



AGENDA ITEM REPORT

Forsyth County

MEETING DATE: May 6, 2021

Agenda Item: 5A-5B

**CONTRACT
NUMBER:**

**STAFF
CONTACT:** J. Kyle Haney,
Community & Economic
Development Director

DEPARTMENT: Community & Economic
Development

SUBJECT:

A. PUBLIC HEARING TO CONSIDER THE EXPENDITURE OF COUNTY GENERAL FUNDS FOR AN ECONOMIC DEVELOPMENT PROJECT AND AUTHORIZING EXECUTION OF AN AGREEMENT WITH A COMPANY

B. RESOLUTION AUTHORIZING THE EXPENDITURE OF COUNTY GENERAL FUNDS FOR AN ECONOMIC DEVELOPMENT PROJECT AND TO APPLY FOR STATE OF NORTH CAROLINA PROGRAMS TO AID AND ENCOURAGE THE EXPANSION BY A COMPANY IN FORSYTH COUNTY AND AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT AGREEMENT

ATTACHMENTS: [Resolution-2021-093 - ED Project blue wave - Pdf](#)
[Blue Wave ED Agreement \(Draft\)](#)

EXECUTIVE SUMMARY

BACKGROUND INFORMATION:

A manufacturer of metal beverage cans, is considering the expansion of its manufacturing plant in Forsyth County, or other Counties. The company would make a capital investment of at least \$195,500,000 in building and machinery and equipment and create at least 94 new full-time jobs with an average wage of at least 130% of the average Forsyth County wage, plus benefits.

This item authorizes an incentive not to exceed \$2,749,100 from available revenues in the General Fund over a five-year period to incentive the company to expand in Forsyth County. Additionally, this item authorizes the County to apply for NC Department of Commerce funds and programs to support the company's expansion.

**RESOLUTION AUTHORIZING THE EXPENDITURE OF COUNTY GENERAL FUNDS FOR
AN ECONOMIC DEVELOPMENT PROJECT AND TO APPLY FOR STATE OF NORTH
CAROLINA PROGRAMS TO AID AND ENCOURAGE THE EXPANSION BY A COMPANY IN
FORSYTH COUNTY AND AUTHORIZING EXECUTION OF AN ECONOMIC DEVELOPMENT
AGREEMENT**

WHEREAS North Carolina General Statute 158-7.1 authorizes counties to undertake an economic development project by extending assistance to a company in order to aid and encourage the company to expand its operations within the county;

WHEREAS a manufacturer of metal beverage cans is considering the expansion of its manufacturing plant in Forsyth County, or other Counties, through capital investments and job creation and retention;

WHEREAS Forsyth County is considering entering into an economic development incentives agreement with a company and applying for a One North Carolina grant in the amount of \$250,000 and a Rural Division Building Reuse grant in the amount of \$500,000 from the State of North Carolina to aid and encourage the expansion of a metal beverage can manufacturing plant in Forsyth County, in which the County will appropriate and expend funds in a proposed amount not to exceed \$2,749,100 from available revenues in the General Fund over a five-year period, and in which annual County incentive amounts will not exceed 50% of the actual annual property taxes generated by the capital investments outlined herein made by a company and/or its subsidiaries and affiliates in Forsyth County and paid to the County in the prior fiscal year during the term of the proposed agreement, and based upon and contingent upon a capital investment by a company and/or its subsidiaries and affiliates of at least \$195,500,000 in building and machinery equipment capital investment over a two-year period, and the creation of at least 94 new full-time or fulltime equivalent (FTE) jobs in Forsyth County over a two-year period with an average wage of at least \$77,300 per year, plus benefits;

WHEREAS the Forsyth County Board of Commissioners has duly advertised and conducted a public hearing to consider whether to participate in and expend County General Funds for an economic development incentives agreement between Forsyth County and a company based on the Company's proposed expansion of it's metal beverage can manufacturing plant through capital investments and job creation and retention in Forsyth County as outlined herein; and

