

Contract #

GRANT AGREEMENT

By And Between

THE CITY OF CLEVELAND

And

THE SHERWIN-WILLIAMS COMPANY

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Contract #
GRANT AGREEMENT

This GRANT AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 20___, effective as of the ___ day of _____, 20___ (the “Effective Date”), by and between THE SHERWIN-WILLIAMS COMPANY, an Ohio corporation (“Grantee”) and the CITY OF CLEVELAND, OHIO (“City”), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio, under the authority of City Ordinance No. ____ - __ passed on _____, 20___ and attached as EXHIBIT A (the “Ordinance”).

RECITALS

A. Grantee was founded in 1866 and today, including its affiliated entities (The Sherwin-Williams Headquarters Company, The Sherwin-Williams Manufacturing Company and others (any entity that controls the Grantee, is controlled by Grantee, or is under common control with Grantee is an “Affiliate”)), is a global leader in the manufacture, development, distribution and sale of paint, coatings and related products to professional, industrial, commercial and retail customers.

B. Grantee, itself or through one or more Affiliates, intends to acquire or cause to be acquired, or has acquired or caused to be acquired, ownership or leasehold interests in certain parcels of real property located in the City, and shall develop or cause to be developed, construct or cause to be constructed (in one or more phases), and operate on the real property a new headquarters facility and possibly facilities for other business activities and supporting or complementary buildings, structures, infrastructure and appurtenances (the “Project Site”).

C. Grantee and the City entered into that certain Development Agreement dated as of _____, 2020, attached hereto as Exhibit B (the “Development Agreement”), which Development Agreement more specifically describes the development of the Project Site and the anticipated operations at the Project Site.

D. In accordance with the Ordinance, which authorizes the City’s Director of Economic Development to enter into an agreement with Grantee to partially finance the relocation of Grantee to the Project Site, the City desires to offer a grant to Grantee of \$13,500,000 (the “Grant Funds”), which has been appropriated by the City.

E. The City and Grantee enter into this Agreement for the benefit and improvement of the economic welfare of the City's citizens as authorized in Article VIII, Section 13 of the Ohio Constitution.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, the parties to this Agreement agree as follows:

ARTICLE I
PROJECT

SECTION 1.01 GRANT PROJECT

Grantee, itself or through its Affiliates, requires additional space for its current and future operations. Grantee intends to relocate its current headquarters and possibly certain other operations in the City of Cleveland to the Project Site, as more specifically described in the Development Agreement (the “Project”). The Project is estimated to begin within one (1) year following the Effective Date and estimated to be completed by December 31, 2025. Grantee will complete the Project not later than December 31, 2027 (the “Projected Completion Date”). Grantee will relocate, retain and create jobs or payroll at the Project Site in order to substantially meet the total investment and retain the job or the payroll levels identified in Section 1.03 below by the Projected Completion Date.

SECTION 1.02 SOURCES AND USES OF FUNDS FOR THE PROJECT

The total cost of the Project will be at least \$300,000,000, and shall be partially financed by a grant in the amount of \$13,500,000 from the City to Grantee in accordance with this Agreement. The remaining costs of the Project shall be paid by the Grantee’s cash flow, financings or other sources, currently estimated to be as set forth in Exhibit C attached hereto.

SECTION 1.03 JOB RETENTION & CREATION

Grantee represents and warrants that it and/or an Affiliate owns or leases, or expects to own or lease, the Project Site. Grantee shall retain or cause to be retained a minimum of 3,138 full-time equivalent jobs, with a combined payroll of approximately \$347,219,356 at its current locations or the Project Site, as more specifically described in the Development Agreement.

Grantee shall submit documentation regarding employment activity as of December 31 of each year during the Grant Term to the Director of Economic Development of the City in the Certification Form for Grant Payment form set forth as Exhibit D attached hereto not later than March 31 of each following year until December 31, 2030, and at all other times reasonably requested by the City during the Grant Term. For purposes of this Agreement, the “Grant Term” means the period beginning on the Effective Date and ending on December 31, 2030.

