

CITY OF TWINSBURG, OHIO

RESOLUTION 11-2009

**A RESOLUTION AUTHORIZING THE MAYOR TO
EXECUTE THE SUMMIT COUNTY
INTERGOVERNMENTAL MEMORANDUM OF
UNDERSTANDING FOR JOB CREATION AND TAX
REVENUE SHARING**

WHEREAS, job losses result in social and human costs which can be a significant burden to the area, the region and the State, and

WHEREAS, the County of Summit ("County") and communities throughout Summit County including the City of Twinsburg, Ohio recognize that it is imperative to cooperate and collaborate with each other for the economic benefit of the region and it's resident tax-payers in order to attract and retain businesses and jobs; and

WHEREAS, there are many current and prospective employers who desire to remain or locate in Summit County; and

WHEREAS, the County, communities and the City of Twinsburg, Ohio recognize that cooperation is necessary for regional prosperity and enhancement of the local tax base and to successfully compete in global markets; and

WHEREAS, the County works with employers, prospective employers and individual communities within Summit County to provide tax and other incentives for purposes of retaining and locating prospective employers and facilities in communities within Summit County including the City of Twinsburg, Ohio; and

WHEREAS, the County and communities throughout Summit County including the City of Twinsburg, Ohio desire to execute the Summit County Intergovernmental Memorandum of Understanding for Job Creation and Tax Revenue Sharing for the purposes of discouraging business poaching between communities, providing for revenue sharing between signatory communities in the event certain businesses relocate, and to provide certain economic development grant scoring incentives to signatory communities; and

WHEREAS, the County and communities do not desire to have any adverse impact on a business or company's decision to locate or relocate within Summit County but merely wish to address the relationship of government bodies that may be affected by those independent business decisions; and

WHEREAS, this Council, after reviewing all pertinent information, has determined that it is necessary and in the best interests of the City of Twinsburg to authorize the Mayor to execute the Summit County Intergovernmental Memorandum of

Understanding.

NOW THEREFORE, BE IT RESOLVED, by the Council of the City of Twinsburg, County of Summit, State of Ohio, that:

SECTION I: The Mayor is hereby authorized to execute the Summit County Intergovernmental Memorandum of Understanding for Job Creation and Tax Sharing, attached hereto as Exhibit A, and incorporated as if fully rewritten herein, on behalf of the City of Twinsburg, County of Summit, State of Ohio.

SECTION II: This Resolution is hereby declared an emergency in the interest of the health, safety and welfare of the residents of the City of Twinsburg, County of Summit, State of Ohio and for the further purpose of allowing the Memorandum of Understanding to be immediately signed by the Mayor and other participating communities,

SECTION III: Provided this Resolution receives the affirmative vote of members (a majority or requirement under the municipalities or township charter), it shall take effect immediately upon its adoption and approval by the Mayor; otherwise it shall take effect and be in force at the earliest time provided by law.

SECTION IV: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action.

SECTION V: It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were taken in open meeting or to the public and in full compliance with all legal requirements, including without limitations, those set forth in Section 121.22 of the Ohio Revised Code.

PASSED: _____

APPROVED: _____

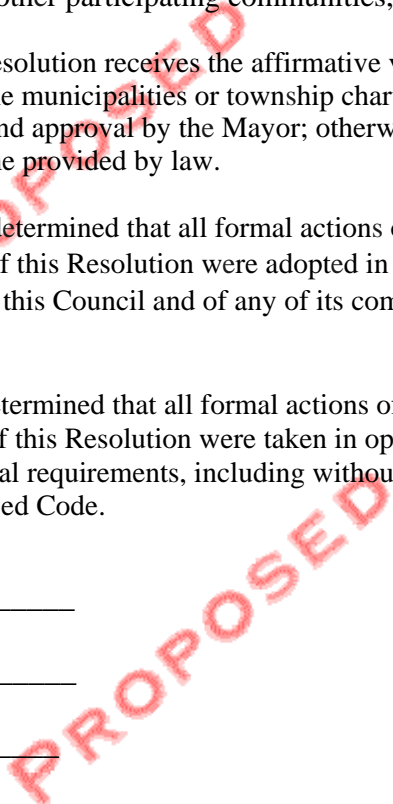
Steve Murphy, President of Council

Submitted to the Mayor for approval this

_____ day of _____, 2009

Approved by the Mayor _____, 2009

Katherine A. Procop, Mayor



ATTEST:

