

CITY OF TOLEDO, OHIO
MUNICIPAL JOBS RETENTION TAX CREDIT AGREEMENT

This Municipal Jobs Retention Tax Credit Agreement (the "Agreement") is made and entered into this ____ day of _____, 2022, by and between the City of Toledo, an Ohio municipal corporation, located at One Government Center, Suite 2250, Toledo, Ohio 43604 (hereinafter referred as "City"), and Libbey Glass LLC currently located at 300 Madison Ave., Toledo, Ohio 43604, whose Federal Tax Identification Number is 22-2784107, (hereinafter referred to as "Grantee").

WHEREAS, Grantee is a long-established Toledo-based company with deep history in the community and has a significant economic impact on the Toledo area in terms of employment, income and investment; and

WHEREAS, Employer is desirous to maintain its manufacturing plant and employment in Toledo, Ohio, and to consolidate production from another location to the Toledo Plant located at 940 Ash Street, Toledo, Ohio 43611; and

WHEREAS, Grantee proposes to make additional investments in machinery and equipment and enterprise resource planning property, and expand its current production opportunities at 940 Ash Street, Toledo, Ohio (the "Project"); and

WHEREAS, the City desires to support the retention and future development of Employer's Toledo plant and corporate office operations through the amendment and extension of its Toledo Expansion Incentive Agreement dated February 11, 2011 for an additional ten (10) years through December 31, 2030; and

WHEREAS, Section 718.151 of the Ohio Revised Code ("ORC") authorizes a municipality to grant credits against its tax on business income ("Municipal Job Retention Tax Credit") for the purpose of fostering job retention in the municipal corporation; and

WHEREAS, the tax credits provided under ORC Sections 718.151 and 718.51 are factors in Grantee's decision to undertake the Project; and

WHEREAS, Grantee has applied to the City for a Municipal Job Retention Tax Credits; and

WHEREAS, Toledo City Council by Ordinance _____, in determining that the industrial, commercial, and economic welfare of the City will be benefitted by the Project, approved this Agreement for a Municipal Job Retention Tax Credit to Grantee and authorized the execution of the same.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the parties intending to be legally bound, agree as follows:

1. Definitions

- 1.1. For the purpose of this Agreement, the “Beginning Date” for the Project is January 1, 2021.
- 1.2. “Occupancy Period” means the term of years that the company is required to remain at the Project Location under Section 5 of this Agreement.
- 1.3. “Qualified Retained Employee” means an employee employed by the Grantee as of the Beginning Date of the Project or an employee hired after the Beginning Date for any job position already existing at the Project location (replacement worker).
- 1.4. “Baseline City Withheld Income Tax” means the equivalent of the total amount of City withheld income tax from employees at the Project Location for the calendar year immediately preceding the “Beginning Date”.
- 1.5. The “Tax Credit Period” means the number of consecutive years for which the tax credits are granted in Section 4 of this Agreement.
- 1.6. “Full-time Equivalent Employees” means the total number of employees multiplied by the total hours worked divided by 2080.

2. Term of Agreement

- 2.1. The Term of this Agreement commences on the Beginning Date, January 1, 2021, and continues through the Occupancy Period, ending on December 31, 2030.

3. Grantee Commitments and Project Description

- 3.1. Grantee will invest in its existing operations at its plant at 940 Ash Street, Toledo, Ohio 43611 (the “Project Location”) and consolidate existing production capability from its Shreveport, Louisiana plant to the Toledo plant.
- 3.2. Grantee will make a cumulative investment of approximately \$33 million in machinery and equipment modifications and maintenance and enterprise resource planning systems.
- 3.3. As of the Beginning Date of the Project, Grantee had Eight Hundred (800) employees with an annual payroll of approximately \$46.3 million at the Project Location (“Qualified Retained Employees”).

4. City Tax Credit

- 4.1. City grants a nonrefundable tax credit to Grantee for the sole and express purpose of supporting the Project and as a condition of the grant of the tax credit, Grantee shall undertake and accomplish the Project as described in Section 3 of this Agreement, including the capital investment.
- 4.2. The tax credit is awarded for a term of ten (10) consecutive years, commencing January 1, 2021 (the “Tax Credit Period”).

- 4.3. Annual tax credits authorized under this Agreement may be claimed against the City tax imposed on net profits and due from Grantee under Toledo Municipal Code Section 1905.03.
- 4.4. The amount of the tax credit allowable to Grantee for each taxable year during the Tax Credit Period shall be equivalent to the City income taxes withheld from Qualified Retained Employees multiplied by 10 percent (10%), except as may be limited by the terms of Section 5. In the event that the tax credit provided under this Agreement reduces the Grantee's net profit income tax liability below zero in any year in the Tax Credit Period, the negative credit amount shall not be refunded, but may be carried forward by Grantee to the future for up to three (3) years.

