

**CITY OF XENIA, OHIO
RESOLUTION 2021 – EE**

**AUTHORIZING THE EXECUTION OF AN AGENCY AGREEMENT WITH THE XENIA
COMMUNITY IMPROVEMENT CORPORATION**

WHEREAS, this Council, by Resolution 2020-AA, passed on September 24, 2020, authorized the creation of an economic development corporation pursuant to ORC Chapter 1724., known as the Xenia Community Improvement Corporation (Xenia CIC);

WHEREAS, the Xenia CIC has been created and registered with the Ohio Secretary of State as a nonprofit economic development corporation, organized and existing for the purpose of doing all acts and things necessary or convenient to carry out the purposes of an economic development corporation, as set forth in ORC Chapter 1724.;

WHEREAS, this Council, by Resolution 2021-K, passed on February 25, 2021, designated the Xenia CIC as the agency of the City to advance, encourage, and promote industrial, commercial, distribution, and research development in the City; and

WHEREAS, ORC 1724.10 provides that once the Xenia CIC has been designated as an agent of a City, the Xenia CIC and the City may then enter into an agreement setting forth the services outlined in ORC 1724.10 that the Xenia CIC will provide.

NOW, THEREFORE, THE CITY OF XENIA HEREBY RESOLVES, at least four (4) members of the City Council concurring, that:

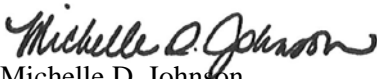
Section 1. The City Manager, on behalf of the City, is hereby authorized to execute an Agency Agreement with the Xenia CIC in the form set forth in the attached Exhibit A, which is hereby incorporated by reference as if fully rewritten herein.


Section 2. It is found that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in this formal action were in meetings open to the public in compliance with all legal requirements, including ORC 121.22.

Section 3. This Resolution shall be effective upon its passage.

Introduced: July 22, 2021
Passed: August 12, 2021

Attest:


Michelle D. Johnson
City Clerk


Wesley E. Smith
President, Xenia City Council

AGENCY AGREEMENT

This Agency Agreement (“Agreement”), is made as of August 15, 2021, by and between the CITY OF XENIA, OHIO (“City”), an Ohio municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio (“State”), and the XENIA COMMUNITY IMPROVEMENT CORPORATION (“CIC”), a community improvement corporation organized and existing as a corporation not for profit under the laws of the State.

RECITALS

- I. The City, by Resolution 2021-K, adopted on February 25, 2021, in accordance with Ohio Revised Code (“ORC”) Section 1724.10, has designated the CIC as the agency and instrumentality of the City for the industrial, commercial, distribution, and research development of the City.
- II. Upon the designation of the CIC as the agency and instrumentality of the City for the aforementioned purposes, the City and the CIC desire to enter into this Agreement, pursuant to ORC Section 1724.10, whereby the CIC may undertake and perform certain actions as the agency and instrumentality of the City for the industrial, commercial, distribution and research development, redevelopment, use, and reuse of land within the City (“Development”).
- III. The City, by Resolution 2021-EE, adopted on ***, 2021, and the CIC, by Resolution 2021-*, adopted on ***, 2021, have approved this Agreement and authorized their representatives to execute the same on their behalves.

FOR AND IN CONSIDERATION OF the mutual promises contained herein, the City and the CIC do hereby agree as follows:

1. Development Plan. The CIC will adopt the City’s 2013 comprehensive land use plan, known as X-Plan (“Plan”), as its plan for Development. The CIC shall use the Plan to advance, encourage, and promote the industrial, commercial, distribution, and research development of the City in a manner which:
 - (A) Creates and preserves jobs and employment opportunities in the City and the State;
 - (B) Improves the economic welfare of the people of the City and of the State;
 - (C) Encourages and causes the maintenance, location, relocation, expansion, modernization and equipment of sites, buildings, structures and appurtenant facilities for industrial, commercial, distribution and research activities within the City and thereby preserves, maintains or creates additional opportunities for employment within the City;
 - (D) Maintains and increases the tax valuation of property within the City in order that tax revenues may be available to provide services for the preservation of public peace, health, safety and general welfare of the City;
 - (E) Is consistent with social, economic and geographic factors present in the City;
 - (F) Is not inconsistent with job needs and skills present in the City;
 - (G) Is not inconsistent with environmental factors present in the City; and
 - (H) Is in accordance with the City’s applicable planning and zoning.

