

**ORDINANCE NO. 2020-\_\_**

OCT 9 '20 PM 2:49

RCUD

**AN ORDINANCE OF ORANGE COUNTY, FLORIDA RELATING TO TAXATION; GRANTING AN ECONOMIC DEVELOPMENT EXEMPTION FROM CERTAIN AD VALOREM TAXATION FOR THE SHERWIN-WILLIAMS COMPANY, AN EXPANSION OF AN EXISTING BUSINESS; PROVIDING FOR DEFINITIONS; PROVIDING FINDINGS; PROVIDING FOR THE ESTIMATED REVENUE LOSS ATTRIBUTABLE TO THE EXEMPTION GRANTED TO THE SHERWIN-WILLIAMS COMPANY; PROVIDING THE LEVEL OF EXEMPTION AND TERM THE EXEMPTION WILL REMAIN IN EFFECT; PROVIDING FOR APPLICABILITY; PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Article VII, Section 3, of the Florida Constitution, and Section 196.1995, Florida Statutes, authorize granting of economic development ad valorem tax exemptions to qualifying new businesses and expansions of existing businesses upon the successful passage of a referendum; and

**WHEREAS**, the electors of Orange County authorized the granting of such exemptions by the successful passage of a referendum held on January 31, 2012; and

**WHEREAS**, subsequent to the passage of such referendum, on February 2, 2012, the Orange County Board of County Commissioners enacted Ordinance No. 2012-05, entitled the "Orange County Economic Development Ad Valorem Tax Exemption Ordinance" ("Program Ordinance"), to establish a program ("Program") for granting such exemptions from certain ad valorem taxation for qualifying new businesses and expansions of existing businesses, and to provide procedures and guidelines for the submissions of applications for the Board's consideration of granting such exemptions; and

**WHEREAS**, The Sherwin-Williams Company, an Ohio corporation ("Company"), submitted an application for an exemption for an expansion of an existing business ("Application"); and

**WHEREAS**, the Application indicates that the Company's business will result in an economic benefit to Orange County through the creation of greater employment opportunities in Orange County; and

**WHEREAS**, the Company has met the requirements to qualify as an expansion of an existing business under the Program; and

**WHEREAS**, the Office of the Property Appraiser has reviewed the Application, and has provided the report required by the Program Ordinance; and

48 WHEREAS, all requirements of state law and the Program Ordinance have been  
satisfied.

50 BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF  
ORANGE COUNTY, FLORIDA:

52 *Section 1. Enactment of New Economic Development Tax Exemption Ordinance.*

A new economic development exemption from certain ad valorem taxation for The Sherwin-  
54 Williams Company is enacted to read as follows:

56 **Title.** This Ordinance shall be known as the “The Sherwin-  
Williams Company Economic Development Ad Valorem Tax  
Exemption Ordinance.”

58 **Definitions.** All terms used in this Ordinance in capitalized  
60 form, unless otherwise defined in this Ordinance, shall have the  
same meanings as ascribed to them in the Program Ordinance.

62 **Findings.** The Board, based on the Application submitted  
64 by the Company regarding its facility located at 2150 West Sand  
Lake Road, Orlando, Florida 32809 (“Expanding Business”), and  
66 the report of the Property Appraiser, and in accordance with the  
procedures set forth in the Program Ordinance, finds that the  
68 Company has met all the requirements of the Program Ordinance  
and meets the requirements of Section 196.012(15), Florida  
70 Statutes, and that granting the Exemption granted by this  
Ordinance will result in an economic benefit to Orange County.

