

RESOLUTION NO. 3336

**A RESOLUTION OF THE SOUTH BEND REDEVELOPMENT COMMISSION
APPROVING AMENDMENTS TO AGREEMENTS WITH NELLO INC. AND
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 (the "Development Agreement"), and on July 21, 2014, the Commission and Nello entered into that certain Equipment Lease Agreement (the "Lease") (collectively, the "Project Agreements"); and

WHEREAS, pursuant to the provisions of the Project Agreements, the Commission procured certain equipment for Nello in exchange for Nello's satisfaction of certain development and job creation requirements; and

WHEREAS, in accordance with the provisions of the Project Agreements, the Commission and Nello desire to amend the Project Agreements by specifying the Year 1 Equipment and the Year 2 Equipment (as respectively defined in the Project Agreements) procured by the Commission after the date of the Project Agreements; and

WHEREAS, Nello has presented evidence of satisfying Section 3.07, subparts (i) and (ii), of the Development Agreement and Section 9, subparts (a) and (b), of the Lease, such that Nello is now entitled to exercise its option to purchase the Year 1 Equipment pursuant to the terms of the Project Agreements; and

WHEREAS, Nello has exercised its option to purchase the Year 1 Equipment, and the Commission desires to take all necessary action to convey the Year 1 Equipment to Nello in recognition of Nello's satisfaction of the above-referenced obligations under the Project Agreements.

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 First Amendment to Economic Development Memorandum of Understanding attached hereto as Exhibit 1 and the First Amendment to Equipment Lease Agreement attached hereto as Exhibit 2 (together, the "Amendments").

2. The Commission hereby approves, and will execute simultaneously with this Resolution, the Bill of Sale attached hereto as Exhibit 3 (the "Bill of Sale") conveying ownership of the Year 1 Equipment to Nello.

3. The Commission hereby authorizes and instructs David Relos or Aaron Kobb, each of the City of South Bend Department of Community Investment, to deliver the Amendments and the Bill of Sale to Nello and 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 1 Equipment conveyed to Nello under the Bill of Sale.

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

ADOPTED at a regular meeting of the South Bend Redevelopment Commission held on April 14, 2016, at 1308 County-City Building, 227 West Jefferson Boulevard, South Bend, Indiana 46601.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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EXHIBIT 1

First Amendment to Economic Development Memorandum of Understanding

[See attached.]

FIRST AMENDMENT TO ECONOMIC DEVELOPMENT
MEMORANDUM OF UNDERSTANDING

This First Amendment to Economic Development Memorandum of Understanding (this "First Amendment") is effective as of April 14, 2016 (the "Effective Date"), 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 525, 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 (the "Development Agreement"); and

WHEREAS, the Parties desire to amend the Development Agreement to identify the Real Estate and to specify the Year 1 Equipment and the Year 2 Equipment procured by the Commission in accordance with the Development Agreement.

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

1. The following description is inserted into Exhibit A to the Development Agreement immediately following the phrase "Real Estate Description":

A tract of land located in the Northwest Quarter of Section 16, Township 37 North, Range 2 East, Portage Township, St. Joseph County, Indiana and being more particularly described as follows: Commencing at the Northwest corner of said Section 16; thence South 0°09'24" East, along the West line of said Section 16, a distance of 1179.82 feet to the Southwest corner of Belleville Gardens, 2nd Unit; thence North 89°48'51" East along the South line of said Belleville Gardens 2nd Unit, a distance of 719.66 feet to the place of beginning for this description; thence continuing North 89°48'51" East, along said South line of Belleville Gardens 2nd Unit, a distance of 1281.26 feet to the Southeast corner of said 2nd Unit; thence South 0°13'19" East, a measured distance of 138.68 feet to the South line of an ingress, egress and utility easement recorded as instrument number 1429559 in the office of the Recorder of St. Joseph County, Indiana; thence South 89°57'28" West, a distance of 5.88 feet; thence South 0°12'56" East, a distance of 882.37 feet; thence South 89°36'33" West a distance of 1277.06 feet; thence North 0°09'24" West, parallel with said West line of Section 16, a distance of 1025.61 feet more or less to the place of beginning containing 30.00 acres more or less.

2. In Exhibit B to the Development Agreement, the sentence immediately following the subtitle "YEAR 1 EQUIPMENT" is deleted in its entirety and replaced by the following: Two (2) "Fabri-K" Series DNC Hydraulic Press Brakes in tandem, Model FK 1250-30/26, Serial #A1889 & A1890.