SECTION 1.04 TIMETABLE FOR PROJECT ACTIVITIES

Grantee anticipates that site improvements are estimated to begin within one (1) year of the Effective Date with Project completion estimated to be on or before the Projected Completion Date, subject to Force Majeure, as more particularly described in the Development Agreement. With each Cost Certificate (defined below), Grantee

must submit a Certification in the form attached as Exhibit D, which will certify, to the best of its knowledge.

a. The total number of full-time equivalent employees, based on 2,080 hours annually for full-time employees of Grantee and its Affiliates as set forth in Section 1.03 (“Current City Employees”), represented by the Current City Payroll (as defined below); and

b. The total payroll for Current City Employees (base compensation plus bonuses, but not including benefits, stock options or restricted stock awards) taxable by the City during the current year (“Current City Payroll”); and

c. That Grantee is not delinquent on any material portion of its municipal taxes, including employee withholding, due and owing to the City of Cleveland (unless such taxes are in dispute and in the appeals process); and

d. At the time of approval of this Agreement, Grantee pays its then Current City Employees the City's current fair employment wage, regardless of the legal applicability of Chapter 189 of the City of Cleveland Codified Ordinances.

SECTION 1.05 GUARANTEE OF COMPLETION

Grantee guarantees substantial completion of the Project substantially in accordance with the schedule set forth in the Development Agreement, subject to Force Majeure. To accomplish complete and timely execution of the Project, Grantee shall make payment for any cost overruns.

SECTION 1.06 CLOSING REQUIREMENTS

The effectiveness of this Agreement and the obligation of the City to make any Grant Payment shall be subject to the Grantee providing, at or prior to the time of execution of this Agreement, the following to the City:

a. A resolution from the Grantee's Board of Directors evidencing the signing authority of the officer executing this Agreement;

b. A copy of the fully executed Workforce Development Agreement by and between the City, the County and Grantee;

c. Payment of (i) a non-refundable fee in the amount of \$75,000.00 payable to the “Cleveland Citywide Development Corp.” and (ii) a non-refundable fee in the amount of \$25,000.00 payable to the “City of Cleveland”; and

d. An IRS Form W-9.

**ARTICLE II
GRANT**

SECTION 2.01 THE GRANT

Subject to the terms and conditions of this Agreement, during the Grant Term, the City shall pay to the Grantee the Grant Funds, as grant payments from non-tax revenues (each a “Grant Payment” and, collectively, the “Grant Payments”), based on appropriate evidence submitted for disbursement by Grantee to the City as set forth in Section 2.02. In consideration of the Project, as stated in Section 1.01 above, and based on the terms provided in this Agreement, the City has appropriated the Grant Funds for this Agreement. Grantee shall be entitled to the Grant Payments subject to compliance with the terms of this Agreement.

SECTION 2.02 DISBURSEMENT OF FUNDS

a. Request for Disbursement

The Grantee shall complete and submit one or more cost certificates to the City in the form attached as Exhibit E (each a “Cost Certificate”), along with source documentation supporting the amounts of each Cost Certificate and evidencing the expenditures of Eligible Costs (defined below) incurred by the Grantee to be reimbursed. The Grantee shall not submit more than one (1) Cost Certificate per calendar month.

The Grant Funds shall not be disbursed until Grantee has submitted to the City any certificates, documents and instruments reasonably required by this Agreement.

b. Eligible Costs

Eligible costs include site preparation, demolition, environmental remediation, building renovation, infrastructure, removal and disposal of waste, hazardous substance abatement, land acquisition, relocation expenses, engineering and architectural services, relevant professional fees, building acquisition, building expansion, new building construction, furniture/fixtures/equipment, tenant improvements, and machinery and equipment (collectively, the “Eligible Costs”).

c. City to Disburse Funds

Each Cost Certificate submitted to the City by the Grantee is subject to the review and approval of the City’s Director of Economic Development (the “City Director of ED”). The City Director of ED may require such evidence of the Eligible Costs as is reasonably necessary for the City Director of ED to determine the nature of the Eligible Costs and confirm payment of the Eligible Costs by the Company or its designee.

