

INTERLOCAL COOPERATION AGREEMENT

Between
City of Dayton, Kentucky
And
Dayton Independent School District

THIS INTERLOCAL COOPERATION AGREEMENT ("**Agreement**") is made by and between the City of Dayton, Kentucky, a Kentucky City of the Home Rule Class (the "**City**"), and the Dayton Independent Board of Education (the "**School District**").

WITNESSETH THAT:

WHEREAS, the Kentucky Interlocal Cooperation Act (the "**Act**"), KRS 65.210 through 65.300 permits the City and the School District to make the most efficient use of their powers by enabling them to cooperate on a basis of mutual advantage and thereby provide services and facilities in a manner and form that will best accord with geographic, economic, population and other factors which influence the needs and development of local communities; and

WHEREAS, to promote economic development within the City, the City Council of the City determined to authorize certain incentives within a riverfront development area commonly referred to as the Manhattan Harbour Development Area (the "**Project Area**"); and

WHEREAS, the incentives authorized within the Project Area included the issuance and sale by the City of Industrial Building Revenue Bonds ("**IRBs**") pursuant to Sections 103.200., *et. seq.* of the Kentucky Revised Statutes (the "**IRB Act**") to facilitate the financing and construction of commercial and residential development; and

WHEREAS, in conjunction with the issuance and sale of the IRBs within the Project Area and the corresponding exemption from *ad valorem* real property taxes pursuant to Section 103.285 of the IRB Act, the City, the School District and Manhattan Development Group, LLC, a Kentucky limited liability company (the "**Developer**"), entered into an Agreement in Lieu of Taxes Agreement dated March 26, 2020, as amended by that certain First Amendment to Agreement In Lieu of Taxes dated November 1, 2020 (together, the "**PILOT Agreement**"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, pursuant to Section 5 of the PILOT Agreement, the City has agreed to collect payments in lieu of taxes ("**PILOT Payments**") from the owners of applicable properties within the Project Area and transfer such PILOT Payments to the applicable taxing jurisdictions, including those PILOT Payments due and owing to the School District (the "**School District PILOT Payments**"); and

WHEREAS, the City and School District desire to enter into an agreement which will establish a framework by which the City will collect the School District PILOT Payments from owners of property within the Project Area.

NOW, THEREFORE, in consideration of the mutual covenants and understandings contained herein, the City and the School District agree to as follows:

1. Effective Date and Term. The initial term of this Agreement shall commence on the date upon which this Agreement is fully valid and binding pursuant to Section 14 below (the “**Effective Date**”) and automatically renew for successive one (1) year terms commencing on each July 1 until such time that there are no longer any outstanding IRBs on the tax rolls of the Campbell County Property Valuation Administrator (the “**Campbell County PVA**”). Notwithstanding anything to the contrary contained herein, either party may elect to terminate this Agreement with ninety (90) days advance written notice delivered to the other party prior to the expiration of the then-current annual term. Notwithstanding anything to the contrary contained herein, the School District hereby confirms and ratifies the services rendered by the City for the School District prior to the Effective Date, in preparing invoices for the collection of the School District PILOT Payments (as defined herein) as herein contemplated.

2. Services:
 - A. The City agrees that it shall perform the following services:
 - i. Beginning with calendar year 2024, using (i) the most recent assessed valuation for each parcel exempt pursuant to an IRB (each an “Exempt Parcel”) as shown on the official records of the Campbell County PVA, (ii) the effective *ad valorem* real property tax rate for the School District, and (iii) any other official records of the School District or the Campbell County PVA, the City shall determine the amounts required to be paid by each owner of an Exempt Parcel to the School District pursuant to the PILOT Agreement for the then-current calendar year, and create and deliver invoices for such amounts for further distribution to the owners of the Exempt Parcels;
 - ii. Pursuant to Sections 5 and 6 of the PILOT Agreement, the City will prepare invoices for the School District PILOT Payments attributable to each Exempt Parcel by no later than October 15 of each year during the term of this Agreement. All School District PILOT Payment invoices for the current year will first be delivered to the School District no later than October 15 of each year during the term of this Agreement for review and comment within five (5) business days and then shall be delivered by the City to the owners of the Exempt Parcels by no later than October 30 of each year.
 - iii. By December 15 of each year, the City shall determine whether any School District PILOT Payments are delinquent, and if so, the City shall send updated invoices to each owner of any Exempt Parcel for all delinquent amounts (“**Updated Invoices**”). In accordance with the PILOT Agreement, the City shall add a twelve percent (12%) delinquent penalty to the outstanding balances on each invoice and include a statement informing owners of Exempt Parcels of the ongoing penalty of interest accruing as described in Section 4 of

the PILOT Agreement. The City shall deliver to the School District copies of all Updated Invoices by December 31 of each year.