WHEREAS the proposed expansion of a metal beverage can manufacturing plant by a company in Forsyth County will stimulate the local economy, promote business, create and retain permanent jobs in the County, increase the property tax base and revenues therefrom, and increase business prospects of the County;

NOW, THEREFORE, BE IT RESOLVED, that the Forsyth County Board of Commissioners, after duly advertised public hearing held, finds that the proposed economic development incentives agreement as outlined herein with a company will stimulate the local economy, promote business, create and retain permanent jobs in the County, increase the property tax base and revenues therefrom, and increase business prospects of the County;

BE IT FURTHER RESOLVED, that the Forsyth County Board of Commissioners hereby approves and authorizes Forsyth County's participation in an economic development incentives

project and applying for a One North Carolina grant in the amount of \$250,000 and a Rural Division Building Reuse grant in the amount of \$500,000 from the State of North Carolina to aid and encourage a company to expand its metal beverage can manufacturing plant in Forsyth County, and the County's appropriation and expenditure of County funds in an amount not to exceed \$2,749,100 from available revenues in the General Fund over a five-year period, in which annual County incentive amounts will not exceed 50% of the actual annual property taxes generated by the capital investments outlined herein made by a company and/or its subsidiaries and affiliates in Forsyth County and paid to the County in the prior fiscal year during the term of the proposed agreement, based upon and contingent upon capital investments by a company and/or its subsidiaries and affiliates of at least \$195,500,000 in building and machinery and equipment capital investment over a two-year period, and the creation of at least 94 new full-time or FTE jobs in Forsyth County over a two-year period with an average wage of at least \$77,300 per year, plus benefits, as will be more specifically set forth in an agreement between Forsyth County and a company; and

BE IT FURTHER RESOLVED, by the Forsyth County Board of Commissioners that the Chairman or the County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, the necessary documents for Forsyth County to participate in an economic development incentives agreement with a company as further described herein, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

NORTH CAROLINA)
FORSYTH COUNTY)

AGREEMENT FOR THE
USE OF FORSYTH COUNTY
ECONOMIC DEVELOPMENT INCENTIVE GRANT FUNDS

THIS AGREEMENT is made and entered into as of the ____ day of ____ 2021, by and between Forsyth County, North Carolina (the “County”), and COMPANY (the “Grantee”) (the County and the Grantee are together referred to as the “Parties”) as an economic development project to aid and encourage the Grantee with the expansion of a metal beverage can manufacturing facility in Forsyth County pursuant to the provisions of N.C.G.S. 158-7.1 and subject to the restrictions and conditions set forth herein.

RECITALS:

A. The County is vitally interested in the economic welfare of its citizens and the creation, retention, and maintenance of jobs for its citizens in strategically important industries and therefore wishes to provide the necessary conditions to stimulate investment in the local economy, promote business, create, retain and maintain jobs, increase the property tax base and revenues therefrom, and increase business prospects of the County, which will be made possible pursuant to this Project, as defined in Section I.1.

B. The Grantee proposes to expand its manufacturing facility in Forsyth County, which includes the creation, retention, and maintenance of full-time or full-time equivalent jobs in the County, and capital investments in building and business personal property in Forsyth County by Grantee.

C. The County recognizes that the Project will bring direct and indirect benefits to the County, and conducted a public hearing on May 6, 2021, and adopted a Resolution on May 20, 2021, to authorize offering economic development incentives to Grantee to induce the Grantee to execute the Project in the County pursuant to the provisions of N.C.G.S. 158-7.1.

D. The County hereby acknowledges that the terms of this Agreement constitute a material inducement to the Grantee to expand a manufacturing facility in the County, which includes the creation, retention, and maintenance of jobs, and making taxable capital investments in the County. Similarly, the Grantee hereby acknowledges that its decision to execute the Project in the County resulted from the inducement by the County of the Incentives outlined in this

Agreement. The Grantee further acknowledges that execution of the Project would not be completed without the economic development assistance of the County.