The City Director of ED shall approve a Cost Certificate in whole or in part or disapprove a Cost Certificate in whole or in part within thirty (30) days of receipt of the Cost Certificate. If the City Director of ED disapproves any Eligible Costs in a Cost Certificate, the City Director of ED will provide, within thirty (30) days of receipt of a Cost Certificate, a written explanation of why those Eligible Costs were not approved and provide the Grantee with a period of not less than thirty (30) days (or such longer period as may be approved by the City) after receipt of notice of any alleged

deficiencies to correct such deficiencies to the commercially reasonable satisfaction of the City.

The City shall disburse a Grant Payment to the Grantee on a reimbursement basis within thirty (30) days after the City Director of ED's approval of a Cost Certificate.

The City shall have no obligation to disburse any amount of the Grant Funds that exceeds the Eligible Costs of the Project actually incurred by the Grantee.

Grant Payments shall be made to the Grantee in the form of a check (or such other customary payment method used by the City at the time of the applicable Grant Payment).

ARTICLE III REPRESENTATIONS AND WARRANTIES

Grantee represents and warrants to the best of its knowledge to the City and the City represents and warrants to Grantee, as applicable, as of the date hereof each of the representations and warranties set forth in Section 3.01 through Section 3.09.

SECTION 3.01 ORGANIZATION

Grantee is a validly existing entity in good standing under the laws of the State of Ohio, and has the power to carry on its business as it is presently being conducted, and to enter into and observe the provisions of the Agreement.

SECTION 3.02 AUTHORIZATION

Grantee's entering into and performance of this Agreement and the execution and delivery hereof has been duly authorized by all necessary action and will not violate any law, rule, regulation, order, writ, judgment, decree, determination or award presently in effect and having applicability to Grantee, or any provision of Grantee's Articles of Incorporation, Regulations or By-Laws, or result in a material breach of or constitute a material default under any indenture, credit agreement or any other agreement or instrument to which the Grantee is a party or that it or its property may be bound or affected.

SECTION 3.03 ENFORCEABILITY

When this Agreement is executed by both Grantee and the City, certified by the City's Director of Finance and approved by the City's Director of Law, and when the Agreement is executed and delivered by Grantee for value, this Agreement shall constitute the legal, valid, and binding obligation of the parties hereto enforceable in accordance with its terms.

SECTION 3.04 LITIGATION

Except as disclosed in periodic reports filed with the Securities and Exchange Commission under the Securities Exchange Act of 1934, copies of which are available at www.sec.gov, there are no legal actions, suits, or proceedings pending, or, to the knowledge of Grantee, threatened against Grantee before any court or arbitrator, or administrative agency, which could reasonably be expected to be adversely determined, and if determined adversely to Grantee, would have a material adverse effect on the financial condition or businesses of Grantee.

SECTION 3.05 GOVERNMENTAL CONSENTS

No additional authorization, consent or approval, or any formal exception of any governmental body, regulatory authorities (federal, state or local) or third party is or was necessary to the valid execution and delivery by Grantee and the City of this Agreement.

SECTION 3.06 TAX RETURNS AND PAYMENTS

To the Grantee's knowledge, Grantee has filed, or received an extension of time to file, all required tax returns and has paid or made provision for the payment of all taxes that have become due under said returns or under any assessments levied against Grantee or its personal or real property by any federal, state or local taxing agency, except those being contested in good faith.

SECTION 3.07 NO ADVERSE CHANGE

Since the date of application for the Grant, there has been no material adverse change in the financial condition, organization, operation, business prospects, fixed assets or personnel of Grantee or City that would affect Grantee's or City's performance hereunder.

SECTION 3.08 MATERIAL FACTS

No representation or warranty contained or made in this Agreement and no certificate, schedule or other document furnished or to be furnished in connection with this Agreement contains a misstatement of material fact or omits a material fact required to be stated.

SECTION 3.09 PROHIBITION OF CONFLICT OF INTEREST

No member of the governing body of the City of Cleveland, Ohio, or the government of the United States of America, and no other officers, officials, agents, or employees of the City shall have any personal financial interest, direct or indirect, in this Agreement (a "Conflict of Interest"). The Grantee covenants that: (i) to the best of its knowledge no public employee or official who presently exercises any functions or responsibilities in connection with the items described in Section 1 of this Agreement has a Conflict of Interest, and (ii) the Grantee shall not knowingly acquire any interest, direct or indirect, which would cause a Conflict of Interest to arise in the performance of this Agreement. A Conflict of Interest shall not arise from any person or entity

having an ownership interest in the Grantee that amounts to less than five percent (5%) of the Grantee's publicly traded shares.

