

ORDINANCE NO. 11-O-2848

AUTHORIZING THE APPROVAL OF AN ECONOMIC DEVELOPMENT CASH INCENTIVE PROGRAM IN THE VILLAGE OF JEFFERSON TO PROVIDE INCENTIVES TO EMPLOYERS CREATING NEW EMPLOYEE POSITIONS WITHIN THE CORPORATE LIMITS OF THE VILLAGE OF JEFFERSON

WHEREAS, the creation of new employment opportunities within the Village of Jefferson (the "Village") is vital to the economic well-being and the general welfare of the citizens of the Village; and

WHEREAS, in furtherance of this effort, the Village desires to offer a variety of incentives to employers to encourage the creation of new jobs and the general development of the Village; and

WHEREAS, the Village desires to create the Jefferson Economic Development Cash Incentive Program (the "Program") to assist employers that create new full-time equivalent positions in the Village by offering to such employers an annual cash incentive equal to a portion of the Village income tax withheld from new full-time equivalent positions located in the Village for a specific period of time;

BE IT ORDAINED by the Council of the Village of Jefferson, State of Ohio:

Section 1. This Council, with the full support of the Mayor, hereby creates the Program as one of the development tools needed for the Village to attract new jobs to the Village and continue to improve the overall economic health of the Village and its citizens. Eligible employers can receive an annual cash incentive for a specific number of years equal to the increased business Village income taxes paid by the employer and its owners, partners and members with respect to income received from the employer pursuant to Section 890.03 of the Village Code over the average of such business income taxes for the two years preceding the year of the application, up to a maximum of an amount equal to up to seventy-five percent (75%) of the Village income tax withheld from "New Employee Positions." "New Employee Position" shall mean a full-time equivalent employee who is first employed within the Village after the Village's approval of the agreement specified in this Ordinance. To qualify as "New Employee Positions," the positions must be either newly created in the Village after the execution of such agreement or transferred from outside the corporate limits of the Village to within the corporate limits of the Village after the execution of such agreement.

Section 2. The availability of the incentive granted pursuant to the Program shall be determined on a case-by-case basis in circumstances in which the Village Administrator, the Tax Administrator, the Mayor and Council believe that the incentive is necessary and appropriate to incentivize an employer to create New Employee Positions in the Village. In order to receive an incentive pursuant to the Program, applicants must demonstrate to the Village that receiving the incentive is a major factor in the applicant's decision to increase employment in the Village. The

term of an incentive granted to an employer pursuant to the Program also shall be determined on a case-by-case basis; provided, however, that in no case shall the term of the incentive exceed ten (10) years following the cessation of substantial growth in employment, as determined by this Council in the agreement specified in this Ordinance.

Section 3. The availability of this incentive is contingent on the receipt of an application, which application shall be in a form not inconsistent with the draft application attached hereto as Exhibit A. Each incentive granted pursuant to the Program must be approved by this Council. Subsequent to such approval, a formal agreement shall be executed between the employer and the Village outlining the terms of the incentive, which agreement shall be substantially in the form attached hereto as Exhibit B.

Section 4. Annual funding of the Program is contingent on Council appropriation and approval based on the availability of general fund non-tax revenue. The Village is not obligated to appropriate any funding for the Program during any year and is not obligated to make any payments associated with the Program from tax revenues.

Section 5. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any decision making bodies of the Village that resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements.

WHEREFORE, this Ordinance shall be in force and take effect from after the earliest period allowed by law.

PASSED: _____ APPROVED: _____
Judy Maloney, Mayor

ATTEST: _____
Patricia A. Fisher, Clerk-Treasurer

Exhibit A

Village of Jefferson, Ohio

ECONOMIC DEVELOPMENT CASH INCENTIVE PROGRAM APPLICATION

Important: Final Village Council approval of an agreement is necessary before job creation that qualifies for the economic development cash incentive program can begin. The project must be within the boundaries of the Village of Jefferson, Ohio to qualify for incentive payments. Please allow twenty-one days for processing.

