

FINAL COPY

February 2005

**AMHERST TOWNSHIP-CITY OF LORAIN
JOINT ECONOMIC DEVELOPMENT
DISTRICT CONTRACT**

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**AMHERST TOWNSHIP-CITY OF LORAIN
JOINT ECONOMIC DEVELOPMENT
DISTRICT CONTRACT**

This Amherst Township-City of Lorain Joint Economic Development District Contract (the “Contract”) is made and entered into as of _____, 200____, by and between the City of Lorain, Ohio (the “City”), and the Township of Amherst (the “Township”), in accordance with the terms and provisions set forth herein.

RECITALS

A. The City and the Township intend to enter into this Contract to create and provide for the operation of the District (defined in Section 1) in accordance with Section 715.72 et seq. of the Ohio Revised Code for their mutual benefit and for the benefit of their residents and of the State of Ohio (the “State”).

B. The legislative authorities of the City and the Township have each authorized and directed the City and the Township, respectively, to make and enter into this Contract by and through their respective officers in accordance with Ordinance No. _____ - 200____ passed by the Council of the City on _____, 200____, and Resolution No. _____, adopted by the Board of Township Trustees on _____, 200____.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Contract, the City and the Township agree and bind themselves, their agents, employees and successors as follows:

Section 1. Creation of District: Name. The City and the Township, by their combined action evidenced by the signing of this Contract, hereby create a joint economic

development district in accordance with the terms and provisions of this Contract. The joint economic development district created pursuant to this Contract shall be known as the “Amherst Township-City of Lorain Joint Economic Development District” (the “District”). The Board of Directors (the “Board”) of the District may change the name of the District by resolution of the Board.

Section 2. Contracting Parties. The contracting parties to this Contract are the City of Lorain, Lorain County, Ohio, a municipal corporation existing and operating under the laws of the State, and the Township of Amherst, Lorain County, Ohio, a township existing and operating under laws of Ohio, and their respective successors.

Section 3. Purpose. The City and the Township intend that the creation and operation of the District shall, and it is the purpose of the District to, facilitate economic development, to create or preserve jobs and employment opportunities, and to improve the economic welfare of the people of the State, the County of Lorain (the “County”), the City, the Township and the District.

Section 4. Territory of the District. The territorial boundaries and legal description of the District are described in Exhibit 1 attached to and made part of this Contract. The territory of the District (i) is located entirely within the Township and the County of Lorain, and (ii) does not include any “parcel of land” (as defined in Section 715.73(c) of the Revised Code) that is owned in fee by or is leased to a municipal corporation or a township. No electors reside in the territory of the District and no part of the territory of the District is zoned for residential use.

Section 5. Addition and Removal of Areas from District. This Contract may be amended from time to time to add certain property within the Township to the territory

of the District, pursuant to ORC 715.761, upon the filing of a request by the owner of that property with the Board. Upon agreement by the City and the Township, this Contract shall be amended to add such property to the territory of the District, pursuant to the request of the owner of that property, evidenced by Legislative Action of each. Upon agreement by the City and Township, evidenced by Legislative Action of each, this Contract may also be amended from time to time to remove property from the territory of the District. As used in this Contract, the term “Legislative Action” means proper enactment of a resolution or ordinance by the Council of the City or Board of Trustees of the Township by which such resolution or ordinance becomes effective in accordance with the law.

Section 6. Term. The initial term of this Contract shall commence on the 31st day following approval of the contract and shall terminate December 31, 2100 (unless otherwise terminated prior to that date as provided herein). Each party shall have the right to extend this Contract for two (2) successive fifty (50) year periods by delivering written notice of the extension to the other party hereto on or before 180 days prior to the expiration of the term of this Contract or any extension thereof. The provision herein for the initial term of and the right of each party to extend this Contract recognizes that the accrual of benefits to the parties from this Contract may take decades and that the construction of utility facilities and other possible capital improvements provided for herein is of permanent usefulness and duration.

