

The City of Gahanna and Gahanna Community Improvement Corporation 2013 Agreement

This Agreement (the "Agreement") is made and entered into on _____, 2013, by and between the City of Gahanna, Ohio ("City"), an Ohio Municipal Corporation, with offices at 200 S. Hamilton Road, Gahanna, Ohio 43230 and the Gahanna Community Improvement Corporation ("CIC"), with a mailing address of 200 S. Hamilton Road, Gahanna, Ohio 43230 for the services as detailed herein. Gahanna and the CIC are collectively referred to herein as the "Parties."

WITNESSETH:

WHEREAS, the City has enacted Gahanna City Code Section 165.02 (d) to authorize a lodging tax for the purpose of promoting development within the City of Gahanna.

WHEREAS, the City, on the _____ day of _____, 2012, adopted ORD _____, wherein the Mayor of the City of Gahanna, Ohio, is hereby authorized to enter into an Agreement with the CIC for the development of business retention, expansion and attraction strategies for the benefit of the citizens and for the economic vitality of the community thereof in accordance with Gahanna City Code Section 165.02 (d).

WHEREAS, the City, on the 19th day of May, 2008, adopted ORD 0112-2008 authorizing the establishment of a CIC for the purpose of industrial, economic, civic, commercial, distribution and research development in the City.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and Agreements contained herein, the Parties, intending to be legally bound, agree as follows:

SECTION I – TERM

1. This Agreement shall be for a period of twelve (12) months, beginning on the first day of January, 2013, and extending to and including the second day of January, 2014.

SECTION II – SCOPE OF CIC OBLIGATIONS

1. The CIC agrees to work cooperatively with the City, through its designated departments, to accomplish specific economic development goals and objectives of the City.
2. The CIC agrees to assist in promoting, encouraging, facilitating and incentivizing private investment and job creation activities within the City. These services shall include, but shall not be limited to, the following:

- a. Effectively administer the obligations outlined within the Non-Recourse Loan Agreement, and other ancillary agreements, that were executed on November 24, 2009 by and between the CIC and Franklin County for the purchase of State of Ohio Air Quality Development Authority Taxable Revenue Bonds in order to fund improvements to the former Bedford 1 Landfill; and
- b. Oversee the obligations outlined within the Optical Fiber Use Agreement that was executed on May 24, 2010 by and between the City and the CIC; and
- c. Manage the obligations outlined within the Network Service Agreement that was executed on August 6, 2010 by and between the CIC and Bluemile, Inc.; and
- d. Oversee the fiber optic business incentive program entitled GahannaNet in order to successfully attract and retain businesses within the City; and
- e. Effectively administer the obligations outlined within the Urban Redevelopment Tax Increment Equivalent Fund Agreement that was executed on May 17, 2012 by and between the City and the CIC; and
- f. Assist in the promotion and continued development of the commercial, historical, cultural, and natural resources including, but not limited to, the Creekside District and the Office, Commerce and Technology District; and
- g. Assist in the preparation, compilation, printing, broadcasting, publishing, distribution and dissemination of information and data of all kinds which may be useful in furthering the purpose of economic development within the City; and
- h. To promote and encourage the economic sustainability of the City.

3. Manage the obligations outlined within the Contract of Sale and Purchase Agreement that was executed on April 7, 2011 by and between the City and the CIC which includes, but is not limited to, the following activities:

- a) Pay and maintain in current status the first mortgage obligation due and payable to Heartland Bank;
- b) Pay all monies received pursuant to ORD 0018-2011 effective April 7, 2011 towards the first mortgage obligation due and payable to Heartland Bank;
- c) Pay all real estate taxes payable on the property when they become due;
- d) Keep in effect and maintain during all points in time a liability insurance policy for the property, a copy of which should be on record in the Department of Planning & Development;

- i) The property casualty coverage on the property at a minimum amount of \$1,186,000.
- e) Assume the responsibility for the payment of all operations, maintenance and upkeep expenses for the property;
- f) Actively market the property, either directly or through a designated agent, to prospective tenants and negotiate and complete all necessary leases and incident there to;
- g) Perform any other acts and activities deemed necessary to protect the interest of the City and the CIC relative to the property located at 181 Granville Street, Gahanna, Ohio 43230.

