

JOB CREATION INCENTIVE AGREEMENT

THIS JOB CREATION INCENTIVE AGREEMENT (the “Agreement”) is made and entered into this ___ day of _____, 2020 (the “Effective Date”), by and between THE SHERWIN-WILLIAMS COMPANY (“Grantee”), an Ohio corporation, and the CITY OF BRECKSVILLE, OHIO (the “City”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio, and under the authority of City Ordinance No. ____ - __ passed on _____, 2020 and attached as EXHIBIT A (the “Ordinance”).

RECITALS:

WHEREAS, the City desires to encourage commercial office development and provide for the creation of employment opportunities within the City; and

WHEREAS, Grantee was founded in 1866 and today, including its affiliated entities (The Sherwin-Williams Headquarters Company, The Sherwin-Williams Manufacturing Company and others (any entity that controls the Grantee, is controlled by Grantee, or is under common control with Grantee is an “Affiliate”)), is a global leader in the manufacture, development, distribution and sale of paint, coatings and related products to professional, industrial, commercial and retail customers; and

WHEREAS, Grantee, itself or through one or more Affiliates, intends to acquire or cause to be acquired, or has acquired or caused to be acquired, ownership or leasehold interests in certain parcels of real property located in the City depicted on EXHIBIT B, and expects to develop or cause to be developed, construct or cause to be constructed (in one or more phases), and operate on the real property a new research and development facility and possibly facilities for other business activities and supporting or complementary buildings, structures, infrastructure and appurtenances (collectively, the “Project,” which will be located at the “Project Site”), as further described and provided for in that certain Development Agreement between the Company, the City and the Brecksville Community Improvement Corporation dated as of _____, 2020 (the “Development Agreement”); and

WHEREAS, in accordance with the Ordinance, which authorizes the City’s Mayor to enter into an agreement with Grantee to support the Project and the creation of the employment opportunities by Grantee at the Project Site, the City desires to provide a fifteen (15) year job creation incentive to Grantee (the “Incentive Term”); and

WHEREAS, the City has determined to offer economic development incentives described herein to induce Grantee to locate and establish its workforce within the City to create jobs and employment opportunities and to improve the economic welfare of the people of the State of Ohio and the City, all as authorized in Article VIII, Section 13 of the Ohio Constitution; and

WHEREAS, the City and Grantee have determined to enter into this Agreement to provide these incentives to induce Grantee to locate its operations within the City.

Now THEREFORE, the City and Grantee covenant agree and obligate themselves as follows:

Section 1. Grantee's Agreement to Locate in the City.

(a) The Project. Grantee will construct or cause to be constructed the Project at the Project Site. Grantee or one of its Affiliates will own or lease the Project Site and will provide the City written confirmation of its ownership, or lease of at least fifteen (15) years (including any lease extensions or options), of the Project Site prior to the beginning of the Incentive Term.

(b) The Incentive Term Commencement. The Incentive Term will begin the earlier of (i) the first full calendar year beginning at least six months following the issuance of the final certificate of occupancy for the Project, or (ii) if the final certificate of occupancy for the Project is issued on or after July 1, 2027 and on or before December 31, 2027, calendar year 2028. Grantee expects to begin operations on or about January 1, 2026.

(c) Payroll. Grantee expects to employ, through itself or one or more Affiliates, approximately 680 employees, with an estimated total payroll at the Project Site of \$55,760,000 by December 31, 2027.

(d) Minimum Payroll to Receive Credit. For each calendar year during the Incentive Term, the Grantee shall only receive a Job Incentive Payment (defined below) if the Grantee's total employee payroll located at the Project Site and subject to City employee withholding taxes for that calendar year is at least \$40,000,000 (the "Minimum Payroll").

Section 2. City Agreement to Provide Incentives.

(a) General. In consideration for Grantee's agreement to locate its workforce and associated payroll at the Project Site within the City, the City agrees to provide economic development incentives to Grantee in accordance with this Section.

(b) Withholding Rebate Incentive.

(i) Calculation of Actual Withholdings. On or before March 15 of each year following a year of the Incentive Term (anticipated to be 2026-2040), the Grantee shall submit to the City the aggregate actual City payroll withholding taxes withheld during the preceding calendar year by the Grantee and its Affiliates from all Employees (the "Actual Withholdings") for that preceding calendar year. For purposes of this Section 2, "Employees" shall include all individuals employed by Grantee or its Affiliates at the Project Site who are subject to City income tax withholdings. The Grantee will make available such evidence of Actual Withholdings as may be reasonably requested by the City.

(ii) Payments to Grantee. The City shall, within thirty (30) days of receipt of Grantee's Actual Withholding information, pay to Grantee (i) thirty-five percent (35%) of the Actual Withholdings attributable to taxable earnings of up to \$55,760,000, and (ii) forty percent (40%) of the Actual Withholdings attributable to taxable earnings of more

than \$55,760,000 (the “Job Incentive Payment”). Such payments shall be made from the City’s non-tax revenues or shall be in the form of a refundable tax credit against the Grantee’s or an Affiliate’s net profit taxes due to the City as provided in R.C. Section 718.15, as determined by the City.

(iii) Form of Payment. The Job Incentive Payment provided for in this Section 2 shall be made by the City to Grantee by electronic funds transfer or by such other manner as is mutually agreed to by the City and Grantee. As set forth more fully in Section 2(e), if the City fails to appropriate or pay the Job Incentive Payment, Grantee shall be entitled to claim a credit against the corporate net profit tax due to the City by Grantee or its Affiliates.