Termination by mutual consent shall require an ordinance passed by the Council of the City and a resolution adopted by the Board of Trustees of the Township within 90 days of each other, consenting to terminate this Contract.

Upon termination of this Contract in accordance with its terms or by mutual termination by the parties, the City shall continue to provide utilities that it is providing at the

time of such termination. However, it is the intent of the parties that they would continue to share any income tax permitted by law assessed in the JEDD area, in exchange for continuance of sanitary sewer services. All other agreements by the parties hereto shall be null and void and all other services provided by the parties shall terminate, unless the parties agree to continue to provide one or more services in accordance with the terms of this Contract or otherwise.

If there is a final, non-appealable judicial determination at any time for any reason that joint economic development districts cannot be entered into, cannot be implemented, or are held invalid by a court of competent jurisdiction or that the income tax provided for in Section 13 hereof is not legal or valid or that the District may not levy, collect or distribute that income tax in accordance with this Contract, then:

- A. this Contract may be terminated by the City,
- B. the City may cease providing sewer lines, or any new connection service to and within the District and cease construction of sewer line facilities and other capital improvements provided for herein, and
- C. the City shall have no further obligation under this Contract, but may continue to provide utilities, at its discretion.

Upon termination of this Contract, any property, assets and obligations of the District shall be divided equally between the City and Township, provided that the District shall first use any property or assets to reduce or settle any obligations of the District. Any records or documents of the District shall be placed with the City and Township for safekeeping, which records and documents shall be maintained by the City and Township as are public records of the City and Township.

Pursuant to Section 715.74(D) of the Ohio Revised Code, this Contract shall continue in existence throughout its term and shall be binding on the contracting parties and on any entities succeeding such parties, whether by annexation, merger, or otherwise. In the event that any portion of the territory of the District shall be included within a municipal corporation by annexation, merger or otherwise, the City and the Township may but are not required to amend this contract to include that municipal corporation as a party to this Contract in addition to or as a substitute for the Township. The portion of the territory of the District that is included within a municipal corporation by annexation, merger or otherwise after the date of this Contract shall continue to be a part of the District and subject to the terms of this Contract and to the income tax provided for in Section 13 hereof. In the event that any portion of the territory of the Township that is within the territorial boundaries of the District becomes the subject of an annexation or merger into a municipal corporation or an incorporation as a municipal corporation, the Board of Trustees of the Township and the City shall use their best efforts, including, but not limited to, legal action to oppose and prevent such annexation, merger or incorporation until and unless a municipal corporation into which such territory would be annexed or merged or that is to be incorporated has either become a party to this Contract and has assumed all the obligations and responsibilities of the Township under this Contract in connection with such territory or has agreed otherwise to recognize and comply with this Contract in a form acceptable to the City and Township.

Section 7. Contributions to the District. In accordance with Section 715.74(A) and (B) of the Ohio Revised Code, the City and the Township each agree to contribute to the development and operation of the District, as provided in Sections 7.1 through 7.4 below.

Section 7.1. General Services. The City may provide services to assist the District with planning, promotion and related activities to facilitate economic development in the District. The City shall provide secretarial services and other staffing for the District. The City may provide any or all of such services through the City's administrative staff.

The City shall be responsible for the administration, collection and enforcement of the District income tax on behalf of the District, as provided in Section 13. Any cost associated with the administration, collection and enforcement of the District income tax shall be paid from the District income tax revenues collected as an operating expense of the District, not to exceed the greater of 3% of the income tax collected or the amount paid to a third-party contractor to provide said administration, collection, and enforcement.

Collection of sewer utility fees shall follow the same procedures as are used in the City for utility fee collection.

The City and Township shall prepare, or cause to be prepared, all documents of the City, Township and the District relating to the formation of the District including, but not limited to, this Contract, instruments describing the District boundaries, petitions, notices, forms of the City, Township, County and District legislation and any District income tax election proceedings. Any costs incurred by the City or Township in preparing such documents may be paid (or reimbursed to the City or Township for payments made by the City or Township) from revenues of the District income tax as an operating expense of the District.

