

OFFICE & INDUSTRIAL INCENTIVE AGREEMENT

This agreement made and entered into by and between the City of Gahanna, Ohio, a municipal government, with its main offices located at 200 S. Hamilton Road, Gahanna, OH 43230, hereinafter referred to as Gahanna, and **Niagara Bottling, LLC** (and its affiliate Eastgate Parkway Properties, LLC) with its main offices located at **2560 E. Philadelphia Street, Ontario, CA 91761** hereinafter referred to as **Niagara**, WITNESSETH;

WHEREAS, Gahanna has encouraged the creation of new jobs opportunities in the community; and

WHEREAS, Niagara is desirous of locating a new bottling facility in Gahanna, Ohio; and

WHEREAS, the Gahanna City Council, by Ordinance ORD-0212-2002, enabled Gahanna to offer an "Office & Industrial Incentive"; and

WHEREAS, Gahanna having the appropriate authority for the stated type of project is desirous of providing **Niagara** with incentives for the development of the project; and

WHEREAS, the Director of Planning & Development has investigated the Application of **Niagara** and the Incentive Advisory Board has recommended the same to the Gahanna City Council on the basis that **Niagara** is qualified by financial responsibility and business experience to create new employment opportunities and improve the economic climate of Gahanna; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. **Niagara** intends to create approximately seventy-three (73) jobs resulting in approximately two million, nine hundred and eighty-seven thousand, eight hundred dollars (\$2,987,800) of annual payroll within one year from **Niagara's** receipt of the final Certificate of Occupancy. **Niagara** and its affiliate will invest up to fifty million dollars (\$50,000,000) in real property and machinery and equipment to establish a new bottling facility as detailed in the Exhibit I Project Scope. Pursuant to Ohio Revised Code Section 718.15, Gahanna shall grant **Niagara** a refundable credit of 50 percent of Gahanna's municipal income tax revenue, based on Gahanna's 1.5 percent municipal income tax, which Gahanna derives from all employees of **Niagara** at the new facility for a term of five (5) years. The term of the Office & Industrial Incentive will begin on January 1, 2013 and end on December 31, 2017. Niagara can request the first refund in 2014 and the last refund in 2018, as outlined in section 5 of this agreement.
2. If **Niagara** materially fails to fulfill its obligation under this agreement, Gahanna shall provide written notice via email and certified mail to the following:
 - a. Niagara Bottling, LLC
Corporate Counsel's Office
Attn: Pamela Anderson Cridlebaugh
2560 E. Philadelphia Street, Ontario, CA 91761
panderson@niagarawater.com
 - b. Niagara Bottling, LLC

Economic Development & Government Relations
Attn: Derieth L. Sutton
7633 American Way, Groveland, FL 34736
dsutton@niagarawater.com

Upon receipt of the certified mail notice, Niagara shall then have twenty (20) days from receipt of this notice to cure or discontinue any breach.

3. This agreement is not transferable or assignable without the express, written approval of Gahanna, which shall not be unreasonably denied, conditioned or delayed; provided, however, Gahanna hereby provides its express, written approval to a transfer or assignment to any entity or entities controlled by or under common control with Niagara.
4. **Niagara** agrees to remain in business in Gahanna, Ohio, for two years for each year of the term of this Incentive Agreement, and failure to do so may result in **Niagara** repaying any funds received.
5. **Niagara** must provide Gahanna with verification of wages paid and taxes withheld for jobs annually during the period outlined under this agreement.
 - a. Within ninety (90) days from the end of the calendar year, **Niagara** must submit the following to Gahanna:
 - i. The number of all employees at the facility as of the end of the year;
 - ii. **Niagara's** annual payroll and employee's municipal income tax withheld for the calendar year; and
 - iii. The total investment by **Niagara** and its affiliate as of the end of the year.
 - b. Upon receipt of these documents, **Gahanna** will have thirty (30) days to review, approve, and issue a refund to **Niagara**.
6. This agreement may be revised and/or amended throughout its term through the mutual written agreement of the parties hereto. Such revisions and/or amendments are and will be subject to applicable Federal, State of Ohio and local laws or ordinances, and any applicable regulations and/or rules of Federal, State of Ohio and local department or agencies possessing authority to implement and/or administer such applicable Federal, State of Ohio and local laws or ordinances. This agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Office & Industrial Incentive offered to Niagara.

Program Compliance

1. If **Niagara** materially fails to fulfill its obligations under this agreement, Gahanna may prospectively terminate or modify the incentive granted under this agreement.
2. **Niagara** shall pay all federal, state and local taxes and shall file all tax reports and returns as required by law. If **Niagara** fails to pay such taxes or file such returns and reports, all

incentives granted under this agreement are rescinded beginning with the year for which such taxes are charged or such reports or returns are required to be filed and thereafter.

3. If for any reason the Office & Industrial Incentive Program expires or is rescinded by Gahanna, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless **Niagara** materially fails to fulfill its obligations under this agreement and Gahanna prospectively terminates or modifies the incentives granted under this agreement.
4. **Niagara** hereby certifies that at the time this agreement is executed, **Niagara** does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe delinquent taxes for which **Niagara** is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., 5753. of the Ohio Revised Code, or, if such delinquent taxes are owed, **Niagara** is currently paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against **Niagara**. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.
5. **Niagara** affirmatively covenants that it has made no false statements to the City of Gahanna in the process of obtaining approval for an Office & Industrial Incentive. If any representative of **Niagara** has knowingly made a false statement to the City of Gahanna to obtain an Office & Industrial Incentive, **Niagara** shall be required immediately to return all benefits received under this Incentive Agreement pursuant to ORC Section 9.66 (C)(2) and shall be ineligible for any future economic development assistance from the City of Gahanna. 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 ORC Section 2921.13 (D)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

IN WITNESS WHEREOF, the City of Gahanna, Ohio, by Rebecca W. Stinchcomb, its Mayor, and pursuant to Ordinance _____, has caused this instrument to be executed this ____ day of _____, 2012 and **Niagara** by _____, has caused this instrument to be executed on this ____ day of _____, 2012.

