



CITY OF PATASKALA

ORDINANCE 2019-4349

Passed November 4, 2019

AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE SOUTHWEST LICKING SCHOOL DISTRICT IN CONNECTION WITH POSSIBLE PROPERTY TAX EXEMPTIONS IN THE PATASKALA CORPORATE PARK, AS EXPRESSED IN THE ATTACHED EXHIBIT A.

WHEREAS, Ohio Revised Code ("R.C.") Sections 5709.40 et seq. (the "TIF Act") authorize municipal corporations to grant tax exemptions for improvements to real property in connection with tax increment financing arrangements entered into pursuant to the TIF Act; and

WHEREAS, R.C. Sections 3735.65 et seq. (the "CRA Act") authorize municipal corporations to designate areas as "community reinvestment areas" and to grant real property tax exemptions for new construction within those areas; and

WHEREAS, in order to encourage commercial, industrial and other economic development in the City of Pataskala, Ohio (the "City"), the City has created an economic development area in the City known as the Pataskala Corporate Park (the "Corporate Park"); and

WHEREAS, to encourage the development of properties within the Corporate Park, the City is considering the granting of (i) one or more such property tax exemptions (each, a "TIF Exemption") pursuant to the TIF Act to a portion of the Corporate Park within the boundaries of the Southwest Licking School District (the "School District") and described in Exhibit A attached hereto (the "Southwest Licking Area"), and (ii) one or more of such property tax exemptions pursuant to the CRA Act with respect to the Southwest Licking Area (each, a "CRA Exemption"), all in connection with the development of the real property located in the Southwest Licking Area; and

WHEREAS, the City and the Board of Education of the School District have attempted to negotiate compensation for the School District with respect to future TIF Exemptions and CRA Exemptions in the Southwest Licking area other than the compensation provided by the R.C. in circumstances where there is no such agreement (the "Default R.C. Provisions"); and

WHEREAS, those negotiations have concluded without such an agreement, meaning that the Default R.C. Provisions shall be applicable; and

WHEREAS, the City and the Board of Education of the School District desire to memorialize the applicability of the Default R.C. Provisions by entering into a Memorandum of Understanding (the "MOU");

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PATASKALA (hereinafter called the "City"), OHIO, that:

SECTION 1. The City Administrator and the Director of Finance are each individually authorized, on behalf of the City and in their official capacities, to execute and deliver a MOU with the School District in substantially the form now on file with the Clerk of the City Council, each of which this City Council finds and determines is in the best interests of the City and its citizens and taxpayers. The MOU is hereby approved with such changes that are not materially inconsistent with this ordinance and not substantially adverse to the City and that are permitted by law and shall be approved by said official or officials. The approval of such changes, and that such changes are not materially inconsistent with this ordinance and not substantially adverse to City, shall be conclusively evidenced by the signing of the MOU by such official or officials. The City Administrator, the Director of Finance, and other appropriate officials of the City are also each individually authorized and directed to execute and deliver any other agreements and to take all other actions and do all other things necessary and consistent with this ordinance in order to accomplish the purposes of this ordinance.

SECTION 2. It is found and determined that all formal actions of this City Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this City Council, and that all deliberations of this City Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law, including R.C. Section 121.22.

SECTION 3. This ordinance shall take effect at the earliest time permitted by law.

ATTEST:


Kathy M. Hoskinson, Clerk of Council


Michael W. Compton, Mayor

Approved as to form:


Brian M. Zets, Law Director

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "MOU") is made and entered into as of this ___ day of ____, 2019 (the "Effective Date"), by and between the City of Pataskala, Ohio (the "City"), a municipal corporation organized and existing under the constitution and the laws of the State of Ohio and its Charter, and the Board of Education (the "Board of Education") of the Southwest Licking Local School District (the "School District"), a school district organized and existing under the constitution and laws of the State of Ohio.