Section 7.2. Utility Services - Generally. All or a portion of the City's contribution to the development and operation of the District may be in providing access to the City's sanitary sewer services and facilities, for users within the District under the terms of this Contract or otherwise.

Section 7.3. Sanitary Sewer Service. In order to provide the sanitary sewer services and facilities described in Section 7.2, the City shall accept the sanitary sewer flow from the JEDD District, in an amount not to exceed 400,000 gallons per day. Users of sanitary sewer services pursuant to this agreement shall be subject to the City's tap-in fees, and other charges described in Section 8.1(C), (E) in an amount proportionate to the users front-footage, side-footage, acreage, calculated sanitary sewer flow, or a combination thereof. New sanitary sewer construction extension costs shall be reduced by any costs paid for by grants, aid, or sources other than City provided funding.

Nothing in this agreement shall commit the City or Amherst Township to design, engineer, or construct a sanitary sewer extension serving the JEDD District.

Section 7.4. Additional Specific Services and Contributions. In addition, the parties agree to the following specific services and contributions to be provided:

- A. Zoning and planning considerations in the development of the District shall be at the final discretion of the Township Trustees and zoning officials, subject to the limitations on sewer service provided in Section 8. However, Township Trustees and zoning officials shall consult with the elected City officials, City Planning Department and/or City Planning Commission to provide the best watershed control and best non-residential development possible, utilizing the resources of both the City's Planning Commission and the Township's zoning authorities.
- B. The City and the Township agree that they will consult and cooperate with the Mayor of the City and all Township zoning authorities on a joint, comprehensive development plan for the District. Further, the City and

the Township agree that they will hold planning advisory committee meetings no less frequently than once a year to further this spirit of cooperation.

- C. The City and the Township will undertake collaborative efforts to apply for, receive and utilize Aid for Public Improvements awarded by the State for public infrastructure capital improvements, pursuant to Chapter 164 of the Ohio Revised Code, or other state or federal sources for assistance for infrastructure capital improvements.
- D. Both fire protection and law enforcement mutual aid shall continue as structured under the mutual aid contracts currently existing.
- E. Both the City and the Township agree to cooperate to develop District property for the maximum benefit to all parties, including the City, the Township, the property owners and the businesses within the District.
- F. The City and the Township agree to cooperate regarding zoning of the District, with the final decision being the decision of the Township; however, the District property will always be zoned for the maximum potential return as non-residential properties to benefit all parties to the Contract.
- G. The City and the Township agree to cooperate to maximize state, federal and private grants to maximize monetary leverage for services within the District, the City and the Township, including infrastructure, elderly assistance and other people-oriented, governmental services.
- H. The Township may provide primary Fire/EMS to the District.

Section 8. Petition for Extension of Utilities.

Section 8.1 Definitions.

- A. “ JEDD”. A Joint Economic Development District consists of non-residentially zoned or used properties. No residential use or zone may exist in a JEDD.
- B. “SERVICE AREAS”. Residential areas that are not in a JEDD. Service areas are not subject to the JEDD income tax. Service areas are in no way a part of the Joint Economic Development District. Service areas are instead residential areas in which sewer service may be available upon petition as provided by law or otherwise as provided by law. The City may deny extension of sewer services to a service area for economic or engineering reasons that would make the service impractical, or based on health, safety and welfare concerns. The Township Trustees may deny service to a proposed service area for planning or land use considerations, or based on health, safety and welfare concerns.
- C. “CONNECTION” or “TAP-IN” means a connection to the sanitary sewer system of a wastewater source of the types described in Section 913.250 of the Codified Ordinances of the City, or as amended by Lorain City Council.
- D. “RESIDENTIAL”, when used with “connection” or “tap-in”, means the categories “Single family resident”, “Two family resident” and “Apartments and townhouses”.
- E. “CONNECTION CHARGE” or “TAP-IN FEE” means the initial connection charge established by the Codified Ordinances of the City and also includes additional specific charges established by the City or

Township to pay costs of a particular project in lieu of, or in addition to, capital cost recovery for that project.

