

OSNABURG TOWNSHIP - CITY OF CANTON
COOPERATIVE ECONOMIC DEVELOPMENT AGREEMENT
AND ANNEXATION AGREEMENT
“STARK CERAMICS, INC., AND THE QUARRY CEDA”

This Agreement is made at Stark County, Ohio, by and between the Board of Trustees for Osnaburg Township, Stark County, Ohio, whose mailing address is 7115 Hillvale, S.E., East Canton, Ohio 44730, (hereinafter referred to as “Township”), and the City of Canton (hereinafter referred to as “City”), whose mailing address is 218 Cleveland Avenue, S.W., Canton, Ohio 44702.

WITNESSETH:

WHEREAS, Township and City desire to establish a Cooperative Economic Development Agreement and Annexation Agreement (“CEDA”) as permitted under Ohio Revised Code Section 701.07 and 709.192 for the development of certain real property (hereinafter referred to as the “Property”), as more fully described on Exhibit A attached hereto, which property is situated in Township; and

WHEREAS, the foregoing described Property is proposed for annexation to City from Township; and

WHEREAS, Township and City are desirous of entering into a CEDA which contemplates that the Property will be annexed into the City, with provisions for allocation and/or sharing of tax revenues, and the cooperation for provision of other services to the Property; and

WHEREAS, both Township and City residents will benefit from the provisions of the Agreement; and

WHEREAS, pursuant to the requirements of Revised Code Section 701.07(A), a joint public hearing was held on December 5, 2006, notice of which was provided as required by law; and

WHEREAS, Osnaburg Township has agreed to enter into this CEDA, pursuant to Resolution No. 06-183, dated December 11, 2006; and the City of Canton has agreed to enter into this CEDA, by Ordinance No. 203/2006, dated 11-6-06, 2006; and Ordinance No. 240/2006, dated 12-18-06, 2006;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, and pursuant to Ohio Revised Code Sections 701.07 and 709.192, the parties agree as follows:

ARTICLE 1

THE PROPERTY

The Property shall consist of a certain 698.8836 +/- acre parcel located in Osnaburg Township, Stark County, Ohio, as further described on Exhibit A, a map depicting said Property, which is incorporated herein by reference. The Property described on Exhibit A may be amended upon written agreement of the parties.

ARTICLE 2

ANNEXATION

A. The parties contemplate that the Property shall be annexed into the City of Canton, pursuant to and subject to the requirements of Ohio Revised Code Chapter 709. Township agrees that annexation of the Property may occur in one proceeding, or in several separate proceedings, at the discretion of the City and when effected by the property owners. In the event of the failure of the annexation of the Property, this Agreement shall be null and void.

B. The parties agree that whenever any of the Property is annexed into the City of Canton, it shall remain in Osnaburg Township, and not become part of McKinley Township after the approval and acceptance of said annexation. The Township and City shall fully cooperate with State

and County officials to create an additional taxing district if necessary.

C. The parties agree that if any other property in the Township is annexed into the City, Exhibit A shall be amended so as to include that real property in this CEDA, subject to all terms and conditions herein. **Nothing herein shall be construed to limit the Township's ability to object to any future annexation attempt.**

D. The City agrees not to annex any property in Osnaburg Township into the City unless the property owner requests to be annexed.

ARTICLE 3

COOPERATION OF TOWNSHIP

A. Township hereby assents to the annexation of the Property to City. Township further agrees to authorize its designated representative to sign any Petitions prepared by City, or its agents, to agree to the annexation of any roadways or other property owned by it within the Property area.

B. Township further agrees, at the written request of the City, to appear at any hearings before the Stark County Board of Commissioners and assist City in the annexation of the Property, including providing testimony under oath that Township agrees to the annexation.

C. Township waives any objections to said annexation and waives any rights it may have to contest such annexation, including rights of appeal or injunctive relief, including but not limited to, any rights it may have under Section 709.07 or Chapter 2506 of the Ohio Revised Code.

