

ORDINANCE NO. 2015- 3769

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE ON BEHALF OF THE CITY OF FREMONT A SETTLEMENT AGREEMENT WITH ALCO IN A FORM APPROVED BY THE LAW DIRECTOR INVOLVING PROPERTY LOCATED AT 223 PROSPECT STREET, FORMERLY CLAUSS CUTLERY. THE AMOUNT OF THE SETTLEMENT IS THE BALANCE OF THE ESCROW ACCOUNT, \$113,270.00, AND DECLARING AN EMERGENCY.

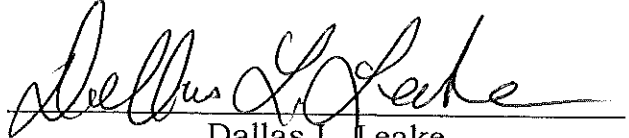
BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FREMONT, STATE OF OHIO:

SECTION 1. That the Mayor is hereby authorized to execute on behalf of the city a settlement agreement, attached as Exhibit A, with ALCO in a form approved by the Law Director involving property located at 223 Prospect Street, formerly Clauss Cutlery, in the amount of \$113,270.00.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Revised Code of Ohio.

SECTION 3. The immediate operation of the provisions of this ordinance is necessary for the immediate preservation of the public peace, health, safety and welfare of the citizens of the City of Fremont. Said emergency being the need to resolve the matter in an expeditious manner.

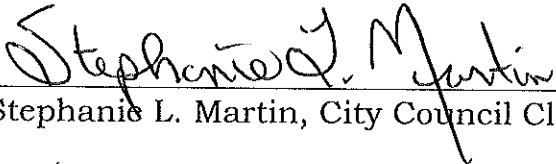
This ordinance, provided it receives a two-thirds yea or nay vote of all the members elected to the Fremont City Council, is hereby declared to be an emergency measure and this ordinance shall be in full force and effect from and after its passage by the Council of the City of Fremont, approval by the Mayor, and publication and posting as required by law.

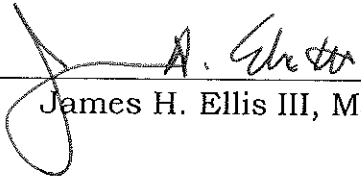

Dallas L. Leake
President of Council

PASSED: 6-4-15

Effective date: 6-4-15

YEAS: 6 NAYS: 0


Stephanie L. Martin, City Council Clerk


James H. Ellis III, Mayor

ORD1928

Approved as to form:



James F. Melle, Director of Law
City of Fremont, Ohio

RELEASE AND SETTLEMENT AGREEMENT

This agreement, dated this _____ day of May, 2015, is a Release and Settlement Agreement (“Settlement Agreement”) whereby the City of Fremont, including itself, its agents, insurers, employees, attorneys, predecessors, affiliates, successors and assigns (hereinafter collectively referred to as “City”), forever extinguishes all of its rights and claims as hereinafter provided against Alco Industries, Inc. (“Alco”) its agents, insurers, assigns, predecessors, successors, affiliates, parent, subsidiary, and related corporations, and each of their respective past, present, and future officers, directors, shareholders, agents, trustees, servants, attorneys and employees (hereinafter collectively referred to as “Alco”).

In consideration of the execution of this Settlement Agreement, the payment of One Hundred Thirteen Thousand and Two Hundred Seventy Dollars (\$113,270) to the City by Alco within thirty (30) days of the Effective Date of this Settlement Agreement, the sufficiency of which are hereby acknowledged, the City and Alco voluntarily and knowingly execute this Settlement Agreement with the express intention of effecting the extinguishment of all obligations as specified herein and agree as follows:

RECITALS

A. WHEREAS, the City and Alco are each referred to as a “Party,” and collectively as the “Parties.”

B. WHEREAS, Alco was the former owner of the former Clauss Cutlery Property (the “Property”) located on 223 N. Prospect Street, Fremont, Ohio.

C. WHEREAS, on or about November 10, 2008, the City and Alco entered into a Property Transfer and Development Agreement (“Development Agreement”) to facilitate the redevelopment and rehabilitation of the Property.

D. WHEREAS, pursuant to the terms and conditions set forth in the Development Agreement the Parties agreed to cooperate to secure a Clean Ohio Revitalization Fund (“CORF”) grant that would be used to accelerate the cleanup of the Property in accordance with the standards set forth in Ohio EPA’s Voluntary Action Program (“VAP”) as established under Ohio Revised Code Chapter 3746 and Ohio Administrative Code Chapter 3745-300.