ARTICLE IV
RESERVED

ARTICLE V
GRANTEE'S ADDITIONAL REQUIREMENTS AND OBLIGATIONS

SECTION 5.01 EQUAL OPPORTUNITY CLAUSE SECTION
187.22(B)

During the performance of this Agreement, the Grantee agrees as follows:

a. The Grantee shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group or Vietnam-era or disabled veteran status. The Grantee shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to race, religion, color, sex, sexual orientation, gender identity or expression, national origin, age, disability, ethnic group, or Vietnam-era or disabled veteran status. As used in this chapter, "treated" means and includes without limitation the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship, promoted, upgraded, demoted, downgraded, transferred, laid off and terminated. The Grantee agrees to and shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the hiring representatives of the Grantee setting forth the provisions of this nondiscrimination clause.

b. The Grantee will, in all solicitations or advertisements for employees placed by or on behalf of the Grantee, state that the Grantee is an equal opportunity employer.

c. The Grantee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract, or understanding, a notice advising the labor union or worker's representative of the Grantee's commitments under the equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. It is the policy of the City that local businesses, minority-owned businesses and female-owned businesses shall have every practicable opportunity to participate in the performance of contracts awarded by the City subject to the applicable provisions of the Cleveland Area Business Code.

e. The Grantee shall permit reasonable access by the Director of the Mayor's Office of Equal Opportunity (the "Director") or his or her designated representative (in accordance with the Cleveland Area Business Code) to any relevant and pertinent existing reports and documents to verify compliance with the Cleveland

Area Business Code, and with the regulations promulgated thereunder. All such materials provided to the Director or designee by the Grantee shall be considered confidential.

f. The Grantee will not obstruct or hinder the Director or designee in the fulfillment of the duties and responsibilities imposed by the Cleveland Area Business Code.

g. The Grantee agrees that each subcontract will include this Equal Opportunity Clause, and the Grantee will notify each subcontractor, material supplier and supplier that the subcontractor must agree to comply with and be subject to all applicable provisions of the Cleveland Area Business Code. The Grantee shall take any appropriate action with respect to any subcontractor as a means of enforcing the provisions of the Cleveland Area Business Code.

SECTION 5.02 WORKFORCE REGULATIONS

Compliance is required if Grantee receives other City assistance such that total City assistance to the Project exceeds \$50,000. As applicable, the Grantee agrees, in connection with the Project, to use good faith efforts to award fifteen percent (15%) of the contracts and supplier purchase orders to certified Minority Business Enterprise (“MBE”) firms, seven percent (7%) to certified Female Business Enterprise (“FBE”) firms and eight percent (8%) to Cleveland Small Business (“CSB”) participation. If the Project is certified by the City to exceed \$100,000, the Grantee shall employ or cause its contractors to employ Cleveland residents for twenty percent (20%) of the total Construction Work Hours (as defined in Section 188.01(c) of the Fannie M. Lewis Resident Employment Law) on constructing the Project and the Grantee shall use significant effort to employ residents of the City who are certified as low-income residents for four percent (4%) of the total Construction Work Hours (as defined in Section 188.01(c) of the Fannie M. Lewis Resident Employment Law) on constructing the Project. Compliance with the City of Cleveland Fair Employment Wage, is required if the Grantee is a recipient of Assistance (as defined in Chapter 189 of the Codified Ordinances) from the City that has an aggregate value of at least \$75,000 and has at least 20 full time employees if a for-profit or at least 50 employees if a not-for profit, by the date of this Agreement.

Grantee shall use good faith efforts to comply and to cause its construction manager for the Project to comply with the standards and procedures established by the City’s Office of Equal Opportunity (“OEO”) relating to the workforce goals set forth in the foregoing paragraph (collectively, the “Workforce Goals”). If the Grantee fails to meet the Workforce Goals, the City shall have the right to impose a penalty of up to one-eighth of one percent (0.125%) of the Grant Funds for each percentage by which Grantee fails to meet the requirement or any reduced requirement determined appropriate in accordance with Section 188.03 of the Fannie M. Lewis Resident Employment Law.