5. Requirements for Eligibility for the Tax Credit

- 5.1. Maintenance of Operations. Grantee shall maintain operations at Project Site for a term equivalent to the Tax Credit Period plus three (3) years (the "Occupancy Period").
- 5.2. Job Retention. Grantee shall maintain at least seven-hundred (700) employees with a minimum annual payroll of \$38,461,930 throughout the Tax Credit Period, plus any period for which Grantee carries forward any tax credit awarded under this Agreement.

Number of Jobs Retained	Minimum Annual Payroll	JRTC Percentage
844-800	\$43,956,491	10%
799-700	\$38,461,930	5%
699 or less	\$38,461,929 or less	0%

- 5.3. Wage Threshold. Throughout the Term of this Agreement, Grantee shall maintain compliance with the Toledo Living Wage Law, which requires generally that a company receiving economic development benefits pay its employees a "living wage" of no less than 110% of the updated federal poverty level for a family of four and make available single coverage health benefits that do not cost the employee more than 15% of the employee's monthly wages, or in lieu of making available single coverage health benefits, employees will be paid a living wage of no less than 130% of the updated federal poverty level for a family of four. The Living Wage is updated annually and posted to Grantee's website.

6. Reporting

- 6.1. Performance Reports. Grantee shall submit to City an Annual Employment Verification Report in the format required by City from time to time (the "Annual Report"). Each Annual Report shall provide information for the applicable reporting period detailing the progress of the Project, the number of employees first hired by Grantee at the Project location on or after the Beginning Date and the number of employees first employed by Grantee prior to the Beginning Date and retained by Grantee at the Project location. Grantee shall submit Annual Reports for each year during term of the Agreement, with such reports submitted to City by March 1 following the year covered by the Annual Report. In addition, Grantee shall provide to

City such additional information and reports as City may reasonably from time to time require to evaluate Grantee's performance and the effectiveness of the award.

- 6.1.1. Signature and Costs. The chief executive officer, chief financial officer, or other officer of Grantee authorized to sign tax returns on behalf of Grantee shall certify by his or her signature of each Annual Report that the information reported by Grantee is true, complete and correct. All costs incurred by Grantee to comply with the reporting requirements of this Agreement shall be borne by Grantee and shall not be an allowable expense reimbursable from Grant Funds.
- 6.1.2. Information to be Filed with Tax Return. During the Term of Tax Credit, Grantee shall submit to the City Tax Commissioner with the Grantee's City of Toledo Net Profit Income Tax Return, an annual report including: (i) the total number of employees, (ii) the number of full-time equivalent employees, (iii) a certification that the Grantee is in compliance with the Living Wage provision of the Toledo Municipal Code, and (iv) total payroll at the Project Location; and (v) total withheld municipal income tax paid to the City.

7. Default and Remedies

- 7.1. Default. Grantee shall be in default of this Agreement if Grantee fails to meet and maintain any of the eligibility requirements as specified in Sections 5 or 6 of this Agreement, or if Grantee fails to perform any of its obligations under this Agreement and such failure to perform continues uncured for more than thirty (30) days after receipt of written notice from City.
- 7.2. Remedies. Following a default by Grantee, City may exercise the following remedies:
 - 8.2.1. Reduction or Termination. City may at its sole discretion reduce the tax credit percentage, as provided in Section 5.2, and/or the Tax Credit Period provided by this Agreement or the City may terminate this Agreement.
 - 8.2.3. Clawback. Upon a permanent cessation of operations at the Project Location at any time during the term of this Agreement, which includes the Tax Credit Period and three years thereafter ("Occupancy Period"), the City may terminate the benefits under this Agreement and upon the City's request Grantee shall refund to the City an amount equal to all or a portion of the tax credits provided and claimed hereunder by the Grantee. For the purposes of this Agreement permanent cessation shall mean a stoppage of all production or operations for a period of more than six months. In determining the amount of the tax credits to be refunded, if any, City may consider the effect of market and economic conditions on the Project.

8. Representations and Warranties

- 8.1. Outstanding Liabilities. Grantee represents and warrants to City that Grantee does not owe, except as otherwise disclosed in writing to the City: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys owed to the State of Ohio or a state agency for the administration or enforcement of

any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due. Items 1 through 3 include amounts being contested in a court of law.

