

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc.

Resolution No. 19-2017

Passed May 23, 20 17

A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN AN AMENDED AND RESTATED USE OF FACILITIES AGREEMENT WITH THE BOARD OF TRUSTEES OF THE DAYTON METRO LIBRARY.

WHEREAS, the City is the owner of the West Carrollton Government Center located at 300 East Central Ave., West Carrollton, Ohio (the "Civic Center Property"), including the building and related improvements which houses the West Carrollton Branch Library, pursuant to a lease agreement entered into between the City and the Board on December 30, 1977, as amended and renewed by a Facility Agreement entered into between the City and the Board effective as of May 1, 1999; and

WHEREAS, the Board has requested permission and the City is willing to allow the Board to renovate and expand the West Carrollton Branch; and,

WHEREAS, pursuant to R.C. 721.22, the City is authorized and empowered to lease real property suitable for library purposes to the Board upon such lawful terms as may be agreed upon between the City and the Board; and,

WHEREAS, pursuant to R.C. 3375.40, the Board is authorized and empowered to lease space in buildings; and,

WHEREAS, subject to the satisfaction of the contingencies set forth in Section 1(a) of this Agreement, the Board desires to lease from the City, and the City desires to lease to the Board, the West Carrollton Branch as so renovated and expanded by the construction of the Library Improvements;

NOW, THEREFORE, be it resolved by the City Council of the City of West Carrollton, Ohio, that:

Section 1: the City Manager is hereby authorized to sign an amended and restated facilities agreement with the Dayton Metro Library, attached hereto and made part of this resolution, and do all things necessary to complete the transaction.

Section 2: this resolution shall become effective immediately upon its passage.

Passed: MAY 23, 2017



Mayor

Attest: Carie Cottongim
Asst. Clerk of Council

RECORD OF RESOLUTIONS

Dayton Legal Blank, Inc.

Resolution No. _____

Passed _____, 20____

**AMENDED AND RESTATED
FACILITY AGREEMENT**

This AMENDED AND RESTATED FACILITY AGREEMENT ("Agreement") is made this _____ day of _____, 2017, by and between the City of West Carrollton, an Ohio municipal corporation, hereinafter referred to as the "City," and the Board of Trustees of the Dayton Metro Library, formerly known as the Board of Library Trustees of the Dayton and Montgomery County Public Library, a political subdivision of the State of Ohio, hereinafter referred to as the "Board".

WITNESSETH:

WHEREAS, the City is the owner of the West Carrollton Government Center located at 300 East Central Ave., West Carrollton, Ohio (the "Civic Center Property"), including the building and related improvements thereto, hereinafter referred to as the "Building," which Building houses the West Carrollton Branch Library, hereinafter referred to as "West Carrollton Branch," pursuant to a lease agreement entered into between the City and the Board on December 30, 1977, as amended and renewed by a Facility Agreement entered into between the City and the Board effective as of May 1, 1999 (the "Existing Facility Agreement"); and

WHEREAS, upon the satisfaction of the contingencies set forth in Section 1(a) of this Agreement, the City and the Board hereby agree to amend and restate, in its entirety, the Existing Facility Agreement, upon the terms and conditions as stated herein; and

WHEREAS, the Board has requested permission and the City is willing to allow the Board to renovate and expand the West Carrollton Branch; and

WHEREAS, pursuant to R.C. 721.22, the City is authorized and empowered to lease real property suitable for library purposes to the Board upon such lawful terms as may be agreed upon between the City and the Board; and

WHEREAS, pursuant to R.C. 3375.40, the Board is authorized and empowered to lease space in buildings; and

WHEREAS, pursuant to R.C. 3375.40, the Board is authorized and empowered to construct, remodel, renovate or otherwise improve, equip or furnish buildings which are necessary for the proper maintenance and operation of the free public libraries under its jurisdiction; and

WHEREAS, the Board is desirous of renovating and expanding the West Carrollton Branch on the Civic Center Property, such library building and improvements (the "Library Improvements") to be owned by the City as part of the Building; and

WHEREAS, subject to the satisfaction of the contingencies set forth in Section 1(a) of this Agreement, the Board desires to lease from the City, and the City desires to lease to the Board, the West Carrollton Branch as so renovated and expanded by the construction of the Library Improvements;

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and conditions hereinafter set forth, the City and the Board agree as follows:

Section 1. (a) During the period from the date of this Agreement through _____, 2017 (the "Contingency Period"), the Board, at its sole expense, shall investigate the financial feasibility of the construction of the Library Improvements, the ability to obtain all approvals

and permits for those improvements, and related factors. The obligations of the Board under this Agreement are subject to the satisfaction of the following contingencies during the Contingency Period:

(i) The Board shall have determined to its satisfaction, after performing or causing to have been performed such engineering work and soil and other tests and investigations as it deems necessary, that the physical condition and characteristics of the Civic Center Property, including, but not limited to, the weight-bearing qualities and characteristics of the sub-strata soil and the underlying water table, are satisfactory for the construction and operation of the Library Improvements;

(ii) The Board shall have obtained a title examination report or title insurance commitment and policy, in form and substance satisfactory to the Board, showing that the City holds fee simple legal title to the Civic Center Property, free of defects, liens and encumbrances except for taxes, assessments, and easements and restrictions of record that will not hinder or prevent the construction and operation of the Library Improvements;

(iii) The Board shall have prepared and submitted to the City preliminary plans for the Library Improvements (the "Preliminary Plans"), which shall include the relocation of a playing field and landscape improvements known as the Plaza of Fame, and the City shall have given its written approval of the Preliminary Plans in regard to (1) the relocated playing field and Plaza of Fame and (2) all other driveway and pedestrian connections and other improvements affecting traffic, circulation, access, parking and similar issues;

(iv) The Board shall have obtained all zoning, building, and other permits necessary for the construction of the Library Improvements, the playing field relocation and all other improvements for which the Board is responsible.

The City grants to the Board during the Contingency Period the right to enter the Civic Center Property in order to perform soil testing, surveys, and other tests, investigations and studies as the Board shall deem necessary or appropriate in connection with the activities described in this Section 1. The Board shall accept responsibility for any damages, losses, judgments, costs and expenses resulting from any entry upon or activities conducted on the Civic Center Property by the Board or its employees, agents, or contractors, and for any damage to the City's property caused by those activities. Prior to conducting any entry pursuant to this paragraph, the Board shall provide to the City a certificate of liability insurance coverage in an amount reasonably acceptable to the City. Without limiting the foregoing, the Board shall not permit any mechanic's liens to be filed against the Civic Center Property by reason of any work, labor, services, materials or equipment supplied or claimed to have been supplied by the Board or any contractor or subcontractor of the Board. These obligations shall survive the termination of this Agreement.

If any of the conditions set forth in (i) – (iv) above is not satisfied or waived on or before the expiration of the Contingency Period, the Board may terminate this Agreement by providing written notice to the City on or before the expiration of the Contingency Period. Upon such termination, this Agreement shall be null and void and the parties shall be released from all further obligations except as otherwise provided herein. In such event, the Existing Facility Agreement shall remain in effect as though unmodified by this Agreement.

If the contingencies set forth in this Section 1(a) are waived by the Board, or the Board allows the Contingency Period to expire without exercising its right to terminate, then this Agreement shall take effect on the earlier of (i) the date the contingencies are waived by the Board or (ii) the day following the expiration of the Contingency Period (such earlier date, the "Commencement Date").

(b) Commencing on the Commencement Date, the Board shall proceed at its sole expense with the construction of the Library Improvements, as well as the relocation of the playing field and Plaza of Fame and any other site improvements contemplated by the plans and specifications developed in accordance with the approved Preliminary Plans (the "Final Plans"). The City shall have the right to approve any changes in the Final Plans that deviate materially from the Preliminary Plans approved by the City. Such approvals shall not be unreasonably withheld or delayed. The following terms and conditions shall apply to the Board's construction activities under this Agreement:

(i) Construction of the Library Improvements and related improvements shall be conducted in such a manner as to minimize disruption of the City's operations on the Civic Center Property. The Board recognizes the City may make other improvements to the Civic Center contemporaneous with construction of Library Improvements outlined in the agreement. Both parties recognize the need to ensure two of the three public entries to the Civic Center are maintained at all times during construction.

(ii) The Board shall cause its contractors and subcontractors to construct the Library Improvements substantially in accordance with the Final Plans and in a good and workmanlike manner. Notwithstanding the foregoing, the Board shall have the right to approve change orders with respect to the Final Plans for the Library Improvements without the approval of the City as long as the connections with the balance of the Building, the driveway and pedestrian connections and other improvements affecting traffic, coordination, access and similar issues are not materially changed.

