

RESOLUTION OF THE CELINA CITY SCHOOL DISTRICT
BOARD OF EDUCATION

November 20, 2017

IN THE MATTER OF APPROVING PROPOSED ENTERPRISE ZONE AGREEMENT FOR FERGUSON ENTERPRISES, INC, REQUESTING COUNTY APPROVAL OF SAME, AND WAIVING STATUTORY NOTICE PERIODS.

moved the adoption of the following resolution:

WHEREAS, Mercer County, Ohio a political subdivision of the State of Ohio (the "County") and Jefferson Township, Mercer County, Ohio , a political subdivision of the State of Ohio (the "Township"), have created an enterprise zone for the purpose of promoting development and expansion of industry in the area, pursuant to Section 5709.632 of the Ohio Revised Code:

WHEREAS, FERGUSON ENTERPRISES, INC desires to construct a new building on property located at 8400 Albers Road, in Jefferson Township, Celina, Mercer County, which is located in the enterprise zone, provided that the appropriate development incentives are available to support the economic viability of the project;

WHEREAS, the Company has submitted a proposed enterprise zone agreement application (the "Application"), a copy of which was received by the Board of Education of the Celina City School District (the "Board") (attached hereto as Exhibit A);

WHEREAS, it is anticipated that an enterprise zone agreement (the "Agreement") substantially in the form attached hereto as Exhibit B will be executed by and among the County, the Township and the Company;

WHEREAS, pursuant to Section 5709.63(C) of the Ohio Revised Code, it has been requested that the Board approve the Agreement, including but not limited to the terms of the Agreement that provide for real property tax exemption of one hundred percent (100%) for ten years (10 years);

WHEREAS, it has been requested that the Board waive the forty-five day notice period and the fourteen day notice period required pursuant to Sections 5709.63(C) and 5709.83(A), respectively, of the Ohio Revised Code prior to the County taking formal action to approve the Agreement; and

WHEREAS, the Board has agreed to approve the Agreement, waive the statutory notice periods, and cooperate fully to effectuate the Agreement and the enjoyment by the Company of the benefits of the Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD:

Section One:

The Board has received a copy of the Application and the proposed Agreement.

Section Two:

Pursuant to Section 5709.63(C) of the Ohio Revised Code, the Board hereby approves the Agreement, including but not limited to the terms of the Agreement that provide for real property tax exemption of one hundred percent (100%) for ten years (10 years).

Section Three:

Pursuant to Sections 5709.63(C) and 5709.83(A) of the Ohio Revised Code, the Board hereby waived the forty-five day and fourteen day notice periods provided therein and authorizes the County to approve and execute the Agreement as soon as practicable after the date of this Resolution.

Section Four:

The Board hereby agrees to cooperate fully effectuate the Agreement and the enjoyment by the Company of the benefits of the Agreement.

Section Five:

The Board hereby requests the approval and execution of the Agreement by the Board of Commissioners of Mercer County as soon as practicable after the Board of Commissioners of Mercer County receives a copy of the Resolution.

Section Six:

True and complete copies of this Resolution, together with attachments hereto, shall be certified to the County, the Township and by the Clerk of the Board as soon as practicable after the passage of this Resolution.

Section Seven:

It is hereby found and determined that all formal actions of the Board concerning and relating to the adoption of this Resolution were adopted in an open meeting of the Board and that all deliberations of the Board and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

seconded the motion and, the roll being called upon the question, the vote resulted as follows:

Motion passed and adopted this 20th day of November, 2017.

President, Board of Education

ATTEST:

Treasurer

Date

COPY

**OHIO DEVELOPMENT SERVICES AGENCY
OHIO ENTERPRISE ZONE PROGRAM**

PROPOSED AGREEMENT for Enterprise Zone Tax Incentives between the Jefferson Township located in the County of Mercer and Ferguson Enterprises, Inc..

- 1a. Name of business, home or main office address, contact person, and telephone number (attach additional pages if multiple enterprise participants).

Ferguson Enterprises, Inc.
enterprise name

Kirk Wall
contact person

757-989-2355
telephone number

12500 Jefferson Ave., Newport News, VA 23602
address

- 1b. Project site:

Kirk Wall
contact person

757-989-2355
telephone number

12500 Jefferson Ave., Newport News, VA 23602
address

- 2a. Nature of business (manufacturing, distribution, wholesale or other).