Section 8.2 Extension of Sanitary Sewer Service

The City may extend sewer service to areas within the Township Service Areas upon petition by the users as provided by law, or as otherwise provided by law, subject to the limitations of Section 7.3. Upon the receipt of said petition, requesting the extension of specific utility services and agreeing to enter into user agreements for such utility service, or as otherwise provided by law, the City may proceed to acquire, construct and install such facilities to provide access to such services, but subject to engineering and legal feasibility and further subject to the levy and collection of special assessments or other charges as provided in the user agreements, for the cost of such improvements. The City may deny extension of sewer services to a service area for economic or engineering reasons that would make the service impractical, or based on health, safety and welfare concerns. The Township may deny sewer services to a service area for land use planning reasons, or based on health, safety and welfare concerns.

Section 9. Utility Rates. As used in this Contract, the term “Lorain Rate” shall mean the user rate for water service and sanitary sewer disposal paid by utility customers

located within the City, as established by the Council of the City and as the same may be amended from time to time by the Council.

- A. Users of residences within the Township service areas, constructed after the effective date of this agreement, shall pay sanitary sewage disposal fees at 130 Percent of the then-current in-City rates.
- B. Residences within this Township service area, existing at the effective date of this agreement, shall pay sanitary sewage disposal fees at 110 Percent of the then-current in-City rates.
- C. Non-residential users within the District shall pay sanitary sewage disposal fees at 100 Percent of the then-current in-City rates.
- D. The City may provide in any user agreements or rate schedules that, in the event this Contract is terminated, the rate charged for service to users within the Township or the District shall be automatically revised as provided in that user agreement or rate schedule.
- E. If an alternate agreement exists, or comes into existence, between the City and any other entity establishing sanitary sewage disposal fees for Amherst Township residential or non-residential users lower than those indicated in A, B and C above, then said rates shall be adjusted to such lower disposal fees in relation to an analysis of comparable services (including but not limited to ownership, maintenance, inspection and billing).

Section 10. Ownership of Facilities. All sanitary sewer service facilities that are acquired, constructed or installed within the JEDD District shall be owned,

operated and maintained by the Lorain County Rural Wastewater District, unless negotiated otherwise between the parties.

Section 11. Board of Directors. Pursuant hereto, a Board of Directors is established to govern the District. The Board shall consist of five (5) members, two (2) each from the City and the Township. The Township members of the Board shall be appointed by the Township Trustees. The City members shall be appointed by the Mayor and members of the Council of the City. The members of the Board shall serve as provided for in Ohio Revised Code 715.78(A). The Township members of the Board shall be (1) a Township Trustee, who shall serve for a period of two years, and (2) a representative of owners of businesses located within the District, who shall serve for a period of three years. The City members shall be (a) a City Council person or the Mayor, who shall serve for a period of one year, and (b) a representative of persons working within the District, who shall serve for a period of four years. The fifth member shall be selected by the four members described above, who shall serve for a period of four years. The fifth member shall alternate between a City and Township resident.

In the event that the Township shall cease to exist or the territory of the District shall be included within a municipal corporation as described in Section 6 hereof, but prior to such event, the Board shall establish a procedure for the appointment of members to the Board from the political subdivision or entity succeeding to the Township or being added as a party to this Contract in accordance with Section 715.78 of the Ohio Revised Code.

The members of the Board shall serve without compensation as such members. Necessary and authorized expenses incurred by members on behalf of the District shall be reimbursed from District funds in accordance with procedures established by the Board.

The Board shall elect the following officers (who shall constitute the Officers of the Board) from among its members: a Chairman, a Vice Chairman, a Secretary and a Treasurer, provided that the Secretary and the Treasurer might be the same person. The Officers shall be elected at the first meeting of the Board and thereafter every other year for two-year terms and shall serve until their respective successors take office. The Board shall establish a procedure for conducting those elections. The Officers shall perform such duties as provided herein and such additional duties as may be provided from time to time by the Board.

