

ORDINANCE NO. 70-14
EXHIBIT A

OHIO ENTERPRISE ZONE AGREEMENT

THIS AGREEMENT made and entered into by and between the **CITY OF AVON**, Lorain County, Ohio, a Municipal Corporation and political subdivision duly organized and existing under the laws of the State of Ohio, located at 36080 Chester Road, Avon, Ohio 44011 (hereinafter referred to as "CITY", **L & W CLEVELAND, INC.**, an Ohio corporation with its principal corporate headquarters located at 17757 Woodland Drive, New Boston, Michigan 48164 (hereinafter referred to individually as "L & W" or as "ENTERPRISE") and **AVON PLANT, LLC**, a Michigan Limited Liability Company and wholly owned subsidiary of "L & W", with its principal headquarters located at 17757 Woodland Drive, New Boston, Michigan 48164 (hereinafter referred to individually as "Avon Plant" or as the "ENTERPRISE" or together with "L & W" as the "ENTERPRISES"). It shall take effect when executed by all parties to this Agreement on the latest signed date.

W I T N E S S E T H:

WHEREAS, the CITY has encouraged the development of real property and the acquisition of personal property located in the area designated as an Enterprise Zone; and

WHEREAS, the ENTERPRISE, Avon Plant, has acquired property located at 1190 Jaycox Road within the City of Avon, Permanent Parcel No. 04-00-021-000-167 (hereinafter referred to as the "Property") and plans to expand their current facility by constructing a 48,000 square feet building addition over a portion of their 23.5292 acres of land and lease it to the ENTERPRISE, L & W, and thereby create new employment opportunities (hereinafter referred to as the "Project") within the boundaries of the aforementioned Enterprise Zone, provided that the appropriate development incentives are available to support the economic viability of said Project; and

WHEREAS, the Council of the City of Avon, Ohio, by Ordinance No. 44-94, adopted March 28, 1994, designated the area as an "Enterprise Zone" pursuant to Chapter 5709 of the Ohio Revised Code; and

WHEREAS, effective May 24, 1994, the Director of Development of the State of Ohio determined that the aforementioned area designated in said Ordinance No. 44-94 contains the characteristics set forth in Section 5709.61(A) of the Ohio Revised Code and certified said area as an Enterprise Zone under said Chapter 5709; and

WHEREAS, the CITY, having the appropriate authority for the stated type of project is desirous of providing both ENTERPRISES with incentives available for development of the Project in said Enterprise Zone under Chapter 5709 of the Ohio Revised Code; and

WHEREAS, the ENTERPRISES have submitted a proposed agreement application (herein attached as Exhibit 1) to the CITY, (said application hereinafter referred to as "Application"); along with the application fee of Five Hundred (\$500.00) Dollars payable to the City of Avon pursuant to ACO §234.02; and

WHEREAS, the ENTERPRISES have submitted the required State application fee of Seven Hundred and Fifty (\$750.00) Dollars made payable to the Ohio Department of Development with the application to be forwarded with the final Agreement; and

WHEREAS, the CITY has investigated the application of the ENTERPRISES, and has recommended the same to Council of the City of Avon and/or the Board of Commissioners of Lorain County on the basis that the ENTERPRISES are qualified by financial responsibility and business experience to create and preserve employment opportunities in said Enterprise Zone and improve the economic climate of the CITY; and

WHEREAS, the project site, as proposed by the ENTERPRISES, is located in the Avon School District and the Lorain County Joint Vocational School district and the Board of Education of the Avon School District and the Lorain County Joint Vocational School have been notified in accordance with Section 5709.83 and been given a copy of the APPLICATION; and

WHEREAS, pursuant to Sections 5709.62(C), 5709.63(A) and/or 5709.632 and in conformance with the format required under Section 5709.631 of the Ohio Revised Code, the parties hereto desire to set forth their Agreement with respect to matters hereinafter contained.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from execution hereof, the parties herein agree as follows:

1. The ENTERPRISE, Avon Plant, shall construct a new Forty Eight Thousand (48,000) square foot addition to a building on land it owns at 1190 Jaycox Road, Avon, Ohio, Permanent Parcel No. 04-00-021-000-167, and will lease said property to the ENTERPRISE, L & W to house its the new and additional equipment and manufacturing operations.

The Project will involve a total minimum investment by the ENTERPRISES of Twelve Million, Five Hundred and Thirty Thousand (\$12,530,000.00) Dollars. Included in this investment are Four Million (\$4,000,000.00) Dollars for construction of the addition to the existing facility; Thirty Thousand (\$30,000.00) for improvements to the existing buildings; Eight Million, Five Hundred Thousand (\$8,500,000.00) Dollars for new machinery and equipment, viz., two truck docks, two press pits and a two thousand ton and three thousand ton press, redesigned scrap system and a new driveway. The total investment in this Project represents a "significant" new investment in the CITY.

