

COMPENSATION AGREEMENT

RELATING TO PROVISION OF COMMUNITY REINVESTMENT AREA EXEMPTIONS BY THE CITY OF SUNBURY, OHIO WITHIN THE TERRITORY OF THE BIG WALNUT LOCAL SCHOOL DISTRICT

This **COMPENSATION AGREEMENT** (the “*Agreement*”) is made and entered into this ____ day of _____, 2023 (the “*Effective Date*”), by and between the **CITY OF SUNBURY, OHIO**, (“*Sunbury*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio and its Charter, and the **BIG WALNUT LOCAL SCHOOL DISTRICT** (“*Big Walnut*” and together with Sunbury, the “*Parties*”), a local school district and political subdivision of the State of Ohio, under the circumstances summarized in the following recitals.

Recitals

A. Sunbury has determined to promote and encourage development within Sunbury which is consistent with Sunbury’s proposed Limited Industrial District zoning requirements for the mutual benefit of Sunbury and Big Walnut.

B. To facilitate that development, Sunbury proposes to adopt legislation which will either expand an existing or create one or more new Community Reinvestment Areas (each a “*CRA*” and collectively the “*CRAs*”) in accordance with Ohio Revised Code Sections 3735.65 *et seq.* as such provisions may be amended from time to time (the “*CRA Statute*”) which will permit Sunbury to offer real property tax exemptions (each an “*Exemption*”) to owners of real property located within a CRA for a project that meets the requirements set forth in this Agreement.

C. The real property in respect of which an Exemption may be approved by Sunbury will be wholly located within the boundaries of Big Walnut.

D. Under the then applicable CRA Statute, some Exemptions may be approved by Sunbury without prior approval of Big Walnut. However, to maximize the development potential within the CRAs, Sunbury proposes to approve certain Exemptions which, under the then applicable CRA Statute, would require approval by Big Walnut.

E. To expedite the process of approving those Exemptions, Sunbury and Big Walnut propose to enter into this Agreement to permit Sunbury to approve certain Exemptions within the CRAs without obtaining Big Walnut’s approval and to require the recipients of those Exemptions to compensate Big Walnut (and the Delaware Area Career Center, “*DACC*”) in connection with the approval of those Exemptions.

F. Pursuant to Ordinance No. _____ passed on _____, 2023, Sunbury’s City Council has authorized the execution of this Agreement.

G. Pursuant to Resolution No. _____ adopted on _____, 2023, the Big Walnut's Board of Education has authorized the execution of this Agreement.

NOW, THEREFORE, in consideration of the foregoing, the promises contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties covenant, agree and obligate themselves as follows:

1. **General Agreement.** For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements between the Parties, the Parties intend to and shall cooperate in the manner described herein to provide for (a) Exemptions which may be granted from time to time by Sunbury to owners of real property located within the CRAs for projects that meet certain requirements and (b) compensation payments to Big Walnut and DACC.

2. **Terms of the Community Reinvestment Areas.**

(a) **Creation of CRAs.** Big Walnut agrees that Sunbury may from time to time create one or more CRAs within the boundaries of Big Walnut, all in accordance with the then applicable CRA Statute.

(b) **Provision of Exemptions Without Prior Approval.** Big Walnut agrees that the compensation requirements set forth in Section 3 will not apply to the provision of any Exemption which, at the time of the approval of the Exemption, does not require approval from Big Walnut under the then applicable CRA Statute.

(c) **Provision of Exemptions With Prior Approval.** Big Walnut agrees that the compensation requirements set forth in Section 3 will apply to the provision of any Exemption which, at the time of the approval of the Exemption, does require approval from Big Walnut under the then applicable CRA Statute. Further, any application for an Exemption which is subject to Section 3 will also need to satisfy the following requirements:

(i) The project in respect of which the Exemption is requested must be consistent with Sunbury's proposed Limited Industrial District zoning requirements, and

(ii) Sunbury must reasonably estimate, at the time an application for an Exemption is submitted to Sunbury, that the payroll expected to be generated by new employees (as such term is defined in the then applicable Ohio Revised Code Section 5709.82) employed at the project site will exceed \$1 million per year.

