

RESOLUTION NO. 4-2022

Introduced by Mark Claus

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SCHOOL COMPENSATION AGREEMENT BY AND AMONG THE CITY OF HURON, THE HURON CITY SCHOOL DISTRICT AND ARDAGH METAL BEVERAGE USA INC.

WHEREAS, the City received a request for tax abatement from Ardagh Metal Beverage USA Inc. ("Ardagh") with the City's Community Reinvestment Area for construction of improvements to the existing building and for construction of an additional attached facility on property acquired by Ardagh, more fully described in Exhibit "A" to the School Compensation Agreement (the "Development Site");

WHEREAS, the Huron City School District and its Board of Education was notified in accordance with Section 5709-83 of the Ohio Revised Code and given a copy of the Application; and

WHEREAS, on January 11, 2022, City Council for the City of Huron passed Ordinance No. 2022-5 authorizing execution of a CRA Agreement with Ardagh providing a fifteen (15) year, One Hundred Percent (100%) real property tax exemption for the assessed value of remodeled and new structures constructed at the Development Site; and

WHEREAS, pursuant to R.C. Sections 3735.671 and 5709.82(B), Ardagh, the City and the School District desire to enter into the School Compensation Agreement to make the School District whole in connection with the exemption from taxation granted to induce the Development.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HURON, OHIO:

SECTION 1. That the City Manager is authorized and directed to enter into a School Compensation Agreement with Huron City Schools and Ardagh Metal Beverage USA, Inc., which agreement shall be substantially in the form of Exhibit "A" attached hereto and made a part hereof.

SECTION 2. That this Council hereby finds and determines that all formal actions relative to the adoption of this Resolution were taken in an open meeting of this Council and that all deliberations of this Council and of its Committees, if any, which resulted in formal action, were taken in meetings open to the public in full compliance with applicable legal requirements, including O.R.C. §121.22.

SECTION 3. That this Resolution shall be in full force and effect from and immediately after its adoption.

ATTEST:


Clerk of Council


Monty Tapp, Mayor

ADOPTED: 11 JAN 2022

SCHOOL COMPENSATION AGREEMENT

THIS SCHOOL COMPENSATION AGREEMENT (the “**Agreement**”) is made and entered into as of this [15th] day of [February], 202[2] (the “**Effective Date**”), by and among the CITY OF HURON, OHIO, an Ohio municipal corporation with a Council-Manager form of government, with its main offices located at 417 Main Street, Huron, Ohio 44839 (the “**City**”), the HURON CITY SCHOOL DISTRICT, a public school district with its principal offices located at 712 Cleveland Road East, Huron, Ohio 44839 (the “**School District**”), and ARDAGH METAL BEVERAGE USA INC., a Delaware corporation having a legal address of 8770 W. Bryn Mawr Ave., Suite 175, Chicago, Illinois 60631-3515 (“**Ardagh**” and, together with the City and the School District, the “**Parties**”).

WITNESSETH:

WHEREAS, the City anticipates facilitating development of properties within the area specified as the Huron City Community Reinvestment Area (the “**CRA**”) pursuant to Ohio Revised Code Section (“**R.C.**”) 3735.65 through R.C. 3735.70 (the “**CRA Act**”); and,

WHEREAS, the City has determined that to induce Ardagh to undertake within the CRA the commercial and industrial project described herein, it is necessary to authorize a real property tax exemption for the construction of new structures and the remodeling of existing structures in the CRA in accordance with the CRA Act; and,

WHEREAS, on August 25, 2021, the City’s Planning Commission approved a final development plan and/or plat submitted by Ardagh (the “**Development Plan**”), proposing the development of an approximately 70.771 acre site, as such property is more fully described in **EXHIBIT A**, attached hereto and made a part hereof (the “**Development Site**”); and,

WHEREAS, the Development Plan calls for the Development Site to be developed for commercial or industrial purposes (the “**Development**”); and,

WHEREAS, the Development Site and its attendant Development is also under the jurisdiction of the School District; and,