Niagara Bottling, LLC

Mayor

By _____

By _____

Pamela Anderson Cridlebaugh

Rebecca W. Stinchcomb

Approved as to form:

Shane Ewald, City Attorney

EXHIBIT I

Project Scope

Niagara Bottling, LLC

On _____, 2012, Gahanna City Council approved an ordinance to grant a 50%, 5 year Office & Industrial Incentive to Niagara Bottling, LLC (Niagara) for the creation of 73 new positions with an associated annual payroll of at least \$2,900,000 as a result of the company's location in the City of Gahanna. As part of the incentive agreement, the City of Gahanna will require the company to remain in Gahanna for 10 years, twice the term of the Office & Industrial Incentive.

Niagara Bottling is a family owned and operated bottled water company headquartered in Ontario, California. Established in 1963, Niagara produces and supplies purified drinking water, purified drinking water with minerals, spring water, and distilled water. The company sells product under the Niagara brand and private labels to many of the nation's leading grocery and general store retailers. Niagara is unique in the industry because they manufacture their own bottles and they have become a leader in their industry by creating the most eco-friendly packaging. Additionally, Niagara created the Eco-Air Go Green environmental program which has led to an estimated annual reduction of 211.4 million pounds of carbon dioxide and 67 million gallons of water.

Niagara has 11 locations nationwide with facilities in California, Arizona, Colorado, Florida, Indiana, North Carolina, Pennsylvania, and Texas. The company employs approximately 1,500 people nationwide.

Niagara will purchase the 308,000 square foot facility located at 1600 Eastgate Parkway. The company will invest approximately \$40 million in new machinery and equipment as well as over \$8 million in facility improvements. Niagara will initially create 73 full-time jobs with potential for additional growth. The company will create skilled positions at an average annual salary of \$41,000.

The Office & Industrial Incentive is an important factor in Niagara's decision to locate their operations in Gahanna. For this project, Gahanna was in competition with sites in Michigan and Kentucky, as well as several other Ohio cities.

Niagara will also receive assistance from the State of Ohio in the form of a Job Creation Tax Credit

Project Summary for Niagara Bottling

Project Site:	1600 Eastgate Pkwy. CA based bottling company considering sites in Michigan, Kentucky, Groveport, Columbus and Gahanna. Company has worked with our Service Department to confirm capacity for their production line.
Company Description:	Established in 1963, the company is the largest family owned and operated bottled water company in the US. Products include 8 oz, 0.5L, 1L and 1Gal bottles packaged under the company's brand or private labels. The company provides four types of bottled water products, purified drinking water, purified drinking water with minerals, spring water and distilled water.
Project Description:	The company is looking to establish a 2 production line (up to 4 line) facility to bottle and distribute water. The company would purchase a facility and invest in facility improvements, machinery and equipment, specialty tooling, and IT and telecommunications equipment. Company would also invest in hiring and training production workers and supervisors.
Investment:	\$50-54 million in the purchase of a facility, improvements, and necessary production and operations machinery and equipment.
Jobs:	Company will create 73 jobs in Phase 1 at an average annual salary of \$41,000

Summary of Fiscal Impact

50%, 5 year Office & Industrial Incentive

	Jobs	Payroll	Withholding	Incentive	City Benefit
Yr1	73	\$ 2,987,800	\$ 44,817	\$ 22,409	\$ 22,409
Yr2	73	\$ 2,987,800	\$ 44,817	\$ 22,409	\$ 22,409
Yr3	73	\$ 2,987,800	\$ 44,817	\$ 22,409	\$ 22,409
Yr4	73	\$ 2,987,800	\$ 44,817	\$ 22,409	\$ 22,409
Yr5	73	\$ 2,987,800	\$ 44,817	\$ 22,409	\$ 22,409
Yr6	73	\$ 2,987,800	\$ 44,817	\$ -	\$ 44,817
Yr7	73	\$ 2,987,800	\$ 44,817	\$ -	\$ 44,817
Yr8	73	\$ 2,987,800	\$ 44,817	\$ -	\$ 44,817
Yr9	73	\$ 2,987,800	\$ 44,817	\$ -	\$ 44,817
Yr10	73	\$ 2,987,800	\$ 44,817	\$ -	\$ 44,817

Total Incentive Payments to the company over term	\$112,043
Net Withholding Tax paid to the City over term	\$112,043
Total Withholding Tax paid to the City over 10 years	\$336,128

Staff Recommendation

If the company purchases the facility, staff recommends a 5 year, 50% Office & Industrial Incentive for the creation of up to 73 jobs in 3 years. The company would also pursue assistance from the State. *Project merits:* substantial private investment, investment in training employees, purchasing and occupying a vacant facility, new investment and workers in the Eastgate Industrial Center may spur additional projects and supports existing businesses, new to the region/state, revenue from property taxes supports Eastgate TIF .