



**SPECIAL MEETING
OF THE
LEE COUNTY BOARD OF COMMISSIONERS
106 HILLCREST DRIVE
SANFORD, NORTH CAROLINA 27330**

September 30, 2019
6:00 P.M.

A G E N D A

I. CALL TO ORDER – Amy Dalrymple, Chair

II. MOMENT OF SILENCE & PLEDGE OF ALLEGIANCE

III. NEW BUSINESS

- A. Public hearing for a proposed modification to an economic development project known as Project Forge. – Dr. John Crumpton/Bob Joyce (Page 1)
- B. Consideration of an incentive agreement for Project Forge. – Dr. John Crumpton (Pages 2-30)
- C. Consideration of an Interlocal Agreement between the City of Sanford and Lee County related to site preparation contributions for Project Forge. – Dr. John Crumpton (Pages 31-33)

IV. ADJOURN



LEE COUNTY AGENDA ABSTRACT BOARD OF COMMISSIONERS MEETING

ITEM #:
III. A.

(Use the Down or Up Arrows to move between fields of the Form)

MEETING DATE: September 30, 2019

SUBJECT: Public Hearing on a proposed modification to an economic development project known as Project Forge

DEPARTMENT: Administration

CONTACT PERSON: Dr. John Crumpton, County Manager

TYPE: Consent Agenda Action Item Public Hearing Information

REQUEST	Hold a public hearing to consider a modification to the proposed terms of Project Forge.
BUDGET IMPACT	Up to \$6,462,032, which may be more or less depending on the amount of new taxable investment made by the subsidiaries.
ATTACHMENTS	Public Hearing Notice – published 9/20/19 in the <i>Sanford Herald</i>
PRIOR BOARD ACTION	N/A
RECOMMENDATION	Hold a public hearing.
SUMMARY	

The economic development project to be carried out by two subsidiary companies of the Kalyani Group consists of building an industrial building and the purchase of machinery and equipment in the amount up to \$170,363,980 in new taxable investment in Sanford, Lee County, North Carolina. Lee County will provide future annual incentive payments of 59.05% of the subsidiaries' new taxable investment in the project over a period of ten years for each subsidiary company. In addition, the County will provide funds to acquire land to be conveyed to the subsidiaries and will contribute funds to cover a portion of site preparation costs.

Due to the terms being a modification of an approved economic development project, an incentive agreement detailing the modified terms has been provided for the Board's consideration and approval following the public hearing.



ITEM #:
III. B.

LEE COUNTY AGENDA ABSTRACT BOARD OF COMMISSIONERS MEETING

(Use the Down or Up Arrows to move between fields of the Form)

MEETING DATE: September 30, 2019

SUBJECT: Consideration of an Incentive Agreement for Project Forge

DEPARTMENT: Administration

CONTACT PERSON: Dr. John Crumpton, County Manager

TYPE: Consent Agenda Action Item Public Hearing Information

REQUEST	Consider and approve an incentive agreement detailing the modified terms of Project Forge.
BUDGET IMPACT	Up to \$6,462,032, which may be more or less depending on the amount of new taxable investment made by the subsidiaries.
ATTACHMENTS	Incentive Agreement
PRIOR BOARD ACTION	Held a public hearing on August 19, 2019 and approved original terms of Project Forge
RECOMMENDATION	Approve incentive agreement as to the material terms of Project Forge and authorize the Deputy County Attorney and Chair to finalize and execute the agreement and upon closing on the subject property, authorize staff to proceed with filing a petition for annexation and rezoning request.
SUMMARY	

The economic development project to be carried out by two subsidiary companies of the Kalyani Group consists of building an industrial building and the purchase of machinery and equipment in the amount up to \$170,363,980 in new taxable investment in Sanford, Lee County, North Carolina. Lee County will provide future annual incentive payments of 59.05% of the subsidiaries' new taxable investment in the project over a period of ten years for each subsidiary company. In addition, the County will provide funds to acquire land to be conveyed to the subsidiaries and will contribute funds to cover a portion of site preparation costs.

The acquisition and conveyance of property will include the purchase of approximately 98.24 acres of real property located on Colon Road (PIN 9655-21-2728-00) at an estimated purchase price of \$1,113,667 coming from a proposed borrowing of funds as a part of renovations to the Lee County Government Center. The City of Sanford will also be contributing funds for site development and expansion of water, sewer, and road infrastructure to the site. As a part of this process, upon closing on the property the County will need to file a petition for annexation and a rezoning request to rezone the property from light industrial to heavy industrial. The county will proceed with closing on the subject property once a fully executed incentive agreement has been received.

**KALYANI PRECISION MACHINING, INC.
AND
BHARAT FORGE ALUMINUM USA, INC.
JOINTLY AND SEVERALLY**

and

LEE COUNTY, NORTH CAROLINA

INCENTIVE AGREEMENT

Dated as of October __, 2019

INCENTIVE AGREEMENT

THIS INCENTIVE AGREEMENT is dated as of the ___ day of September, 2019 (as supplemented or amended, the "Agreement"), and is between **KALYANI PRECISION MACHINING, INC**, a _____ corporation ("KPM"), and **BHARAT FORGE ALUMINUM USA, INC** ("BFA"), a _____ corporation, jointly and severally (referred to jointly as the "Company"), and **BHARAT FORGE AMERICA INC**, a Delaware corporation, as the guarantor of this Agreement (referred to jointly as the "Guarantor"), and **LEE COUNTY, NORTH CAROLINA**, a public body politic and a political subdivision of the State of North Carolina (the "County"), with all being alternatively referred to as a "Party" or jointly as the "Parties".