WHEREAS, it has been and is in the best interests of the City to designate certain areas common to the jurisdictional areas of the City and the School District for commercial, industrial, and other business development from time to time; and

WHEREAS, the City has created an economic development district within an area of the City known as the "Pataskala Corporate Park" (the "Corporate Park"); and

WHEREAS, a portion of the area within the Corporate Park, as shown on Exhibit A attached hereto (the "Southwest Licking Area"), is within the territorial boundaries of the School District; and

WHEREAS, another portion of the area within the Corporate Park, as shown on Exhibit B attached hereto, (the "Licking Heights Area"), is within the territorial boundaries of the Licking Heights Local School District (the "Licking Heights District"); and

WHEREAS, the City anticipates that, to facilitate development of properties within the Licking Heights Area and/or Southwest Licking Area, it may be necessary to exempt some or all of the parcels, including improvements thereon, from real property taxes pursuant to (a) a community reinvestment area (a "CRA") under R.C. Sections 3735.65 et seq. ("CRA Exemptions") or (b) an area subject to non-school tax increment financing (a "TIF") under R.C. 5709.40 et seq. ("TIF Exemptions"); and

WHEREAS, under R.C. Chapter 718, the City levies an income tax within the Licking Heights Area and the Southwest Licking Area on income earned by persons working in the Licking Heights Area and the Southwest Licking Area and on the profits of business located in the Licking Heights Area and the Southwest Licking Area (the "City Income Tax"); and

WHEREAS, R.C. 5709.82 entitles the School District to compensation in connection with certain property tax abatements, including but not limited to certain CRAs and TIFs; and

WHEREAS, the City and the School District desire to articulate terms, described in this MOU, under which the School District will support the use of the CRA Exemptions within the Southwest Licking Area by means of agreeing to a compensation agreement by and among the School District, the City, and the applicable property owner; and

WHEREAS, the City and the Licking Heights District similarly desire to articulate in a separate memorandum of understanding (the "Licking Heights MOU") terms under which the Licking Heights District will support the use of CRA Exemptions within the Licking Heights Area by means of agreeing to a compensation agreement by and among the Licking Heights District, the City, and the applicable property owner; and

WHEREAS, the Board of Education of the School District by its Resolution No. _____ adopted _____, 2019, a true copy of which is attached hereto as Exhibit C (the “School District Resolution”), and the City Council of the City by its Ordinance _____ adopted _____, 2019, a true copy of which is attached hereto as Exhibit C, have approved and authorized the execution of this MOU; and

WHEREAS, the Board of Education of the Licking Heights District has or will adopt the Licking Heights MOU, the terms of which are substantially the same as this MOU, with the exception that the Licking Heights MOU binds the City and the Licking Heights District;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the parties hereto agree to the foregoing premises and as follows:

Section 1. Conditions for School District Consent. School District consent to any CRA within the Southwest Licking Area is expressly conditioned upon execution and delivery by the City and the applicable property owner, together with the School District, of a compensation agreement with the following terms, each applicable for the life of any municipal exemption (CRA or TIF) with respect to the abated property, and each without regard to the amount of the payroll generated by the development for which an exemption is to be provided or any infrastructure costs incurred by the City in connection with the same:

- a. Any TIF established by the City with respect to the applicable property shall be implemented on a non-school basis by providing that the School District will receive the amount of the taxes that would have been payable to the School District if the increases in assessed value with respect to the property had not been exempted from taxation pursuant to the TIF.
- b. The City quarterly shall pay the School District 50% of all City Income Tax due to the City and relating to employee or net profit income earned on the applicable property without regard to the amount of income generated with respect to the applicable property (and without offset for any credit provided by the City with respect to municipal income taxes paid by a taxpayer to another municipality or under a joint economic development district or joint economic development zone) for 15 years for each abatement approved by the School District. In other words, the City shall share 50% of all City Income Tax collected with respect to the applicable property beginning with the first dollar collected from such property in each quarter. Such payments shall be made on a quarterly basis no later than 30 days after the end of each calendar quarter. The City and the School District shall cooperate in calculating the compensation payments due hereunder to ensure accuracy, fairness, and that the spirit of this MOU is maintained. The City shall provide such information relating to the City Income Tax as the School District shall reasonably request in order to confirm amounts due to the School District with respect to an abated property.