(iii) The Board shall secure the building permit as well as all other permits required by governmental agencies necessary for the proper execution and completion of the Library Improvements. The Board shall comply with and give all notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to the performance of the Library Improvements.

(iv) The Board will fully comply with the prevailing wage law as it applies to the Library Improvements.

(v) Subject to reasonable safety and scheduling considerations, the Board agrees to permit duly authorized agents and employees of the City, upon reasonable notice, to inspect and review the construction of the Library Improvements.

(vi) The Board is solely responsible for the design and construction of the Library Improvements. The City's approval of the Preliminary Plans is solely for design intent, and the City shall not be responsible for the acts or omissions of the design professionals, contractors and consultants procured or otherwise engaged by the Board.

(vii) The Board shall accept responsibility for any damages, losses, judgments, costs and expenses incurred or imposed in connection with any construction, installation, entry upon or activity conducted on the Library Improvements by the Board or its employees, agents or contractors. Without limiting the foregoing, the Board shall not permit any mechanics' liens to be filed against the Civic Center Property by reason of any work, labor, services, materials or equipment supplied or claims to have been supplied by the Board or any contractor or subcontractor of the Board.

(viii) The Board shall use reasonable good faith efforts to protect the work and existing or adjacent property and utilities from damage and shall erect and maintain

necessary barriers, furnish and keep lighting necessary danger signals at night, and take precautions to prevent injury or damage to individuals or property.

(ix) During construction, the Board shall purchase and maintain, or cause to be purchased and maintained:

- a. Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits no less than the completed value of the project and no coinsurance penalty provisions. Such coverage shall name the City of West Carrollton as Loss Payee as its interests may appear.
- b. The Board shall provide the City a certificate of insurance evidencing coverages required herein no less than 10 days before commencement of the improvements.

(x) Throughout construction of the Library Improvements, the Board shall be responsible for all utilities relating to the construction, startup, use, and operation of the Library Improvements.

(xi) The Library Improvements shall be constructed at the sole risk and expense of the Board, and until completion the Board shall bear all risk of loss. When the Library Improvements are substantially completed such that the Board is able to obtain a certificate of occupancy (whether temporary or permanent) and commence use and occupancy of the Library Improvements (the "Completion Date"), (a) ownership of the Library Improvements shall be deemed vested in the City and (b) the City's insurance and other responsibilities under this Agreement shall commence as to the Library Improvements.

Section 2. The City does hereby lease, demise and let unto the Board, the West Carrollton Branch (a) effective on the Commencement Date, as to the existing improvements and (b) effective on the Completion Date, as to the Library Improvements, together with all appurtenances thereto, and all improvements located thereon and any improvements to be made, and together with the right to use, in common with the City, the "Common Facilities" (hereinafter defined) of the Building and the Civic Center Property, all of which are hereinafter referred to as the "Demised Premises." The City shall furnish the Demised Premises to the Board in an "As Is" condition on the effective dates established herein and the City shall not be responsible for any latent defects or changes in its condition, and the obligations of the Board to be performed hereunder shall not be withheld or diminished on account of any defect or change in its condition. The City warrants and represents that except for obligations assumed by the Board as provided herein, the Demised Premises shall be in compliance with all applicable zoning, use and building laws, ordinances, rules and regulations of every municipal, county, state and federal government or agency thereof having jurisdiction with respect thereto.

Section 3. The initial term of this Agreement shall be for a period commencing on the Commencement Date and expiring thirty (30) years after the Completion Date unless sooner terminated or extended as hereinafter provided. Upon the occurrence of the Completion Date, the Board and City shall execute a memorandum of understanding or similar document confirming the commencement and termination dates of this Agreement.

Section 4. Throughout the construction of the Library Improvements by the Board, the City shall not interfere with the Board's use and occupancy of the West Carrollton Branch in accordance with the terms of this Agreement.

Section 5. The community meeting room in the Building shall not be considered as a part of the Demised Premises leased to the Board but it shall have the right to negotiate with the City for regular hours of use for purposes of the West Carrollton Branch and the City shall have the right to schedule other hours of use for such meeting room. During the period from the Commencement Date until the Completion Date, the City shall maintain and clean such room but the Board shall pay the City the Board's share of the cost of such maintenance and cleaning according to the percentage provided in Exhibit "A" hereof. After the Completion Date, the Board shall not require the use of the community room and shall no longer share in the cost of its maintenance and cleaning. Any use of the community meeting room by the Board after the Completion Date shall be subject to such fees and charges as the City may establish for such use, consistent with charges assessed to third party users.