3. In Exhibit B to the Development Agreement, the sentence immediately following the subtitle "YEAR 2 EQUIPMENT" is deleted in its entirety and replaced by the following: (i) 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; (ii) ALLTRA HG30-11S Precision Gantry Shape Cutting Machine, Serial No. 6624; (iii) 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; and (iv) Advance Floor Scrubber, Serial No. 1000061087.

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

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

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to Economic Development Memorandum of Understanding to be effective on the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

NELLO INC., an Indiana corporation

Daniel Ianello, President

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EXHIBIT 2

First Amendment to Equipment Lease Agreement

[See attached.]

FIRST AMENDMENT TO EQUIPMENT LEASE AGREEMENT

This First Amendment to Equipment Lease Agreement (this "First Amendment") is effective as of April 14, 2016 (the "Effective Date"), 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 525, South Bend, Indiana 46601 ("Nello") (each, a "Party," and collectively, the "Parties").

RECITALS

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

WHEREAS, pursuant to the Development Agreement, the Parties entered into that certain Equipment Lease Agreement dated July 21, 2014 (the "Lease"); and

WHEREAS, the Parties mutually acknowledge and agree that the Commencement Date of the Lease was December 15, 2015; and

WHEREAS, Nello has exercised its right option to purchase the Year 1 Equipment pursuant to Section 3.07, subparts (i) and (ii), of the Development Agreement and Section 9, subparts (a) and (b); and

WHEREAS, upon the Commission's conveyance of the Year 1 Equipment to Nello, the Year 1 Equipment will no longer be subject to the Lease; and

WHEREAS, the Parties desire to amend certain terms and provisions of the Lease as stated in this First Amendment to specify the Year 2 Equipment and make it subject to the terms of the Lease.

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

1. The following information is inserted into Schedule A to the Lease immediately following the phrase "List of Equipment and Location of Installation":

Year 2 Equipment

(i) 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; (ii) ALLTRA HG30-11S Precision Gantry Shape Cutting Machine, Serial No. 6624; (iii) 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; and (iv) Advance Floor Scrubber, Serial No. 1000061087.

All of the foregoing equipment is installed at the following location in South Bend, Indiana:

A tract of land located in the Northwest Quarter of Section 16, Township 37 North, Range 2 East, Portage Township, St. Joseph County, Indiana and being more particularly described as follows: Commencing at the Northwest corner of said Section 16; thence South 0°09'24" East, along the West line of said Section 16, a distance of 1179.82 feet to the Southwest corner of Belleville Gardens, 2nd Unit; thence North 89°48'51" East along the South line of said Belleville Gardens 2nd Unit, a distance of 719.66 feet to the place of beginning for this description; thence continuing North 89°48'51" East, along said South line of Belleville Gardens 2nd Unit, a distance of 1281.26 feet to the Southeast corner of said 2nd Unit; thence South 0°13'19" East, a measured distance of 138.68 feet to the South line of an ingress, egress and utility easement recorded as instrument number 1429559 in the office of the Recorder of St. Joseph County, Indiana; thence South 89°57'28" West, a distance of 5.88 feet; thence South 0°12'56" East, a distance of 882.37 feet; thence South 89°36'33" West a distance of 1277.06 feet; thence North 0°09'24" West, parallel with said West line of Section 16, a distance of 1025.61 feet more or less to the place of beginning containing 30.00 acres more or less.

2. Unless expressly modified by this First Amendment, the terms and provisions of the Lease remain in full force and effect.

3. Capitalized terms used in this First Amendment will have the meanings set forth in the Lease unless otherwise stated herein.

IN WITNESS WHEREOF, the Parties hereby execute this First Amendment to Equipment Lease Agreement to be effective on the Effective Date stated above.

SOUTH BEND REDEVELOPMENT
COMMISSION

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

NELLO INC., an Indiana corporation

Daniel Ianello, President

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EXHIBIT 3

Bill of Sale

[See attached.]

BILL OF SALE

This Bill of Sale is made on April 14, 2016 (the "Effective Date"), 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: Two (2) "Fabri-K" Series DNC Hydraulic Press Brakes in tandem, Model FK 1250-30/26, Serial #A1889 & A1890 (collectively, the "Equipment").

The Seller hereby conveys the Equipment to the Buyer in accordance with 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, and the Equipment Lease Agreement by and between the Seller and the Buyer dated July 21, 2014. 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.

Seller has signed this instrument as of the Effective Date stated above.

City of South Bend, Department of Redevelopment,
by and through its governing body, the South Bend
Redevelopment Commission

Marcia I. Jones, President

ATTEST:

Donald E. Inks, Secretary

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