RECITALS:

WHEREAS, the County will make Future Incentive Payments to the Company as described in Article V;

WHEREAS, in addition to the Future Incentive Payments referred to above, the County will acquire the Site and convey it to the Company, and pursuant to an Interlocal Agreement with the City of Sanford, the County will provide seven hundred thousand dollars (\$700,000) to the City to provide reimbursements to the Company for Site preparation costs;

WHEREAS, the above referenced support is to be used by the COMPANY toward the goal of creating at least 460 (four hundred sixty) new Full Time Employees at average annual wages as set forth in Article II and net new Direct Investment in the amount of one hundred seventy million three hundred sixty three thousand nine hundred eighty dollars (\$170,363,980) in connection with building construction and the purchase of machinery and equipment in the COMPANY'S manufacturing operations to be located in the County, with KPM having goals of creating one hundred fifty six (156) new Full Time Jobs at average annual wages of forty seven thousand nine hundred ninety two dollars (\$47,992) and making Direct Investments of forty three million dollars (\$43,000,000) and BFA having goals of creating three hundred four (304) new Full Time Jobs at average annual wages of forty seven thousand fifty six dollars (\$47,056) and making Direct Investments of one hundred twenty seven million three hundred sixty three thousand nine hundred eighty dollars (\$127,363,980);

WHEREAS, the Company will construct a high technology manufacturing facility

which will be within the County and which will significantly enhance the County's reputation as a desirable location for high technology manufacturing companies;

WHEREAS, the presence of the Company within the County will significantly enhance the reputation of the County as a desirable location for international companies;

WHEREAS, the Grant is necessary to enable the job creation and taxable investment by the Company in the County to occur and go forward;

WHEREAS, the Grant will stimulate local economic activity, promote business and create a number of new jobs for the citizens of the County;

WHEREAS, the Grant is issued pursuant and subject to the provisions of the Local Development Act, North Carolina General Statute 158-7.1, including public hearings which were held on August 19, 2019 and September 30, 2019; and

WHEREAS, public hearings were held on August 19, 2019 and September 30, 2019; at the regular meeting of the Board of Commissioners, whereby the Board of Commissioners then voted to approve the incentives as provided for in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS; RULES OF CONSTRUCTION

1.01. **Definitions** For all purposes of this Agreement, unless the context requires otherwise, the following terms shall have the following meanings:

"Abandonment of Operations" means that for a period in excess of two (2) weeks the Company's level of Full Time Employees or Direct Investment goes below twenty percent (20%) of the guaranteed levels of Performance Commitments for either Full Time Employees or Direct Investment

"Beneficial Occupancy" means the date on which (a) the Company occupies the Facility for its intended purpose, evidenced by the obtaining of a Certificate of Occupancy for the Facility and (b) at least twenty (20) persons are employed at least one week in the Facility.

"Business Day" means any day that is not a Saturday or a Sunday, or a day on which banks in the State are required by law to be closed.

"Cancellation Date" means the date of Start of Construction at which time the County surrenders its reversion rights, as referred to in Article II.

"Change in Use" means any reduction in or diversion of use of the Facility which would not provide the guaranteed levels of Performance Commitments of Direct Investment or Full Time Employees, as set forth in Article II and Exhibits D and E, where such reduction does not equate to an Abandonment of Operations.

"Closing Date" means the date on which this Agreement is first executed and delivered by the Parties, and is not the date on which the Company acquires title to the Site from the County as set forth in Article III.

"Direct Investment" means the original tax value of all land, building and equipment placed by the Company on the ad valorem tax rolls, regardless of the funding sources for said property.

"Facility" means the manufacturing facility intended to be constructed by the Company on the Site, as more particularly described in Exhibit B.

The number of "Full Time Employees" means the number of jobs filled by employees after the Closing Date who are paid for at least thirty five (35) hours of work per week, and whose wages are subject to withholding for NC income taxes.

"Incentive" means the various incentive payments from all sources referred to in this Agreement to the Company, including the Site transfer referred to in Article II.

"Identified Encumbrances" means the encumbrances on the County's ownership of the Site, as set forth in Exhibit C.

"Performance Commitments" means the levels of Full Time Employees to be hired by the Company paying an average wage for all employees per year as specified in Article II, and for which the Company will provide health insurance with the Company paying at least fifty percent (50%) of the cost of such coverage, and/or the levels of Direct Investment to be made by the Company in relation to the Company's operations in the Facility, as specified in Article II.

"Occupancy Date" means the date on which the Company assumes Beneficial Occupancy of the Facility.

"Site" means the real property in the County upon which the Facility is to be constructed, as more specifically described in Exhibit A, which description is subject to minor adjustments prior to conveyance of the Site, based upon engineering analyses by the Company.

“Start of Construction” means when the Company has received final approval of a site plan for the development of the site, has entered into one or more agreements for the development of the Site and/or construction of the Facility, and the development of the site has begun.

"State" means the State of North Carolina.

1.02 Rules of Construction. Unless the context otherwise indicates:

- (a) Words importing the singular shall include the plural and vice versa, and words importing the masculine gender shall include the feminine and neuter genders as well;
- (b) All references to Articles, Sections or Exhibits are references to Articles, Sections and Exhibits of this Agreement;
- (c) All references to officers are references to County officers; and
- (d) The headings and Table of Contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meanings, construction or effect.