WHEREAS, on January 11, 2022, City Council for the City passed Ordinance No. 2022-1 (the “**CRA Ordinance**”), a copy of which is attached hereto as **EXHIBIT B**, and pursuant to which, among other things, the City authorized the execution of (i) a CRA Agreement with Ardagh providing a fifteen (15) year, One Hundred Percent (100.00%) real property tax exemption for the assessed value of remodeled and new structures constructed at the Development Site (the “**CRA Exemption**”), and (ii) this Agreement; and,

WHEREAS, pursuant to R.C. Sections 3735.671 and 5709.82(B), Ardagh, the City, and the School District desire to enter into this Agreement to make the School District whole in connection with the exemption from taxation granted to induce the Development; and,

WHEREAS, on December 21, 2021, the Board of Education of the School District adopted a resolution (the “**School Resolution**”) granting its approval of this Agreement and waived any further requirements of the CRA and R.C. 5709.82 and R.C. 5709.83 on the condition that the City execute and deliver this Agreement; and,

WHEREAS, to compensate the School District for a portion of the real property taxes that the School District would have received had the Development Site been improved and not been exempted from taxation under the CRA, the City and the School District 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. Compensation Payments to School District.

A. Calculated Amounts Due. The Parties agree that Ardgah shall pay to the School District, commencing in the first year in which the tax exemption first applies under the CRA, an amount equal to One Hundred Percent (100.00%) of the amount of taxes that would have been payable if the Development Site had not been exempted from taxation.

B. Timing. Payments under this Section 1 are to be made to the School District no later than December 31st in each year in which the tax exemption applies under the CRA as granted under the CRA Ordinance.

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 the CRA Exemption applies to the Development.

(B) 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.

(C) Waiver of Notice, Defects and Irregularities. The School District hereby waives any right to receive notification of the passage of the CRA Ordinance or legislation authorizing the CRA Exemption or any other applicable provision of the Ohio Revised Code, including but not limited to R.C. 3735.671, R.C. 5709.82 or R.C. 5709.83, for the Development Site. Further, the School District waives any defects or irregularities relating to the CRA Exemption.

(D) Validity of CRA Exemption. The School District agrees that it will not contest any application for a real property tax exemption put in place in connection with the CRA Exemption.

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.

(G) Notices. All payments, certificates, and notices which are required to or may be given pursuant to the provisions of this Agreement 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:	Erie County Regional Planning Attention: Enterprise Zone Manager 2900 Columbus Avenue Sandusky, Ohio 44870
With copy to:	Huron City Council Attention: City Manager 417 Main Street Huron, Ohio 44839
If to the Company, to:	Ardagh Metal Beverage USA Inc. 877 W. Bryn Mawr Avenue, Suite 175 Chicago, Illinois 60631

If to the School District: 712 Cleveland Road East
Huron, Ohio 44839
Attn: Treasurer

Any Party may change its address for receiving notices and reports by giving written notice of such change to the other Parties.

(H) Events of Default and Remedies. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by any Party hereto, such defaulting Party shall, upon written notice from any non-defaulting Party, proceed immediately to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the defaulting Party shall upon written notice from any non-defaulting Party commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach is not to be cured or remedied within a reasonable time, the aggrieved non-defaulting Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the defaulting Party.

(I) Severability of Provisions. The invalidity of any provision of this Agreement will not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if any invalid portions were omitted.

(J) Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the City, the School District, and Ardagh other than in his or her official capacity, and neither the members of the legislative bodies of the City or the School District nor any official or authorized officer executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations, or agreements of the City, the School District, and Ardagh 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 City, the School District, or Ardagh 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, 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 HURON, OHIO

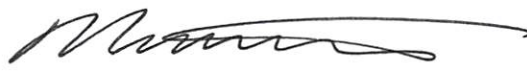
By: 
City Manager

HURON CITY SCHOOL DISTRICT

By: 
President of the Board of Education

By: 
Treasurer

ARDAGH METAL BEVERAGE USA INC.
a foreign corporation registered to do business in Ohio

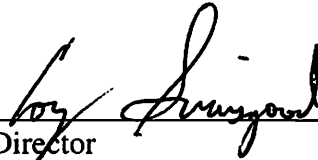
By: 
Its: CFD

R.C. 5705.41
CERTIFICATE OF AVAILABILITY OF FUNDS

The undersigned, Finance Director of the City of Huron, Ohio (the "City"), hereby certifies in connection with the Compensation Agreement between the City and the Huron City School District, dated as of [February 15], 20[22], that:

The amount required to meet the contract, obligation, or expenditure for the attached during Fiscal Year 20[22], 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 22nd day of February, 20[22].