4. The CIC shall prepare in writing and orally deliver to the City an Annual Report that includes the following items: past year activities and accomplishments of the CIC; a complete schedule of the expenditure of funds made by the CIC; an Action Plan and Budget for the upcoming year's activities. This Annual Report shall be submitted to the City Council prior to the end of the first quarter of each year. In addition, the CIC may also make progress reports on achievement of the CIC's activities and accomplishments to the City as requested by Council.

5. The CIC shall keep complete and accurate records and accounts of all financial transactions. The City or State of Ohio has the right to examine and audit all such records at any time upon reasonable notice. The CIC shall be solely responsible for the conduct of any such State audit and the cost thereof. It is expected that the City will, at a minimum, receive an annual financial review and activity report.

6. The CIC agrees to indemnify, protect, defend and hold harmless the City and its elected officials, officers, agents, employees, and volunteers from and against any claims, costs (including attorney's fees and court costs), expenses, damages, liabilities, losses or judgments arising out of, or in connection with, any claim, demand or action made by any third party, if such are sustained as a direct or indirect consequence of the execution of the CIC's obligations under this Agreement and are a direct or indirect result of the acts or omissions of the CIC and/or its staff, employees, agents, or guests.

7. The CIC agrees that funding received from the City under this Agreement shall be allocated at its sole discretion, but shall be allocated in pursuit of activities and obligations expressed in this Agreement.

8. The CIC agrees that funding received from the City under this Agreement shall be the full extent of funding received from the City for completion of the obligations expressed in this Agreement and that, in the event that other funding is requested from the City, it shall be provided under a separate Agreement.

SECTION III – CITY OF GAHANNA OBLIGATIONS

1. In exchange for the CIC completing the above said obligations, **the City agrees to pay the CIC 0.0833 percent of lodging tax revenue received under section 165.02(a) of the Gahanna City Code**, excluding interest earned on the funds. Said payment shall be remitted monthly to the CIC pursuant to a schedule determined by the City Finance Director.

SECTION IV – MISCELLANEOUS PROVISIONS

1. This Agreement may be changed only by an instrument in writing signed by both parties with sixty (60) days advance notice.
2. No waiver of any breach shall affect or alter this Agreement but each and every covenant, Agreement, term and condition of this Agreement shall continue in full force and effect.
3. This Agreement constitutes all promises, conditions, inducements and understandings between the City and the CIC.
4. In the event any term or provision of this Agreement shall for any reason be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision herein.
5. This Agreement shall be enforceable between the Parties. Unless otherwise expressly agreed to in writing by the Parties, no other person, entity, organization, or group shall have rights under this Agreement
6. Unless agreed to by the Parties, no third party shall have any rights under this Agreement as a third party beneficiary.
7. Whenever there is a conflict between any provision of this Agreement, and any new law, rule, or regulation, such law, rule or regulation shall prevail and this Agreement shall be curtailed, modified, or limited only to the extent necessary to eliminate such conflict.
8. This Agreement shall be deemed made and entered into in the State of Ohio and shall be governed by and construed in accordance with the Gahanna City Code and the laws of Ohio. Any controversy of claim, whether based upon contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Agreement, whether between the Parties, or of either of the Parties' employees, agents, staff, members, elected officials, or affiliates, will be resolved in the appropriate court in Franklin County, Ohio.

IN WITNESS WHEREOF, the parties have caused duplicate originals of this Agreement to be executed on the _____ day of _____, 2013.

SIGNED IN THE PRESENCE OF:

WITNESSES:

City of Gahanna

By: _____
Rebecca W. Stinchcomb, Mayor

Gahanna Community Improvement Corp.

By: _____
President

Approved as to Form:

Shane Ewald, City Attorney