WITNESSETH:

Now, therefore, in consideration of receipt of Incentives from Forsyth County for executing the Project, as set forth herein, the County and the Grantee do hereby agree as follows:

I. Description of Project and Assistance:

1. The Project. The Project is defined as

(a) The expansion by Grantee of a metal beverage can manufacturing facility in an existing facility in Winston-Salem, Forsyth County, (“Facility”) with a capital investment by Grantee of at least \$5,500,000 in building renovation and upfit and \$190,000,000 in business personal property over a two-year period (collectively the requirements in this subsection are hereinafter referred to as the “Capital Investment Condition”); and

(b) The creation of at least 94 new full-time or full-time equivalent (“FTE”) jobs with an average wage of \$77,300 per year, plus benefits (“New Qualified Jobs”) within a two-year period in the Facility, the retention of 217 existing full-time or FTE jobs (“Retained Qualified Jobs”), and the maintenance of all jobs for a five-year period (collectively the requirements in this subsection are hereinafter referred to as the “Jobs Condition”).

2. Maximum Payment. The maximum total payment which Grantee may receive from the County shall not exceed \$2,749,100, which consists of up to \$1,374,550 for satisfaction of the Capital Investment Condition and up to \$1,374,550 for satisfaction of the Job Condition, as calculated pursuant to the Section I.4, which shall be paid over an Incentive Period of five years.

3. Qualified Jobs. Total New Qualified Jobs is the number of new jobs with benefits created by Grantee at the Facility, whose average annual compensation is at least \$77,300 per year. If the average annual rate of compensation for new jobs is less than \$77,300, then the lowest paying jobs will be subtracted from the Total New Qualified Jobs until the average compensation is at least \$77,300. If the number of retained jobs is less than the Retained

Qualified Jobs, then the shortfall in retained jobs shall be deducted from the Total New Qualified Jobs.

4. Calculation of Incentive Payment. Provided that Grantee satisfies all conditions of this Agreement, County shall pay Grantee an Annual Total Incentive Payment for up to five years, calculated as follows:

- (a) Annual Total Incentive Payment shall consist of the sum of the Annual Job Condition Payment and the Annual Capital Condition Payment.
- (b) Annual Job Condition Payment shall be calculated as follows:
 - (i) Divide the actual New Qualified Jobs (Cumulative) by the New Qualified Jobs (Cumulative) Goal for the corresponding incentive year, as set forth in Exhibit A; and
 - (ii) Multiple the result, not to exceed 1, by the Maximum Job Incentive for the corresponding year, set forth in Exhibit A.
- (c) Annual Capital Condition Payment shall be calculated as follows:
 - (i) Multiply the increase in the assessed property tax valuation in the Facility attributable to Grantee's capital investment as part of the Project by the annual County property tax rate; and
 - (ii) Multiply the result by 0.25.
- (d) Notwithstanding anything to contrary herein, each Annual Total Incentive Payment shall not exceed 50% of the actual annual increase in County property taxes which are attributable to the capital investment made by Grantee at the Facility pursuant to this Agreement and paid to the County in the prior fiscal year during the term of this Agreement, and any excess of the Annual Total Incentive Payment over 50% shall be deducted from the Annual Capital Condition Payment.
- (e) Notwithstanding anything to the contrary herein, the sum of all Annual Capital Condition Payments shall not exceed \$1,374,550, the sum of all Jobs Condition Payments shall not exceed \$1,374,550, and the sum of all Total Annual Total Incentive Payments, which includes all payments to Grantee under this Agreement, shall not exceed \$2,749,100.

5. Incentive Payment Schedule. The Incentive Period of five years shall begin, and the County shall commence Incentive Payments, in the County fiscal year following the payment

of annual property taxes by the Grantee on the capital investments related to the Project, provided that the Grantee provides documentation to the County of twelve months of qualifying capital investments and job creation, retention, and maintenance under the Project, and after the Grantee's request to commence payment of incentives under this Agreement. If the Grantee fails to qualify for any incentives within five years of the date of this Agreement, the Agreement shall terminate. Once incentive payments have commenced, the County shall pay the incentives each year thereafter within thirty days of receipt of a written request from Grantee for payment, together with sufficient supporting documentation of Qualifying Job creation and maintenance and capital investments, and any other documentation reasonably required by the County in support of the request for Annual Total Incentive Payment. Notwithstanding anything to the contrary herein, the Grantee shall not receive Incentive Payments for any period later than the fiscal year ending June 30, 2030, and Company shall not receive Incentive Payments for any fiscal year if the Grantee's request is submitted later than 6 months following the end of that fiscal year.