(d) Eligibility for Job Incentive Payment. Grantee shall provide written notice to the City following the issuance of the certificate of occupancy for the Project of the beginning of the Incentive Term, which must be effective on a January 1st. Grantee agrees that to be eligible for the Job Incentive Payment for the preceding year, Grantee must occupy the Project Site and maintain operations and achieve the Minimum Payroll as described in Section 1 during such preceding year. The City shall have no obligation to make the Job Incentive Payment for any tax year that the Grantee fails to occupy the Project Site or maintain operations and the Minimum Payroll in the City as described in Section 1 for that year.

(e) City's Obligation to Make Payments Not Debt. Notwithstanding anything to the contrary herein, the obligations of the City pursuant to this Agreement shall not be a general obligation debt or bonded indebtedness, or a pledge of the general credit or taxes levied by the City, and Grantee shall have no right to have excises or taxes levied by the City, the State or any other political subdivision of the State for the performance of any obligations of the City herein. Consistent with Section 13 of Article VIII, Ohio Constitution, any payments or advances required to be made by the City pursuant to this Section 2 shall be payable solely from the City's non-tax revenues or as a refundable tax credit from all amounts appropriated by the City for tax refunds. If the City fails to appropriate or pay the Job Incentive Payment, Grantee shall be entitled to claim a credit against the corporate net profit tax due to the City by Grantee or its Affiliates in the amount of the Job Incentive Payments, with any unused credits carrying forward to future tax years until the total credits claimed equal the shortfall in Job Incentive Payments, plus interest on the unpaid amount at an annual rate equal to the prime rate published by the Wall Street Journal (or equivalent publication), plus 2%. In addition, the Grantee may pursue all rights and remedies against the City, including but not limited to claims for damages, and Grantee may elect to terminate this Agreement with no further obligations to the City while preserving its claims for damages and credits.

Section 3. Miscellaneous.

(a) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to

or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this agreement, notices shall be addressed to:

(i) the City at: City of Brecksville, Ohio
9069 Brecksville Road
Brecksville, Ohio 44141
Attention: Mayor

and

City of Brecksville, Ohio
9069 Brecksville Rd.
Brecksville, OH 44141
Attention: Law Director

(ii) the Grantee at: The Sherwin-Williams Company
101 W. Prospect Ave.
Cleveland, OH 44115
Attention: Senior Vice President, General Counsel
and Secretary, Mary L. Garceau

and

The Sherwin-Williams Company
101 W. Prospect Ave.
Cleveland, OH 44115
Attention: Vice President – Taxes,
Lawrence J. Boron

and

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Attention: Scott J. Ziance

The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices; certificates, requests or other communications shall be sent.

(b) Extent of Provisions; No Personal Liability; Limitation on Damages. All rights, remedies, representations, warranties, covenants, agreements and obligations of the City under this Agreement shall be effective to the extent authorized and permitted by applicable law. No representation, warranty, covenant, agreement, obligation or stipulation contained in this Agreement

shall be deemed to constitute a representation, warranty, covenant, agreement, obligation or stipulation of any present or future elected official, trustee, member, officer, agent or employee of the City or Grantee in other than his or her official capacity. No official executing or approving the City's or Grantee's participation in this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of this Agreement or the City's or Grantee's obligations hereunder. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall City or Grantee 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.

(c) Successors. This Agreement shall be binding upon and inure to the benefit of Grantee and its successors and assigns, and all rights and benefits of the Grantee under this Agreement may be transferred and assigned by the Grantee, in whole or in part, to any Affiliate or to any successor of the Grantee, with written notice to the City.

(d) Recitals. The City and Grantee 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.

(e) Amendments. This Agreement may only be amended by written instrument executed by the City and Grantee.

(f) Executed Counterparts. This Agreement may be executed in several counterparts (including electronic counterparts), each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(g) 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. The remaining provisions of this Agreement shall be read together to preserve the intent of the parties to the fullest extent possible.

(h) 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.

(i) Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between the City, its agents and employees, and Grantee, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Cuyahoga County, Ohio.

(j) Force Majeure. In the case of an event of Force Majeure (defined below), all deadlines and obligations of the parties shall be tolled and extended for a time period equal to the

delay. "Force Majeure" means any of the following events outside of the parties' control that impact a party's ability to meet its deadlines or other obligations: flood, earthquake, storm, lightning, fire, or other acts of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of the Grantee); civil disturbance; terrorist act; power outage; governmental permitting or other governmental delays. Each party agrees that it cannot invoke Force Majeure for a delay the party itself causes.

(k) Survival of Representations and Warranties. All representations and warranties of Grantee and the City in this Agreement shall survive the execution and delivery of this Agreement.

(l) Termination. Notwithstanding anything to the contrary herein, Grantee may terminate this Agreement effective upon sixty (60) days prior written notice to the City, in which event the City will be released from any liability or obligation to Grantee except to make payment to Grantee of any valid Job Incentive Payment which has accrued prior to such effective date of termination. The City may terminate this Agreement if the Grantee has not commenced construction of the Project within two years of the Effective Date.

(Signature Page to Follow)

AFTER DUE AUTHORIZATION, the parties have each caused this Agreement to be duly executed as of the day of and year first written above.

CITY OF BRECKSVILLE

By:
Its:
Date:

The legal form and correctness of
this instrument is approved.

By: David J. Matty, Law Director
Date:

THE SHERWIN-WILLIAMS COMPANY

By: _____
Its: _____

FISCAL OFFICER’S CERTIFICATE

As fiscal officer for the City of Brecksville, I hereby certify that funds sufficient to meet the obligations of the City in this Agreement (including specifically the funds required to meet the obligation of the City in the year 2020, being \$0.00) have been lawfully appropriated for the purposes thereof and are available in the treasury, and/or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Ohio Revised Code Sections 5705.41 et seq.

Dated: _____, 2020

Director of Finance
City of Brecksville
Cuyahoga County, Ohio

EXHIBIT A

ORDINANCE

[to be attached]