D. Township agrees and covenants that it (1) will not assist or encourage any person or entity owning all or portion of the Property to petition for the detachment of all or any portion of the Property from the City and (2) it will not advocate for the detachment of all or any portion of the Property from the City at the public hearing before the Stark County Board of Commissioners or to

any individual member of the Board of Commissioners.

ARTICLE 4

ALLOCATION OF TAX REVENUES AND DURATION

A. For purposes of this Article, "Township taxes" means the taxes against the real and tangible personal property that would have been charged by and/or payable to the Township, if no annexation had occurred. It is agreed that the Property shall remain in Osnaburg Township and not become a portion of McKinley Township following the approval and acceptance of said annexation. The Township and City shall fully cooperate with State and County officials to create an additional taxing district, if necessary.

B. This Agreement is intended to provide Township during the term of this Agreement with one hundred percent (100%) of the tax revenue it would have received from the Property if the annexation had not taken place, including current and future real property and personal property tax revenue under Township millage rates in effect at the time of collection.

C. The parties agree that during the term of this Agreement, all Township taxes collected by the Stark County Auditor after the annexation is accepted by the City by resolution or ordinance will be paid directly to Township. This would also include Township taxes generated as a result of new businesses located on or in the Property, after annexation. All such taxes shall be paid at whatever Township millage or other taxing rate is existing at the time the collection is made by the Stark County Auditor.

D. The parties further agree that, during the term of this Agreement, taxes for any Township levy, which at this date are general fire, EMS and road levies, that the Township would have received but for the annexation of the property, shall be paid to the Township at the time

collection is made by the Stark County Auditor, under millage rates in effect at the time of the collection.

E. In the event that any such taxes which by the terms of this Agreement are to be paid to Township, are collected by the Stark County Auditor and paid to City instead of Township, City agrees to promptly remit to Township an amount equal to said taxes it receives. Payment by City to Township of any taxes erroneously received shall be made within thirty (30) days of the receipt of such funds from the County Auditor, or of discovery of such error.

F. Notwithstanding the above, any amounts of real property and personal property taxes that City may be entitled to receive for City millage only, over and above the amount Township receives or would have received under then existing Township millage rates if the annexation had not taken place, shall be paid to City.

G. Township shall receive the tax revenues set forth herein for the duration of this Agreement, as set forth in Article 9 below.

ARTICLE 5

TAX ABATEMENTS

It is the intent of the parties that the Property may be subject to real and personal property tax abatements. However, in the event that the City may grant real and/or personal property tax abatements to property owners and businesses located on or within the property, such tax abatements shall meet all requirements of the Revised Code, to include Sections 5709.62 et seq., as now written or as the same may be amended. The City shall notify the Township of any tax abatement applications.

The City agrees that if it approves a real or personal property tax abatement that exceeds sixty

percent (60%), it or the company receiving the Tax Abatement shall pay the Township the difference between sixty percent (60%) and the percentage so abated. The Township shall forward to the Osnaburg Local School Board the amount of that percentage to which it is entitled under the formula in place at that time. The Township agrees that if the City grants any real or personal property tax abatements that reduce the taxes to which the Township would otherwise be entitled, and the abatement so granted is less than sixty percent (60%) or less, then the City shall have no obligation to pay any contribution to the Township for such real or personal property taxes.

ARTICLE 6

OTHER TAXES

A. Estate Taxes. During the term of this Agreement, City and Township agree to equally share any and all estate taxes received by either or levied in connection with the Property depicted in the attached Exhibit "A" pursuant to Section 5731.02 of the Ohio Revised Code.

B. Income Taxes. City shall receive all City income taxes from all persons and/or entities located, residing in and/or working within the Property.

C. Miscellaneous Fees. The Township and City agree that the Township shall receive all fees from any landfills, transfer stations, junkyards and/or adult entertainment uses of the property, which it would have been entitled to receive but for the annexation of the Property.