II. Reporting and Information Disclosure Requirements:

1. Payment of Incentives will be made only upon written request of the Grantee and submission to the County of appropriate documentation of Capital Investments and Job Creation and Maintenance as outlined herein and reasonably acceptable to the County.

2. The Grantee agrees that it will supply to the County an annual report containing non-confidential records, information and verification relating to Grantee's compliance with Capital Investment and Job Conditions outlined in this Agreement, in support of the written request by the Grantee for annual Incentives which confirm that the levels of Capital Investment and Job Creation, Retention, and Maintenance as outlined herein have been achieved. The Grantee agrees that, upon reasonable notice, the County shall have access to such non-confidential records of the Grantee and the Facility during normal business hours for the purposes of verifying Grantee's satisfaction of its obligations under this Agreement; and the Grantee agrees to submit such reports as the County shall reasonably request pertaining to Grantee's satisfaction of the obligations set forth in this Agreement. Job Creation, Retention, and Maintenance records to be provided to the County by Grantee shall include the monthly employment totals of Qualified Jobs.

3. Grantee shall provide such additional non-confidential information reasonably requested by the County for the purposes of verifying Grantee's satisfaction of its obligations under this Agreement within thirty (30) days of the written request by the County. Failure by

Grantee to provide the information requested within thirty (30) days shall constitute an Event of Default of this Agreement, and the County may exercise the remedies outlined in Section II.5 of this Agreement.

4. Grantee shall notify the County immediately if it is appealing any County property tax valuation, or if it is claiming any exemption, during the Incentive Period. No incentive payment will be made by the County for the year of the property tax appeal or claim for exemption and any subsequent year until the matter is finally adjudicated. Upon final adjudication of the appeal or claim, the Grantee shall notify the County, and the County shall make the incentive payment based upon the final adjudicated valuation.

5. Default, Cure Right, and Remedies.

(a) The failure of Grantee to comply with any material terms and conditions of this Agreement will constitute an event of default (“Event of Default”).

(b) The County will provide the Grantee with written notice of an Event of Default. Such notice will describe the facts and circumstances associated with such Event of Default. Thereafter, the Grantee will have up to thirty (30) days to cure such Event of Default to the reasonable satisfaction of the County.

(c) Subject to the cure rights described in Section II.5(b) of this Agreement, upon an Event of Default, the County may, in its discretion, exercise one or more of the following remedies:

- (i) Suspend or terminate the payment of the Incentives;
- (ii) Require the repayment by the Grantee of all Incentives paid to Grantee prior to the occurrence of an Event of Default; and
- (iii) Terminate this Agreement.

(d) If the County exercises its remedy to require repayment of all Incentives pursuant to Section II.5(c) of this Agreement, due to an Event of Default by the Grantee, the Grantee agrees to promptly remit to the County any payments of Incentives previously received by the Grantee which have been paid or received by the Grantee in violation of the provisions of this Agreement.

(e) Except as otherwise provided herein, failure to fully achieve the Job Condition or the Capital Investment Condition shall not constitute an Event of Default, but shall be subject to reduced Incentives as provided in Section I.4 of this Agreement.

6. Grantee shall not be entitled to any annual economic development assistance if it is in arrears in the payment of its annual property taxes or other financial obligations to the County.

III. Public Records and Confidential Information. All non-confidential information and documents provided by the Grantee to the County shall be treated as a public record under N.C.G.S. 132-1 et. seq. All information or documents provided by the Grantee to the County and marked as “confidential” or with a similar designation under N.C.G.S. 132-1.2 will be treated by the County as confidential and will not be disclosed to any person without the prior written consent of the Grantee, if it meets the criteria outlined in N.C.G.S. 132-1.2 (1)(a-d).