Distribution

- 2b. List primary 6 digit NAICS # 423720.
Business may list other relevant SIC numbers. 493110

- 2c. If a consolidation, what are the components of the consolidation? (must itemize the location, assets, and employment positions to be transferred)
N/A as this is not a consolidation
-
- 2d. Form of business of enterprise (corporation, partnership, proprietorship, or other).
C-Corporation
-
3. Name of principal owner(s) or officers of the business (attach list if necessary).
Kirk Wall, Senior Director of Facilities
-
4. Is business seasonal in nature? Yes___ No X
- 5a. State the enterprise's current employment level at the proposed project site:
0
-
- 5b. Will the project involve the relocation of employment positions or assets from one Ohio location to another? Note that relocation projects are restricted in non-distress based Ohio Enterprise Zones. A waiver from the Director of the Ohio Department of Development is available for special limited circumstances. The business and local jurisdiction should contact ODOD early in the discussions.
Yes___ No X
- 5c. If yes, state the locations from which employment positions or assets will be relocated and the location to where the employment positions or assets will be located:
N/A
-
- 5d. State the enterprise's current employment level in Ohio (itemized for full and part-time and permanent and temporary employees):
589 full-time permanent
-
- 5e. State the enterprise's current employment level for each facility to be affected by the relocation of employment positions or assets: N/A
- 5f. What is the projected impact of the relocation, detailing the number and type of employees and/or assets to be relocated? N/A

6a. Has the Enterprise previously entered into an Enterprise Zone Agreement with the local legislative authorities at any site where the employment or assets will be relocated as a result of this proposal? Yes ___ No X

6b. If yes, list the local legislative authorities, date, and term of the incentives for each Enterprise Zone Agreement: N/A

7. Does the Enterprise owe :

a. Any delinquent taxes to the State of Ohio or a political subdivision of the state?
Yes ___ No X

b. Any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State? Yes ___ No X to the best of the undersigned's knowledge

c. Any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.
Yes ___ No X - to the best of the undersigned's knowledge

d. If yes to any of the above, please provide details of each instance including but not limited to the location, amounts and/or case identification numbers (add additional sheets if necessary).

N/A

8. Project Description (attach additional pages if necessary):

Construct an approximately 160,000 SF Pipe Distribution Facility with approximately 6 acres of pipe lay down / outside storage area.

9. Project will begin July 12, 2017 and be completed April 2018 provided a tax exemption is provided.

10a. Estimate the number of new employees the business intends to hire at the facility that is the project site (job creation projection must be itemized by full and part-time and permanent and temporary): 36 Full-time permanent positions, 0 part-time or temporary positions.

10b. State the time frame of this projected hiring: 3 years

- 10c. State proposed schedule for hiring (itemize by full and part-time and permanent and temporary employees): 36 employees will be hired within 36 months – all permanent, full-time
- 11a. Estimate the amount of annual payroll such new employees will add \$1,500,000 (new annual payroll must be itemized by full and part-time and permanent and temporary new employees).
- 11b. Indicate separately the amount of existing annual payroll relating to any job retention claim resulting from the project: \$ N/A
12. Market value of the existing facility as determined for local property taxation.
\$ 0
- 13a. Business's total current investment in the facility as of the proposal's submission.
\$ 0
- 13b. State the businesses' value of on-site inventory required to be listed in the personal property tax return of the enterprise in the return for the tax year (stated in average \$ value per most recent 12 month period) in which the agreement is entered into (baseline inventory):
\$ 0
14. An estimate of the amount to be invested by the enterprise to establish, expand, renovate or occupy a facility:
- | | <u>Minimum</u> | <u>Maximum</u> |
|---------------------------------------|---------------------|----------------|
| A.Acquisition of Buildings: | \$ | \$ |
| B.Additions/New Construction: | \$10,900,000 | \$ |
| C.Improvements to existing buildings: | \$ 0 | \$ |
| D.Machinery & Equipment: | \$ 2,010,000 | \$ |
| E.Furniture & Fixtures: | \$ 250,000 | \$ |
| F.Inventory: | \$ 0 | \$ |
| Total New Project Investment: | \$13,160,000 | \$ |
15. a. Business requests the following tax exemption incentives: 100 % for 10 years covering real property only as described above. Be specific as to type of assets, rate, and term.
-
-

b. Business's reasons for requesting tax incentives (be quantitatively specific as possible)

Tax incentive is being requested to defray financing and opportunity costs associated with investing in and locating in the Mercer County area. The incentive would make the Mercer County area more attractive/feasible than the Indiana or Kentucky locations considered.

Submission of this application expressly authorizes Jefferson Township and/or Mercer County to contact the Ohio Environmental Protection Agency to confirm statements contained within this application including item #7 and to review applicable confidential records. As part of this application, the business may also be required to directly request from the Ohio Department of Taxation or complete a waiver form allowing the Ohio Department of Taxation to release specific tax records to the local jurisdictions considering the incentive request.