- c. The applicable property owner shall pay to the School District an amount equal to 12% of the property tax revenue to which the School District would have been entitled in the absence of the CRA (PILOT). Such amount shall be due and payable to the School District semi-annually on the dates set forth in the applicable compensation agreement, beginning in the first tax year for which the property owner shall receive a real property tax exemption and continuing for so long as the applicable exemption remains in effect. School District approval of a proposed abatement hereunder shall not be contingent on any compensation other as expressly stated herein. The City agrees that, if an enterprise fails to pay the School District the PILOTs when due, and such failure persists without cure for a period of 60 days, the City shall either terminate the CRA or otherwise provide for payment to the School District of the amount then due.
- d. In the event that a CRA is established with respect to a tract of real property with portions in both the Southwest Licking Area and the Licking Heights Area, the School District and the Licking Heights District shall be entitled to pro rata shares, allocated in accordance with their respective portions of the acreage of the applicable tract, of the compensation set forth in Sections 1(a) and (b) of this MOU.
- e. The City shall provide to the School District, prior to obtaining School District approval of the compensation agreement applicable to an abated property, substantially final copies of all compensation agreements or similar instruments between the City, the County, or any other political subdivision and the owner of the abated property or any enterprise to be located on the abated property.
- f. The compensation agreement shall provide that the owner of the abated property shall pay costs incurred by the School District, including attorney fees, in connection with reviewing and approving the proposed abatement in an amount not to exceed \$10,000.

Section 2. School District Approval of CRAs in Southwest Licking Area. Subject to the City's execution and delivery of and compliance with a compensation agreement according to the conditions set forth in Section 1 hereof, the Board of Education of the School District approves and consents to, and agrees it will not challenge any CRA or CRA Exemption, as, when, and to the extent authorized and implemented by the City, subject to the following conditions:

- a. No exemptions shall be granted for the portions of any development involving retail, restaurant, or similar business operations.
- b. No exemptions shall be granted for any development that does not result in new annual payroll associated to the creation of new employment positions in excess of \$1,000,000, exclusive of benefits.
- c. In the event that the City decides to abate any portion of the income tax withheld or paid by an enterprise, the portion of income tax to which the School District shall be entitled shall be computed as if such income tax abatement were not made and paid without regard to such income tax abatement by the City.
- d. The City will provide copies of all applications for any CRA Exemption or TIF Exemption, as well as the applicable compensation agreement, to the School District 30 days prior to enacting legislation granting a CRA Exemption or a TIF Exemption.

- e. The School District will have a reasonable opportunity to meet with representatives of any enterprise to which the City proposes to grant a CRA Exemption prior to the City enacting legislation granting either exemption.
- f. The School District and the enterprise to receive the exemption must reach an agreement for compensation by the enterprise according to the terms set forth herein and satisfactory to the School District, before the City enacts legislation granting a CRA Exemption.
- g. The conditions in e. and f. above are considered met, if the enterprise agrees to pay the PILOT in full.

Section 3. Amendment. This MOU may be amended or modified by the parties only in writing, signed by both parties to the MOU.

Section 4. Entire MOU, Waiver of Notice. This MOU merges and supersedes all prior discussions, agreements, and undertakings of every kind between the parties with respect to the subject matter of this MOU. Except as provided elsewhere in this MOU, the School District, by adoption of the School District Resolution and execution of this MOU, agrees to accept 30-day notice in connection with the TIFs and CRAs and waives any separate notice requirements, including, but not limited to, those set forth in R.C. Sections 3735.67, 3735.671, 5709.40, 5709.83 and 5715.27. Notwithstanding the provisions of this Section 4, the City agrees to provide to the School District courtesy copies of all documents relating to the R.C. Sections mentioned in this Section as soon as practicable but in no event later than the date such documents may be filed with any other entity.