Section 6. During the period from the Commencement Date until the Completion Date, rest room facilities in the Building shall be available to persons using the West Carrollton Branch and the City shall provide janitorial services for cleaning such rest room space and furnish all supplies such as towels, toilet tissue, etc.; and the Board shall pay the City the Board's share of the costs for such cleaning and supplies according to the percentage provided in Exhibit "A" hereof. After the Completion Date the Board shall no longer have the right to use the rest room facilities in other parts of the Building and will not share in the costs of cleaning and supplies for those rest rooms.

Section 7. In addition to the Demised Premises, the City grants to the Board a non-exclusive easement to use and access the common areas of the Building and the common areas appurtenant to the real estate thereto, all of which are hereinafter referred to as the "Common Facilities," which shall include, without limitation, all entrance ways, parking lots, driveways, and sidewalks. Effective on the Completion Date, the Common Facilities will no longer include the community meeting room or the rest room facilities in the Building. The City grants to the Board the right of non-exclusive use, in common with the City and other tenants and users of the Civic Center Property, of the parking areas constructed upon the site for the parking of passenger automobiles and trucks of the Board, their employees, suppliers, and patrons. The City retains the right to reserve such parking areas as are reasonably required for its operations, and to designate areas specifically for library use as appropriate. The Board shall share in the maintenance and repair of the Common Facilities existing as of the date of this Agreement and its share shall be based on a set percentage of the square footage of the Demised Premises vis-a-vis of the Building. When the exact square footage of the Demised Premises is determined after construction of the Library Improvements, the total square footage of the Demised Premises and the total square footage of the Building will be determined and the exact percentages of each of the parties will be agreed upon by the parties and be disclosed on "Appendix A", which will be attached to this Agreement at that time. The City shall further be responsible for snow and ice removal of the Building and Common Areas and the Board shall pay their share of such expenses based upon the percentage as herein provided.

Section 8. Except as otherwise provided in this Agreement, the City shall operate and maintain the Common Facilities. Subject to the Board's non-exclusive easement as provided in Section 7 hereof, the Common Facilities shall at all times be subject to the exclusive control and management of the City and the City shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all Common Facilities. The City shall maintain and operate reasonable and necessary lighting facilities on all said Common Facilities. With respect to the Common Facilities, the City shall have the right, from time to time to change the location and arrangement of the Common Facilities provided that the use and operation of the Demised Premises is not materially impaired; to restrict parking by tenants, their officers, agents or employees to employee parking areas; to construct surface, subterranean

or elevated parking areas and facilities; to establish and change the level of parking surfaces; to enforce parking charges (by operation of meters or otherwise) with appropriate provisions for free parking ticket validating by tenants and library patrons; close temporarily all or any portion of the Common facilities; and discourage non-customer parking.

Section 9. The Board shall use and occupy the Demised Premises exclusively as a library and shall operate the same on a basis comparable with community library operations elsewhere in Montgomery County, due consideration being given to the population of the area served by the library, the number of students therein and the history and development of the City. The library shall be open to free use by the residents of the City and of Montgomery County, subject to the rules and regulations of the Board. The Board shall comply with all orders, regulations, rules and requirements of every kind and nature relating to the use of the Demised Premises as a library in accordance with any governmental authority having jurisdiction with respect thereto and the Board shall pay the cost and expense incidental to such compliance and accept responsibility for any expense and damage by reason of its failure to comply with any order, regulations or rules or requirements of any such authority.

Section 10. The Board shall maintain the Demised Premises in a clean, orderly, and sanitary condition, free of insects, rodents, vermin and other pests and shall provide, at its sole cost and expense, custodial services to the Demised Premises.