D. Liquor Tax. The City agrees the City and Township shall share equally in any liquor tax levied or collected in the Property.

E. Other and Future Taxes. The parties agree that, during the term of this Agreement, new taxes may be approved and/or modifications of taxes may be authorized by the state legislature and some current taxes may be approved, modified, replaced, added to, changed or eliminated. The

parties, therefore, agree to meet and discuss any new tax or modification involving the subject Property of this Cooperative Economic Development Agreement which arises, or if local government or other current taxes are approved, modified, replaced, added to, changed or eliminated. The parties will use their best efforts to cooperate to benefit both in the event of such changed circumstances regarding any tax change.

ARTICLE 7

TAX VALUATION CHALLENGES

The parties agree that either or both may object to the tax assessments or evaluations or re-evaluations of property involved in the CEDA from time to time.

The parties shall cooperate with each other such that the party with the legal standing to challenge such assessments or evaluations or re-evaluations shall diligently pursue those challenges on behalf of itself and/or the other party.

ARTICLE 8

POST ANNEXATION GOVERNMENTAL SERVICES

Zoning.

A. Upon annexation, City shall consult Township regarding proposed zoning of the Property and City agrees to use its best efforts to zone the Property or otherwise keep it compatible with the surrounding territory. The parties agree that the Property shall be zoned so as to best encourage business and economic development in furtherance of the objectives of this agreement. In the event that another use is proposed by the landowners and/or their agents, such use shall be subject to the zone change procedures of the City. In the event that another use is proposed by the landowners and/or agents and the proposed use is prohibited by the Township's zoning resolution

and is permitted under the City zoning ordinances, the parties shall meet to determine the zoning classification that is in the best interest of the Property and with the minimum impact upon Township area not included within the Property. Notwithstanding any of the above, all City regulations regarding zoning and planning shall be applicable to the Property. The City shall notify Township of any proposed zoning changes. **Township shall have the right to approve all zoning changes, in the event that the parties cannot agree on a zoning change the original zoning classification shall remain.** The City agrees to share equally all zoning fees derived from the Property, and to account for and remit on a monthly basis one-half ($\frac{1}{2}$) of said fees to the Township for a period of twenty (20) years.

B. If the City's zoning ordinances permit uses which are clearly incompatible with Township's zoning regulations on the adjacent land remaining in the Township from which the Property was annexed, the City of Canton will require, in the zoning ordinance permitting the incompatible uses, the owner of the Property to provide a buffer separating the use of the Property and the adjacent land remaining with the Township. For purposes of this section, "buffer" includes open space, landscaping, fences, walls and other structure elements, streets and street rights of way, and bicycle and pedestrian paths and sidewalks.

Standard Governmental Services.

The City shall provide to the Property the following municipal services: fire, waste collection, police, building and code regulations, civil engineering, traffic engineering, street and road maintenance and repair, parks and recreation, fair employment, fair housing, community development and planning, housing inspection, health and environmental services, economic development and water and sewer services. The parties agree that the Property is entitled to standard

governmental services by the City in the same manner such services are provided to other areas of the City.

Fire Protection and Emergency Medical Services.

City and Township shall provide to the Property automatic/mutual aid for fire and emergency medical services. Township and City shall enter and maintain appropriate Automatic/Mutual Aid Agreements to insure full cooperation between the Township and City Fire and Emergency Medical Services Departments. The parties agree that the Property is entitled to standard fire protection and emergency medical services by the City and Township in the manner such services are provided to other areas of the City and Township. A separate agreement for the type and conditions of automatic/mutual aid shall be entered into by the parties within ninety (90) days of the final approval of this agreement.

Water.

1. The City will design, bid and extend a water main of at least twelve (12) inches in diameter to the Property and provide water to the Property at prevailing City water rates. The water main shall be completed within one (1) year from the date of acceptance of the annexation of the Property by the City. Said timeline may be extended due to unforeseen circumstances, acts of God, or for other good and just cause.