Applicant agrees to supply additional information upon request.

The applicant affirmatively covenants that the information contained in and submitted with this application is complete and correct and is aware of the ORC Sections 9.66(C)(1) and 2921.13(D)(1) penalties for falsification which could result in the forfeiture of all current and future economic development assistance benefit as well as a fine of not more than \$1,000 and/or a term of imprisonment of not more than six months.

Ferguson Enterprises, Inc. 10-9-2017
Name of Enterprise Date

Kirk Wall Chief Executive Officer or Authorized Co. Rep.
Signature Kirk Wall - Senior Director of Facilities
Typed Name and Title

* A copy of this proposal must be forwarded by the local governments to the affected Board of Education along with notice of the meeting date on which the local government will review the proposal. Notice must be given a minimum of fourteen (14) days prior to the scheduled meeting to permit the Board of Education to appear and/or comment before the legislative authorities considering the request.

** Attach to Final Enterprise Zone Agreement as Exhibit A

Please note that copies of this proposal must be included in the finalized Enterprise Zone Agreement and be forwarded to the Ohio Department of Taxation and the Ohio Development Services Agency within fifteen (15) days of final approval.

OHIO ENTERPRISE ZONE AGREEMENT

COPY

This agreement made and entered into by and between the Mercer County Commissioners of Mercer County, Ohio, with its main offices located at 220 W. Livingston Street, Celina, Ohio 45822, the Jefferson Township Trustees of the Township of Jefferson, Mercer County, Ohio, with its main office located at Havemann Road, Celina, Ohio 45822 (hereinafter referred to as the Township) and Ferguson Enterprises, Inc., a Virginia Corporation with its main offices located at 12500 Jefferson Ave., Newport News, VA 23602 (hereinafter referred to as "enterprise"), WITNESSETH;

WHEREAS, Mercer County and Jefferson Township have encouraged the development of real property and the acquisition of personal property located in the area designated as an Enterprise Zone; and

WHEREAS, Ferguson Enterprises, Inc. is desirous of purchasing land and constructing a pipe distribution facility i.e., construction of a new (160,000 sf) one hundred sixty thousand square foot facility with approximately 6 acres of pipe lay down / outside storage area and will create employment opportunities. (hereinafter referred to as the "PROJECT") within the boundaries of the aforementioned Enterprise Zone, provided that the appropriate development incentives are available to support the economic viability of said PROJECT; and

WHEREAS, the Director of Development of the State of Ohio by Resolution No. 6-93 adopted August 9, 1993, designated the area as an "Enterprise Zone" pursuant Chapter 5709 of the Ohio Revised Code; and

WHEREAS, effective August 10, 1993, the Director of Development of the State of Ohio determined that the aforementioned area designated in said Resolution No. 6-93 contains

the characteristics set forth in Section 5709.61(A) of the Ohio Revised Code and certified said area as an Enterprise Zone under said Chapter 5709; and

WHEREAS, Mercer County and Jefferson Township having the appropriate authority for the stated type of project is desirous of providing Ferguson Enterprises, Inc. with incentives available for the development of the PROJECT in said Enterprise Zone under Chapter 5709 of the Ohio Revised Code; and

WHEREAS, Ferguson Enterprises, Inc. has submitted a proposed agreement application (herein attached as Exhibit A) to Mercer County and Jefferson Township said application (hereinafter referred to as "APPLICATION"); and

WHEREAS, Ferguson Enterprises, Inc. has remitted the required state application fee of \$750.00 made payable to the Ohio Development Services Agency with the application to be forwarded with the final agreement; and

WHEREAS, Jerry Laffin, County Commissioner, and Kent Marbaugh, Township Trustee, have investigated the application of Ferguson Enterprises, Inc. and has recommended the same to the Mercer County Board of Commissioners and Jefferson Township Trustees on the basis that Ferguson Enterprises, Inc. is qualified by financial responsibility and business experience to create and preserve employment opportunities in said Enterprise Zone and improve the economic climate of the County of Mercer, Township of Jefferson; and

WHEREAS, the project site as proposed by Ferguson Enterprises, Inc. is located in the Celina City School District and the Board of Education of the Celina City School District has been notified in accordance with Section 5709.83 and been given a copy of the APPLICATION; and

WHEREAS, pursuant to Section 5709.62(C), and in conformance with the format required under Section 5709.631 of the Ohio Revised Code, the parties hereto desire to set forth their agreement with respect to matters hereinafter contained;

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. Ferguson Enterprises, Inc. shall construct a new (160,000 sf) one hundred sixty thousand square foot facility (\$10,900,000) located at 8400 Albers Road to be used in the distribution of plumbing products to their branches and will create employment opportunities in Jefferson Township, Ohio.