Section 11. Except for any improvements included in the plans for the Library Improvements, the City shall provide and maintain the necessary mains, conduits and lines to bring water, gas, electricity, telephone, cable, and any such other utilities necessary to service the Demised Premises. During the term of this Agreement, the Board shall pay its share of any expenses necessary for the repair or upgrading of the utilities described herein, except for those charges described in Section 19 hereof which the Board shall pay in full. Any such costs or charges to be paid by the Board as provided herein shall be limited by the percentages as set forth in "Exhibit A" attached hereto and made apart hereof. After the Completion Date, the Board's responsibility for shared utility expenses shall be limited to exterior services such as irrigation and exterior lighting; the Board will pay for the utility services for the Demised Premises and the City will pay for the utility services for the balance of the Building. The City shall not be liable to the Board for any damages or loss caused by an interruption of the foregoing utilities if caused by an act or event outside the reasonable control of the City. The Board shall be responsible for and pay when due, all the fees and charges for telephone service and cable service for the Demised Premises.

Section 12. The City shall procure and maintain fire and extended coverage insurance for the Building and commencing on the Completion Date such insurance shall include the Library Improvements. Said insurance shall be in the amount not less than one hundred percent (100%) of the full replacement value thereof. The cost of such insurance shall be prorated by the City based upon the percentage as set forth in Exhibit A hereof. Such insurance policies shall name the Board as an additional insured and loss payee, with respect to its interests in the Demised Premises. The City covenants that it shall obtain a written obligation from the insurer to notify the Board in writing at least thirty (30) days prior to cancellation or refusal to renew. The City further covenants to deliver upon the Board's written request, any such certificates or binders evidencing such insurance and the payment of the premiums thereof. The Board covenants that it will not do, or suffer to be done, or keep, or suffer to be kept, anything in, upon or about the Demised Premises, which will contravene the City's policies insuring against loss or damage by fire, or other casualty, or which will prevent the City from procuring such policies in companies acceptable to the City provided the Board is first given adequate notice of the requirements of such policies. The Board shall have the right to participate in any insurance settlement relating to the Demised Premises. If anything done, omitted to be done, or suffered to be done by the Board, or kept or suffered by the Board to be kept, in, upon or about the Demised Premises, shall cause the rate of such insurance, on the Demised Premises, to

be increased beyond the minimum rate from time to time applicable to the premises, the Board shall pay the amount of any such increase in premium promptly upon the City's demand.

Section 13. If the Demised Premises are damaged by fire or other casualty, but are not thereby rendered wholly untenable, the City shall promptly and with due diligence cause such damage to be repaired. Notwithstanding the foregoing, until the Completion Date the Board shall assume the risk of loss and the obligation to restore any damage to the Library Improvements caused by fire or other casualty. If by reason of any such occurrence the Demised Premises are rendered wholly untenable, the City shall have a period of sixty (60) days after said occurrence in which to elect either to restore the Demised Premises or terminate this Agreement. In that event, the City shall give the Board written notice that it has elected not to restore the Demised Premises, then this Agreement shall automatically terminate and neither party shall have any further obligation to the other hereunder, except that the Board shall be entitled to any insurance proceeds relating to the improvements to the Demised Premises. If the City elects to restore the Demised Premises, then the City shall proceed to promptly and with due diligence, restore the Demised Premises to its same condition existing immediately prior to the occurrence, provided however, that the City's election to restore the Demised Premises shall not extend to the personal property, equipment, trade fixtures and other personal property installed or provided by the Board, nor shall the City be required to restore damage to the Library Improvements occurring prior to the Completion Date.

Section 14. Except to the extent as otherwise provided in Section 12 hereof, the City shall have no obligation to procure and maintain any other insurance, including without limitation, insurance covering the personal property, equipment, trade fixtures and other personal property of the Board.

Section 15. During the entire term of this Agreement, the Board shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Board's operation and use of the Demised Premises.

(a) The cost of the following such insurance shall be borne by the Board.

(i) Commercial General Liability (CGL) with coverage at least as broad as Insurance Services Office (ISO) Form CG 00 01 with limits no less than \$2 million per occurrence. If a general aggregate limit applies, such limit shall be no less than \$3 million per occurrence.

(ii) Workers' Compensation as required by the State of Ohio, with Statutory Limits and Employers Liability with limits no less than \$1,000,000 per accident for bodily injury or disease. Employers' Liability coverage must be endorsed on the Commercial General Liability policy.

(b) The City, its officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Board.

(c) For any claims related to this Agreement, the Board's coverage shall be primary coverage as respects the City. Its officials, employees, and volunteers. Any insurance maintained by the City, its officials, employees, or volunteers shall be excess of the Board's insurance and shall not contribute with it.