ARTICLE II

COMPANY'S COMMITMENTS

In return for the Incentives set forth herein, which are a competitive necessity for the Company to choose to locate its Facility in the County, the Company commits to certain Performance Commitments related to jobs created and incrementally increased taxes in the County. For the County to provide incentives to support the location of the Facility in the County there must be a competitive offer from another potential location for this Facility, and but for the provision of the incentives contemplated by this Agreement, the Company would not locate its facility in the County. Previous to the execution of this Agreement, the Company has provided to the County evidence of a competitive alternative location for this Facility, which is satisfactory in the County's discretion. The Parties acknowledge and agree that the consideration for the County to enter into this Agreement is the expectation that the Company will meet or exceed these Performance Commitments.

Specifically, the Company agrees to meet or exceed the following Performance Commitments:

- (a) The Company will create and maintain in the Facility for the term of this Agreement, the following number of Full Time Employees:

For KPM:

	<u>New By Year</u>	<u>Cumulative By Year</u>
2022	5	5
2023	34	39
2024	63	102
2025	13	115
2026	41	156
2027	-	156
2028	-	156
2029	-	156
2030	-	156
2031	-	156

For BFA:

	<u>New By Year</u>	<u>Cumulative By Year</u>
2021	98	98
2022	11	109
2023	82	191
2024	32	223
2025	81	304
2026	-	304
2027	-	304
2028	-	304
2029	-	304

2030

-

304

However it is understood and agreed that for measuring compliance with this Agreement, the Company shall be deemed to be fully compliant with the job creation requirements if it creates eighty percent (80%) or more of the jobs described in the above charts.

- (b) The Company agrees that the average wage level of all Full Time Employees in the Facility shall be no less than forty seven thousand nine hundred ninety two dollars (\$47,992) for Full Time Employees of KPM , and forty seven thousand fifty six dollars (\$47,056) for Full Time Employees of BFA Benefits will be provided which will include, but not be limited to, the Company providing health insurance coverage for its employees, with the Company paying at least fifty percent (50%) of the cost for such coverage.
- (c) The Company shall make Direct Investments equal to at least one hundred seventy million three hundred sixty three thousand nine hundred eighty dollars (\$170,363,980), and the taxable property resulting from these Direct Investments shall remain in the County subject to ad valorem tax assessments for the term of this Agreement. It is understood that Direct Investments will be made over a period of time on a phased basis. All such Direct Investments, to be considered a basis for incentives covered hereunder shall be made no later than December 31, 2025. The Direct Investments will be made and maintained at the following cumulative levels for the years indicated, though it is understood that a shortfall in Direct Investment by either KPM or BFA individually shall not be considered a breach of this Agreement if the amount of Direct Investment by the other entity over the amount required below for that entity is enough to offset the shortfall:

For KPM:

	<u>By Year</u>	<u>Cumulative By Year</u>
2022	\$11,428,571	\$11,428,571
2023	\$20,000,000	\$31,428,571
2024	-	\$31,428,571
2025	\$11,571,429	\$43,000,000
2026	-	\$43,000,000

2027	-	\$43,000,000
2028	-	\$43,000,000
2029	-	\$43,000,000
2030	-	\$43,000,000
2031	-	\$43,000,000
2032	-	\$43,000,000

For BFA:

	<u>By Year</u>	<u>Cumulative By Year</u>
2020	\$30,068,000	\$30,068,000
2021	\$23,088,000	\$53,156,000
2022	\$10,051,980	\$63,207,980
2023	\$34,068,000	\$97,275,980
2024	\$30,088,000	\$127,363,980
2025	-	\$127,363,980
2026	-	\$127,363,980
2027	-	\$127,363,980
2028	-	\$127,363,980
2029	-	\$127,363,980
2030	-	\$127,363,980

Confirmations of the Company's attainment as to Performance Commitments shall be as follows. The amount of Direct Investment shall be the amount of the tax value for all property owned by the Company in the County as shown on its Business Real and Personal Property Tax Listings, for each year that new investments are made. The number of Full Time Employees

shall be the number shown on filings of form NCUI 101 with the N.C. Employment Security Commission as to unemployment compensation taxes. Notwithstanding anything to the contrary in this Agreement, the amount of Direct Investment and the number of Full Time Employees are the only two elements in the Performance Commitments that shall be assessed in determining whether the Company receives all or a portion of a Future Incentive Payment in any given grant year. The County may in its discretion require other documentation to verify the attainment of these Performance Commitments.

ARTICLE III

SITE TRANSFER AND SITE PREPARATION FUND

The County will acquire the Site, which is the real property upon which the Facility is to be constructed. The Site is described in Exhibit A. Provided, however, that the Site description in Exhibit A is subject to minor adjustments prior to the conveyance of a deed for the Site, based upon engineering analyses by the Company, to the extent that such adjustments are mutually agreed to by all of the Parties to this incentive agreement. The County hereby represents and warrants that it will be seized of and have the right to convey the Site in fee simple, that the Site will be free and clear of all liens and encumbrances other than the Identified Encumbrances, and that the title to the Site is marketable. Within one hundred eight (180) Business Days of the Closing Date, the County will deliver to the Company a special warranty deed for the Site (the "Transfer Deed"). The Transfer Deed shall be in form and substance reasonably acceptable to the Company. Compensation for the property which comprises the Site will be by way of future new property tax revenues from the Company, in excess of the amount of property tax revenues now paid on the Site, or assignees of the Company permitted under the terms of this Agreement.