SECTION 5.03 PUBLIC RECORDS INFORMATION

The City agrees to keep confidential, to the maximum extent allowable by law, any and all business, financial or tax information of the Grantee. All such information provided to the City or its designee by the Company shall be considered confidential only if such materials are clearly marked as CONFIDENTIAL. The City will endeavor to immediately notify Grantee of any request for confidential information about this Agreement or any other confidential information about Grantee. Notwithstanding anything contained herein to the contrary, the City may disclose any confidential information delivered to the City in connection with this Agreement (collectively, the “Confidential Information”) as required to comply with orders of governmental entities with jurisdiction over it, including as required in response to a valid subpoena or court order, or for a public records request (to the extent required by law); the City, however, agrees to (i) give the Grantee prior written notice sufficient to allow the Grantee to seek a protective order or other remedy (except to the extent that the City’s compliance would cause it to violate an order of the governmental entity or other legal requirement), (ii) disclose only such information as is required by the governmental entity and/or the State public records law, and (iii) request and seek confidential treatment for any Confidential Information so disclosed. Upon request of the Grantee and at the Grantee's expense, including reimbursement to the City of any fines or costs incurred by the City (including reasonable legal fees), the City will use reasonable efforts to cooperate with the Grantee’s efforts to obtain a protective order, restraining order, or other reasonable assurance to maintain the confidentiality of Confidential Information, and to resist or refuse disclosure thereof. If, in the absence of a protective order or restraining order, the City is compelled as a matter of law to disclose Confidential Information then the City will disclose only that portion of said information or documents as is required by law. The Grantee will defend and indemnify the City in any challenge to the City’s refusal to release certain information based on the Grantee’s claim that the information is confidential and not subject to release (each a “Public Records Challenge”).

SECTION 5.04 INDEMNIFICATION

Grantee agrees to indemnify the City and hold the City, its agents, employees, and members of City Council (the “Indemnified Parties”) harmless as against any third party liability, damages or loss of any kind brought against or incurred by the Indemnified Parties, whether at law or in equity, arising out of or in connection with this Agreement, other than any third party liability, damages or loss caused by the gross negligence or willful misconduct of the City. In case any claim or demand is at any time made, or action or proceeding is brought, against the City in respect of which indemnity may be sought hereunder, the City will give prompt written notice of that action or proceeding to the Grantee, and the Grantee upon receipt of that notice will have the right, but not the obligation, to assume the defense of the action or proceeding. In addition to the other limitations herein, the aggregate payments that may be due from the Grantee under this Section will not exceed the total of the Grant Funds (except for claims related to a Public Records Challenge). Notwithstanding any other provision in this Agreement, the Grantee will not be required to indemnify the Indemnified Parties for any settlements reached with respect to a third party claim unless the Grantee has provided its prior written consent for such settlement.

The terms of this Section 5.04 shall survive the termination of this Agreement.

**ARTICLE VI
GRANT FUNDS**

SECTION 6.01 USE OF FUNDS

There shall be no restriction or qualification as to the use by Grantee of any Grant Payment once earned (post-disbursement).

SECTION 6.02 NON-TAX FUNDS

Notwithstanding anything in this Agreement to the contrary, the obligations of the City under this Agreement shall not be general obligations of the City and Grantee shall have no right to have excises or taxes levied by the City for the City's performance of any obligation under this Agreement. Any payments or advances required to be made by the City under this Agreement shall be made solely from the City's non-tax revenues.

**ARTICLE VII
DEFAULT AND REMEDIES**

SECTION 7.01 EVENTS OF DEFAULT AND RECOVERY OF GRANT FUNDS

a. Grantee Events of Default:

- (i) It shall be a default under this Agreement for Grantee to knowingly provide materially incorrect or fraudulent information to the City in the application for Grant approval, in the negotiation of this Agreement, in the submission of documentation for payments under this Agreement, and/or in the submission of any other document or information pursuant to the terms of this Agreement;
- (ii) It shall be a default under this Agreement if, prior to the end of the Grant Term, Grantee fails to substantially complete the Project by the Projected Completion Date, subject to Force Majeure, or fails to maintain operations in the City of Cleveland substantially in accordance with the terms of the Development Agreement, subject to Maintenance of Operations Threshold (as defined in the Development Agreement).