3. **School Compensation and Related Matters.**

(a) **Compensation Agreement.** Before Sunbury may approve any Exemption that is subject to this Section 3, the proposed recipient of the Exemption (or such other party as may be acceptable to Big Walnut) will have entered into an agreement with Big Walnut providing that during each year that the Exemption is effective, the recipient (or such other party) will remit payments to Big Walnut and DACC each equal to 12.5% of the real property taxes which Big

Walnut and DACC, respectively, would have received from the project if the Exemption had not been approved by Sunbury.

(b) Income Tax Sharing. In connection with any Exemption that is subject to this Section 3 and for which the condition in Section 3(a) has been satisfied, Big Walnut hereby waives its right to receive any compensation pursuant to Ohio Revised Code Section 5709.82.

(c) Waiver of Notices. In connection with any Exemption that is subject to this Section 3 and for which the condition in Section 3(a) has been satisfied, Big Walnut hereby waives its right to receive any notices or grant any approvals as may be required by the then applicable CRA Statute or Ohio Revised Code Section 5709.83.

(d) Failure to Satisfy. In connection with any Exemption that is subject to this Section 3 and for which the condition in Section 3(a) has not been satisfied, Sunbury will be required to comply with the then applicable CRA Statute, including but not limited to, providing notices to Big Walnut and DACC and obtaining approval from Big Walnut for the Exemption, as well as complying (if applicable) with Ohio Revised Code Section 5709.82.

4. Miscellaneous.

(a) Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

(b) Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

(c) 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.

(d) 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.

(e) Entire Agreement. This Agreement constitutes the entire Agreement between the Parties on the subject matter hereof and supersedes all prior negotiations, agreements and understandings, both written and oral, between the Parties with respect to such subject matter. This Agreement may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

(f) 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 shall not 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.

(g) Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

(h) 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 Sunbury or Big Walnut other than in his or her official capacity, and neither the members of the legislative bodies of Sunbury or Big Walnut nor any official 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 Sunbury and Big Walnut contained in this Agreement.

(i) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio without regard to its principles of conflicts of laws.

(j) 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.

(k) Limit on Liability. Notwithstanding any clause or provision of this Agreement to the contrary, in no event shall Sunbury or Big Walnut 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.

(l) Notices. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt,

unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

- (i) Sunbury at: City of Sunbury, Ohio
9 East Granville Street
Sunbury, Ohio 43074
Attention: Administrator

- (ii) Big Walnut at: Big Walnut Local School District
110 Tippet Court
Sunbury, Ohio 43074
Attention: Superintendent

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices; certificates, requests or other communications shall be sent.

(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) 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.

(o) Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

(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) Term of Agreement. This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years; provided that the Agreement will automatically renew for an additional ten (10) years on each of the tenth (10th) and twentieth (20th)

anniversaries of the Effective Date, unless either Party provides written notice of the termination hereof no later than thirty (30) days prior to each such automatic renewal.

(r) Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF SUNBURY, OHIO

BIG WALNUT LOCAL SCHOOL DISTRICT

By: _____

By: _____

Printed: Daryl Hennessy

Printed: Ryan McLane

Title: Administrator

Title: Superintendent

APPROVED AS TO FORM AND CORRECTNESS

By: _____

Printed: David Brehm

Title: Director of Law

FISCAL OFFICER’S CERTIFICATE

The undersigned, Director of Finance of Sunbury under the foregoing Agreement, certifies hereby that Sunbury does not currently have any financial obligations under the foregoing Agreement during Fiscal Year 2023. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2023

Director of Finance
City of Sunbury, Ohio

FISCAL OFFICER’S CERTIFICATE

The undersigned, Treasurer of the Board of Education of Big Walnut under the foregoing Agreement, certifies hereby that Big Walnut does not currently have any financial obligations under the foregoing Agreement during Fiscal Year 2023. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2023

Treasurer, Board of Education
Big Walnut Local School District