A. GENERAL INFORMATION

1. Name of applicant:

2. Current address:

3. Contact person: _____ Telephone: _____
Title: _____
4. Project address if different from above: _____
5. Type of business organization (corporation, partnership, etc.):
_____ Incorporated or organized in the state of: _____
6. Name(s) of principal owner(s) or officer(s):

7. Present number full time equivalent (FTE¹) employees: _____
Number of current FTEs who work in the Village: _____
8. Current payroll: \$ _____
Current payroll for FTEs who work in the Village: \$ _____
9. Proposed number of new FTE employees at the project site: _____
10. Estimated annual payroll generated from the new FTE employees: \$ _____

¹ A full time equivalent (FTE) employee is an employee (or group of employees) who works at least 35 hours per week.

11. Business Village income taxes paid² for each of the last three (3) years: \$ _____; \$ _____; \$ _____.

B. CAPITAL INVESTMENT PROJECT INFORMATION (if applicable)³

12. An estimate of the amounts to be invested in connection with the project:

- A. Purchase of Land/Building \$ _____
- B. New Building Construction \$ _____
- C. Building Additions \$ _____
- D. Improvements to Existing Buildings \$ _____

13. Total capital investment amount: \$ _____

14. Reasons for requesting Cash Incentive:

15. Project Completion Schedule (if applicable): For real property, show pre-project market values under Pre-project column and estimated investments over each previous year (NOT cumulatively) for columns One through Five as appropriate for your situation. For pre-project totals for FTEs and payroll, show only amounts related to FTEs who work or are expected to work in the Village. Project only as far as you are comfortable with investment and job creation estimates. The projected first year for startup of commercial operations resulting from this investment is 20___. If no capital investment project is being constructed, only provide information on projected FTEs and payroll.

December 31, Project Year:

	Pre-project	One	Two	Three	Four	Five
	20__	20__	20__	20__	20__	20__
Real Property						
Employment (FTE)						
Payroll						

C. JOB INFORMATION

16. Number of applicant's PRE-APPLICATION jobs (FTE) in the Village:
management

² Business income taxes paid includes taxes paid by the applicant and its owners, partners and members with respect to income received from the applicant pursuant to Section 890.03 of the Village Code.

³ It is not necessary that applicants construct a capital investment project to receive this incentive, but if one is to be constructed, please provide the below data. If no capital investment project is to be constructed, please mark this section N/A.

supervisors

staff

other

17. Number of NEW jobs (FTE) created after the submission of this application:

management

supervisors

staff

other

18. Wage rates of NEW jobs (FTE) created after the submission of this application:

management \$

supervisors \$

staff \$

other \$

19. Brief description of BENEFITS for new employees:

20. Description of other project assistance from governmental or quasi-governmental agencies other than the Village of Jefferson:

D. <u>CERTIFICATION</u>

1. The applicant believes the information contained hereon and submitted herewith is correct to the best of his/her knowledge and belief.
2. The applicant understands the cash incentive payments will not commence until after the Village of Jefferson and the applicant execute an agreement for the project.
3. The applicant understands that, if approved, the information contained on this application will serve as the basis for a signed agreement between the applicant and the Village of Jefferson. Local policy REQUIRES annual monitoring for conformance to that agreement. Failure to comply may result in LOSS AND/OR RETURN OF CASH INCENTIVES.

4. The applicant hereby certifies that the applicant is current in all tax obligations to the Village of Jefferson, Ohio.
5. The applicant represents that receipt of cash incentives is a major factor in applicant's decision to locate in Jefferson Village and/or hire new FTEs.