2. Furtherance of the Plan by the CIC. The Plan may be amended and supplemented from time to time by the City and the CIC, and to that end, to the extent as requested by the legislative authority of the City:
 - (A) The CIC may prepare and maintain a current inventory and catalog of real property, buildings, or other improvements within the City which are or may become available and suitable for the location, relocation, expansion, modernization or conversion of or to industrial, commercial, distribution or research development facilities in furtherance of this Agreement and the Plan and the accomplishment of its purposes.
 - (B) The CIC may cause the preparation of analyses of the social, economic, geographic, and other advantages that the City can offer in support of Development in a form suitable for distribution to those whom the City and the CIC seek to interest in such Development within the City.
3. Implementation of the Plan. In furtherance of the Plan, as from time to time amended, the CIC may, to the extent requested by the legislative authority of the City:
 - (A) As the agency and instrumentality of the City, advance, encourage, and promote the maintenance, location, relocation, expansion, modernization, and equipment of buildings, structures, and appurtenant facilities, and the acquisition of sites therefor for lease or sale by the City or the CIC for Development activities within the City. Any real or personal property, or both, proposed for acquisition, by gift or purchase, construction, improvement or equipment for such purpose is referred to herein as a "Development Project."
 - (B) From time to time, prepare and present to the executive and legislative authorities of the City recommendations for action to be taken in aid of Development in the City. Where appropriate, such recommendations shall include the location, relocation, construction, expansion, modernization, modification or improvement of municipal facilities or services.
 - (C) Upon the request of the City's Economic Development & Incentive Review Board, review any Development Project proposed to be financed by the City pursuant to the authority granted by Article VIII, Section 13, Ohio Constitution and ORC Chapter 165 to determine whether or not such Development Project is in accordance with this Agreement and the Plan and following such review shall certify to such City its determination.
 - (D) Cause advertising, promotional, and educational material to be prepared, printed or otherwise reproduced and distributed and otherwise made available to such extent and in such manner as in the judgment of the CIC will best assist Development in the City.
 - (E) Contact and solicit any person, firm or corporation ("Employer") which then or in the immediate future is likely to or may be induced to locate, relocate, expand, modify or improve industrial, commercial, distribution, or research activities or facilities within the City or which then or in the immediate future threatens to terminate or reduce employment in any such activities or facilities then existing within the City in order to induce said Employer to locate, relocate, expand, modify, improve or maintain its said industrial, commercial, distribution or research activities or facilities in the City.
 - (F) Advance, encourage and promote the establishment, growth, and maintenance in the City of industrial, commercial, distribution and research facilities in accordance with and in furtherance of the purposes set forth in Section 1 of this Agreement by:
 - (1) Insuring mortgage payments required by a first mortgage on any industrial, economic, commercial or civic property for which funds have been loaned by any person, corporation,