Marie K. Weaver
Clerk of Council

1st Rdg. _____
2nd Rdg. _____
3rd Rdg. _____

Passed: _____

Yes _____ No _____

CERTIFICATE OF POSTING

I, Marie K. Weaver, Clerk of Council, of the City of Twinsburg, State of Ohio, do hereby certify that publication of the foregoing ordinances, resolutions was duly made by posting true copies thereof at five of the most public places in said City as determined by Section 113.02 of the Codified Ordinances of the City of Twinsburg; each for a period of fifteen days commencing on the _____ day of _____, 2009

Marie K. Weaver
Clerk of Council
City of Twinsburg

PROPOSED

PROPOSED

SUMMIT COUNTY INTERGOVERNMENTAL MEMORANDUM OF UNDERSTANDING FOR JOB CREATION AND RETENTION AND TAX REVENUE SHARING

WHEREAS, the loss of jobs results in social and human costs which can be a significant burden to the area, the region and State, and

WHEREAS, the County of Summit and communities throughout the County recognize it is imperative to cooperate and collaborate with each other for the economic benefit of the region and its resident-taxpayers in order to attract and retain businesses and jobs; and

WHEREAS, there are many current and prospective employers who desire to remain or locate in the County of Summit; and

WHEREAS, the communities further recognize that cooperation is necessary for regional prosperity and enhancement of the local tax base and to successfully compete in global markets; and

WHEREAS, the County of Summit, hereinafter "County", works with employers, prospective employers and individual communities within the County to provide tax and other incentives for purposes of retaining and locating prospective employers and facilities in communities within the County.

NOW THEREFORE, the County and the communities who are signatories herein have reached an understanding concerning their joint and respective interests touching upon a mutual desire to retain and attract businesses and jobs. As a result, the parties agree as follows:

SECTION 1. Communities offering any economic incentive or other inducement to potential employers and/or businesses presently located within another signatory community may do so only as specified herein. The signatory communities also agree to adhere to a Model Code of Conduct which is attached to this Agreement and made a part hereof as if fully rewritten herein.

SECTION 2. The relocation of an employer or business between signatory communities, regardless of whether or not the re-locating community offered any economic incentive or other inducement, shall trigger tax revenue sharing as set forth herein. Said tax

revenue sharing shall be triggered by either of the following events: (i) the business which relocated was significant to the tax base of the community where the employer or business is departing. A significant revenue loss to the departing community will arise if the departing Employer/business had either a \$3.5 million dollar or larger inflation-adjusted annual payroll or constituted 5% or more of the income tax revenue of the departing community; or (ii) the employer or business which relocated was the beneficiary of any economic incentive(s) or other financial assistance from the community to which it relocated.

SECTION 3. Revenue sharing shall be determined on a case-by-case basis with due consideration for the individual circumstances and other relevant factors particular to each case. It shall first be the obligation of the signatory communities to attempt to agree between themselves on revenue sharing obligations. The signatory communities shall use the formulas and other criteria as set forth in this Agreement as broad parameters in their negotiations. In the event the communities cannot agree between themselves, the County shall offer its assistance and mediation to resolve the matter. Requests for mediation shall be commenced with service of notice on all affected signatory communities and the County by certified mail. The mediation request shall set forth the subject-matter for which mediation is requested and a good-faith representation that negotiations have failed to resolve the matter. The County shall schedule mediation within sixty(60) days of receipt of the above notice unless the parties agree to extend the time. Should the parties be unable to resolve their differences through mediation, the parties shall submit the matter to arbitration pursuant to Chapter 2711 of the Ohio Revised Code. In the event a matter proceeds to arbitration, the County shall select one arbitrator and an arbitrator shall be selected by each community as permitted by R.C. 2711.04. Every arbitrator shall be an attorney duly licensed to the practice of law in the State of Ohio, All arbitrations hearings shall be held in the County of Summit, Ohio at a mutually agreeable time and place and any award or decision of the arbitrators shall be reduced to writing.

SECTION 4. Should revenue sharing be deemed appropriate under this Agreement, the recommended approach would be a two tier model as more fully set forth below:

Tier One. Tier One covers projects defined as those with less than \$3.5 million in total, inflation adjusted income payroll and less than 5% of the income tax revenue of the departed community and would require the relocating business being the beneficiary of economic incentives or financial assistance from the community to which it relocated. Tier One projects would share 40% of the total income tax revenue received by the destination community in the first year with the departing community, 30% in the second year and 20% in the third year.

Tier Two. Tier two covers projects defined as those with more than \$3.5 million in total, inflation adjusted income payroll or more than 5% of the income tax revenues of the departed community, Tier two projects would share 50% of the total income tax revenue received by the destination community in the first year, 40% in the second year, 30% in the third year, 20% in the fourth year and 10% in the fifth year.

Computation(s) undertaken with any of the above formulas shall use the tax based revenues of the old (departing) community and shall not be based upon the tax base/revenues of the new (destination) community. It is acknowledged by the signatory communities that the above

formula(s) are general and illustrative and deviation may be agreed upon between the communities and in any mediation, arbitration or other alternate dispute resolution forum.