2A. After obtaining the written approval of the Township Trustees, the City may bring water into the Township pursuant to a preliminary plan that will be for separate, designated areas of the Township. Separate contracts for each designated area will determine the terms and conditions for the implementation of the plan as a whole or in phases.

2B. The City shall charge the outside rate for any Township residents, outside the Property

area, but the City shall not require any such resident to sign an annexation proxy or consent as a condition precedent to obtaining water service, unless said resident's property is contiguous to the City's corporate municipal boundary line.

Sewer.

The parties agree that as the Township is part of the Stark County Metropolitan Sewer District, they will adhere to the 1974 Canton/Stark County Sewer Service Agreement, as amended, see Supplements No. 14 and No. 15, attached hereto as Exhibits B and C.

In the event of future development on the property, beyond that currently planned at the Quarry, which will require a greater capacity than that available, the City agrees that it will facilitate the search for such funding from state, federal or private means so that there is no detrimental impact on the current existing capacities.

Roadway Maintenance.

All roadways within the Property that would have been the Township's responsibility to maintain and improve but for the annexation shall become the responsibility of the City to maintain and improve. This shall include routine road and street maintenance, including lighting, snowplowing, repairing of chuckholes and signage. This shall also include the cost of road capital improvements.¹ All roads that, absent annexation, would have been considered and maintained as Township's roads, shall count as Township's roads for road tax purposes and gas tax distribution.

General.

The parties specifically agree that these provisions in Article 8 are both authorized and necessary under the CEDA and under ORC 701.07.

¹See Exhibit D, attached, for 2007 road projects the City will complete.

ARTICLE 9

LENGTH OF AGREEMENT

The parties agree that, due to the extensive nature of the municipal service to be extended to the CEDA area, and due to the financial impact on the Township in losing the area to annexation, and because this Agreement is intended for the long-term future to set a cooperative basis for agreements between the Township and City, the initial term of this Agreement shall be for ninety-nine (99) years from the date of acceptance of annexation of the Property by City by ordinance or resolution. In the event such annexation shall occur in separate proceedings, the initial term shall be ninety-nine (99) years after the last parcel contained in the Property is accepted by the City.

This Agreement will be renewed for an additional fifty (50) year term unless either party, by official legislative action, gives written notice to the other party of its intent not to renew on or before ninety (90) days prior to the extension of the initial term.

ARTICLE 10

MEDIATION AND NOTICE OF CLAIMED BREACH

In the event the parties have a dispute as to any of the terms or to the applicability of this Agreement, the parties agree to use their best efforts to resolve the dispute through a mutually acceptable mediation process or, if they are unable to agree, to utilize whatever mediation process may then be in existence and used by the Stark County Common Pleas Court. The parties retain all legal rights available to them under this Agreement and under the law.

If a party to this Agreement believes the other party has failed to perform its part of any provision of this Agreement, including the failure to make any payment of monies due under this Agreement, the complaining party shall give notice to the other party clearly stating what breach the

complaining party believes has occurred. The party receiving that notice has ninety (90) days from the receipt of that notice to cure the breach. If the breach has not been cured within that ninety (90) day period, then the complaining party may seek its remedies under this Agreement, including but not limited to suit for recovery of the money due under the Agreement, suit for specific enforcement of this Agreement, or terminate the Agreement by giving notice of termination to the other party.

ARTICLE 11

MUNICIPAL POWER

Nothing in this Cooperative Economic Development Agreement shall be construed to be in derogation of the powers granted to municipal corporations by Article XVIII of the Ohio Constitution.

ARTICLE 12

CLARIFICATION OF REVENUE SHARING

Nothing in this Agreement is to be interpreted as the sharing of the proceeds of any tax levy by and between the City and Township. All language within this Agreement is to be interpreted pursuant to ORC 701.07(D), that any reference to any sharing of taxes is to be construed such that the proceeds of those taxes are to be used to make the payments authorized in the Agreement. The parties do not consider estate taxes to be a tax levy.