Section 5. City Commitment for Granting CRA Incentives. The City agrees not to enter into an agreement under Section 3735.671 of the Revised Code granting a CRA real property tax exemption unless the owners of the real property to which that exemption will apply have committed in writing, through deed restrictions or covenants, to retain that real property in the School District. Those restrictions or covenants shall prohibit any owner of the real property to which that agreement and its CRA real property tax exemption apply (the "CRA Exempted Property") from consenting to, proposing, petitioning, or failing to object, as applicable, for the transfer of any of that CRA Exempted Property from the jurisdiction of the School District to the jurisdiction of any other school district without the prior written consent of the School District. Those restrictions or covenants shall provide that they are binding on the owner and any subsequent owners of the CRA Exempted Property, and shall further provide that they are enforceable by the School District as a third party beneficiary against the owner and any subsequent owner.

Section 6. Notices and Communications. All payments, certificates, and notices which are required to or may be given pursuant to the provisions of this MOU shall be sent by the United States ordinary mail, postage prepaid, and shall be deemed to have been given or delivered when so mailed to the following addresses:

If to the City: City of Pataskala, Ohio
Attn: City Administrator
Suite 2-B
621 West Broad Street
Pataskala, Ohio 43062

If to the School District: Southwest Licking School District
Attn: Superintendent
927-A South Street
Pataskala, Ohio 43062

Either party may change its address for receiving notices and reports by giving written notice of such change to the other party.

The City and the School District are mutually committed to ongoing and open communication regarding developments in the Southwest Licking Area, all consistent with established City practices and in addition to the School District's full participation in the meetings of the Tax Incentive Review Council established for the Southwest Licking Area. The City and the School District will work together to address any unintended or unexpected disadvantages for the School District under any of the changes to the School District's funding and, in such event, hereby agree to negotiate in good faith any necessary amendments to this MOU as may be necessary in the judgement of the School District to protect the School District's financial interests in connection with such changes.

Section 7. Counterparts. This MOU may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party to this MOU may execute this MOU by signing any such counterpart.

Section 8. Violation of MOU. In the event that either party violates this MOU with respect to any exemption, this MOU shall be terminated and no further exemption may be granted in reliance upon it. In addition, the party violating the MOU agrees to pay the reasonable attorney fees of the other party incurred in enforcing the terms of this MOU with respect to any exemption granted prior to the violation of this MOU; provided, however, that such obligation (if incurred beyond the current fiscal year of the applicable party) is subject to appropriation by Board or City Council, as applicable

Section 9. Extent of Covenants. Binding Effect: No Personal Liability. All covenants, stipulations, obligations and agreements of the parties contained in this MOU shall be effective to the extent authorized and permitted by applicable law. Each provision of the MOU is binding upon the officer(s) or other person(s) and any body or bodies as may from time to time have the authority under the law to take the actions as may be necessary to perform all or any part of the duty required by a given provision of this MOU. Each duty of the City and its bodies, officers, and employees, undertaken pursuant to the MOU, is established as a duty of the City and of each such officer, employee, or body having authority to perform that duty, specifically enjoined by law resulting from an office, trust, or station within the meaning R.C. Section 2731.01, providing for enforcement by writ of mandamus. No such covenant, stipulation, obligation, or agreement shall

be deemed a covenant, stipulation, obligation, or agreement of any present or future member, officer, agent, or employee of any parties in their individual capacity.

Section 10. Effective Date: Term. This MOU shall be in effect, unless otherwise terminated in accordance with the terms hereof, beginning on the Effective Date and terminating on the tenth anniversary of the MOU; provided, however, that, this MOU shall automatically extend for two renewal terms of ten (10) years each in duration unless (i) either the City of the School District notifies the other party in writing at least one year prior to the expiration of the original term that it does not intend to renew this MOU, or (ii) either the City or the School District notifies the other party in writing at least one year prior to the expiration of the original term or any renewal term that it is requesting to extend this MOU beyond the originally contemplated term of ten (10) years or the originally contemplated renewal term of ten (10) years, as applicable, in which case this MOU shall extend in accordance with such written request if such written request is accepted by the other party.