The Project will begin during the third (3rd) quarter of 2014, and all acquisition, construction and installation will be completed during the fourth (4th) quarter of 2015.

The total investment of this Expansion project is greater than Ten Percent (10%) of the market value of the facility assets already owned at the site prior to such expenditures, i.e., it far exceeds 10% of \$3,323,100.00.

2. As a result of said PROJECT, the ENTERPRISE, L & W, shall create within a time period not exceeding Twenty-Four (24) months after the completion of construction of the aforesaid facility, the equivalent of Thirty-Five (35) full-time permanent job opportunities. All these are new jobs to Ohio. In addition, the ENTERPRISE, L & W, shall retain all of its Eighty-four (84) current full-time employees.

ENTERPRISE'S schedule for hiring over the One (1) year period will be as follows:

<u>Year</u>	<u>Employees</u>
<u>Year One</u>	18
<u>Year Two</u>	<u>17</u>
TOTAL	35

The creation of these permanent full-time jobs will result in approximately Six Hundred Twenty-Nine Thousand (\$629,000.00) Dollars of additional payroll in the first 12 months of operation.

3. The ENTERPRISES shall provide to the proper Tax Incentive Review Council any information reasonably required by the Review Council to evaluate the ENTERPRISES' compliance with the Agreement, including returns filed pursuant to Section 5711.02 and 5727.08 of the Ohio Revised Code if requested by the Review Council.

4. The CITY hereby grants to the ENTERPRISES a tax exemption on its real property improvements (23.5292 acres) pursuant to Sections 5709.62, 5709.63 and/or 5709.632 of the Ohio Revised Code and shall be in the following amounts:

<u>Year of the Tax Exemption</u>	<u>Tax Exemption Amount</u> (Approximate)
Year 1	75%
Year 2	75%
Year 3	75%
Year 4	75%
Year 5	75%
Year 6	75%
Year 7	75%
Year 8	75%
Year 9	75%
Year 10	75%

The exemption commences the first year for which the real property would first be taxable were that property not exempted from taxation. No exemption shall commence after December 31, 2015 nor extend beyond December 31, 2025.

5. Although not applicable at this time, if the State of Ohio should reinstate its personal property tax, the CITY, hereby grants to the ENTERPRISES a tax exemption pursuant to Sections 5709.62, 5709.63 and/or 5709.632 of the Ohio Revised Code, (or those similar to same) for eligible new tangible personal property acquired in conjunction with the Project in the following amounts:

<u>Year of the Tax Exemption</u>	<u>Tax Exemption Amount</u> (Approximate)
Year 1	75%
Year 2	75%
Year 3	75%
Year 4	75%
Year 5	75%
Year 6	75%
Year 7	75%
Year 8	75%
Year 9	75%
Year 10	75%

The exemption commences the first year for which the tangible personal property would first be taxable were that property not exempted from taxation. No exemption shall commence after December 31, 2015 nor extend beyond December 31, 2025.

One or both of the ENTERPRISES must file the appropriate tax forms (DTE 24) with the Lorain County Auditor and (#913) with the Ohio State Department of Taxation to effect and maintain the exemptions covered in the Agreement. The #913 Ohio tax form must be filed annually.

6. One or both of the ENTERPRISES shall pay an annual fee equal to the greater of One (1%) percent of the dollar value of incentives offered under this Agreement or Five Hundred (\$500.00) Dollars; provided, however, that if the value of the incentives exceed Two Hundred Fifty Thousand (\$250,000.00) Dollars, the fee shall not exceed Two Thousand Five Hundred (\$2,500.00) Dollars.

The fee shall be made payable to the Lorain County Commissioners once per year for each year the Agreement is effective on the days and in the form of a certified check. This fee shall be deposited in a special fund created for such purpose and shall be used exclusively for the purpose of complying with Section 5709.68 of the Ohio Revised Code and by the Tax Incentive

Review Council created under Section 5709.85 of the Ohio Revised Code exclusively for the purposes of performing the duties prescribed under that Section.

7. One or both of the ENTERPRISES shall pay such real and tangible personal property taxes as are not exempted under this Agreement and are charged against such property and shall file all tax reports and returns as required by law. In the event that these ENTERPRISES fails to pay such taxes or file such returns and reports, all incentives granted under this Agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

8. The ENTERPRISES shall perform such acts as are reasonable, necessary or appropriate to effect, claim, reserve and maintain exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.