Section 12. Powers, Duties, and Functions of the Board. The Board shall meet at least once each calendar year on a date determined by the Board, provided that the first meeting of the Board shall occur within 30 days of the effective date of this Contract. The Board shall adopt procedures for holding and conducting regular and special meetings. Meetings may be held at the offices of the City or the Township or at other locations within the County as determined by the Board. The principal office and mailing address of the District and the Board shall be determined by the Board at its first meeting and may be changed by the Board from time to time. The Board may maintain an office within the District. A minimum of three members shall constitute a quorum for Board meeting purposes. The Board shall act through resolutions adopted by the Board. A resolution must receive the affirmative vote of at least four members of the Board to be adopted. A resolution adopted by the Board shall be immediately effective unless otherwise provided in that resolution or by applicable Sections of the Ohio Revised Code.

The Board may adopt by-laws for the regulation of its affairs and the conduct of its business consistent with this Contract.

The Chairman shall preside over and conduct the meetings of the Board in accordance with its by-laws or other procedures adopted by the Board.

The Vice Chairman shall act as Chairman in the temporary absence of the Chairman.

The Secretary shall be responsible for the records of the Board, including, but not limited to, correspondence and minutes of the meetings of the Board.

The Treasurer shall be the fiscal officer of the Board and shall be responsible for all fiscal matters of the Board, including, but not limited to, the preparation of the budget and the appropriations resolution, paying or providing for the receipt, safekeeping and investment of funds of the Board, and maintaining or providing for the maintenance of accurate accounts of all receipts, expenditures, assets and obligations of the Board. The Board may provide in the Tax Agreement (as defined in Section 13 hereof) that the City shall assist the Treasurer with the duties of that office.

The Board shall designate by resolution or in its by-laws those Officers who may sign documents on behalf of the Board.

The Board shall adopt an annual budget for the District to be a .01% share of income tax collected, pursuant to Section 13, or in a greater amount as approved by the City and Township. The fiscal year of the District shall be the same as the fiscal year of the City. The budget shall estimate the revenues of the District and expenses of the operation of the District. The Board shall establish an appropriations procedure to provide for payment of the operating expenses of the District and the distribution of income tax revenues in accordance with Section 13 hereof.

The Board is authorized to take such necessary and appropriate actions, or establish such programs to facilitate economic development in the District in accordance with the purpose of this Contract.

The Board, on behalf of the District, may exercise all authority permitted in Section 715.72 to 715.81 of the Ohio Revised Code, as it may be amended from time to time.

The City and the Township may exercise all of the powers and may perform all of the functions and duties set forth in Section 715.81 of the Ohio Revised Code.

Section 13. Income Tax. The Board, at its first meeting, pursuant to Section 715.74(C) of the Ohio Revised Code, shall by resolution levy an income tax at the same overall rates as those levied in the City. The income tax shall go into effect on the earliest date allowed by law. The income tax revenues collected shall be shared by the City and Township, with the City receiving 50 percent and the Township receiving 50 percent. The parties shall equally contribute to the .01 percent annual budget for the District.

The Board shall adopt, by resolution, all of the provisions of the City's income tax legislation, as it may be amended from time to time. The rate of the income tax shall change from time to time so that it is equal to the overall rate of the municipal income tax levied by the City. The income tax levied by the Board, pursuant to this Contract and the Ohio Revised Code, shall apply in the entire District throughout the term of this Contract, notwithstanding that all or a portion of the District becomes subject to annexation, merger or incorporation.

The Board shall enter into an agreement with the City to administer, collect and enforce the income tax on behalf of the District (the "Tax Agreement"). The cost of said agreement shall be subject to the limitations of Section 7.1. The Tax Agreement shall provide that the Treasurer of the City shall be the Administrator of the income tax of the District (the

“Administrator”), who shall be responsible for the receipt, safekeeping and investment of the income tax revenues collected within the District.

All other tax revenues generated within the District, including but not limited to all property taxes, road and bridge taxes, real estate and personal property taxes, shall remain revenue of the Township.

