

TEMPORARY ORDINANCE NO. 25-24

PERMANENT ORDINANCE NO. 29-24

AN ORDINANCE TO AUTHORIZE THE MAYOR TO ENTER INTO A SCHOOL COMPENSATION AGREEMENT FOR INCOME TAX SHARING BETWEEN AMANDA CLEARCREEK LOCAL SCHOOL DISTRICT AND THE CITY OF LANCASTER

WHEREAS, the City created a community reinvestment area pursuant to Resolution No. 123-79 on November 12, 1979, known as the Pre-1994 CRA; and

WHEREAS, a portion of the territory of the Pre-1994 CRA overlaps with the territory of the Amanda Clearcreek Local School District ("School District"), specifically, the Google Data Center Project ("Project") at 35 Whiley Road in Lancaster; and

WHEREAS, on December 8, 2023, the School District received written notice from the City that the construction of that Project was approved to receive a property tax exemption pursuant to the Pre-1994 CRA; and

WHEREAS, pursuant to Ohio Revised Code § 5709.82, the City and the School District desire to enter into a School Compensation Agreement ("Agreement") to compensate the School District in connection with the Pre-1994 CRA property tax exemptions relating to the Project for CRA Duration; and

WHEREAS, such an Agreement will compensate the School District for a portion of the real property taxes that the School District would have received had the Project site been improved and not been exempted from taxation under the exemption resulting from Pre-1994 CRA; now, therefore,

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

SECTION 1. That the Mayor is hereby authorized to negotiate and enter into the Agreement attached hereto as Exhibit 1 with the Amanda Clearcreek Local School District regarding income tax sharing at the Project site known as 35 Whiley Road.

SECTION 2. That the School Compensation Agreement in the form presently attached hereto as Exhibit 1 is hereby approved and authorized with changes therein not inconsistent with this Ordinance and not substantially adverse to this City and which shall be approved by the Mayor. This Council further authorizes the Mayor for and in the name of the City, to execute any amendments or changes to the final documents, which amendments are not inconsistent with this Ordinance and not substantially adverse to the City.

SECTION 3. This Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

Passed: August 26, 2024 after 3rd reading. Vote: Yeas 9 Nays 0

Date Approved: August 26, 2024

Clerk: [Signature]

[Signature]
President of Council

Offered by: Kurt McCut

Mayor

Second by: ~~_____~~

Requested by Law Committee

I, Kristina Crites, Clerk of Council do hereby certify that on _____, 2024 in the Lancaster Eagle Gazette published the summary of this ordinance in accordance with Ohio Revised Code 731.24.

Clerk of Council



SCHOOL COMPENSATION AGREEMENT

(Google Project – 35 Whiley Road, Lancaster, Ohio)

THIS SCHOOL COMPENSATION AGREEMENT (the “*Agreement*”) is made and entered into as of this [] day of [], 2024 (the “*Effective Date*”), by and between the **CITY OF LANCASTER, OHIO**, an Ohio municipal corporation, with its main offices located at 104 E. Main Street, Lancaster, Ohio 43130 (the “*City*”), and the **AMANDA CLEARCREEK LOCAL SCHOOL DISTRICT**, Fairfield County, Ohio, a public school district with its principal offices located at 328 E. Main Street, Amanda, Ohio 43102 (the “*School District*” and, together with the City, the “*Parties*”).

WITNESSETH:

WHEREAS, the City created a community reinvestment area pursuant to Resolution No. 123-79 on November 12, 1979, as amended and/or supplemented from time (the “*Pre-1994 CRA – Zone 1*”) pursuant to Sections 3735.65 at seq. (the “*CRA Act*”);

WHEREAS, a portion of the territory of the Pre-1994 CRA – Zone 1 overlaps with the territory of the School District, specifically, the Project Site (as defined herein);

WHEREAS, on December 8, 2023, the School District received written notice from the City that the construction of a new data center building, as a commercial development, for the benefit of Google (“*Building 1 of the Project*”) located at 35 Whiley Road, Lancaster, Ohio (on parcels: 0571000230 and 0571000200; see *Exhibit A* attached hereto and incorporated herein) (the “*Project Site*”) had been approved to receive a property tax exemption pursuant to the Pre-1994 CRA – Zone 1;

WHEREAS, as permitted by the CRA and the Pre-1994 CRA – Zone 1, the City intends that the property tax exemption for Building 1 of the Project commence on January 1, 2024, and that the duration of such exemption last for 15 years, ending on December 31, 2038 (the “*Building 1 CRA Duration*”);

WHEREAS, amount of the property tax exemption associated with Building 1 of the project is intended to be 100% of the dollar amount by which new construction attributable to Building 1 of the Project increases the market value of the structure;

WHEREAS, the City anticipates that additional buildings and structures (i.e. several buildings) will be constructed on the Project Site for similar commercial purposes, inclusive of Building 1 of the Project and any additional buildings and/or structures on the Project Site relating to a Pre-1994 CRA – Zone 1 exemption (the “*Aggregate Project*”) and for each additional building or structure for which a property tax exemption will be sought under Pre-1994 CRA – Zone 1 that is part of the Aggregate Project, the City will provide the School District notice of the period of the tax exemption, inclusive of the Building 1 CRA Duration and any additional buildings and/or structures on the Project Site relating to a Pre-1994 CRA – Zone 1 exemption (the “*Aggregate CRA Duration*”);