IV. Other Provisions:

(1) Amendment. This Agreement may not be amended or modified except with the prior written consent of all parties.

(2) Applicable Law; Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without regard to any application of conflicts or choice of law principles.

(3) Assignment. This Agreement and the right to receive Incentives hereunder are non-assignable without the written consent of the County.

(4) Continue Operation in County. Grantee must continue to operate its Facility in Forsyth County during the term of this Agreement in order to be eligible to receive Incentive payments thereon.

(5) Reimbursement and Refund. If the Grantee ceases operations at the Facility or otherwise ceases to use the site for the purposes contemplated herein, in either case within the five (5) year Incentive Period for any reason other than nonperformance by the County of its covenants under this Agreement, then, at the County’s request, the Grantee will refund to the County, a percentage of the Annual Total Incentive Payments previously paid to the Grantee, in each case

depending on the year in which the Grantee ceases operations at the Facility as determined in the following table:

<u>Year</u>	<u>Reimbursement Percentage</u>
1	100%
2	90%
3	80%
4	70%
5	60%

(6) Audit Right. The County reserves the right to require an audit by an independent certified public accountant, or may perform the audit through the use of its County staff, solely for the limited purpose of confirming the Grantee's compliance with the Capital Investment and Jobs Conditions described in Section I of this Agreement. If the County elects to undertake an audit, it shall provide the Grantee with at least thirty (30) days prior written notice and such audit will be at the County's sole expense. The Grantee will provide the County and its auditors with reasonable access to such records and the premises of the Grantee as may be necessary to conduct such audit, subject to the execution of appropriate written assurances in favor of the Grantee with respect to the preservation of the confidential information of the Grantee and third parties that is made available in the course of such audit. The County will be entitled to retain documentation from the said audit for as long as it deems necessary, and to use the audit solely for the limited purposes described above.

(7) Binding Obligation. The Parties and their respective successors, assigns, and legal representatives accept full legal responsibility hereunder for compliance with all covenants, agreements and obligations of this Agreement and with respect to all funds received hereunder from the County by the Grantee.

(8) Compliance with Law.

(a) Grantee and its subcontractors shall comply with Article 2 of Chapter 64 of the North Carolina General Statutes relating to the required use of the federal E-Verify program to verify the work authorization of newly hired employees. Failure of the Grantee to comply with this provision or failure of its subcontractors to comply could render this contract void under North Carolina law.

(b) Provider hereby certifies that it is not on the North Carolina State Treasurer's lists of persons engaging in business activities in Sudan (Darfur), Iran, or boycotting Israel, prepared pursuant to NCGS §§ 147-86.43, 147-86.58, and 147-86.81, nor will Provider utilize for this Agreement any subcontractor on such lists.

(c) The Grantee and the County shall comply with all applicable federal, state, and local laws that may be required to carry out their respective obligations to be performed under this Agreement.

(d) The Grantee shall comply with all applicable employment laws, including but not limited to the Americans with Disabilities Act (ADA), the State of North Carolina Occupational/Safety and Health Act (OSHA), and the State and Federal Equal Opportunity laws, as well as the applicable regulations promulgated thereunder.

(9) Counterparts; Jurisdiction. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original. The Parties submit to the exclusive jurisdiction of the North Carolina State courts sitting in Forsyth County with respect to any dispute arising under this Agreement.

(10) Entire Agreement; Authority. This Agreement is the entire agreement between these Parties as to the subject matter referenced herein, without regard to any prior agreements, understandings or undertakings, whether oral, written, electronic, or otherwise. The Parties, and each person executing this Agreement on behalf thereof, represent and warrant that they have the full right and authority to enter into this Agreement, to sign on behalf of the party indicated, and are acting on behalf of themselves, their constituent members and the successors and assigns of each of them, in each case in their official capacities.

(11) Exhibits. The attached Exhibits, as described below, are incorporated herein by reference.