72 **Ad valorem tax revenues.** The total amount of revenue  
74 available to the County from ad valorem tax sources for the current  
fiscal year is Six Hundred Thirty-Five Million, Seven Hundred  
76 Sixty-Three Thousand, Forty-Eight and 00/100 Dollars  
(\$635,763,048.00). The total amount of revenue lost to the County  
78 for the current fiscal year by virtue of Exemptions currently in  
effect is One Hundred Thirty-Eight Thousand Twenty-Nine and  
80 00/100 Dollars (\$138,029.00). The Improvements made by or for  
the use of the Company’s Expanding Business and the Tangible  
82 Personal Property of such Expanding Business are anticipated to  
first appear on the Orange County ad valorem tax assessment roles  
84 on or after tax year 2020. The estimated revenue loss to the  
County during the current fiscal year if the Exemption applied for  
86 in the Application was granted for the current fiscal year is Ninety-

88 Five Thousand Four Hundred Five and 00/100 Dollars  
(\$95,405.00).

90 **Level and Term of Exemption; Expiration Date.** Based  
92 upon the information provided by the Company as to the number  
of jobs to be created and the estimated average annual salaries for  
94 such jobs, the Company qualifies for a Level 1 Exemption (fifty  
percent (50%) for a period of five (5) years) to commence on  
96 January 1<sup>st</sup> of the year in which the Improvements made by or for  
the use of the Company's Expanding Business and/or any Tangible  
98 Personal Property of such Expanding Business first appear on the  
Orange County ad valorem tax assessment rolls, and shall expire  
on December 31<sup>st</sup> of the fifth tax year thereafter. The ability to  
100 receive an Exemption for the period granted is conditioned upon  
the Company: 1) executing the agreement in substantially the form  
102 attached hereto as **Exhibit "A,"** attached hereto ("Agreement"); 2)  
maintaining the Expanding Business throughout the five (5) year  
104 Exemption period; and 3) continued compliance with the  
requirements of this Ordinance and the Program Ordinance,  
106 including, but not limited to, the submission of an annual renewal  
statement and an annual report. Should the Company fail to satisfy  
108 the conditions set forth in this Ordinance, the Board may revoke  
the Exemption or take such other action with respect to the  
110 Exemption as it deems appropriate, as provided for in the Program  
Ordinance or the Agreement.

112 **Grant of Exemption.** After consideration of the  
114 Application, which includes the report of the Property Appraiser as  
required by the Program Ordinance, and applying the exemption  
116 criteria set forth in Section 7 thereof, the Board hereby grants and  
establishes an Exemption of fifty percent (50%) of the assessed  
118 value of the Improvements made by or for the use of the  
Company's Expanding Business located at 2150 West Sand Lake  
120 Road, Orlando, Florida 32809, and of all Tangible Personal  
Property of such Expanding Business for a period of five (5) years,  
122 provided that the Improvements are made or the Tangible Personal  
Property is added or increased on or after the day this Ordinance is  
124 adopted. As a condition to receiving the Exemption, the Company  
shall abide by the terms and conditions set forth in this Ordinance  
126 and the Program Ordinance, and any and all amendments thereto,  
including, but not limited to, entering into the Agreement with the  
128 County to ensure that the Company satisfies all requirements  
associated with the granting and continuation of the Exemption, as  
130 well as any policies and procedures related to the Program, as may  
be adopted from time to time. Failure to abide by the same may  
132 result in a modification to the Exemption, a revocation of the

134 Exemption, and/or the recovery of all taxes not paid on Tangible  
135 Personal Property as a result of the Exemption, as provided for in  
136 the Program Ordinance. No Exemption shall be granted for the  
land upon which the Company's Expanding Business is located.

138 **Applicability.** The Exemption shall apply only to ad  
139 valorem taxes levied by the County. The Exemption shall not  
140 apply to taxes or assessments levied by any County municipal  
141 service taxing or benefit unit, municipality, school district, or water  
142 management district, or to taxes levied for the payment of bonds or  
143 taxes authorized by a vote of electors pursuant to Section 9(b) or  
144 12, Article VII of the Florida Constitution.