- iv. By January 15 of each year, the City shall prepare and deliver to the School District a report in Microsoft Excel Format setting forth (i) the total amount of School District PILOT Payments collected as of December 31; (ii) the aggregate amount of the delinquent School District PILOT Payments with penalties thereon; and (iii) the City's annual City Collection Fee retained based upon the School District PILOT Payments actually collected for the corresponding year.
 - v. By February 1 of each year, the City shall disperse all School District PILOT Payments actually received, including delinquent payment fees. Such disbursement shall be exclusive of the City Collection Fee (defined herein).
 - vi. If the City receives any delinquent School District PILOT Payments after February 1, then the City shall deposit such delinquent School District PILOT Payment, withhold the City Collection Fee (defined herein), and transfer the balance to the School District within 30 days of the City's receipt of each delinquent School District PILOT Payment.
 - vii. In consideration for the services provided herein, the City shall retain an amount equal to one and one-half percent (1.5%) of the aggregate School District PILOT Payments actually collected for the then-current year (the "**City Collection Fee**").
 - viii. The City, at the written request of the School District, shall provide access to all documents reasonably necessary for the School District's ongoing collection of delinquent School District PILOT Payments.
- B. The City will supply all tools and means necessary to perform the services, duties and actions and production of those work products specified herein.
 - C. Should any errors caused by the City be found in any services or work products, the City will correct those errors, and if the errors are in final services or products, make such corrections at no additional charge, by revising the services and work products as necessary to eliminate the errors, which may include the City delivering additional invoices to the owners of Exempt Parcels.
3. In the event any School District PILOT Payments remain delinquent as of February 1 of any calendar year, the School District shall pursue any and all remedies available to it at law and under the PILOT Agreement at its sole cost and expense with the City's cooperation, which may include providing statements of such delinquent School District PILOT Payments together with copies all correspondence pertaining to the Exempt Parcels to which such delinquent School District PILOT Payments are attributable.

4. The School District, at the written request of the City, shall provide access to all documents reasonably necessary for the performance of its services and duties under this Agreement. Except as necessary for the performance of its duties under this Agreement, and to the extent not generally known as available to the public, the City shall not use or disclose information concerning the School District without the prior written consent of the School District.
5. All work product provided by the City with respect to the IRBs is to become the property of the School District upon completion and all work product provided by School District with respect to the IRBs is to become the property of the City upon completion. The City and the School District have the full right to use their respective work product in any manner when and where they may determine, without any claim for additional compensation.
6. Any notices to be given hereunder by any party to the other parties may be effected by (i) actual delivery of the notice into the hands of the persons specified to receive such notice, or (ii) by mailing the notice through the U.S. Postal Service via Registered or Certified Mail, Return Receipt Requested, or (iii) by actual delivery of electronic mail. Mailed notices shall be addressed to the Parties at the addresses appearing below, or such other address as given by written notice from one party to the other. The notice shall be deemed to be received in case (i) on the date of its actual receipt by the Party to whom the notice is delivered, and in case (ii) on the date of its mailing. If any change of address occurs, it is a Party's obligation to provide the new address to the other Party.

To the City: City of Dayton, Kentucky
514 Sixth Avenue
Dayton, KY 41074
Attention: Jay Fossett, City Administrator
Email: jfossett@daytonky.com

To the School District: Dayton Independent Schools
200 Clay Street
Dayton, KY 41074
Attn: Rick Wolf, Superintendent
Email: rick.wolf@dayton.kyschools.us

7. The City represents and warrants to the School District that on the date of this Agreement:
 - A. The City (i) is a duly organized, validly existing City of the Home Rule Class and (ii) possesses all requisite authority, permits, and power to conduct its business as is now being, or is contemplated by this Agreement, to be conducted.