9. If for any reason the Enterprise Zone designation expires, the Director of the Ohio Department of Development revokes certification of the zone, or the City of Avon revokes the designation of the zone, entitlements granted under this Agreement shall continue for the number of years specified under this Agreement, unless one or both of the ENTERPRISES materially fails to fulfill its obligation under the Agreement and the City of Avon, Ohio terminates or modifies the exemptions from taxation granted under this Agreement.

10. If one or both of the ENTERPRISES materially fails to fulfill its obligations under the terms of this Enterprise Zone Agreement, e.g., by moving, selling any or all of its business, relocating any portion of its operation, relocating any of its jobs, ceasing operation or otherwise failing to preserve employment opportunities within the CITY as contemplated by this Enterprise Zone, then in that event, both ENTERPRISES shall forthwith repay any and all tax benefits received during the contract exemption periods. The CITY may record a Certificate of Non-Compliance with the Office of the Lorain County Recorder which shall serve, in addition to other remedies which may be available at law or in equity, as a lien or charge against the affected real property until repayment of taxes has been made in full.

11. If either of the ENTERPRISES materially fails to fulfill its obligations under this Agreement, or if the CITY determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the CITY may terminate or modify the exemptions from taxation granted under this Agreement and may require the repayment of the amount of taxes that would have been payable had the property not been exempted from taxation under this Agreement.

12. Both ENTERPRISES hereby certify that at the time this Agreement is executed, neither ENTERPRISE owed any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and neither owes delinquent taxes for which the ENTERPRISE 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 ENTERPRISE 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 ENTERPRISE. For the purposes of certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

13. Both ENTERPRISES affirmatively covenant that they do not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.

14. In any three-year period during which this agreement is in effect, if the actual number of employee positions created or retained by L & W is not equal to or greater than seventy-five per cent of the number of employee positions estimated to be created or retained under this agreement during that three-year period, either or both ENTERPRISE shall repay the amount of taxes on property that would have been payable had the property not been exempted from taxation under this agreement during that three-year period. In addition, the CITY may terminate or modify the exemptions from taxation granted under this agreement.

15. The ENTERPRISES and the CITY acknowledge that this Agreement must be approved by formal action of the legislative authority of the City of Avon, Ohio and the County of Lorain, Ohio, as a condition for the Agreement to take effect. This Agreement takes effect upon such approval.

16. The CITY has developed a policy to ensure recipients of Enterprise Zone tax benefits practice non-discriminating hiring in this operation. By executing this Agreement, these ENTERPRISES commit to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.

17. Exemptions from taxation granted under this Agreement shall be revoked if it is determined that either ENTERPRISE, any successor enterprise, or any related members (as those terms are defined in Section 5709.61 of the Ohio Revised Code) has violated the prohibition against entering into this Agreement under Division (E) of Section 3735.671 or Section 5709.62, 5709.63 and/or 5709.632 of the Ohio Revised Code prior to the time prescribed by that division or either of those Sections.

18. The ENTERPRISES affirmatively covenant that they have made no false statements to the State or local political subdivision in the process of obtaining approval for the Enterprise Zone incentives. If any representative of either ENTERPRISE has knowingly made a false statement to the State or local political subdivision to obtain the Enterprise Zone incentives, the ENTERPRISES shall be required to immediately return all benefits received under the Enterprise Zone Agreement pursuant to ORC Section 9.66(C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66 (C)(1). Any person who provides a false statement to secure

economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC Section 2921.13(D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more that six (6) months.

20. This Agreement is not transferable or assignable without the express, written approval of the City of Avon, Ohio.

IN WITNESS WHEREOF, the CITY, by Bryan K. Jensen, its Mayor, and pursuant to Ordinance No. -14, has caused this instrument to be executed this ___ day of _____, 2014, AVON PLANT, LLC, by Scott Jones, President, has caused this instrument to be executed on this ___ day of _____, 2014 and L & W CLEVELAND, INC., by Scott Jones, President, has caused this instrument to be executed on this ___ day of _____, 2014.

Witnesses:

THE CITY OF AVON, OHIO

Bryan K. Jensen, Mayor

**BOARD OF COUNTY COMMISSIONERS
OF LORAIN COUNTY, OHIO**

**L & W CLEVELAND, INC.
(the "ENTERPRISE")**

Scott Jones, President

AVON PLANT, LLC

Scott Jones, President

Approved as to Form:

John A. Gasior, Law Director
City of Avon, Ohio