146 **Nullification of the Exemption.** In the event that,  
147 subsequent to the adoption of this Ordinance, the Administrator  
148 receives written notice that the Company has determined not to  
149 undertake or complete the activity giving rise to the Exemption  
150 granted pursuant to this Ordinance, the Exemption so granted shall  
151 be void, shall not take effect, and shall not be implemented. If  
152 such notice is received, this section shall be self-executing and no  
153 further action of the Board will be required to void the Exemption.  
154 Following the County's receipt of such notice, the Administrator  
155 shall forward a copy thereof to the Property Appraiser along with a  
156 copy of this Ordinance.

158 **Section 2. Effective date.** This ordinance shall become effective as provided by  
general law.

160 ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2020.

**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

164 By: \_\_\_\_\_  
165 Jerry L. Demings  
166 Orange County Mayor

168 **ATTEST:** Phil Diamond, CPA, County Comptroller  
169 As Clerk of the Board of County Commissioners

170 By: \_\_\_\_\_  
171 Deputy Clerk

**ECONOMIC DEVELOPMENT AD VALOREM TAX EXEMPTION  
AGREEMENT**

The Sherwin-Williams Company  
(2150 West Sand Lake Road, Orlando, Florida 32809)

**THIS AGREEMENT** is made as of the \_\_\_\_ day of \_\_\_\_\_, 2020 ("Effective Date"), by and between Orange County, Florida, a charter county and political subdivision of the State of Florida ("County") and The Sherwin-Williams Company, a Ohio corporation ("Company")(collectively referred to herein as the "Parties").

**WITNESSETH:**

**WHEREAS**, Article VII, Section 3, of the Florida Constitution, and Section 196.1995, Florida Statutes, authorize the granting of economic development ad valorem tax exemptions to qualifying new businesses and expansions of existing businesses upon the successful passage of a referendum; and

**WHEREAS**, the electors of Orange County have authorized the granting of such exemptions by the successful passage of a referendum held on January 31, 2012; and

**WHEREAS**, subsequent to the passage of such referendum, on February 2, 2012, the Board of County Commissioners of Orange County ("Board") enacted Ordinance No. 2012-05, the "Orange County Economic Development Ad Valorem Tax Exemption Ordinance" ("Program Ordinance") to establish a program for granting such exemptions from certain ad valorem taxation for certain new businesses and expansions of existing businesses ("Program") and to provide procedures and guidelines for the application and consideration of same; and

**WHEREAS**, the Company applied for such an exemption under the Program for an expansion of an existing business to be located at 2150 West Sand Lake Road, Orlando, Florida 32809 in Orlando, Florida 32837 ("Expanding Business"); and

**WHEREAS**, all affected and interested agencies reviewed said application, and provided comments on the granting of such an exemption; and

**WHEREAS**, all requirements of state law and the Program Ordinance were satisfied with respect to the granting of such an exemption; and

**WHEREAS**, on the date of this Agreement, the Board enacted an Ordinance, the (the "Exemption Ordinance") which granted an exemption from certain ad valorem taxation for the Company's Expanding Business under the Program, as more specifically set forth in the Exemption Ordinance; and

**WHEREAS**, pursuant to the Program Ordinance and the Exemption Ordinance, as a condition to receiving the Exemption, the Company is required to, among other things,

enter into an agreement with the County to ensure that the Company satisfies all requirements associated with the granting and continuation of the Exemption for the Expanding Business, as well as any policies and procedures related to the Program as may be adopted from time to time; and

**WHEREAS**, the County and the Company desire to enter into this Agreement to satisfy the referenced requirement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

**Section 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein by reference.

**Section 2. Incorporation of Ordinances.** The Program Ordinance and Exemption Ordinance, copies of which are attached hereto as **Exhibit "A"** and **Exhibit "B,"** respectively, are incorporated herein by this reference.

**Section 3. Definitions.** All terms used in this Agreement in capitalized form, unless otherwise defined in this Agreement, shall have the same meanings as ascribed to them in the Program Ordinance and Exemption Ordinance.

**Section 4. Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall remain in effect until the later of December 31<sup>st</sup> of the fifth (5th) tax year after January 1<sup>st</sup> of the year in which the Improvements made by or for the use of the Company's Expanding Business and/or the Tangible Personal Property of such Expanding Business first appear on the Orange County ad valorem tax assessment rolls, or the date on which all of the obligations of the Parties provided for in this Agreement have been satisfied.