The County will cooperate with the Company in obtaining title insurance for the Site, but the Company shall be responsible for all fees and expenses in connection therewith. Notwithstanding the foregoing or anything else contained herein, the County agrees to provide as soon as reasonably practicable, and on an on-going basis throughout the Term of this Agreement, copies of any and all documents in the County's possession (and to the best of the County's actual knowledge and without obligation to inquire further) relating to the Site, including without limitation, title commitments/policies and exception items, vesting deed, surveys/maps, and environmental reports.

The intent of this Agreement is that the Company shall expeditiously undertake development of the Site, start construction of the Facility, and complete construction of the Facility, and shall occupy the Facility after its construction on the Site. To this end the Parties agree that the Site should revert to the County's ownership in the future if the Company fails to undertake the Start of Construction within six (6) months from the date on which the Company confirms final financing for the project and gives notice to the County of such financing (the "Notification Date") and that a deed of trust securing the rights of the County under this

Agreement shall not be cancelled unless the Company takes Beneficial Occupancy of the Facility within eighteen (18) months following the Notification Date. Notwithstanding the foregoing, and provided the Company is diligently pursuing any and all necessary approvals, permits, and if applicable, financing for the development of the Facility, the County agrees to reasonably cooperate with the Company on extending the foregoing six (6) month timeframe as reasonably necessary. To provide for the Start of Construction, the Transfer Deed shall include a reversionary interest in the County, in form and substance reasonably acceptable to the County and the Company, providing for the Company to undertake the Start of Construction of the Facility within six (6) months of the Notification Date, and if the Company fails to do so, for the County's reversionary interest to take effect, unless extended by the terms of an act of God clause, as more specifically set forth in the transfer deed. To provide for the Company taking Beneficial Occupancy of the Facility, the County shall have a deed of trust on the Site, in form and substance reasonably acceptable to the County and the Company, and which will be subordinated to any deed of trust the Company enters into to secure a loan for the development of the Site and/or construction of the Facility. If the Company fails to take Beneficial Occupancy of the Facility within eighteen (18) months from the Notification Date, unless extended by an act of God clause as more specifically set forth in the deed of trust, then the County may exercise its rights under the deed of trust to retake ownership of the Site and all improvements on the Site. Provided, however, that if the County gives notice to the Company of its intention to exercise its rights pursuant to the reversionary term in the transfer deed or the deed of trust, the Company has the option of paying the County for the fair market value of the land conveyed pursuant to Article III, and thereby can retain title to the Site without a reversion to the County or foreclosure of the Site by the County. The fair market value is agreed to by the Parties to be nine hundred thirty six thousand dollars (\$936,000).

Upon the Start of Construction, provided that the County has not initiated proceedings to exercise its reversionary interest, the County shall take all necessary actions which will provide for the cancellation of the reversionary interest. Upon the Company taking Beneficial Occupancy of the Facility, provided that the County has not initiated proceedings to exercise its rights under the deed of trust, the County shall take all necessary actions to cancel its deed of trust.

If there is an Abandonment of Operations or Change in Use during the term of this Agreement, the Company will reimburse to the County a portion of the fair market value of the Site, or nine hundred thirty six thousand dollars (\$936,000), as shown by the description and examples at Exhibit D.

The County is conveying to the City of Sanford funds in the amount of seven hundred thousand dollars (\$700,000), which will be combined with City funds to provide for the reimbursement of all or a portion of the Company's costs of Site preparation. Pursuant to an Interlocal Agreement between the County and the City of Sanford these funds will be administered by the City, and any obligations the Company may have as to the use or reimbursement of those funds shall be provided for in a separate incentive agreement between

the Company and the City. The Sanford-Lee County Partnership for Prosperity (DBA Sanford Area Growth Alliance) will oversee the development of the Site on behalf of the County.

ARTICLE IV

CONSTRUCTION OF FACILITY

The Parties agree that construction of the Facility shall be solely the Company's responsibility. The Company shall cause the construction to be carried on in accordance with all applicable State and local laws and regulations. the Company shall cause the Facility to be constructed on the Site and shall insure (1) that the Facility does not encroach upon nor overhang any easement or right-of-way and (2) that the Facility, when erected, will be wholly within any applicable building restriction lines, however established, and will not violate applicable use of other restrictions contained in prior conveyances or applicable protective covenants or restrictions. The Company shall cause all utility lines, and streets serving the Site, which are located within the metes and bounds of the Site, to be completed in accordance with health department standards and other applicable regulations of any governmental agency having jurisdiction.

The Company shall pay all taxes and all charges for utility services furnished to or used on or in connection with the Site and the Facility.

The Company shall bear all risk of loss to and condemnation of the Site and the Facility, after conveyance of the deed for the Site to the Company.

The Company shall observe and comply promptly with all current and future orders of all courts and regulatory bodies having jurisdiction over the Facility or any portion thereof (or be diligently and in good faith contesting such orders), and all current and future requirements of all insurance companies writing policies covering the Facility or any portion thereof.

ARTICLE V

FUTURE INCENTIVE PAYMENTS

The County also commits to pay to the Company grants in the future ("Future Incentive Payments"), which shall be paid individually to KPM and BFA based on the amounts of each entity's individual property tax payment. These Future Incentive Payments shall be paid in amounts calculated as being fifty nine and five hundredths percent (59.05%) of the property

taxes paid by KPM and BFA, individually, each year. This calculation is for ease of determination of the amounts of the Future Incentive Payments. Such Future Incentive Payments may be paid by the County from any fund source available to the County, which is not restricted as to the use of such funds.