(d) The Board shall furnish the City with a certificate of insurance evidencing the coverage required herein upon execution of this agreement and on or before February 1 of each year thereafter.

Section 16. During the entire term of this Agreement, the Board shall pay any and all taxes which may be levied against the Demised Premises and any furnishings, equipment, and materials therein, by reason of the Board's use and occupancy of the Demised Premises.

Section 17. Representatives of the City and the Board shall meet at reasonable times upon the request of either, to discuss the operations of the library and the operations under this Agreement; provided, that the Board shall have full and final control of all library operations, subject to the provisions of this Agreement.

Section 18. The City, by its duly authorized representatives, shall have the right to enter the Demised Premises at all reasonable times for the purpose of inspecting it and of making repairs which may be necessary, provided that to the extent practicable any such work shall be scheduled so as to minimize interference with normal library operations, and further provided that this agreement is not a covenant by the City to make other or further repairs than as may be required by this agreement.

Section 19. All fixtures, additions, changes, renewals, replacements, extensions, building, and structures, except for bookshelves, furniture, equipment, and trade fixtures designed exclusively for library use, erected on the leased premises by either party during the term of this lease and any extensions shall at once be and become the absolute property of the City without payment or set-off. Notwithstanding the foregoing, the Library Improvements shall remain the property of the Board during construction and shall become the City's property on the Completion Date. At the end of the demised term and any extensions thereof, the Board will remove all other equipment which is not part of the real estate and restore the Demised Premises to the condition in which it was at the start of the term herein demised, or as altered by either party, ordinary wear and tear and damage by fire or other casualty excepted.

Section 20. The Board shall cause to be installed and maintain separate meters to record the utility costs for heating and cooling the Demised Premises and during the term of this lease they shall pay all such charges without cost or liability of the City.

Section 21. The Board shall accept responsibility for and shall promptly pay and discharge any charge, claim or demand arising out of the operation of the Demised Premises as a public library by the Board as well as any claim, cause of action, demand or lien arising out of any building alterations, change or installation of fixtures effected by the Board upon said building or premises, except to the extent arising from the negligence or willful misconduct of the City, its agents, employees or contractors, unless such liability is waived pursuant to Section 21. The City shall also accept responsibility for and shall promptly pay and discharge any charge, claim or demand arising out of the operation of the Civic Center Property and the Common Facilities as a public building by the City as well as any claim, cause of action, demand or lien arising out of the building alteration, change or installation of fixtures effected by the City upon portions of the Civic Center Property not occupied by the Board, except to the extent arising from the negligence or willful misconduct of the Board, its agents, employees or contractors, unless such liability is waived pursuant to Section 21.

Section 22. Notwithstanding any other provisions of this Agreement, the City shall not be liable for loss or damage (i) to any trade fixtures, furnishings, equipment or other personal property located or found in the Demised Premises or (ii) to the Library Improvements during the period prior to the Completion Date, caused by fire or other perils usually covered by a "special form" policy of property

insurance, and the Board waives all rights of subrogation against the City with respect to those perils. Notwithstanding any other provisions of this Agreement, the Board shall not be liable for loss or damage to the Building or the Demised Premises (other than the Library Improvements up to the Completion Date) caused by fire or other perils usually covered by a "special form" policy of property insurance, and the City waives all rights of subrogation against the Board with respect to those perils. This Section shall apply regardless of the negligence of either party and shall not be limited by the amount of insurance coverage. Each party shall obtain any special endorsements required by its insurer to allow this waiver, but the waiver shall apply regardless of whether the party obtains the endorsements. This waiver shall not apply to willful misconduct or intentional acts if the resulting damage is not covered by the required insurance.

Section 23. The Board accepts the Demised Premises in its current state and condition without any representation or warranty by the City as to the condition of said addition or improvements; and the City shall not be responsible for any latent or other defect or change in its condition, and the performance of the obligations of the Board hereunder shall not in any case be withheld or diminished on account of any defect or change in its condition.

Section 24. Either party to this Agreement may initiate negotiations for an extension of this Agreement at any time after the 28th year after the Completion Date, but this provision shall not change any other provision of this Agreement relative to the rights of the parties during the term hereof.