**Section 5. Exemption.** The Company has been granted an Exemption on the assessed value of all Improvements made by or for the use of the Company's Expanding Business to be located at 2150 West Sand Lake Road, Orlando, Florida 32809, of all Tangible Personal Property of such Expanding Business, provided that the Improvements are made or the Tangible Personal Property is added or increased on or after January 1, 2020. Subject to the limitations provided for in the Program Ordinance, the Exemption so granted shall remain in effect for a period of five (5) tax years commencing on January 1<sup>st</sup> of the year in which the Improvements made by or for the use of the Company's Expanding Business and/or the Tangible Personal Property of such Expanding Business first appear on the Orange County ad valorem tax assessment rolls, and expiring on December 31<sup>st</sup> of the fifth (5th) tax year thereafter. The Exemption shall apply only to taxes levied by the County. The Exemption shall not apply to taxes or assessments levied by a municipality, municipal service benefit or taxing unit, school district, or water management district, or to taxes levied for the payment of bonds or taxes authorized by a vote of the electors pursuant to Section 9(b) or 12, Article VII of the Florida Constitution.

**Section 6. Conditions Precedent.** The Company's ability to receive the Exemption for the period granted is conditioned upon the Company's continued compliance with the requirements of the Program Ordinance, and any amendments thereto, throughout the five (5) year Exemption period, including, but not limited to:

- A. The Company locating its business at 2150 West Sand Lake Road, Orlando, Florida 32809;
- B. The Company maintaining at the site of the Expanding Business at least fourteen (14) Full-Time Equivalent Employees with Average Annual Wages of at least One Hundred Fifty Percent (150%) of the Average Annual Wage in the County in accordance with the following schedule: 14 jobs by December 31, 2021;
- C. The Company's submission of an annual renewal statement certifying that the information provided in the original application has not changed and an annual report to the Administrator on or before March 1<sup>st</sup> of each year reporting on the status of the Expanding Business, evidencing continued performance of the conditions set forth in the application and containing such other information as shall be deemed necessary by the Property Appraiser and the Administrator for determining such continuing performance including the forms listed in Section 7 below;
- D. Compliance by the Company with the terms of this Agreement;
- E. Compliance by the Company with any policies and procedures related to the Program as may be adopted from time to time;
- F. Compliance by the Company with federal, state, or local laws and regulations;
- G. Notification of a change in ownership of the Company in writing within ten (10) days of such change;
- H. Compliance by the Company with all filings required pursuant to Section 196.011, Florida Statutes (including the annual filing of an application for an Exemption with the Orange County Property Appraiser);
- I. Notification of any material change in the operation of the Expanding Business.

**Section 7. Performance Monitoring and Annual Report.**

- A. Job Performance. Each Annual Report submitted by the Company to the County must include a then current Florida New Hire Form, Florida Department of Revenue UCT 6 Form, a Federal Employment Tax Form 941, the Company's HR Report, and such other information with respect to the Expanding Business as the County deems necessary to verify that the Company is maintaining the required number of Full-Time Equivalent Employees at the required amount of Average Annual Wages.
- B. Maintenance and Review of Records. The Company shall maintain adequate records and accounts, including but not limited to, property, personnel, operations and financial records and supporting documentation as they pertain to the Exemption, the Expanding Business and this Agreement for a period of