At any time, upon learning that it has provided materially incorrect information under this Agreement, Grantee must promptly notify the City and provide corrected information. The total amount of all Grant Payments which were paid based on incorrect information shall be due and payable to the City within ten (10) business days after the Grantee learns that it has provided materially incorrect information, without any other notice or demand of any kind.

b. Upon learning of an Event of Default and determining that such Event of Default has not been corrected to the reasonable satisfaction of the City, the City may exercise, concurrently or successively, any one or more of the following rights or remedies, upon forty-five (45) days prior written notice, during which period the Grantee will have an opportunity to cure the Event of Default to the reasonable satisfaction of the City:

1. Wholly or partially terminate this Agreement and the rights given to Grantee in this Agreement;
2. Wholly or partially suspend this Agreement and the rights given to Grantee in this Agreement;
3. Temporarily or permanently withhold or reduce Grant Payments not yet earned by Grantee;
4. Recover any or all Grant Payments (the “Repayment Amount”) previously paid to Grantee which would not otherwise have been paid, but for the breach, except that with respect to default under Section 7.01(A)(ii), all Grant Payments may be recovered, less an amount to be determined in good faith by the City that takes into account, on a proportional basis, the Applicable Market Conditions (as defined in the Development Agreement).

c. City Event of Default: It shall be a default under this Agreement if the City fails to pay the Grant Payment in accordance with the terms of this Agreement, and such failure continues for forty-five (45) days after written notice from the Grantee; provided that such failure is not due to a good faith dispute regarding Eligible Costs. Upon a City Event of Default, Grantee shall have all rights and remedies available against the City, including but not limited to claims for damages.

SECTION 7.02 NO-DEFAULT CERTIFICATION

Grantee certifies that, to the best of its knowledge, there shall exist as of the Effective Date of this Agreement no event or condition that constitutes an Event of Default as defined in Section 7, or that, after notice or lapse of time or both, would constitute such an Event of Default.

ARTICLE VIII MISCELLANEOUS

SECTION 8.01 NOTICES AND COMMUNICATIONS

All Grant Payments and notices, demands, requests, consents or approvals given, or required to be given, shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or if sent by recognized overnight delivery service or by certified mail, postage pre-paid return receipt requested, provided that it

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is addressed to the other party at the following addresses, or at such other address as the recipient may later provide in writing:

To City at: Director of Economic Development
City of Cleveland
601 Lakeside Ave., Room 210 Cleveland,
OH 44114

and

Director of Law
City of Cleveland
601 Lakeside Ave., Room 106
Cleveland, OH 44114

and

McDonald Hopkins LLC
600 Superior Avenue, Suite 2100
Cleveland, Ohio 44114
Attention: Teresa Metcalf Beasley

To Grantee at: The Sherwin-Williams Company
101 W. Prospect Ave.
Cleveland, OH 44115
Attention: Senior Vice President, General
Counsel and Secretary, Mary L. Garceau

and

The Sherwin-Williams Company
101 W. Prospect Ave.
Cleveland, OH 44115
Attention: Vice President – Taxes,
Lawrence J. Boron

and

Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Attention: Scott J. Ziance

SECTION 8.02 NO PERSONAL LIABILITY

No official executing or approving this Agreement shall be personally liable under this Agreement or be subject to any personal liability or accountability by reason of authorizing this Agreement. The City agrees that the Grantee's liability in any event

shall be limited to, and not exceed, the aggregate amount of Grant Payments made hereunder, and the City agrees that in no event shall the City claim or seek consequential, punitive, lost business or other damages from the Grantee or seek any claims or damages against the Grantee's officers, directors, agents or representatives under this Agreement; provided, however, that the foregoing limitation of liability shall not apply to any Public Records Challenge.