Finance Director

Dated: February 22, 20[22]

EXHIBIT A

Project Site

The Project Site to be exempt under the foregoing Agreement consists of the following parcel(s) of real property, situated in the City of Huron, County of Erie, State of Ohio that is identified by the County Auditor of Erie County, Ohio as having the following tax parcel identification number(s), as that real property may be subdivided, combined, and/or designated by different tax parcel numbers from time-to-time:

42-02021.000

42-02021.002

For ease of reference, the following map of the Project Site and adjoining property is provided:



EXHIBIT B

CRA Ordinance

[See Attached.]

ORDINANCE NO. 2022-1

Introduced by Mark Claus

AN ORDINANCE RATIFYING THE COMMUNITY REINVESTMENT AREA AGREEMENT WITH ARDAGH METAL BEVERAGE USA INC.; AUTHORIZING THE CITY MANAGER TO EXECUTE THE COMMUNITY REINVESTMENT AREA AGREEMENT SUBSTANTIALLY IN THE FORM ATTACHED TO THIS ORDINANCE UPON EXPIRATION OF THE 14-DAY REVIEW PERIOD PROVIDED FOR UNDER SECTION 5709.83 OF THE OHIO REVISED CODE; AND DECLARING AN EMERGENCY

WHEREAS, the Huron City Council ("Council") established a Community Reinvestment Area ("CRA") by the passage of Ordinance No. 2008-10 adopted on May 13, 2008, as repealed and readopted by Ordinance No. 2008-22 adopted July 22, 2008;

WHEREAS, the City has received a request for tax abatement within the CRA for construction of improvements to the existing building, and for construction of an additional attached facility on property acquired by Ardagh Metal Beverage USA Inc. ("Ardagh");

WHEREAS, Ardagh will construct and equip the new facility on their property located in the corporate park with a total investment of approximately \$411,000,000.00;

WHEREAS, the EHOVE Joint Vocational School District and its Board of Education have been notified in accordance with Division (A)(2) of R.C. 3735.671 and R.C. 5709.83 and given a copy of the Application and a draft of the Community Investment Agreement; and

WHEREAS, the Huron City School District and its Board of Education have been notified in accordance with Division (A)(2) of R.C. 3735.671 and R.C. 5709.83 and given a copy of the Application and draft of the Community Reinvestment Agreement; and

WHEREAS, it is deemed necessary in order to provide for the immediate preservation of the public health, safety and general welfare of the citizens of the City and to provide for the economic development of the City by adopting this Ordinance as an emergency measure to assure the beginning of the construction of the aforesaid facility and the timely completion thereof;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF HURON, OHIO:

SECTION 1. That this Council hereby approves the CRA Agreement substantially pursuant to the terms and conditions contained in each, copies of which are on file in the office of the Clerk of Council and attached to this Ordinance as Exhibit "A".

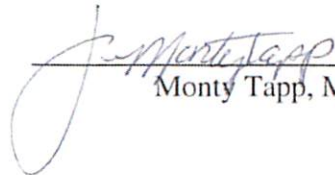
SECTION 2. That upon expiration of the 14-day review period relating to the notifications sent to EHOVE Joint Vocational School District and its Board of Education and the Huron City Schools and its Board of Education, the City Manager be, and he hereby is,

authorized and directed to execute the CRA Agreement with Ardagh, which agreement shall be in substantially the form of Exhibit "A".

SECTION 3. That, if any section, phrase, sentence or portion of this Ordinance is, for any reason, held invalid or unconstitutional by a Court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4. That this Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in those formal actions were in meetings open to the public in compliance with the law, including ORC Sec. 121.22.

SECTION 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the health, safety and general welfare of the citizens of Huron and for the further reason that it is necessary to enhance the economic development of the City by allowing work on the project described herein to commence without delay; **wherefore**, this Ordinance shall be in full force and effect from and immediately after its adoption.


Monty Tapp, Mayor

ATTEST: 
Clerk of Council

ADOPTED: 11 JAN 2022