Each future Incentive Payment shall be paid to the Company after the Company pays all of the property taxes owed by the Company in the calendar years in which the Company qualifies for a Future Incentive Payment, and after the Company provides to the County all of its form NCUI 101 filings for the years prior to the payment of a Future Incentive Payment provided that the Company is current on all other taxes and fees owed to the County. The first calendar year in which a Future Incentive Payment will be paid to KPM will be 2024, for incentive year 2022, based upon property tax listings in 2023 for investments made in 2022. The final calendar year in which a Future Incentive Payment will be paid to KPM will be 2033, for incentive year 2031, based upon property listings in 2032 for investments made in 2031. This first calendar year in which a Future Incentive Payment will be paid BFA will be 2022, for incentive year 2020, based upon property tax listings in 2021 for investments made in 2020. The final calendar year in which a Future Incentive Payment will be paid to BFA will be 2031, for incentive year 2029, based upon property tax listings in 2030 for investments made in 2029. Determinations as to whether the Company has successfully achieved or exceeded the Performance Commitments will be in accordance with the provisions regarding Change of Use as set forth in this Agreement.

If a Change in Use occurs in any year prior to the last payment to the Company, the amount of the Future Incentive Payment due in that year, shall be reduced on a pro rata basis, to the percentage shortage in the Performance Commitment level, as determined by the formula set forth in Exhibit E. If the Company has an Abandonment of Operations in the Facility, the other Parties to this Agreement shall not be obligated to make any future Incentive Payments from the date of Abandonment of Operations.

ARTICLE VI

INDEMNIFICATION

The Company hereby agrees to indemnify, protect and save the County and its officers, directors and employees harmless from all liability, obligations, losses, claims, damages, actions, suits, proceedings, costs and expenses, including reasonable attorneys' fees, arising out of, connected with, or resulting directly or indirectly from the Site or the Facility or the transactions contemplated by or relating to this Agreement, including without limitation, the possession, condition, construction or use thereof, insofar as such matters relate to events subject to the

control of the Company and not the County. The indemnification arising under this Article shall survive the Agreement's termination.

ARTICLE VII

TERMINATION OF AGREEMENT

Upon the occurrence of any of the following events, the Company shall have the option of terminating this Agreement:

- (a) Failure of the County, to convey the Site to the Company as provided in Article III of this Agreement; and
- (b) Failure of the County, to make Future Incentive Payments, as provided for in Article V of this Agreement; and

Should the Company exercise its option to terminate this Agreement, pursuant to this Article or of its unilateral choice, regardless of any of the above incidences of default, the Company shall convey the Site back to the County or in the alternative at its option, the Company may pay the County nine hundred thirty six thousand dollars (\$936,000) and retain title to the Site, and the Company shall repay to the relevant funding entity all funds paid to or for the benefit of the Company. Thereafter, the County shall have no further obligation to make annual incentive payments.

The County shall have the option of terminating this Agreement upon an Abandonment of Operations by the Company, which option shall be executed by giving written notice to the Company.

In any event, the above terms notwithstanding, this Agreement shall terminate at the end of the term of this Agreement. The term of this Agreement as to the Company's Performance Commitments shall be through incentive year 2031 and the filing of property tax listings in 2032, but the commitment to pay the final Future Incentive Payment to KPM in 2033, shall survive the term of this Agreement.

ARTICLE VIII

TEMPORARY REDUCTIONS IN PERFORMANCE COMMITMENTS

Notwithstanding anything herein to the contrary, if the Company shall be prevented or delayed from fulfilling, or continuing to fulfill, either or both of the Performance Commitments as set forth in herein, by reason of a:

- (a) Government moratorium;
- (b) Delay in obtaining any governmental or quasi-governmental approvals, permits or certificates, despite reasonable efforts by the Company to obtain same;
- (c) Enemy or hostile governmental or terrorist action;
- (d) Act of God, including but not limited to hurricane, tornado, snowstorm, windstorm, earthquake or flood, fire or other extreme weather conditions or other casualty;
- (e) Strike, lockout or a labor dispute involving entities other than the Company which causes the Company an inability to obtain labor or materials;
- (f) Delay in funding from any state or local government incentive to or for the benefit of the Company; or;
- (g) Any other event, other than normal business exigencies, which is beyond the reasonable control of the Company.
- (h) Documented unavailability of trained labor;
- (i) Trade sanctions which negatively affect the Company's sales of its products.

then the Performance Commitments for the year(s) in which such event occurred shall be equitably reduced to reflect the effect of such event.

The Parties shall negotiate in good faith to make an equitable reduction in the Performance Commitments for an affected year(s). However, if the Parties cannot in good faith reach an agreement as to such adjustment, all Parties agree to submit this issue to binding arbitration on an expedited basis.

ARTICLE IX

ASSIGNMENTS

No Party shall sell or assign any interest in or obligation under this Agreement without the prior express written consent of all the Parties. Provided, however, that this Agreement may be assigned by the Company to a wholly owned subsidiary of the Company, or an affiliate company to the Company of which at least fifty one percent (51%) of the equity of the affiliate company is owned by one or both of the Guarantors without the consent of the County, provided

that the Company will guarantee the performance by the Subsidiary of the obligations due under this Agreement , provided that the assignee company is organized or incorporated in the State, or is domiciled as a foreign corporation or limited liability company doing business in the State.