Typed name and title: _____

Signature: _____

Date: _____

Exhibit B

JEFFERSON ECONOMIC DEVELOPMENT CASH INCENTIVE PROGRAM AGREEMENT

This Economic Development Cash Incentive Program Agreement (this “Agreement”) is made and entered into by the Village of Jefferson, Ohio (the “Grantor”) and [Business/Corporation] (the “Grantee”), located at [Address], with respect to Grantee’s [Project] at [Address], as further described in the Economic Development Cash Incentive Program Application attached as Exhibit A hereto and incorporated herein (the “Project,” with such application hereinafter referred to as the “Application”).

BACKGROUND INFORMATION

A. The creation of new employment opportunities within the boundaries of the Village of Jefferson (the “Village”) is vital to the economic well-being of the Village and the general welfare of the citizens residing therein.

B. By Ordinance No. _____, passed _____, the Grantor has created an Economic Development Cash Incentive Program (the “Program”) for the purpose of creating and retaining jobs within the Village limits.

C. The Grantee has submitted the Application, which Application is attached hereto as Exhibit A.

D. By Ordinance No. _____, passed _____, the Grantor has approved the terms of this Agreement.

E. Based on the information contained in the Application regarding the Project, Grantor desires to offer Grantee incentives pursuant to the Program, subject to the terms and conditions contained herein.

STATEMENT OF THE AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the parties hereby agree to the foregoing and as follows:

1. Grantor Determinations. Based on a review of the information contained in the Application and other representations made by Grantee, the Grantor has determined the following:

A. The Project will create new jobs in the Village.

B. The Project is economically sound and will benefit the people of the Village by increasing opportunities for employment and strengthening the economy of the Village; and

C. Receiving incentive payments pursuant to the Program is a major factor in the Grantee's decision to go forward with the Project.

2. Grantee Commitments. Based on the information contained in the Application, the Grantee hereby commits to the following:

A. Grantee commits to create at least ___ New Employee Positions (as defined in Section 4 below), which New Employee Positions would result in approximately \$_____ in new payroll.

B. Grantee hereby commits to invest approximately \$_____ in connection with the Project.

C. Grantee shall maintain operations at the Project location for at least the Term (as defined in Section 3 below) plus an additional three (3) years. If Grantee fails to maintain operations for the Term plus three years, this Agreement may be terminated, and Grantee may be required to repay all or a portion of the Cash Payments (as defined in Section 3 below) received by Grantee, as discussed in Section 8 of this Agreement.

3. Incentive Payments. In consideration of the Grantee's commitments set forth in Section 2 of this Agreement, the Grantor hereby grants to the Grantee annual cash incentive payments (the "Cash Payments") for a term commencing on the date of the execution of this agreement and continuing for (10) years following the cessation of "substantial growth" in employment (the "Term"). For purposes of this Agreement, "substantial growth" shall be considered ceased when the total number of Grantee's full-time equivalent employees in the Village remain the same or decreases as of December 31 of one year from December 31 of the previous year. For example, if the Grantee's total full-time equivalent employees remain the same or decreases from December 31, 2013 to December 31, 2014, then the (10) year end point shall commence for Incentive Year 2014 and shall extend for 10 additional Incentive Years.

The Cash Payments granted to the Grantee for each Incentive Year (as defined below) shall be equal to the total increase in business Village income taxes paid by the Grantee and its owners, partners and members with respect to income from the Grantee pursuant to Section 890.03 of the Village Code (the "Grantee Business Taxes") for each Incentive Year over the average of such Grantee Business Taxes for the two years preceding the year of the application (the "Base Taxes"); provided, however, that no payments for any Incentive Year shall exceed an amount equal to 75% of the income taxes withheld by the Grantor with respect to New Employee Positions for the Grantee within the Village for that Incentive Year (the "Maximum Payment Amount").