WHEREAS, by way of example and for the purposes of clarity, in the event that Building 2 is constructed on the Project Site (“*Building 2 of the Project*”) and the construction of such building

is completed on December 8, 2025, and a property tax exemption is granted on 100% of the dollar amount by which Building 2 of the Project increases the market value of the related structure, for a period of 15 years commencing on January 1, 2026 and ending on December 31, 2040 (“**Building 2 CRA Duration**”), the parties intend that Building 1 of the Project and Building 2 of the Project shall constitute the Aggregate Project, and further, that the Building 1 CRA Duration and Building 2 CRA Duration shall constitute the Aggregate CRA Duration; provided, however, when the Building 1 CRA Duration expires, then the Aggregate CRA Duration will only include the Building 2 CRA Duration and any subsequent durations as a result of additional buildings or structures on the Project Site;

WHEREAS, the Parties intend that any and all measurements hereunder (including, but not limited to, new employee payroll) shall include the Aggregate Project and the Aggregate CRA Duration at any given point in time;

WHEREAS, pursuant to Ohio Revised Code Section 5709.82, the City and the School District desire to enter into this Agreement to compensate the School District in connection with the Pre-1994 CRA – Zone 1 property tax exemptions relating to the Aggregate Project for the Aggregate CRA Duration;

WHEREAS, on [_____], 2024, City Council for the City [adopted] [passed] Ordinance No. [_____] (the “**Authorizing Ordinance**”), pursuant to which the City authorized execution of this Agreement; and,

WHEREAS, on June 19, 2024, the Board of Education of the School District adopted a resolution (the “**School District Resolution**”) granting its approval of this Agreement;

WHEREAS, to compensate the School District for a portion of the real property taxes that the School District would have received had the Project Site been improved and not been exempted from taxation under the exemption resulting from Pre-1994 CRA – Zone 1, the Parties have determined to enter into this Agreement, which Agreement is in the vital and best interest of the City and the School District and will improve the health, safety, and welfare of the citizens of the City and the School District;

NOW THEREFORE, in consideration of the premises and covenants contained in this Agreement, the Parties agree as follows:

Section 1. Approval; Compensation Payments to School District and Joint Vocational School District.

A. Income Tax Sharing. For each year that the Project Site is subject to the exemption or exemptions resulting from the Aggregate Project as part of the Pre-1994 CRA – Zone 1, as applications for property tax exemptions are received and approved by the City, a housing officer of the City, or other authorized representative (collectively, the “**CRA Exemption**”), the City will pay to the School District an amount equal to 50% of the income taxes collected by the City with respect to each calendar year for new employees located on a parcel of the Project Site for which the CRA Exemption is in effect, less any income tax sharing amounts required to be paid to the applicable joint vocational school district (“JVSD”) pursuant to Ohio law, in accordance with the following methodology for making distribution determinations:

(i) for each year that the Project Site is subject to the CRA Exemption and the payroll of new employees equals or exceeds two million dollars (\$2,000,000), as adjusted under Section 5709.82(E) of the Ohio Revised Code, the City shall pay to the School District and the JVSD, on a pro rata basis based upon the allocable portion of the School District's and the JVSD's respective effective tax rate millage as a percentage of the entirety of the School District's and the JVSD's combined effective tax rate millage, within the territory of which the Project Site is located, an amount equal to fifty percent (50%) of the difference between the amount of income taxes levied and collected by the City on the incomes of the new employees, and the amount of any infrastructure costs incurred in that tax year, however, the amount of such infrastructure cost may not exceed thirty-five percent (35%) of the amount of such income taxes for purposes of this calculation.

The City will make the required payments due for any such year by April 1 of the following year, such period of time being necessary for the City to receive and review income tax returns and determine the amount of income taxes received. The foregoing income tax sharing applies to wages that are subject to City income tax withholding pursuant to Ohio Revised Code Section 718.011 for full and part time workers located at the Project Site and construction workers constructing any portion of the Aggregate Project. As used in this Agreement, "new employee" is defined in Ohio Revised Code Section 5709.82 in effect on the date of this Agreement. As used in this Agreement, "infrastructure costs" is defined in Ohio Revised Code Section 5709.82 in effect on the date of this Agreement.