ARTICLE X

LIMITED OBLIGATION OF COUNTY

NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS CREATING A PLEDGE OF THE FAITH AND CREDIT OF THE COUNTY WITHIN THE MEANING OF ANY CONSTITUTIONAL DEBT LIMITATION. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR INTERPRETED AS DELEGATING GOVERNMENTAL POWERS NOR AS A DONATION OR A LENDING OF THE CREDIT OF THE COUNTY WITHIN THE MEANING OF THE STATE CONSTITUTION. THIS AGREEMENT SHALL NOT DIRECTLY OR INDIRECTLY OR CONTINGENTLY OBLIGATE THE COUNTY TO MAKE ANY PAYMENTS BEYOND THOSE APPROPRIATED IN THE COUNTY'S SOLE DISCRETION FOR ANY FISCAL YEAR IN WHICH THIS AGREEMENT SHALL BE IN EFFECT. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED TO PLEDGE OR TO CREATE A LIEN ON ANY CLASS OR SOURCE OF THE COUNTY'S MONEYS, NOR SHALL ANY PROVISION OF THE AGREEMENT RESTRICT TO ANY EXTENT PROHIBITED BY LAW, ANY ACTION OR RIGHT OF ACTION ON THE PART OF ANY FUTURE COUNTY GOVERNING BODY. TO THE EXTENT OF ANY CONFLICT BETWEEN THIS ARTICLE AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS ARTICLE SHALL TAKE PRIORITY.

ARTICLE XI

MISCELLANEOUS

11.01 Governing Law. The Parties intend that this Agreement shall be governed by the law of the State of North Carolina.

11.02 Notices.

(a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement

(b) Any communication shall be sufficiently given and deemed given when delivered by hand or five days after being mailed by first-class mail, postage prepaid, and addressed as follows:

- (1) If to Kalyani Precision Machining, Inc, to:
- (2) If to Bharat Forge Aluminum USA, Inc. to:
- (3) If to Kalyani Technoforge Ltd., to:
- (4) If to Bharat Forge America Inc, to:
- (5) If to the County, to:

(c) Any communications hereunder sent to one Party shall also be sent to the other Parties.

(d) Any addressee may designate additional or different addresses for communications by notice given under this Section to each of the other Parties.

11.03 Non-Business Days. If the date for making any payment or the last day for performance of any act or the exercising of any right shall not be a Business Day, such payment shall be made or act performed or right exercised on or before the next preceding Business Day.

11.04 Severability. If any provision of this Agreement shall be determined to be unenforceable, that shall not affect any other provision of this Agreement.

11.05. Entire Agreement; Amendments. This Agreement, including Exhibits A through E Attached, which are incorporated herein and made a part hereof, constitutes the entire contract between the Parties, and this Agreement shall not be changed except in writing signed by all the Parties.

11.06. Binding Effect. Subject to the specific provisions of this Agreement, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

11.07. Time. Time is of the essence in this Agreement and each and all of its provisions.

11.08. Liability of Officers and Agents. No officer, agent or employee of the County or the Company shall be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees shall be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section shall not relieve any such officer, agent or employee from the performance of any official duty provided by law.

11.09 Guarantors. The Guarantors are executing this Agreement solely to guarantee the performance of the Company as to all terms, provisions and requirements of this Agreement.

11.010. Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each shall be an original, but all of them together constitute the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

DRAFT

[SEAL]
INC.

KALYANI PRECISION MACHINING,

By _____

ATTEST:

Secretary

[SEAL]

INC.

BHARAT FORGE ALUMINUM USA,

By _____

ATTEST:

Secretary

[SEAL]

The following parties are executing this Agreement as guarantors, pursuant to the provisions of Section 11.09:

KALYANI TECHNOFORGE LTD

By _____

ATTEST:

Secretary

BHARAT FORGE AMERICA INC.

By _____

ATTEST:

Secretary

LEE COUNTY, NORTH CAROLINA

ATTEST:

By _____

Clerk

This instrument has been preaudited
in the manner required by The Local
Government Budget and Fiscal Control Act

Name:
Finance Officer, Lee County,
North Carolina

Exhibits

- A - Site Description
- B - Facility Description
- C - Permitted Encumbrances
- D - Schedule for Reimbursement of Fair Market Value of Site
- E - Schedule for Reduction of Future Incentive Payments

DRAFT

EXHIBIT A

SITE DESCRIPTION

The Site will consist of a seventy eight (78) acre parcel of property which is a portion of a 98.24 acre parcel of property located on Colon Road in the County, and which identified by the tax identification number of 9655-21-2728-00. The Site is more definitely described as

(Insert property description)

DRAFT

EXHIBIT B

FACILITY DESCRIPTION

The Facility will consist of a building of approximately 100,000 square feet and
[Insert other attributes of the Facility which are important to the County]

DRAFT

EXHIBIT C

PERMITTED ENCUMBRANCES

(Encumbrances on title to the site are to be inserted)

DRAFT

EXHIBIT D

SCHEDULE FOR REIMBURSEMENT OF FAIR MARKET VALUE OF SITE

[For the sake of this example, it is assumed that the fair market value of the Site is \$936,000, the term of the Agreement is ten years, employment commitments and investment commitments are as shown below].