SECTION 8.03 AMENDMENTS

This Agreement may be amended only by written agreement between the parties, duly executed by the parties and approved by the Cleveland City Council if necessary.

SECTION 8.04 RETENTION OF RECORDS

During the term of this Agreement and for a period of at least three (3) years after the later to occur of (a) submission of the final Cost Certification for the Project or (b) the Company's receipt of all of the permanent certificates of occupancy for the Project, the Grantee shall maintain records reasonably sufficient to document the Grantee's performance under this Agreement, specifically, invoices related to the Eligible Costs (the "Records"). The Grantee shall permit the City and/or its designee(s) to review the Records, upon not less than ten (10) business days prior written notice, provided that such review shall: (i) not be disruptive to the Grantee's business, (ii) take place at a mutually agreed time during the Grantee's normal business hours; (iii) be completed within sixty (60) days from commencement; (iv) not be engaged with a contingent fee structure; and (v) to the extent practicable, rely on inspection and review of documents and not require the removal of any documents. In the event the City's examination reveals a deficiency or discrepancy, the Parties will cooperate in good faith to address and resolve any such deficiency or discrepancy. Records reviewed by the City in connection with any such audit shall be treated as confidential information of the Grantee and the City agrees to maintain the confidentiality of such information to the maximum extent permitted by applicable law. Notwithstanding the foregoing or any other provision of this Agreement, the Grantee will not be required to disclose, permit the inspection of or examination of, or discuss, any information that: (i) contains trade secrets, or (ii) is subject to attorney-client or similar privilege. Nothing in this Agreement shall be interpreted as contrary to the Ohio Public Records Act (Ohio Revised Code Section 149.43).

SECTION 8.05 FORCE MAJEURE

In the case of an event of Force Majeure, all deadlines and obligations of the Grantee shall be tolled and extended for a time period equal to the delay. Force Majeure means any of the following events that directly impact the Grantee's ability to meet its deadlines or other obligations: flood, earthquake, storm, lightning, fire, or other acts of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not

on the part of agents or employees of the Grantee); civil disturbance; terrorist act; power outage; governmental permitting or other governmental delays.

SECTION 8.06 ASSIGNMENT

This Agreement and all rights and benefits of the Grantee under this Agreement may be transferred and assigned by the Grantee, in whole or in part, to any Affiliate of the Grantee or to any successor of the Grantee, with written notice to the City.

SECTION 8.07 SEVERABILITY

Whenever possible, each provision of this Agreement shall be interpreted in such 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 provisions of this Agreement. The remaining provisions of this Agreement shall be read together to preserve the intent of the parties to the fullest extent possible.

SECTION 8.08 INTENTIONALLY OMITTED

SECTION 8.09 ARTICLE AND SECTION HEADINGS

Article and section headings are for convenience only and shall not affect the interpretation of this Agreement.

SECTION 8.10 NO ORAL REPRESENTATIONS

All of the terms and conditions of the Agreement between the parties are stated in this Agreement.

SECTION 8.11 CHOICE OF LAW

This Agreement shall be deemed to have been executed and delivered within the State of Ohio, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of Ohio without regard to principles of conflicts of laws.

SECTION 8.12 CHANGE OF LAW

In the event that any law, rule, or regulation applicable to this Agreement or the Grantee or any policy, decision or interpretation thereof at any time during the term of this Agreement is modified, issued, implemented or determined to prohibit or materially restrict the terms of this Agreement, then the parties to this Agreement shall negotiate in good faith to amend this Agreement to minimum degree necessary in a manner consistent with such change and the intent of the parties.

SECTION 8.13 COUNTERPARTS

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

[Signature Page Immediately Follows]

File No. 284-2020-B

AFTER DUE AUTHORIZATION, the parties have each caused this Agreement to be duly executed as of the day of and year first written above.