Section 25. The Board shall keep the Demised Premises, including the electrical, plumbing, and other mechanical installations which exclusively service the Demised Premises therein in good order and repair, reasonable wear and tear excepted, at its sole cost and expense. The Board's responsibility under this Section shall include the responsibility for repairing, replacing, and maintaining the following in the Demised Premises:

	Repair	Replacement
Exterior, roof wall	Board	Board
Exterior windows	Board	Board
Interior Painting	Board	Board
Floors	Board	Board
Room Finish	Board	Board
Structural Failure	Board	Board
Electric	Board	Board
Water Damage from Exterior	Board	Board
Plate Glass and Door Glass	Board	Board
Ceiling Tile	Board	Board
Plumbing	Board	Board
Heating, Ventilation and Air Conditioning	Board	Board
Sprinkler System	Board	Board
Smoke Detection System	Board	Board

The duty of the Board to repair and replace heating, plumbing, ventilating, air conditioning, and electric equipment extends to all of that equipment which is in the Demised Premises.

During the term of this Agreement the City shall keep the remainder of the Building (other than the

Demised Premises) and all Common Facilities in good order and repair, reasonable wear and tear excepted, at its sole cost and expense except as otherwise provided herein. The City's responsibilities under this Section shall include the responsibility for repairing, replacing, and maintaining the portions of the Building (other than the Demised Premises) and the parking areas, driveways and other exterior improvements on the Civic Center Property. Such improvements to be maintained by the City also include the vestibule and automated doors to be installed by the Board as part of the Library Improvements, as well as the drive entry modifications and additional parking spaces contemplated as part of the Library Improvements. With respect to the current shared entry, the Board may close the entry as necessary during construction of the Library Improvements, but the Board will use reasonable efforts to keep the entry open to visitors of the Civic Center.

Section 26. The Board shall promptly repair at its sole cost and expense, any damage to the Demised Premises caused by any personal property, fixtures or equipment of the Board, or by the installation or removal thereof, unless caused by the City, its agents, employees or contractors.

Section 27. The Board shall not place or suffer to be placed or maintained on the exterior of the Demised Premises any sign and will not place or maintain any decoration, lettering or advertising matter on the glass of any window or door of the Demised Premises without first obtaining the City's written consent, which consent shall not be unreasonably withheld. The City acknowledges its approval of any existing signage as of the date of this Agreement. The Preliminary Plans may include additional signage for the City's reasonable approval, including signs on both sides of the exterior of the Premises and a separate monument sign (in lieu of the Board's use of the existing shared sign). The Board further covenants to maintain any such sign, decoration, lettering and advertising matter as may be approved in good condition and repair at all times.

Section 28. If the Board at any time during the term of this Agreement shall fail to observe or perform any of its covenants, agreements or obligations hereunder, for a period of ninety (90) days after the City shall have given the Board written notice specifying such default or defaults, or in the case of a default or contingency which cannot with due diligence be cured by the Board within a period of ninety (90) days, then in any such event, the City shall have the right, at its election, to give the Board notice of the City's intention to terminate this Agreement on a date specified in such notice and on such date this Agreement shall terminate and the Board hereby covenants to peaceably and quietly surrender the Demised Premises to the City. This right to terminate shall not apply so long as the Board is contesting the alleged violation in good faith. If the City elects not to terminate the Agreement, then the City may, after the failure of the Board to timely cure any default, make such payment, or perform such an act on behalf of the Board. Notwithstanding the foregoing, if a default constitutes an emergency requiring immediate action to prevent damage to property or injury to persons, the City may elect to cure the default prior to the expiration of the notice and cure period provided herein. All costs incurred by the City in connection with such payment or performance shall be reimbursed to the City by the Board upon written demand thereof, which shall include a statement of the cost of any such payments or performance. The City reserves the right upon the Board's default to assert any other remedies available at law or in equity.

Section 29. If the City at any time during the term of the Agreement shall fail to observe or perform any of its covenants, agreements or obligations hereunder, for a period of ninety (90) days after the Board shall have given the City written notice specifying such default or defaults, or in the case of a default or contingency which cannot with due diligence be cured within a period of ninety (90) days, the Board shall have the right, at its election, to give the City notice of the Board's intention to terminate this Agreement on a date specified in such notice and on such date this Agreement shall terminate. If the Board elects not to terminate the Agreement, then the Board may, after the failure of the City to timely cure any default, make such payment, or perform such an act on behalf of the City. Notwithstanding the foregoing, if a default constitutes an emergency requiring immediate action to prevent damage to property or injury to

persons, the Board may elect to cure the default prior to the expiration of the notice and cure period provided herein. All costs incurred by the Board in connection with such payment or performance shall be reimbursed to the Board by the City upon written demand thereof, which shall include a statement of the cost of any such payments or performance. The Board reserves the right upon the City's default to assert any other remedies available at law or in equity.