In the event of an Abandonment of Operations within the Facility by KPM or BFA at any time prior to end dates shown below the Company must reimburse the County for the Maximum Amount Due (as set forth below) for the year shown below which corresponds to the date of the Abandonment of Operations. In addition, in any year prior to end dates as shown below that the Company, or its successor in interest pursuant to a Change of Use, fails to meet the Minimum Performance of 80% of the Performance Commitment set forth below for Full Time Employees and/or the full Performance Commitment of Direct Investment, the Company must reimburse the County a pro rata share of \$93,600, which pro rata share shall be computed as the average unweighted percentage by which the Company has failed to meet the combined totals for KPM and BFA of the guaranteed Minimum Performance of 80% of Performance Commitments for Full Time Employees and/or the full Performance Commitment of Direct Investment, as shown below. The examples below demonstrate the application of this reimbursement provision. Any reimbursement owed by the Company to shall be paid no later than January 31 of the year following that in which the Company failed to meet one or both of the Performance Commitment.

KPM CALCULATIONS

<u>Date</u>	<u>Maximum Amount Due</u>	<u>Employment Performance Commitment</u>	<u>Employment Minimum Performance</u>	<u>Cumulative Direct Investment</u>
December 31, 2022	\$936,000	5	4	\$11,428,571
December 31, 2023	\$842,400	39	32	\$31,428,571
December 31, 2024	\$748,800	102	82	\$31,428,571
December 31, 2025	\$655,200	115	92	\$43,000,000
December 31, 2026	\$561,600	156	125	\$43,000,000
December 31, 2027	\$468,000	156	125	\$43,000,000
99157		24		

December 31, 2028	\$374,400	156	125	\$43,000,000
December 31, 2029	\$280,800	156	125	\$43,000,000
December 31, 2030	\$187,200	156	125	\$43,000,000
December 31, 2031	\$93,600	156	125	\$43,000,000

BFA CALCULATIONS

FULL TIME EMPLOYEES

<u>Date</u>	<u>Maximum Amount Due</u>	<u>Employment Performance Commitment</u>	<u>Employment Minimum Performance</u>	<u>Cumulative Direct Investment</u>
December 31, 2021	\$936,000	98	79	\$53,156,000
December 31, 2022	\$842,400	109	88	\$63,207,980
December 31, 2023	\$748,800	191	153	\$97,275,980
December 31, 2024	\$655,200	223	179	\$127,363,980
December 31, 2025	\$561,600	304	244	\$127,363,980
December 31, 2026	\$468,000	304	244	\$127,363,980
December 31, 2027	\$374,400	304	244	\$127,363,980
December 31, 2028	\$280,800	304	244	\$127,363,980
December 31, 2029	\$187,200	304	244	\$127,363,980
December 31, 2030	\$93,600	304	244	\$127,363,980

Example 1. On December 31, 2025, KPM and BFA cumulatively have 335 Full Time Employees, or 80% of the cumulative Minimum Performance of the cumulative Performance Commitment for Full Time Employees, and has invested \$170,363,980 or 100% of the

Performance Commitment for Direct Investment. The Company does not owe any reimbursement of fair market value of the Site.

Example 2. On December 31, 2028, KPM and BFA cumulatively have 304 Full Time Employees, or 66% (14% short) of the cumulative Minimum Performance amount of the cumulative Performance Commitment and \$170,363,980 or 100% of the Performance Commitment for Direct Investment. Since both compliance metrics (number of jobs and investments) are weighted equally for determining the overall reimbursement percentage, the short fall is the unweighted average of the two shortfalls or 7%. Thus the Company must reimburse the County 7% of \$93,600 or \$6,552.

DRAFT

EXHIBIT E

SCHEDULE FOR REDUCTION OF FUTURE INCENTIVE PAYMENTS

FOR A CHANGE OF USE

[For the sake of this example, it is assumed that the amount of each future incentive payment is \$60,000, (although the exact amounts of Future Incentive Payments will be determined year by year as described in Article V) the term of the Future Incentive Payments is ten years, employment commitments are as shown below for KPM and BFA, to be phased in over time]

In any year that the County has agreed to make Future Incentive Payments that KPM or BFA, the Company, or a successor in interest to either of those companies pursuant to a Change of Use, fails to meet the Minimum Performance of 80% of the Performance Commitment set forth below for Full Time Employees, the County's payments for that year to the Company shall be reduced by a pro rata amount of that year's payment, which pro rata share shall be computed as the percentage by which the Company has failed to meet the Minimum Performance of 80% of the Performance Commitments for Full Time Employees. The examples below demonstrate the application of this payment reduction provision.

KPM CALCULATIONS

Date	Performance Commitment	Minimum Performance
December 31, 2022	5	4
December 31, 2023	39	31
December 31, 2024	102	82
December 31, 2025	115	92
December 31, 2026	156	125
December 31, 2027	156	125
December 31, 2028	156	125

99157

December 31, 2029	156	125
December 31, 2030	156	125
December 31, 2031	156	125

BFA CALCULATIONS

Date	Performance Commitment	Minimum Performance
December 31, 2021	98	78
December 31, 2022	109	87
December 31, 2023	191	153
December 31, 2024	223	178
December 31, 2025	304	243
December 31, 2026	304	243
December 31, 2028	304	243
December 31, 2029	304	243
December 31, 2030	304	243
December 31, 2031	304	243

Example 1. On December 31, 2025, KPM has created or maintained jobs for 94 Full Time Employees. KPM's Future Incentive Payment for that year will not be reduced.