The Tax Agreement shall provide that the Administrator shall make an annual report to the Board regarding the receipt and distribution of the income tax of the District.

Section 14 Annexation; Zoning.

- A. The City agrees that the City will not approve annexation petitions with respect to any land area within the District. through December 31, 2030. In addition, for the duration of this agreement, the City will use its best efforts to oppose the annexation, merger or consolidation of any property located in the Township by any other municipal corporation. Neither the City nor the Township is or will be divested of its rights and obligations under this Contract because of annexation, merger or succession of interests.
- B. The Township agrees to maintain non-residential zoning of the property within the District.

Section 15. This Section Reserved

Section 16. Modifications. This Contract may be modified by the City and the Township only in writing approved by the legislative authorities of both parties by appropriate Legislative Action authorizing that modification.

Section 17. Binding Effect. This Contract shall inure to the benefit of and shall be binding upon the District, the City, the Township and their respective permitted successors, subject, however, to the specific provisions hereof. This Contract shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence.

Section 18. Support of Contract. In the event that this Contract, or any of its terms, conditions or provisions, is challenged by any third party or parties in a court of law, the parties agree to cooperate with one another and to use their best efforts in defending this Contract with the object of upholding this Contract. Each party shall bear its own costs in any such proceeding challenging this Contract or any term or provisions thereof.

Section 19. Signing Other Documents. The parties agree to cooperate with one another and to use their best efforts in the implementation of this Contract and to sign or cause to be signed, in a timely fashion, all other necessary instruments, petitions and similar documents, and to take such other actions, in order to effectuate the purposes of this Contract.

Section 20. Severability. In the event that any section or provision of this Contract, or any covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, or any application thereof, is held to be illegal or invalid for any reason:

- A. that illegality or invalidity shall not affect the remainder hereof or thereof, any other section or provision hereof, or any other covenant, agreement, obligation or action, or part thereof, made, assumed, entered into or taken, all of which shall be construed and enforced as if the illegal or invalid portion were not contained herein or therein;
- B. the illegality or invalidity of any application hereof or thereof shall not affect any legal and valid application hereof or thereof, and
- C. each section, provision, covenant, agreement, obligation or action, or part thereof, shall be deemed to be effective, operative, made, assumed, entered into or taken in the manner and to the full extent permitted by law.

Section 21. Governing Law and Venue. This Contract shall be governed exclusively by and construed in accordance with the laws of the State, and in particular Section 715.72 to 715.81 of the Ohio Revised Code, and venue for all issues involving this Contract shall be in Lorain County, Ohio.

Section 22. Captions and Headings. The captions and headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections hereof.

IN WITNESS WHEREOF, the City and the Township have caused this Contract to be duly signed in their respective names by their duly authorized officers as of the date hereinbefore written.

Signed as to the City in the presence
of:

CITY OF LORAIN

Printed Name:

Mayor (signature)

Printed Name

Witnesses as to the City (signature)

ATTEST:

Approved as to legal form and
correctness:

Clerk, Lorain City Council

By: _____
Director of Law
City of Lorain

Signed as to the Township
in the presence of:

TOWNSHIP OF AMHERST

Printed Name: (Witnesses as to the Township)

Signature (Witnesses as to the Township)

Printed Name:

Trustee (signature)
Township of Amherst

Printed Name:

Trustee-Chairman (signature)
Township of Amherst

Printed Name:

Trustee (signature)
Township of Amherst

ATTEST:

Approved as to legal form and
correctness:

Clerk, Amherst Township

By: _____
Legal Counsel to
Amherst Township

STATE OF OHIO)
)
LORAIN COUNTY) ss:

On this _____ day of _____, 200____, before me, a Notary Public in and for said County and State, personally appeared _____, Mayor of the City of Lorain, Ohio, who acknowledged that with due authorization and as such officer on behalf of the City, he did sign said instrument on behalf of the City and who acknowledged that the same is his voluntary act and deed, individually as said officer and the voluntary and corporate act and deed of the City.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year aforesaid.

(seal)

NOTARY PUBLIC