E. WHEREAS, on or about March 9, 2009, the City secured a CORF grant to facilitate the cleanup of the Property under the VAP.

F. WHEREAS, pursuant to the Development Agreement the City took ownership of the Property on or about May 20, 2009.

G. WHEREAS, pursuant to Section 3 of Development Agreement Alco agreed to pay the required minimum twenty-five (25%) match necessary to secure the CORF as well as all environmental investigation, remediation, and post-monitoring costs that exceed the amount of funds available under the CORF (“Cost Overruns”).

H. WHEREAS, pursuant to Section 5 of the Development Agreement Alco agreed to indemnify the City for certain environmental liabilities.

I. WHEREAS, on August 29, 2014, the City entered into an Operation & Maintenance Agreement (“O&M Agreement”) with Ohio EPA to maintain compliance with VAP applicable standards through implementation of the remedial activities described within the Operation & Maintenance Plan (“O&M Plan”).

J. WHEREAS, on September 3, 2014, Ohio EPA issued a VAP Covenant-Not-To-Sue (“CNS”) for the Property under Ohio Revised Code §3746.12 which certified that Ohio EPA determined the Property meets applicable VAP cleanup standards and releasing the City from certain environmental liability pursuant to the terms and conditions set forth in the CNS.

K. WHEREAS, the Parties wish to reach a resolution of the costs to be paid by Alco under the Development Agreement as well as Alco's liability for its past ownership of the Property.

AGREEMENT

NOW THEREFORE, in consideration of the covenants and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by each Party, the Parties agree as follows:

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated into and made part of this Agreement.
2. Release. The City generally and fully releases, settles, cancels, discharges, and acknowledges to be fully satisfied as against Alco any and all rights, claims, counterclaims, causes of action, demands, actions, suits, damages, debts, losses, executions, and liabilities of whatever kind or nature which the City now has, ever had, or may in the future have against Alco, including, but not limited to, past, present, and future claims, whether currently known or unknown, suspected or unsuspected, for contractual, extra-contractual, tortious, statutory, compensatory, and punitive damages, interest, attorneys' fees, and costs arising out of or by reasons of or in any manner connected with the Development Agreement or in connection with any physical characteristics or existing condition, including, without limit, subsurface conditions and Hazardous Substances, on, under, or related to the Property, or any Environmental Laws applicable thereto. (The terms "Environmental Laws," and "Hazardous Substances" shall have the same meaning as defined under the Development Agreement.)

3. No Admission. This Agreement is not to be construed as an admission of fault or liability on the part of any Party, and each Party specifically denies any liability or fault.

4. Representation of No Subrogation or Assignment. The City represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, or potential causes of action referred to in this Settlement Agreement. The City represents that no portion of the claims which are the subject of this Settlement Agreement has been assigned, subrogated, or otherwise transferred to any person or legal entity.

5. Entire Agreement. This Settlement Agreement contains the entire agreement between the City and Alco with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, between the parties except as herein expressly set forth.

6. Representation of Comprehension of Documents. In entering this Settlement Agreement, the City and Alco represent the following: (1) the terms of the Settlement Agreement have been completely read and explained to the City and Alco and by their respective attorneys, and; (2) the terms of this Agreement are fully understood and voluntarily accepted by the City and Alco.

7. Interpretation. This Settlement Agreement shall not be construed more strictly against one party than another merely by virtue of the fact that it, or any part of it, may have been prepared by one of the parties. The headings of paragraphs of this Settlement Agreement are inserted for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect the construction hereof. The City and Alco recognize that the terms and conditions of this Agreement are the result of arm's length negotiations of the Parties.

8. Severability. The City and Alco expressly warrant, represent, covenant and agree that should any provision of this Settlement Agreement be held illegal, invalid, or unenforceable, such provision(s) shall be fully severable, and in place of such provision(s) shall be substituted a similar provision(s), which shall be legal, valid and enforceable; however, notwithstanding the foregoing, if the payment provision of this Settlement Agreement are held legal, valid, and enforceable, then, the release provisions of this Settlement Agreement will also be deemed legal, valid and enforceable.

9. Governing Law. This Settlement Agreement shall be construed in accordance with the laws of the State of Ohio.

10. Effective Date. The Effective Date of this Agreement shall be the last date on which any Party executes this Agreement.

11. Counterparts. This Settlement Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signed electronic copies, including, but not limited to, a facsimile of this Settlement Agreement shall legally bind the Parties to the same extent as the original documents.

CITY OF FREMONT

Date

By: _____

Its: _____

Witness

By: _____

ALCO INDUSTRIES, INC.

Date

By: _____

Its: _____

Witness

By: _____