three (3) years from the expiration of the term of this Agreement (the "Audit Period"). The County and its authorized agents shall have the right, and the Company and its subcontractors, as applicable will permit the County and its authorized agents, to examine all such records, accounts and documentation and to make copies thereof, and excerpts or transcriptions therefrom and to audit all contracts, invoices, materials, accounts and records relating to all matters covered by this Agreement, including but not limited to, personnel and employment records for the Audit Period. All such records, accounts and documentation shall be made available to the County and its authorized agents for audit, examination or copying purposes at any time during normal business hours and as often as the County may deem necessary during the Audit Period. The County's right to examine, copy and audit shall pertain likewise to any audits made by any other agency, whether local, State or federal. The Company shall insure that any subcontractor providing any services associated with this Agreement shall recognize the County's right to examine, inspect and audit its records, accounts and documentation in connection with such services. If an audit is begun by the County or other agency, whether local, State or federal, during the Audit Period, but is not completed by the end of the Audit Period, the Audit Period shall be extended until audit findings are issued. This Article shall survive the expiration or earlier termination of this Agreement.

#### **Section 8. Events of Default; Remedies.**

##### **A. Events of Default.**

Each of the following shall constitute an event of default ("Event of Default") on the part of the Company:

1. The failure of the Company to comply with each of the terms, covenants, conditions, obligations or provisions of this Agreement;
2. Fraud or material misrepresentation by the Company with respect to the Application, any term or condition of this Agreement or the Program.

##### **B. Remedies**

1. In the event of the occurrence of an Event of Default, the County shall be entitled to pursue all rights and remedies available under the Program Ordinance and the right to terminate this Agreement as provided for in Section 9 of this Agreement. In the event the County, at the discretion of the Board, exercises its contractual right of termination, the County shall be entitled to recover immediately upon demand from the Company an amount equal to all taxes not paid by the Company as a result of the Exemption as provided in the Program Ordinance and the Exemption Ordinance.



2. The Parties agree that the County shall have the specific rights and remedies set forth in this Agreement. Such rights and remedies are in addition to and cumulative with any and all other rights or remedies, now or hereafter available to the County at law or in equity in order to enforce the provisions of this Agreement. The exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy nor shall any such delay or omission be construed to be a waiver of or acquiescence to any Event of Default. The exercise of any such right or remedy by the County shall not release the Company from its obligations or any liability under this Agreement, except as expressly provided for in this Agreement or as necessary to avoid duplicative recovery from or payments by the Company.

**Section 9. Termination.** Upon the occurrence of an Event of Default, the County shall have the right to terminate this Agreement, and, in such case, upon receipt by the County from the Company of the payment of an amount equal to all taxes not paid by the Company on Tangible Personal Property as a result of the Exemption, the Parties shall have no further rights or obligations under this Agreement.

**Section 10. Liability and Indemnification.** By entering into this Agreement, the County does not assume any liability for the acts or omissions or negligence of the Company, its agents, servants or employees; nor will the Company exclude liability for its own acts or omission or negligence to the County. Moreover, the County neither waives any defense of sovereign immunity under section 768.28, Florida Statutes, as may be amended, nor increases the limits of its liability by entering into this Agreement. The Company shall defend, indemnify and hold harmless the County, from and against any and all losses, liabilities, costs, expenses, damages, claims, demands, actions, suits, judgments and other obligations, including without limitation, attorneys' fees, expenses and court costs at the trial and all appellate levels, arising from or as a result of personal injury, or property damage resulting from the acts or omissions of the Company or from any of the Company's activities as described in or performed under this Agreement.

**Section 11. Non-Discrimination.** The Company will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, handicap or marital status. The Company will take affirmative action to ensure equal opportunity in recruitment advertising, and that employees are treated during employment (employment, upgrading, demotion or transfer; layoff or termination; rate of pay or other forms of compensation; and selection for training), without regard to their race, color, religion, sex, national origin, age, handicap or marital status.

**Section 12. Assignment.** Neither Party may assign or otherwise transfer its rights, duties or obligations under this Agreement, in whole or in part, without the prior written consent of the other Party, which consent will not be unreasonably withheld.

**Section 13. Waiver.** A waiver of any performance or default by either Party shall not be construed to be a continuing waiver of other defaults or non-performance of the same provision or operate as a waiver of any subsequent default or non-performance of the terms, covenants and conditions of this Agreement.