In addition, Ferguson Enterprises, Inc. will purchase and install new machinery and equipment (\$2,010,000) as well as furniture and fixtures (\$250,000) for a total investment of \$13,160,000.

The PROJECT will begin July 12, 2017 and all acquisition, construction and installation will be completed by April, 2018.

The project will involve a total investment by Ferguson Enterprises, Inc. of no less than Thirteen Million One Hundred Sixty Thousand and 00/100 (\$13,160,000.00) Dollars at 8400 Albers Road, Jefferson Township, Celina, Ohio as more fully set forth in their ODSA Ohio Enterprise Zone Program application attached hereto and incorporated by reference.

2. Ferguson Enterprises, Inc. shall create within a time period not exceeding 36 months after the commencement of construction of the aforesaid facility, the equivalent of 36 new full-time permanent job opportunities, 0 new part-time permanent job opportunities, 0 full-time temporary job opportunities and 0 part-time temporary job opportunities.

Ferguson Enterprises, Inc. currently has 0 full-time permanent employees, 0 part-time permanent employees, 0 full-time temporary employees, and 0 part-time permanent employees at the project site. In total, Ferguson Enterprises, Inc. has 589 full-time permanent employees, 0 part-time permanent employees, 0 full-time temporary employees, and 0 part-time temporary employees in the State of Ohio.

This increase in the number of employees will result in approximately (\$ 1,500,000.00) (One Million Five Hundred thousand) dollars of additional annual payroll for Ferguson Enterprises, Inc. . The following is an itemization by the type of new jobs created: full-time permanent \$ 1,500,000.00 , full-time temporary \$ 0 , part-time permanent \$ 0 , and part-time temporary \$ 0 .

3. In any three-year period during which this agreement is in effect, if the actual number of employee positions created or retained by Ferguson Enterprises, Inc. is not equal to or greater than seventy-five per cent of the number of employee positions estimated to be

created or retained under this agreement during that three-year period, Ferguson Enterprises, Inc. shall repay the amount of taxes on property that would have been payable had the property not been exempted from taxation under this agreement during that three-year period. In addition, Mercer County or Jefferson Township may terminate or modify the exemptions from taxation granted under this agreement.

4. Ferguson Enterprises, Inc. shall provide to the proper Tax Incentive Review Council any information reasonably required by the council to evaluate the enterprise's compliance with the agreement, including returns filed pursuant to section 5711.02 of the Ohio Revised Code if requested by the council.

Ohio Development Services Agency suggests enterprises receiving personal property tax incentives be required to supply a copy of the Ohio Department of Taxation State Tax return form 913 to the Tax Incentive Review Council for each year the agreement is in effect or required to be reviewed.

5. The Ohio legislature has eliminated the tangible personal property tax. By law, the following clause remains a requirement of this agreement: Mercer County and Jefferson Township hereby grant a 0% tax exemption pursuant to Section 5709.632 for eligible new tangible personal property including inventory acquired in conjunction with the PROJECT and will only apply to the limits expressed in the project description as defined in Sections 1 and 5 of this agreement.

0% tax exemption on all machinery, equipment and inventory acquired as part of the PROJECT as defined in Section 1 of this agreement and as more fully set forth in their ODSA Ohio Enterprise Zone Program application attached hereto and incorporated by reference. Each identified project improvement will receive a zero year exemption period.

The minimum investment for tangible personal property to qualify for the exemption is \$2,010,000 to purchase machinery and equipment first used in business at the facility as a result of the project, \$250,000 for furniture and fixtures and other noninventory personal property first used in business at the facility as a result of the project, and \$0 for new inventory. The maximum investment for tangible personal property to qualify for exemption is \$2,010,000 to purchase machinery and equipment first used in business at the facility as a result of the project, \$250,000 for furniture and fixtures and other noninventory personal property first used in business at the facility as a result of the project, and \$0 for new inventory. The exemption commences the first year for which the tangible personal property would first be taxable were that property not exempted from taxation. No exemption shall commence after tax return year 2018 nor extend beyond tax return year 2018. In no instance shall any tangible personal property be exempted from taxation for more than ten return years.