During the Term, the Cash Payments shall be made in the calendar year following the calendar year to which the information submitted pursuant to Section 6 below relates (with each such calendar year period referred to herein as an "Incentive Year," as further described in Section 6 hereof). A calculation of the Cash Payment for the applicable Incentive Year shall be determined as follows:

The lesser of (A) the increase in the Grantee Business Taxes during the Incentive Year when compared to the Base Taxes; and (B) the Maximum Payment Amount for the Incentive Year equal to 75% of the value of increased FTE income tax paid to the village = the Cash Payment for the applicable Incentive Year

4. New Employee Position Defined. “New Employee Position” shall mean a full-time equivalent employee who is first employed within the Village by the Grantee after the Grantor’s approval of this Agreement. Such approval was obtained on _____, 20___. A full-time equivalent employee is an employee (of group of employees) who works at least 35 hours per week. An employee hired to take the place of or to succeed a person already employed by the Grantee on the date of Council’s approval of this Agreement shall not be considered a “New Employee Position.”

5. Application; Representations. The Grantee hereby represents and warrants that all information, representations and warranties contained in the Application and this Agreement are true and correct as of the date hereof. Any material inaccuracies or misrepresentations in the Application or this Agreement shall be cause for the Grantor to exercise the remedies set forth in Section 8.

6. Submission of Annual Reports. Beginning on the effective date of this Agreement and for three years following the end of the Term, the Grantee shall submit annual reporting forms (the “Annual Reports”), along with any requested supporting documentation, to the Village Administrator and the Tax Administrator no later than February 28th of the calendar year following the Incentive Year to which the Annual Reports relate (i.e., the Annual Report for the Incentive Year ending December 31, 2012 is due no later than February 28, 2013). The Village Administrator and the Tax Administrator hereby agree that the confidentiality of any information submitted to them by the Grantee shall be protected to the maximum extent permitted by law.

The Annual Reports shall be in a form developed by the Village Administrator and Tax Administrator and shall specify for each Incentive Year (i) the number of New Employee Positions, (ii) the annual payroll of the New Employee Positions, (iii) the Village income taxes withheld in connection with the New Employee Positions, (iv) the amount of Grantee Business Taxes, (v) the amount of payments made for capital improvements in connection with the Project, (vi) a calculation of the Cash Payment for the Incentive Year, and (vii) any other information the Village Administrator or the Tax Administrator deem necessary. The chief executive officer, chief financial officer or any other officer authorized to sign tax returns of the Grantee shall certify as accurate the information contained in the Annual Reports and sign a statement to such an effect. Failure of the Grantee to submit completed Annual Reports, or material inaccuracies in an Annual Report, shall be cause for the Grantor to exercise the remedies set forth in Section 8.

7. Verification Certificate. The Grantor annually shall verify the amounts reported pursuant to Section 6 and, if believed to be accurate, shall issue a verification certificate to the Grantee, stating that the amounts have been verified with respect to the particular Incentive Year. The amounts verified by the Grantor are subject to further audit and examination by the Tax Administrator. The Grantor shall pay to the Grantee the Cash Payments no later than 30 days after the issuance of a verification certificate for a particular Incentive Year.

8. Effect of Non-Compliance. If the Grantee fails to comply with its obligations under this Agreement, the Grantor may, in its sole discretion, take any of the following actions: (i) terminate this Agreement, (ii) reduce the length of the Term, or (iii) require the Grantee to repay some or all of the Cash Payments. The Grantor may take such actions after providing the Grantee with written notice, in accordance with the notice provisions of this Agreement, of its failure to perform satisfactorily any requirement of this Agreement. The notice shall provide the Grantee with a thirty (30) day period to cure any and all defaults under this Agreement.

9. Records and Maintenance. The Grantee shall establish and maintain for at least three (3) years from the end of the Term such records as are required by the Grantor in Section 6 above, and all relevant supporting documentation. The parties further agree that records required by the Grantor with respect to any audit, litigation or dispute between the Grantor and the Grantee shall be maintained for the time needed for the resolution of said audit, litigation or dispute. The Grantor and Grantee further agree that in the event of early termination of this Agreement or if for any other reason the Grantor shall require a review of the records related to the Project, the Grantee shall, at its own cost and expense, segregate all such records related to the Project from its other records of operation. The Grantee shall maintain and organize its records in such form so that, in case of a review of its records or an audit, it is able to verify and document the information it provides in its Annual Reports pursuant to Section 6 of this Agreement.