- 8.2. Falsification of Information. Grantee represents and warrants to City that Grantee has made no false statements to City or any of its employees or agents in the process of obtaining the award. Grantee acknowledges that any person who knowingly makes a false statement to obtain an award of financial assistance may be required under Ohio Revised Code § 9.66(C) to repay such financial assistance and shall be ineligible for any future economic development assistance from the State of Ohio, any state agency or a political subdivision. In addition, any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code §2921.13(A)(4).
 - 8.3. Compliance with Laws. The Grantee shall pay all applicable taxes associated with the Project, and shall keep and maintain the Project Location, including all facilities, and any personal property located thereon, in good repair and operating condition, insured as is customary for facilities such as the Project, and in compliance with all applicable laws.
 - 8.4. Public Records & Confidential Information. Grantee acknowledges that this Agreement and other records in the possession or control of City regarding the Project are public records under Ohio Revised Code § 149.43 and are open to public inspection unless a legal exemption applies. Grantee's non-public financial information may be exempt from disclosure under a trade secret exception to the public records law. Grantee financial information gained as a result of tax returns, tax investigations, tax hearings, or tax verifications required or authorized by a charter or ordinance of a municipal corporation levying an income tax is confidential.
 - 8.5. Preservation. The City and Grantee agree to take any and all action necessary or appropriate to effect, claim, preserve, and maintain the tax credits described in this Agreement, including, without limitation, joining in the execution of all applications, agreements, and other documents and providing any necessary certifications or designations required in connection with the City Tax Credit.
 - 8.6. Nondiscrimination. Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin, ancestry, disability, sexual orientation or marital status.
9. Miscellaneous
- 9.1. Governing Law. This Agreement shall be governed by Ohio Revised Code Sections 718.15, 718.151 and the laws of the State of Ohio as to all matters, including, but not limited to, matters of validity, construction, effect and performance.
 - 9.2. Forum and Venue. All actions regarding the Agreement shall be formed and venued in a court of competent jurisdiction in Lucas County, Ohio.

- 9.3. Entire Agreement. This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between the parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of this Agreement.
- 9.4. Amendments or Modifications. Either party at any time during the term of this Agreement may request amendments or modifications, but such changes or amendments shall not be effective until executed by the parties, except that the City may amend the percentage and term of the City Tax Credit or terminate this Agreement as otherwise provided for in this Agreement without the consent of the Grantee and without a written amendment. Requests for amendment or modification of this Agreement shall be in writing. The parties shall review the request for the modification in terms of the legislation, regulations and goals relating to the Project. An amendment shall be drawn, approved, and executed in the same manner as the original Agreement and shall not have effect until signed by the Mayor of the City.
- 9.5. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a 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 provision(s) of this Agreement.
- 9.6. Forbearance Not a Waiver. No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under this Agreement, either express or implied, shall be construed as a waiver by City of any of its rights under this Agreement or applicable law.
- 9.7. Assignment. Neither this Agreement, nor any rights, duties, or obligations of Grantee pursuant to this Agreement shall be assigned by Grantee without the prior express written consent of City, which shall not be unreasonably withheld. Any purported assignment not made in accordance with this paragraph shall be void. Notwithstanding the foregoing, Grantee may assign this Agreement to a related entity.
- 9.8. Binding Effect. Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.
- 9.9. Pronouns. The use of any gender pronoun shall be deemed to include all the other genders and the use if any singular noun or verb shall be deemed to include the plural, and visa versa, whenever the context requires.
- 9.10. Headings. Section headings contained in this Agreement are inserted for the convenience only and shall not be deemed to be part of this Agreement.

9.11. Notices. All notices and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, postage prepaid to the addresses set forth hereunder or to such other addresses as the other party hereto may designate in written notice transmitted in accordance with this provision.

To the City:

Department of Economic Development
City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
Attn: Director of Economic Development

With copy to:

Department of Law
City of Toledo
One Government Center, Suite 2250
Toledo, Ohio 43604
Attn: Law Director

And

Department of Finance
City of Toledo
One Government Center, Suite 2070
Toledo, Ohio 43604
Attention: Commissioner of Taxation and Treasury

To the Grantee:

Juan Amezcua, SVP, Chief Financial Officer
Libbey, Inc.
300 Madison Ave.
Toledo, OH 43604

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first appearing above.

Libbey Glass LLC

By: *J. Amezquita*
Name Juan Amezquita - CFO

02/15/2022
Date

City of Toledo

By: _____
Wade Kapszukiewicz, Mayor

Date

Approved as to Content:

Approved as to Form:

Department of Economic Development

Department of Law