B. Income Tax Calculation. The City shall submit to the School District, with the transmission of the amounts described in Section 1.A.i. above, a detailed accounting of its calculation of such payments (each a "*School Income Tax Payment*"). Subject to its confidentiality obligations imposed by Section 718.13 of the Ohio Revised Code and other applicable law, the City shall provide such back-up information for its calculations as the School District reasonably requests. In the event the School District disputes the amount of a School Income Tax Payment, as certified by the Tax Commissioner of the City, the School District shall certify, within 30 days of receipt of the accounting from the City, the basis for the dispute and the amount that the School District claims is the correct amount of School Income Tax Payment to be paid to the School District. Within 10 days thereafter, the City's Tax Commissioner and the School District's Treasurer shall meet to discuss and resolve the dispute. In the event the Tax Commissioner and the Treasurer are unable to mutually agree on the amount of the School Income Tax Payment, the City shall, within 15 days thereafter, pay the amount that it has, in good faith, determined is due under this Agreement; provided that nothing contained in this Section shall limit the School District's ability, after payment and receipt of such School Income Tax Payment amount, to seek recovery of amounts deemed underpaid.

In no case may the total School Income Tax Payments made hereunder over the entire period of the CRA Exemption exceed the amount of taxes that the School District would have received over the entire CRA Exemption period absent the CRA Exemption. Nothing contained in this Section shall limit the City's ability, after payment and receipt of such School Income Tax Payment amount, to seek recovery of amounts deemed overpaid.

C. Sharing of Legal Expenses. The Parties hereto agree to evenly share legal expenses of the preparation of this Agreement up to a reasonable amount not to exceed \$8,500.00 (in the aggregate).

Section 2. Term of Agreement; Other Terms.

(A) Term. The term of this Agreement commences on the date of this Agreement and expires on December 31st of the last year in which a CRA Exemption applies to any parcel of the Project Site.

(B) Subdivision or Consolidation of the Project Site. In the event that the Project Site is subdivided or consolidated with other property, the Parties agree to make the necessary amendments to this Agreement in order to preserve and protect the School Income Tax Payment to the School District and the JVSD, as originally contemplated under this Agreement.

(C) No Other Compensation. Except for the payments and consideration set forth in Section 1 of this Agreement, the School District shall not be entitled to any other compensation from the City, whether pursuant to R.C. 5709.82 or otherwise, in connection with the CRA Exemption.

(D) Waiver of Defects and Irregularities. The School District waives any defects or irregularities relating to the CRA Exemption or additions to such exemption. The School District agrees that fourteen (14) day advance notice of additions to the CRA Exemption is sufficient and that notices may be delivered by e-mail to the School District Treasurer.

Section 3. Miscellaneous.

(A) Entire Agreement. This Agreement sets forth the entire agreement and understanding among the Parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements, and undertakings of every kind and nature among the Parties with respect to the subject matter of this Agreement.

(B) Amendment. This Agreement may be amended or modified by the Parties only in writing, signed by all Parties.

(C) Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

(D) Binding Effect. The provisions of this Agreement are binding upon the successors or assigns of the Parties.

(E) Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections of this Agreement.

(F) Day for Performance. Wherever herein there is a day or time period established for performance and such day or the expiration of such time period is a Saturday, Sunday or legal holiday, then such time for performance shall be automatically extended to the next business day.

liability or accountability by reason of the execution thereof or by reason of the covenants, obligations, or agreements of the Parties contained in this Agreement.

(K) Legal Authority. The Parties respectively represent and covenant that each is legally empowered to execute, deliver, and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. The Parties further respectively represent and covenant that this Agreement has, by proper action, been duly authorized, executed, and delivered by the Parties and all steps necessary to be taken by the Parties have been taken to constitute this Agreement, and the covenants and agreements of the Parties contemplated herein, as a valid and binding obligation of the Parties, enforceable in accordance with its terms.

(L) Limit on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall the Parties be liable to each other for punitive, special, consequential, or indirect damages of any type and regardless of whether such damages are claimed under contract, tort (including negligence and strict liability) or any other theory of law.

(M) No Waiver. No right or remedy herein conferred upon or reserved to any Party is intended to be exclusive of any other right or remedy, and each and every right or remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing upon the occurrence of any event of default hereunder. The failure of any Party to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any such right or remedy or be construed as a waiver or relinquishment thereof. Every right and remedy given by this Agreement to the Parties hereto may be exercised from time to time and as often as may be deemed expedient by the Parties hereto, as the case may be.

(N) Ohio Laws. Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code shall include such section, provision or chapter as modified, revised, supplemented, or superseded from time to time; provided, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

(O) Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

(P) Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

(Q) Counterparts. This Agreement may be executed in any number of counterparts (including electronically executed or transmitted counterparts), all of which taken together shall constitute one and the same instrument, and any Party to this Agreement may execute this Agreement by signing any such counterpart.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly signed as of the date set forth above.

CITY OF LANCASTER, OHIO

By: _____
Mayor

Approved as to Form:

City Law Director

AMANDA CLEARCREEK LOCAL SCHOOL DISTRICT

By: _____
President of the Board of Education

By: _____
Treasurer

R.C. 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS

The undersigned, Finance Director of the City of Lancaster, Ohio (the “City”), hereby certifies in connection with the Compensation Agreement between the City and the Amanda Clearcreek Local School District, dated as of [_____], 2024, that:

The amount required to meet the contract, obligation, or expenditure for the attached during Fiscal Year 2024, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance. This certificate is given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2024.

City Auditor

Dated: _____, 2024

EXHIBIT A

Project Site

Parcel Number(s):

0571000230

0571000200