6. Mercer County and Jefferson Township hereby grant Ferguson Enterprises, Inc. a tax exemption of 100% for real property improvements made to the PROJECT site pursuant to Section 5709.632 of the Ohio Revised Code. This identified improvement will receive a 10-year exemption period. The exemption commences the first year for which the Real Property exemption would be taxable were that property not exempted from taxation. Total exempted Real Property shall not exceed \$10,900,000 during the life of the project. Ferguson Enterprises, Inc. must file appropriate tax forms (DTE 23) with the County Auditor and (#913) with the State Department of Taxation to effect and maintain the exemptions covered in this agreement. The #913 must be filed annually.

7. Ferguson Enterprises, Inc. shall pay such real and tangible personal property taxes as are not exempted under this agreement and are charged against such property and shall file all tax reports and returns as required by law. Ferguson Enterprises, Inc. 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. Mercer County and Jefferson Township hereby waives any annual monitoring fee in conjunction with this project.
8. Mercer County and Jefferson Township shall perform such acts as are reasonably necessary or appropriate to effect, claim, reserve, and maintain exemptions from taxation granted under this agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions.
9. If for any reason the Enterprise Zone designation expires, the Director of the Ohio Development Services Agency revokes certification of the zone, or Mercer County or Jefferson Township revokes the designation of the zone, entitlements granted under this agreement shall continue for the number of years specified under this agreement, unless Ferguson Enterprise, Inc. materially fails to fulfill its obligations under this agreement and Mercer County and/or Jefferson Township terminates or modifies the exemptions from taxation granted under this agreement.
10. If Ferguson Enterprises, Inc. materially fails to fulfill its obligations under this agreement, or if Mercer County or Jefferson Township determines that the certification as to delinquent taxes required by this agreement is fraudulent, Mercer County or Jefferson Township may terminate or modify the exemptions from taxation granted under this agreement.
11. Ferguson Enterprises, Inc. hereby certifies that at the time this agreement is executed, Ferguson Enterprises, Inc. 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 Ferguson Enterprises, Inc. is liable under Chapter 5733., 5735., 5739., 5741., 5743., 5747., or 5753. of the Revised Code, or, if such delinquent taxes are owed, Ferguson Enterprises, Inc. currently is 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 Ferguson Enterprises, Inc. 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.
12. Ferguson Enterprises, Inc. affirmatively covenants that it does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State; (2) any moneys to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a state agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not.
13. Ferguson Enterprises, Inc. and Mercer County and Jefferson Township acknowledge that this agreement must be approved by formal action of the legislative authority of Celina City School District as a condition for the agreement to take effect. This agreement takes effect upon such approval.

14. Mercer County and Jefferson Township have developed a policy to ensure recipients of Enterprise Zone tax benefits practice non-discriminating hiring in its operations. By executing this agreement, Ferguson Enterprises, Inc. is committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
15. Exemptions from taxation granted under this agreement shall be revoked if it is determined that Ferguson Enterprises, Inc., any successor enterprise, or any related member (as those terms are defined in Section 5709.61 of the Ohio Revised Code) has violated the prohibition against entering into this agreement under Division (E) of Section 3735.671 or Section 5709.632 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections.
16. Ferguson Enterprises, Inc. affirmatively covenants that it has made no false statements to the State or local political subdivision in the process of obtaining approval for the Enterprise Zone incentives. If any representative of Ferguson Enterprises, Inc. has knowingly made a false statement to the State or local political subdivision to obtain the Enterprise Zone incentives, Ferguson Enterprises, Inc. shall be required to immediately return all benefits received under the Enterprise Zone Agreement pursuant to ORC Section 9.66 (C)(2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66(C)(1). 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 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.
17. This agreement is not transferrable or assignable without the express, written approval of Mercer County and/or Jefferson Township.

IN WITNESS WHEREOF, Mercer County, by its Board of Commissioners and the Township, by its Board of Trustees, Ohio, and pursuant to County Resolution) No. _____, and Township Resolution No. _____ and has caused this instrument to be executed this _____ day of November, 2017 and Ferguson Enterprises, Inc. by Kirk Wall, its Senior Director of Facilities, has caused this instrument to be executed on this _____ day of November, 2017.

Mercer County Commissioners:

By _____
Jerry Laffin, Chairman

By _____
Greg Homan

By _____
Rick Muhlenkamp

Jefferson Township, Board of Trustees:

By _____
Kent Marbaugh, Trustee

By _____
Nick Laux, Trustee

By _____
Keith Houts, Trustee

Ferguson Enterprises, Inc.

By _____
Chief Executive Officer or Authorized
Company Representative
Kirk Wall – Senior Director of Facilities

Approved as to form:

Mercer County Prosecuting Attorney Office