- bank or financial or lending institution upon such terms and conditions as the CIC may prescribe;
- (2) Incurring debt, mortgaging its property, no matter from what source and by what method acquired, and issuing its obligations for the purpose of acquiring, constructing, improving, and equipping buildings, structures and other properties, and acquiring sites therefor, for lease or sale by the CIC in order to carry out Development; provided, however, that any such debt shall be solely that of the CIC and shall not be secured by the pledge of any moneys received or to be received from the City, the State or any political subdivision thereof, except as provided for in ORC Section 307.78(C);
 - (3) Making loans to any person, firm, partnership, corporation, joint stock company, association, or trust, and may establish and regulate the terms and conditions with respect to any such loans; provided, however, that the CIC shall not approve any application for loan unless and until the person applying for said loan shows that he has applied for the loan through ordinary banking or commercial channels and that the loan has been refused by at least one (1) bank or other financial institution;
 - (4) Purchasing, receiving, holding, leasing, or otherwise acquiring and selling, conveying, transferring, leasing, subleasing, or otherwise disposing of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including but not restricted to, any real or personal property acquired by the CIC from time to time in the satisfaction of debts or enforcement of obligations;
 - (5) Acquiring the good will, business, rights, real and personal property, and other assets, or any part thereof, or interest therein, of any persons, firms, partnerships, corporations, joint stock companies, associations, or trusts, and may assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, partnership, corporation, joint stock company, association, or trust; may acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others in whole or in part for the construction of industrial plants other business establishments; and may acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, sublease, or otherwise dispose of industrial plants or business establishments;
 - (6) Acquiring, subscribing for, owning, holding, selling, assigning, transferring, mortgaging, pledging, or otherwise disposing of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company, association, or trust, and while the owner or holder thereof, may exercise all the rights, powers, and privileges of ownership, including the right to vote therein;
 - (7) Mortgaging, pledging, or otherwise encumbering any property acquired pursuant to the powers contained in Sections 3(f)(4), (5) or (6);
 - (8) Making application to the Director of the Ohio Department of Development (“ODOD”) of the State for insurance or advance commitments for insurance of mortgage payments required by a first mortgage on any Development Project for which the CIC has loaned its funds or upon which the CIC has borrowed funds, and may make assignments of insured mortgages and provide other forms of security in accordance with the provisions of ORC Section 122.451;
 - (9) Soliciting, receiving, and using donations or commitments of money or other property of any kind whatsoever from private corporations, firms or organizations; and/or
 - (10) Otherwise exercising any or all of the powers and privileges permitted by, and subject to the limitations of, ORC Section 1724.10.

4. Conveyances.

- (A) The CIC is authorized to sell or to lease any real property or interests in real property owned by the City determined from time to time by the legislative authority of the City not to be required by the City for its purposes, for uses determined by the legislative authority of the City as those that will promote the welfare of the people of the City, stabilize the economy, preserve, maintain or provide employment, and assist in Development within the City to the benefit of the people of the City and will preserve, maintain or provide additional opportunities for their gainful employment. The legislative authority of the City shall specify the consideration for such sale or lease and any other terms thereof. Any determination made by the legislative authority of the City under this Section 4 shall be conclusive. The CIC, acting through its officers and on behalf and as agent of the City, shall execute the necessary instruments, including deeds conveying the title of the City or leases, to accomplish such sale or lease. Such conveyance or lease shall be made without advertising and receipt of bids. A copy of this Agreement shall be recorded in the office of the County Recorder of Greene County, Ohio, in which the City is located, prior to the recording of a deed or lease executed pursuant to this Agreement.
- (B) The City may convey to the CIC real property and interest in real property owned by the City and determined by its legislative authority not to be required by the City for its purposes, and that such conveyance of such real property or interests in real property will promote the welfare of the people of the City, stabilize the economy, provide employment and assist in the development of industrial, commercial, distribution and research activities to the benefit of the people of the City and preserve, maintain or provide additional opportunities for their gainful employment. The consideration for any such real property and interests in real property so conveyed shall be the fair market value thereof as determined by a qualified appraiser, designated and employed by the City, and confirmed by its legislative authority.
- (C) The CIC may also, as agency for such development and to the extent requested by the legislative authority of the City, acquire from others additional real property or interests in real property and may convey real property or interests in land; provided, however, that any real property or interests in real property the CIC may so acquire or convey shall be so acquired or conveyed for uses that will promote the welfare of the people of the City, stabilize the economy, preserve, maintain or provide employment, and assist in the development of industrial, commercial, distribution and research activities required for the people of the City and for their gainful employment. Any conveyance or lease by the City to the CIC shall be made without advertising and receipt of bids. If any real property or interests in real property conveyed by the City to the CIC are sold by the CIC at a price in excess of the consideration received by the City from the CIC therefor, such excess shall be paid to the City after deducting therefrom the following costs to the extent incurred by the CIC:
- (1) The costs of acquisition and sale by the CIC;
 - (2) Taxes or assessments;
 - (3) Costs of maintenance and/or costs of improvements to the real property by the CIC;
 - (4) Debt service charges of the CIC attributable to such real property or interests; and
 - (5) A reasonable service fee determined by the CIC.