Exhibit A: Capital Investment Schedule, Job Creation, Retention, and Maintenance Schedule, and Maximum Job Incentive

(12) Further Action. The Parties acknowledge that further actions are not legally necessary under North Carolina law to implement the terms of this Agreement in a lawful manner. The Parties agree that if this Agreement is challenged by a third party in a court of law, they shall cooperate with the County in defense of the Agreement.

(13) Hiring Practices. The Grantee will use reasonable efforts to hire, where practicable, qualified local contractors, including minority and women contractors, and for employment purposes local residents from the Forsyth County area.

(14) Hold Harmless. The Grantee agrees to hold the County harmless from liability for any expenses which may be claimed against the County due to any acts or omissions by the Grantee or its employees or agents related to the administration of the Project.

(15) Notice. Notices shall be given in writing, and shall be deemed received (a) when personally delivered; (b) three business days after being deposited in the United States Mail, postage prepaid, registered or certified, return receipt requested, or (c) one business day after being deposited with an overnight commercial courier (such as, but not limited to, Federal Express), at the following addresses:

For notice to the COUNTY:

Forsyth County Manager
Forsyth County Government Center
201 North Chestnut Street
Winston-Salem, NC 27101

WITH COPY TO:

Forsyth County Attorney
Forsyth County Government Center
201 N. Chestnut Street
Winston-Salem, NC 27101

For notice to COMPANY:

[INSERT NOTICE ADDRESS]

(16) Relationship of Entities. Nothing contained herein will be construed as establishing an employment relationship, partnership, joint venture, or agency agreement among the Parties.

(17) Severability. In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be replaced with a revision which accomplishes the purposes outlined herein and shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable

and all other provisions and requirements of this Agreement, not contingent thereon, shall remain in full force and effect.

(18) Statutory Authority. N.C.G.S. 158-7.1 authorizes the execution of this Agreement by the Parties upon approval of the Board of County Commissioners following a public hearing.

(19) Termination. Termination of this Agreement by the County may occur for reasons described herein. This Agreement shall also terminate at the end of the five-year Incentive Period and upon payment by the County of all Incentives due, if any. Any terms and provisions which by their nature must be honored or fulfilled after termination will survive termination and be binding upon the County and Grantee until completely satisfied.

(20) Waiver of Default. Failure on the part of the County to exercise any right, remedy, power or privilege hereunder shall not operate as a waiver of any current or future default. Further, a waiver of one provision of this Agreement is not a waiver of all or future provisions of this Agreement.

[SIGNATURES ON NEXT PAGES]

IN WITNESS WHEREOF, the Grantee has caused this Agreement to be duly executed as of the date first above written.

ATTEST:

COMPANY

Secretary

By: _____

Job Title: _____

(SEAL)

IN WITNESS WHEREOF, the County has caused this Agreement to be duly executed as of the date first above written.

ATTEST:

FORSYTH COUNTY

Clerk to the Board

By:_____
J. Dudley Watts, Jr., County Manager

(SEAL)

Exhibit A

Capital Investment Schedule

	<u>Annual Capital Investment</u>	<u>Cumulative Capital Investment</u>
End of Year 1 =	\$5,500,000 – Building Construction \$149,500,000 - Business Personal Property	\$ 155,000,000
End of Year 2 =	\$40,500,000 - Business Personal Property	\$ 195,500,000

Job Creation, Retention, and Maintenance Schedule
(94 Total New Qualified Jobs)

	<u>New Qualified Jobs (Cumulative) Goal</u>	<u>Qualified Jobs (Including Existing Jobs)</u>
End of Year 1 =	70	287
End of Year 2 =	94	311
End of Year 3 =	94	311
End of Year 4 =	94	311
End of Year 5 =	94	311

Maximum Job Creation Schedule

End of Year 1 =	\$ 215,737
End of Year 2 =	\$ 289,703
End of Year 3 =	\$ 289,703
End of Year 4 =	\$ 289,703
End of Year 5 =	\$ 289,704