economic Development Memorandum of Understanding dated April 14, 2016, and the Second Amendment to Economic Development Memorandum of Understanding dated April 13, 2017. Further, the Seller hereby conveys the Equipment to the Buyer as-is, where-is, and without representation or warranty of any kind. Without limiting the generality of the foregoing sentence, the Seller specifically disclaims any representation or warranty of merchantability or fitness for any particular use or purpose.

[Signature page follows.]

SOUTH BEND REDEVELOPMENT COMMISSION

David Varner, Vice President

ATTEST:

Donald E. Inks, Secretary

Date:

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