- B. This Agreement will, upon execution and delivery by all parties thereto, constitute a legal and binding contract between the City and the School District, enforceable against the City according to its terms.
 - C. The City is not subject to, or aware of the threat of, any litigation that is reasonably likely to be determined adversely to it and that, if so adversely determined, would have a material adverse effect on its financial condition relevant to this Agreement.
8. The School District represents and warrants to the City that on the date of this Agreement:
- A. The School District (i) is a duly organized, validly existing school district in the Commonwealth of Kentucky and (ii) possesses all requisite authority, permits, and power to conduct its business as is now being, or is contemplated by this Agreement to be, conducted.
 - B. This Agreement will, upon execution and delivery by all parties thereto, constitute a legal and binding contract between the City and the School District, enforceable against the School District according to its terms.
 - C. The School District is not subject to, or aware of the threat of, any litigation that is reasonably likely to be determined adversely to it and that, if so adversely determined, would have a material adverse effect on its financial condition relevant to this Agreement.
9. The School District agrees that to the fullest extent permitted by law, no council member, officer, mayor, principal or employee of the City shall have personal liability under this Agreement or for any matter in connection with the professional services provided pursuant to this Agreement. The City agrees that to the fullest extent permitted by law, no board member, officer, superintendent, principal or employee of the School District shall have personal liability under this Agreement or for any matter in connection with the School District's duties within this Agreement.
10. This Agreement does not call for nor will there be any separate legal or administrative entity created for its administration, nor will there be any separate manner of financing or budget which is not already established in accordance with the parties' orders, resolutions, and/or ordinances.
11. This Agreement does not call for nor will there be any joint or cooperative acquisition, holding or disposition of real or personal property between the parties hereto.
12. This Agreement will be jointly administered by the City Council and the School District Board of Education, or their respective designees, who shall have authority to enact jointly applied rules and regulations, created per written mutual agreement, to implement and carry out this Agreement.

13. It is expressly understood and agreed that, with the exception of the provisions herein, the execution of this Agreement does not alter or constitute a waiver in whole or in part of any of the privileges or immunities otherwise enjoyed by any of the governmental entities which are parties hereto.
14. Miscellaneous Provisions:
 - A. This Agreement shall be governed by the laws of the Commonwealth of Kentucky.
 - B. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one Agreement.
 - C. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to confer upon any other person rights or remedies under or by reason of this Agreement.
 - D. This Agreement, including any exhibits, schedules, and other documents incorporated herein by reference, supersedes any and all agreements, either oral or written, between the parties, and contains all of the covenants and agreements between the parties with respect to the rendering of such services. To the extent there is a conflict between this Agreement and the PILOT Agreement, the PILOT Agreement shall govern. The parties acknowledge that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied in this Agreement, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement (including any modification to an exhibit) will be effective if it is in writing and signed by the parties to this Agreement.
 - E. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of that or any other provision of this Agreement.
 - F. No party to this Agreement shall be deemed in default or breach of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without negligence, such as natural disasters or "Acts of God."
 - G. If any provision of this Agreement or the application to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected, but shall be enforced to the greatest extent permitted.

- H. This Agreement shall not be assigned by either party to this Agreement without the prior written consent of the other party.
15. This agreement shall be valid and binding only when all of the following acts have occurred:
- a. Execution by the Mayor of the City of Dayton, Kentucky which is authorized by the City Council of the City pursuant to a duly enacted City Order/Resolution.
 - b. Execution by the Superintendent of the School District as authorized by the School Board pursuant to a duly enacted resolution.
 - c. Approval by the Kentucky Department for Local Government pursuant to KRS 65.260.
 - d. Filing the attested copies with the Secretary of State of the Commonwealth of Kentucky and the County Clerk of Campbell County, Kentucky, as required by KRS 65.290.

[Signature Page to Follow]

IN WITNESS WHEREOF the parties acting under authority of their respective governing bodies have caused this Interlocal Cooperation Agreement to be duly executed by their duly elected and authorized officials.

CITY OF DAYTON, KENTUCKY

City of Dayton, Kentucky Mayor Ben Baker

Date: _____

Signature: _____

DAYTON INDEPENDENT BOARD OF EDUCATION

Dayton Independent Board of Education Superintendent Rick Wolf

Date: _____

Signature: _____

CERTIFICATION OF APPROVAL WITH DEPARTMENT FOR LOCAL GOVERNMENT

This Interlocal Cooperative Agreement is in proper form, and is compatible with the laws of the Commonwealth of Kentucky; therefore, it is approved this ____ day of _____, 2024.

Matt Sawyers, Commissioner
Department of Local Government
Commonwealth of Kentucky