Section 30. If the Board shall perform all of the covenants and agreements herein to be performed by the Board under this Agreement, the Board shall have the peaceable and quiet enjoyment and possession of the Demised Premises, without any manner of hindrance, interferences or otherwise from the City or persons claiming through the City.

Section 31. The Board may not assign or sublet this Agreement or any part thereof without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such assignment or subletting without the prior written consent of the City shall be void and, at the option of the City, it may terminate this Agreement. Consent by the City allowing the Board to sublet or assign the Demised Premises shall not relieve the Board from any liability hereunder, and the Board shall not sublet or assign the Demised Premises for any period which would expire on a date later than the expiration of this Agreement. However, in the event that the Board shall consolidate with or transfer all of their assets to another public library system governed by the provisions of Chapter 3375 of the Revised Code of Ohio, then the City's consent to assign or sublet the Agreement shall not be required, however, the rights and obligations hereunder shall inure to and become the obligations of the surviving public library system.

Section 32. No mention in this Agreement of any specific right or remedy shall preclude a party from exercising any other right or from having other remedy or from maintaining any action to which it may be otherwise entitled either at law or in equity; and the failure of a party to insist in any one or more instances upon a strict performance of any covenant of this Agreement or to exercise any option or right herein contained shall not be construed as a waiver or relinquishment for the future of such covenant, right or option, but the same shall remain in full force and effect unless the contrary is expressed in writing by the party against whom the waiver would apply.

Section 33. If any term, covenant, condition, section, or provision of this Agreement or the application thereof shall be declared invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, covenant, section, condition, and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

Section 34. The Board hereby acknowledges that it is aware of the current zoning for the Demised Premises and that the use of the Demised Premises is permitted under that zoning.

Section 35. This Agreement shall be governed and construed in accordance with the laws of the State of Ohio.

Section 36. This Agreement shall bind and inure to the benefit of the Board and the City, and their respective successors and assigns.

Section 37. This Agreement contains the entire understanding and agreement between the parties, and no oral statement or representations or written matter not contained in this Agreement shall have any force or effect. This Agreement shall not be modified or amended in any way except by a writing executed by both parties.

Section 38. The relationship between the parties hereto is solely that of lessor and lessee and nothing in this Agreement shall be construed as creating the relationship of principal and agent, or of a partnership or joint venture between the parties hereto.

Section 39. By the execution hereof, the undersigned officer(s) of the Board warrant and represent the execution hereof has been authorized by the Board of Trustees of the Dayton Metro Library.

Section 40. Time is of the essence of this Agreement.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the City has caused this Agreement to be executed by its City Manager and the Board has caused this Agreement to be executed by the _____ of its Board of Trustees, as of the date first above written, pursuant to authority duly granted by the Council of the City of West Carrollton, Ohio, in Resolution ** and the Board of Trustees of the Dayton Metro Library, respectively.

APPROVED AS TO FORM:

CITY OF WEST CARROLLTON

City Attorney

By: _____
Name:
Title:

BOARD OF TRUSTEES OF DAYTON METRO
LIBRARY

By: _____
Name:
Title:

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, _____ of the City of West Carrollton, Ohio, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

STATE OF OHIO)
) SS:
COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, _____ of the Board of Trustees of Dayton Metro Library, a political subdivision in the State of Ohio, on behalf of the subdivision.

Notary Public

APPENDIX A

WEST CARROLLTON CIVIC CENTER SQUARE FOOTAGE

Total Existing Square Footage of West Carrollton Civic Center (prior to Completion Date):	32,000
Existing Library	10,575
Percentage Board Use	30.76%
Percentage City Use	69.24%

Percentages after Completion of Library Improvements:

Existing Square Footage of Civic Center	34,375
New Square footage of Library Improvements	5,000
Total Square Footage	39,375
Existing Library	10,575
Expansion	5,000
Total Square Footage/Library	15,575
Percentage Board Use	39.56%
Percentage City Use	60.44%