SECTION 5. Except as otherwise provided herein, this Agreement sets forth the exclusive rights of the communities concerning business relocations and tax revenue sharing between and among themselves and limits any and all claims for legal relief to the monetary remedies set forth herein. The parties waive any and all claims to injunctive or other equitable relief which could or might be asserted hereunder. It is further acknowledged that this Agreement is only between the communities and may not be used to prohibit, impede, delay or otherwise encumber any business/employer from moving or relocating. This Agreement may not be used to assert any claim or cause of action in law or equity against any business/employer arising from or due to any decision to relocate.

SECTION 6. When a signatory community *offers* a business public monies or assistance to facilitate relocation, it shall notify the departing community and the County of the same in accordance with the notice provisions set forth herein. The Notice provisions imposed when an offer of public monies or assistance to facilitate a business relocation shall be done within the time, manner and upon the persons/entities set forth in R.C.5709.69. Offering a potential relocating business information/intelligence about a community's benefits or other assets will not trigger notification obligations.

When a business with a \$3.5 million dollar or larger inflation adjusted annual payroll or a business which constitutes 5% or more of the income tax revenue of a community departs and relocates to another signatory community, the departing community must provide the relocated community with notice of a claim for tax sharing under this Agreement. Such notice must be sent on or before 180 days of the employer or business's last payroll tax filing with the departed community. Notice must be sent by personal delivery or U.S. certified mail and notice shall also be served upon the County.

SECTION 7. This Agreement is subject to the legislative approval of all participating communities including County.

SECTION 8. The County of Summit shall act as facilitator of the provisions of this Agreement and shall: (i) assist the signatory communities in applying for and participating in any state or federal programs or other eligible grant fund programs which may be offered to communities for economic assistance; (ii) County shall assist in any dispute resolution offered under this Agreement including offering mediation to signatory communities; (iii) County shall also be noticed or sent copies of any notices required under this Agreement. The Director of Community and Economic Development of the County of Summit shall be designated as the person to receive any notice required under this Agreement.

SECTION 9. The County, in addition to other duties set forth above, will offer signatory communities opportunities to score 5% higher on applications for SCIP/LTIP, CDBG funding, Job Ready Sites, Industrial Site Improvement Funding, and other application mechanisms that are administered or scored by the County providing approval for the same has been granted or given by the necessary grantor agencies. This incentive

structure has been approved by the Ohio Public Works Commission for SCIP/LTIP funding.

SECTION 10. All signatories to this Agreement agree to participate in a review of this Agreement once per year to consider any modifications, alterations or other changes which the signatories may find necessary or desirable. Any change or modification to this Agreement must be approved by the legislative body of each participating community.

SECTION 11. Time is of the essence of this Agreement.

**IN WITNESS WHEREOF, WE HAVE SIGNED AS REPRESENTATIVES
OF OUR RESPECTIVE ENTITIES ON THIS _____ DAY OF
_____ 2009.**

MODEL CODE OF CONDUCT OF SIGNATORY COMMUNITIES

1. The signatory communities recognize that in a free marketplace employers and business can and will relocate. This Agreement concerns only jobs and businesses locating from one Summit County signatory community to another Summit County signatory community. Jobs and businesses relocating from outside of Summit County do not qualify for tax revenue sharing under this Agreement.
2. The signatory communities recognize that good faith efforts to fulfill their rights and obligations between themselves are essential to successful job creation/retention and revenue sharing. This includes the obligation to provide timely notice to fellow communities and the County as required under this Agreement, accurate disclosure of financial data, tax information and other matters and the prompt sharing of tax revenues which may be due pursuant to this Agreement.
3. This Agreement does not prohibit or otherwise limit the signatory communities from entering into Agreements between themselves concerning job creation/retention or revenue sharing. This Agreement does not abrogate any existing Agreement between the communities.
4. The signatory communities agree to participate in good-faith negotiations to resolve disputes and cooperatively participate in mediations and other dispute resolution mechanisms which may be required from time to time.

5. When considering changes or modifications to this Agreement, due consideration will be given to the needs and welfare of all signatory communities.
6. The signatory communities will not attempt to circumvent their obligations imposed hereunder by means of subterfuge, the use of third party intermediaries or other methods.
7. Inflation adjustments as contemplated under this Agreement will be determined by the Consumer Price Index as published by the United States Bureau of Labor in the Federal Register. June 30, 2008, shall be the base starting point and adjustments shall be computed on an annual basis. If the parties cannot agree among themselves the County shall determine the appropriate inflation adjusted thresholds under this Agreement.

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