Example 2. On December 31, 2029 BFA has created or maintained jobs for 220 Full Time Employees. BFA's Future Incentive Payment for that year will be reduced by 9.53%.



ITEM #:
III. C.

LEE COUNTY AGENDA ABSTRACT BOARD OF COMMISSIONERS MEETING

(Use the Down or Up Arrows to move between fields of the Form)

MEETING DATE: September 30, 2019

SUBJECT: Consideration of an Interlocal Agreement with the City of Sanford regarding Project Forge

DEPARTMENT: Administration

CONTACT PERSON: Dr. John Crumpton, County Manager

TYPE: Consent Agenda Action Item Public Hearing Information

REQUEST	Consider and approve an Interlocal Agreement with the City of Sanford regarding site development contributions related to Project Forge.
BUDGET IMPACT	\$700,000, approved as part of the incentive for site development related to Project Forge
ATTACHMENTS	Interlocal Agreement
PRIOR BOARD ACTION	Held a public hearing on August 19, 2019 and approved original terms of Project Forge
RECOMMENDATION	Approve Interlocal Agreement as presented.
SUMMARY	

Included as a part of the incentive grant for Project Forge is \$700,000 to be paid to the City of Sanford for site preparation which includes preparation of site to a pad ready condition for building construction and the acquisition of right of way. The City may delegate oversight of site preparation to the Sanford Area Growth Alliance. The enclosed Interlocal Agreement details the terms of accountability between the City of Sanford and Lee County related to Project Forge and the \$700,000 contribution for site preparation.

STATE OF NORTH CAROLINA
COUNTY OF LEE

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF SANFORD
AND LEE COUNTY FOR PROJECT FORGE

THIS AGREEMENT, made and entered into this ____ day of _____, 2019, by and between the County of Lee, one of the one hundred counties of the State of North Carolina and a body both politic and corporate, (hereinafter referred to as "County"), and the City of Sanford, a North Carolina Municipal Corporation, (hereinafter referred to as "City").

WITNESSETH:

WHEREAS, pursuant to North Carolina General Statute § 158-7.1, the County and City intend to participate in the cost of an economic development project known as Project Forge; and

WHEREAS, following a public hearing held on August 19, 2019, the Lee County Board of Commissioners voted to approve the expenditure of funds related to Project Forge detailed in the public hearing notice including \$700,000 (seven hundred thousand dollars) for site preparation, including but not limited to acquisition of road right-of-way, clearing, grading, and preparation of a site pad; and

WHEREAS, it is the intent of the County to transfer funds in the amount of \$700,000 (seven hundred thousand dollars) to the City for site preparation as authorized by North Carolina General Statute 158-7.1(b)(7).

NOW, THEREFORE, the City and County, each through their authorized representative/official, agree as follows:

1. Acquisition. The County will acquire approximately 98.24 (ninety eight point two four) acres of property located on Colon Road in Sanford, NC (PIN 9655-21-2728-00) of which approximately 78 (seventy-eight) acres will be developed as an industrial site for Project Forge.

2. Contribution. The County will contribute \$700,000 (seven hundred thousand dollars) to the City for site preparation as described in paragraph 3 Use of Funds.

3. Use of funds. City shall use the \$700,000 (Seven hundred thousand dollars) for payment or reimbursement of site preparation including but not limited to acquisition of road right-of-way, clearing, grading, and preparation of a site pad.

4. Completion. The City shall exercise reasonable efforts to complete site preparation within a reasonable time, which is mutually agreeable by the governing bodies and the subsidiaries associated with Project Forge.

5. Substantial Compliance. The City shall have met its obligation hereunder upon providing documentation to the County that site preparation has been completed and verification by way of detailed invoices, payments, and receipts verifying the funds have been used for their intended purpose.

6. Annexation and Rezoning. County shall complete an application and any necessary procedures for petitioning annexation of the property into the City limits, and request rezoning of the property in a timely fashion. The City shall waive any fees associated with the applications for annexation and rezoning.

7. Conveyance. The County shall convey the Property to a company which is a subsidiary of the Kalyani Group subject to conditions detailed in the incentive agreement, deed, public hearing requirements, and authorization by the Board of Commissioners;

8. Proportionate Reimbursement. In the event the City is reimbursed all or a portion of the costs related to site preparation for the Kalyani Group, the City shall reimburse the County an amount proportionate to the County's investment in site preparation. The City shall seek sufficient documentation to verify that the expenditures are related to right of way acquisition, clearing, grading and site preparation and upon receipt, shall provide this documentation to the County. In the event the funds are used for a purpose other than right of way acquisition, clearing grading and site preparation, the City shall pursue using any legal remedies available to seek reimbursement and damages for the unauthorized use.

9. Prerequisite. The terms of this agreement are subject to preliminary authorizations including the respective governing bodies' approval of the associated incentive contracts for Project Forge, and the County's successful borrowing of funds related to the project. In the event that any or all of the above mentioned preliminary authorizations are not achieved, this agreement shall be rendered null and void.

IN WITNESS WHEREOF, the County of Lee and the City of Sanford have caused this instrument to be duly executed, attested by its respective clerk, and its seal affixed all by authority of its respective governing bodies, first duly given, the day and year first above written.

County of Lee

Amy M. Dalrymple, Chairman
Board of Commissioners

Attest:

Jennifer Gamble, Deputy County Attorney/Clerk to the Board

City of Sanford

T. Chet Mann, Mayor

Attest:

Bonnie Davis, City Clerk