5. Financial Contributions.

- (A) The City may, but shall not be required to, make any financial contributions to the CIC.
- (B) All costs of the CIC shall be paid solely from the funds of the CIC and the City may, but is not required to, contribute any moneys to the CIC to meet its costs. In no event shall any moneys raised by taxation be obligated or pledged for the payment of any bonds or other obligations issued or guarantees made pursuant to this Agreement.

- (C) Nothing in this Agreement or the Plan shall be construed as permitting the CIC to obligate the City except as expressly set forth in this Agreement.
6. Term. The term of this Agreement shall commence on August 1, 2021, and shall continue in effect until July 31, 2022. Thereafter, this Agreement shall automatically renew for one (1) year terms, except as otherwise provided in this Section 6. During any renewal period, either party may give to the other party, no later than May 2nd, written notice of its intention to withdraw from this Agreement. Upon receipt of such notice, no further actions, agreements, contracts, liabilities or obligations shall be initiated or incurred pursuant to this Agreement, but any action, agreement, contract, liability or obligation which has been commenced, entered into, initiated or incurred prior to the receipt of such notice shall not be affected by such withdrawal and this Agreement shall remain in full force and effect as to any such action, agreement, contract, liability or obligation and the CIC shall continue as the Agency of the City under this Agreement and the Plan and the designation made by the legislative authority of the City in the resolution confirming and authorizing this Agreement, as to all such actions, agreements, contracts, liabilities or obligations. Notice of withdrawal shall be given to the City by delivering a copy of such notice to the office by the City Manager and to the CIC by delivering a copy of such notice to the person in charge of its principal office.
7. Miscellaneous.
- (A) Not less than two-fifths of the governing board of the CIC shall be comprised of appointed or elected officers of the City or other political subdivision designating the CIC as its agency pursuant to ORC Section 1724.10.
- (B) In the event of any voluntary or involuntary dissolution or liquidation of the CIC, or in the event of failure to reinstate the Articles of Incorporation of the CIC after cancellation thereof, any remaining assets of the CIC shall be paid over and distributed as determined by the governing body of the CIC with the approval of the Court of Common Pleas of Greene County, Ohio, to one or more political subdivisions of the State from which on the date of the dissolution, liquidation or cancellation of the Articles of the CIC there exists a designation of the CIC to act as agent for industrial, commercial, distribution and research development, to be used exclusively for designated civic projects or public charitable purposes.
- (C) No provision, term or covenant contained in this Agreement shall be construed as prohibiting or limiting the City from independently exercising any and all powers it may have under the Constitution of the State, ORC Chapter 165, or any other law.
- (D) This Agreement may be amended or supplemented from time to time as desired and approved by the legislative authority of the City and the Board of Directors of the CIC.
- (E) This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

IN WITNESS WHEREOF, the City and the CIC, by their duly authorized officers, have caused this Agreement to be executed as of the day and year written.

XENIA COMMUNITY IMPROVEMENT CORPORATION

By: _____
Donna Saraga, Chair

Date: _____

Attest: _____
Steve Brodsky, Secretary

CITY OF XENIA, OHIO

By: _____
Brent W Merriman, City Manager

Date: _____

Attest: _____
Michelle D. Johnson, City Clerk

Approved as to form:

Donnette A. Fisher, Esq.
Xenia Law Director