10. Audits and Inspections. At any time during normal business hours upon reasonable written notice and as often as the Grantor may reasonably deem necessary, the Grantee shall make available to the Grantor for examination all of its records with respect to matters covered by this Agreement including, but not limited to, records of personnel and conditions of employment, and shall permit the Grantor and appropriate officials to audit, examine and make excerpts or transcripts from such records.

11. Adherence to State and Federal Laws and Regulations. Grantee agrees to comply with all applicable Federal, State and local laws related to the Project.

12. Affirmative Covenants and Representations. Grantee affirmatively covenants and represents that it does not owe any delinquent taxes or any other money to the State or a political subdivision of the State, whether or not the amount owed is being contested in a court of law. Grantee affirmatively covenants and represents that it has made no false statements to the Grantor in the process of obtaining approval for the Cash Payments. If any representative of Grantee has knowingly made a false statement to the Grantor to obtain the Cash Payments, Grantee shall be required to immediately return all benefits received under this Agreement and shall be ineligible for any future economic development assistance from the Grantor. Any person who provides a false statement to secure economic development assistance will be subject to the provisions of Section 9.66 of the Ohio Revised Code.

13. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by the Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by the Grantor of any of its rights hereunder.

14. Indemnification. The Grantee agrees to hold the Grantor harmless from any and all liabilities or claims caused by or resulting from Grantee's performance of the obligations or

activities in furtherance of the Project. The Grantee will reimburse the Grantor for any judgments arising from Grantee's performance hereunder that may be obtained against the Grantor. The Grantee agrees to reimburse the Grantor for all costs incurred by the Grantor in defending against any such claims or legal actions if called upon by the Grantor to do so.

15. Annual Appropriations. Notwithstanding any other provision in this Agreement, the obligation of Grantor to make Cash Payments pursuant to this Agreement is subject to an annual appropriation by the Village Council from non-tax general fund revenues of the Village. Grantor is not obligated hereby to make such annual appropriations. Nothing in this Agreement shall be construed to obligate Grantor to appropriate tax revenues to make the Cash Payments.

16. Miscellaneous.

A. Governing Law; Forum and Venue. This Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Ashtabula County, Ohio.

B. Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

C. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

D. Notices. All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered, sent by nationally recognized overnight courier service or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.

In case of the Grantor, to: _____

In case of the Grantee, to: _____

E. Amendments and Assignments. This Agreement may be amended or assigned by written instrument duly executed by the parties hereto. The Village retains the right to receive notice of, and to object to, any additional agreements set forth that may have an economic impact on the Village.

F. Campaign Finance Laws. By signing this Agreement, Grantee hereby certifies that, as it pertains to this Agreement, Grantee is in compliance with State campaign financing laws

contained in R.C. Chapter 3517, including, but not limited to, divisions (I)(1) and (3) and J(1) and (3) of R.C. Section 3517.17.

G. Ethics Laws. By signing this Agreement, Grantee hereby certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, R.C. Sections 102.01 et seq., 2921.01, 2921.42, 2921.421 and 2921.43, and will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time.

H. Declaration Regarding Material Assistance/Non-assistance to a Terrorist Organization. Prior to receiving any Cash Payments pursuant to this Agreement, Grantee shall certify compliance with R.C. Section 2909.33, in the form available from the Ohio Department of Public Safety. The Grantor shall provide the Grantee with the proper form to complete this certification.

I. Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

(Remainder of page intentionally left blank – signatures on next page)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers on the last day and year set forth below.

VILLAGE OF JEFFERSON, OHIO

By: **Village Administrator**

Name: _____

Date: _____

By: **Tax Administrator**

Name: _____

Date: _____

[GRANTEE]:

By: _____

Name/Title: _____

Date: _____