**Section 14. Compliance with Laws.** Each Party shall comply with all applicable federal, state and local laws, rules, regulations and guidelines, relative to the performance of this Agreement.

**Section 15. Independent Contractor.** Nothing in this Agreement shall be construed to create a relationship of employer and employee, or principle and agent, partnership, joint venture, or any other relationship between the Parties other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement.

**Section 16. Governing Law; Venue.** This Agreement shall be construed in accordance with and be governed for all purposes by the laws of the State of Florida applicable to contracts executed and to be wholly performed within such state. Venue for any proceeding pertaining to this Agreement shall be in Orange County, Florida.

**Section 17. Severability.** If any covenant, condition, provision, term or agreement of this Agreement shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, the remaining covenants, conditions, provisions, terms and agreements of this Agreement shall not be affected thereby, but each covenant, condition, provision, term or agreement of this Agreement shall be valid and enforced to the fullest extent permitted by law.

**Section 18. Headings.** Article headings have been included in this Agreement solely for the purpose of convenience and shall not affect the interpretation of any of the terms of this Agreement.

**Section 19. Notice.** All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed properly given when received if sent by personal delivery, or by certified United States Mail, postage prepaid, return receipt requested, addressed as follows:

To the County:

Orange County Administrator  
P.O. Box 1393  
Orlando, Florida 32802

With copy to:

Economic Development Administrator  
P.O. Box 1393

201 S. Rosalind Avenue, 5<sup>th</sup> Floor  
Orlando, Florida 32802-1393

To the Company:

The Sherwin-Williams Company  
Attn: \_\_\_\_\_  
101 West Prospect Avenue  
Cleveland, Ohio 44114

Each Party may by written notice to the other specify a different address for subsequent notice purposes. Notice shall be deemed effective on the date of actual receipt or three (3) days after the date of mailing whichever is earlier.

**Section 20. Counterparts.** This Agreement may be executed by the Parties in any number of separate identical counterparts, no one of which need be signed by both of the Parties so long as each of the Parties has signed at least one such identical counterpart. Each such identical counterpart, when signed and delivered by one or both of the Parties, shall constitute an original instrument and all such counterparts shall constitute one and the same instrument.

**Section 21. Amendments.** This Agreement may be amended only by written instrument upon mutual consent of both Parties.

**Section 22. Land Development Regulations.** Notwithstanding anything contained in this Agreement to the contrary, the County does not, by this Agreement, abrogate any right it may have to grant or deny any particular land development regulatory approval, zoning classification or any applicable permit or approval.

**Section 23. Survivability.** Any term, condition, covenant or obligation which requires performance by either Party subsequent to termination of this Agreement shall remain enforceable against such Party subsequent to such termination.

**Section 24. No Third Party Beneficiary.** This Agreement is for the benefit of the Parties, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person, corporation or governmental entity or agencies, other than the Parties, any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof.

**Section 25. Representations and Warranties.** Each Party hereby represents and warrants to the other that it has all the requisite power, authority and authorization to enter into this Agreement, has taken all necessary actions required to enter into this Agreement, and to fulfill any and all of its obligations, duties and responsibilities provided for or required of it by this Agreement, whether exercised individually or collectively.

**Section 26. Entire Agreement.** The foregoing terms and conditions constitute the entire agreement between the Parties and any representation not contained herein shall be null and void and of no force and effect.

**IN WITNESS WHEREOF**, the County and the Company have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**ORANGE COUNTY, FLORIDA**  
By: Board of County Commissioners

By: \_\_\_\_\_  
By: Jerry L. Demings,  
Orange County Mayor

**ATTEST:** Phil Diamond, CPA, County Comptroller  
As Clerk of the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

**THE SHERWIN-WILLIAMS COMPANY**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:** \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by means of  physical presence or  online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_ (printed name), \_\_\_\_\_ (title) of The Sherwin-Williams Company, a Ohio corporation, on behalf of the corporation. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public

Name typed, printed or stamped:

\_\_\_\_\_

My Commission Expires; \_\_\_\_\_