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

CITY OF PATASKALA, OHIO

SOUTHWEST LICKING SCHOOL DISTRICT

By: _____
City Administrator

By: _____
Board President

Approved as to form:

Director of Law

By: _____
Treasurer

FISCAL OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer of the City of Pataskala, Ohio, certifies hereby that the moneys required to meet the obligations (if any) of the City during the year 2019 under the foregoing MOU have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2019

Director of Finance

EXHIBIT A
Southwest Licking Area

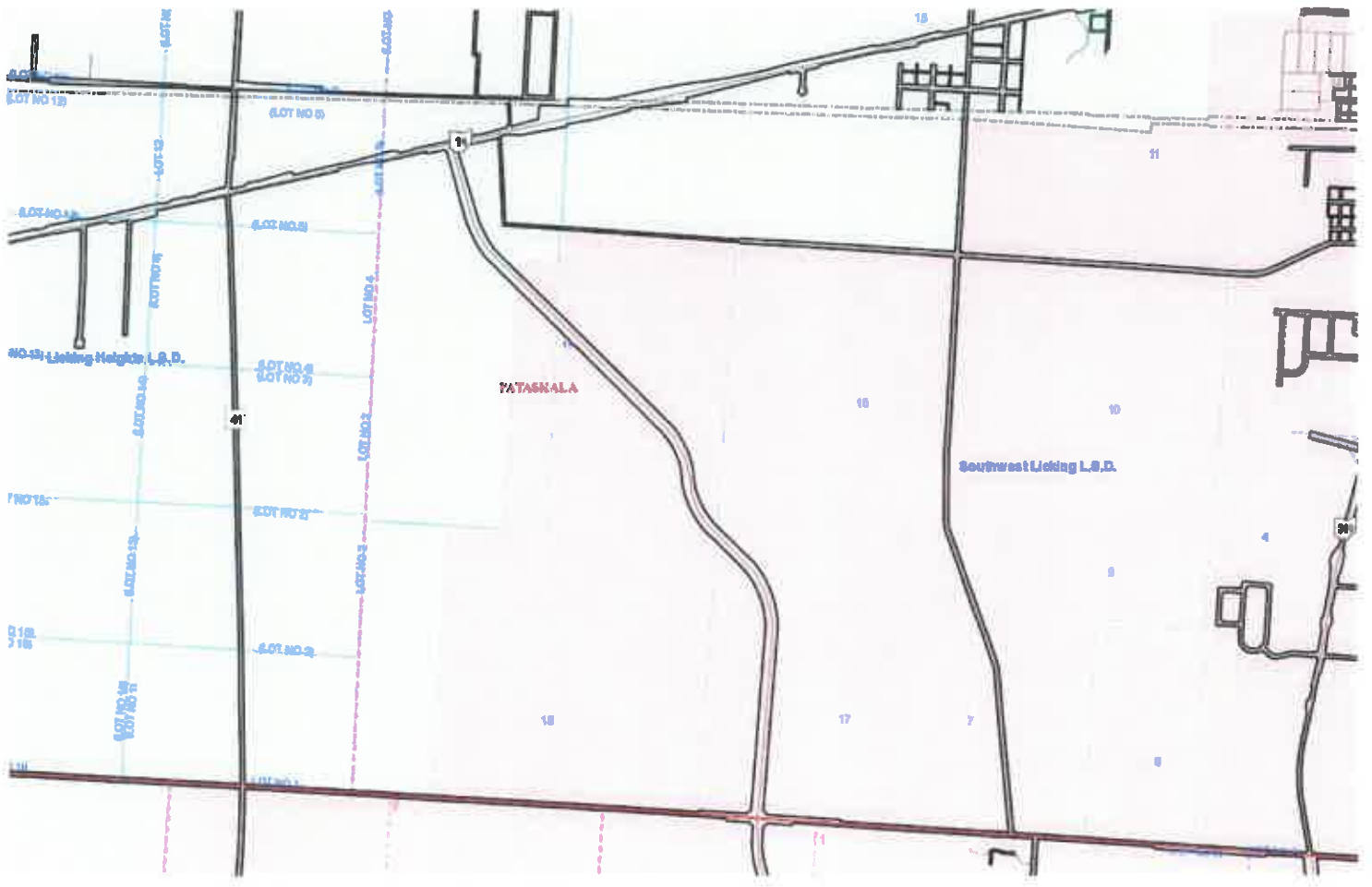


EXHIBIT B
Licking Heights Area