ARTICLE 13

ADDITIONAL TERMS AND CONDITIONS

The parties agree to study ways in which the City and Township can work together for the benefit of residents of both entities.

To this end, the City and Township agree as follows:

A. Within two (2) weeks of the signing of this Agreement and the approval of the Agreement by Resolution of the Township and Ordinance of the City, the parties may form a committee, as follows: the Board of Trustees may name a Township Trustee and a designee of the Township Trustees, and the President of City Council may name the Mayor or the Mayor's designee, and a member of Canton City Council, subject to confirmation by a majority of the members of City Council, to said committee to study ways in which the City and Township can work together for the benefit of residents of both City and Township. This committee is to study such matters as cooperation in providing police and fire services, and other methods by which the City and Township can work together to benefit the residents of both communities. The committee shall also explore and recommend to the other elected officials any methods by which the City and Township might work together for the benefit of the respective residents of those communities. Committee members shall serve a one (1) year term, but may be reappointed for additional terms under the procedure set forth above. Any committee member who no longer holds his or her Township or City office shall no longer be on the committee, and shall be replaced by another such officeholder, in the manner as set forth above.

B. The parties further agree that the Committee referenced above will act in a consultative manner regarding development issues for the Property within the Exhibit A area and for any other real property within Osaburg Township, Stark County, Ohio.

ARTICLE 14

LIBERAL CONSTRUCTION

The parties agree that just as ORC 701.07 is to be liberally construed to allow parties to enter into Cooperative Economic Development Agreements, the parties agree that this Agreement shall be liberally construed in order to facilitate the desire of both parties to carry out this Agreement by providing government improvements and facilities and services, by promoting and supporting economic development, by creating and preserving employment opportunities, and by allowing for the sharing by City, Township, County and State of Ohio, in the benefits of economic development, even if the economic development does not occur in an unincorporated area. Further, each provision of this Agreement shall be construed and interpreted so as to permit maximum advantage to the parties allowed by ORC 701.07.

ARTICLE 15

MODIFICATION

This Agreement may not be modified except by official legislative action of both City and Township.

This Agreement may be terminated prior to the expiration of its terms by mutual consent of City and Township, as evidenced by official legislative action by each, or as provided by Article 10 herein.

ARTICLE 16

LEGAL CONSTRUCTION

In the event any one or more of the provisions contained in this Agreement are held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not

be affected by any other provision of this Agreement. The titles of the Articles of this Agreement are descriptive only and are not to be considered substantive provisions of this Agreement. This Agreement is intended to conform to Ohio Revised Code 701.07 in all respects.

ARTICLE 17

PRIOR AGREEMENTS SUPERSEDED

This Agreement constitutes the entire Agreement of the parties and supersedes any prior understandings or previous oral or written agreements between the parties respecting the subject matter of this Agreement.

ARTICLE 18

GOVERNING LAW

This Agreement, and all the rights, duties and obligations of City and Township, shall be construed under and in accordance with the laws of the State of Ohio, and all obligations of the parties hereunder are performable in Stark County, Ohio.

ARTICLE 19

PARTIES BOUND

This Agreement shall be binding upon and inure to the benefit of the parties, their agents, servants, members, officials, trustees, employees, representatives, assigns and successors.

Executed, in duplicate, at Stark County, Ohio, on the date set forth below.

Signed and Acknowledged:

THE CITY OF CANTON

By: Janet Weir Creighton
Its: Mayor

Date: 12-19-06

Dated: 12-19-06

APPROVED:

Joseph Martuccio
Joseph Martuccio
City of Canton Law Director

THE BOARD OF TRUSTEES FOR
OSNABURG TOWNSHIP

By: Paul A. Pew
By: Donna M. Middaugh

By: Richard R. Decker

Dated: 12-19-06

Eric J. Williams
Eric J. Williams
Counsel for Osnaburg Township
Board of Trustees