CITY OF CLEVELAND
Department of Economic Development
601 Lakeside Avenue, Room 210
Cleveland, OH 44114
Phone: (216) 664-3611

By: _____
David Ebersole
Director of Economic
Development

Date: _____

Approved as to Form:
Barbara Langhenry
Director of Law

By: Steven Martinek
Its: Assistant Director of Law
Date:

THE SHERWIN-WILLIAMS
COMPANY

By: _____
Name; Title

FISCAL OFFICER'S CERTIFICATE

As fiscal officer for the City of Cleveland, I hereby certify that funds sufficient to meet the obligations of the City in this Agreement (including specifically the funds required to meet the obligation of the City in the year 20__) have been lawfully appropriated for the purposes thereof and are available in the treasury, and/or are in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This certificate is given in compliance with Ohio Revised Code Sections 5705.41 et seq.

Dated: _____, 20__

By: _____

Director of Finance
City of Cleveland
Cuyahoga County, Ohio

File No. 284-2020-B

Exhibit A

Ordinance No. 1___ -__

EXHIBIT B
DEVELOPMENT AGREEMENT

See attached.

EXHIBIT C

ESTIMATED SOURCES AND USES

EXHIBIT D

CERTIFICATION FORM FOR GRANT PAYMENT

Pursuant to the Grant Agreement (“Agreement”) dated _____, 2020, between the CITY OF CLEVELAND, OHIO (“City”) and THE SHERWIN-WILLIAMS COMPANY (the “Grantee”), Grantee hereby certifies, to the best of Grantee’s knowledge, the following:

The attachment (Attachment 1) for the prior calendar year states the number of Current City Employees of Grantee and its Affiliates demonstrated by taking total hours worked (per Section 1.03 of the Agreement) and dividing it by 2,080 hours as set forth in the Agreement; and

Grantee has also attached (Attachment 2) a true copy of the Current City Payroll, which includes Grantee's total payroll (base compensation plus bonuses but not including benefits, stock options or restricted stock awards) for Current City Employees which is income taxable by the City, including that of any Affiliate, for the prior calendar year; and

Grantee is not delinquent on any portion of its municipal taxes, including employee withholding, due and owing to the City of Cleveland (unless such taxes are in dispute and in the appeals process); and

Grantee's average hourly wage its Current City Employees in the City of Cleveland are paid is at least the current fair employment wage, regardless of the legal applicability of Chapter 189 of the City of Cleveland Codified Ordinances.

Each of the representations and warranties made by the Grantee set forth in Article III of the Agreement are true and correct in all material respects as of the date hereof.

THE SHERWIN-WILLIAMS COMPANY

By: _____
Date: _____

EXHIBIT E

COST CERTIFICATE

To: City of Cleveland, Ohio

Attention: _____, _____

Subject: Cost Certificate for Eligible Costs pursuant to the terms of the Grant Agreement dated _____, 2020 (the "Agreement"), by and between the City of Cleveland, Ohio and The Sherwin-Williams Company (the "Company").

You are hereby requested to approve the amount of [\$ _____] as an Eligible Cost for the purposes set forth in the schedule attached hereto. Unless otherwise defined herein, all capitalized terms set forth but not defined in this Cost Certificate have the respective meanings assigned to them in the Agreement.

The undersigned authorized representative of the Company does hereby certify on behalf of the Company that:

1. I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents relating to the matters covered by this Cost Certificate;
2. The disbursement herein requested is for an obligation properly incurred, is a proper charge as a cost of the Eligible Costs (as defined in the Agreement), and has not been the basis of any previous reimbursement request submitted to the City of Cleveland, Cuyahoga County, the State of Ohio or JobsOhio;
3. The Company is in material compliance with all provisions and requirements of the Agreement;
4. The reimbursement requested hereby does not include any amount which is being retained under any holdbacks or retainages provided for in any applicable agreement;
5. The Company has, or the appropriate parties on the Company's behalf has, asserted its entitlement to all available manufacturer's warranties to date upon acquisition of possession of or title to the good or services related to the Eligible Costs or any part thereof which warranties have vested in the Company;
6. The Company is either (i) not aware of any attested account claim from any subcontractor, material supplier or laborer who has performed labor or work or has furnished materials in connection with the Eligible Costs for which reimbursement is requested pursuant to this written requisition; or (ii) has provided security discharging any known attested account claims.

EXECUTED this _____ day of 20__.

THE SHERWIN-WILLIAMS
COMPANY

By: _____
Name; Title

Date: _____