

**RESOLUTION NO. R23-40**

**A RESOLUTION BY THE TROTWOOD CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A DEVELOPMENT AGREEMENT WITH GORDON FOOD SERVICES, INC. TO LOCATE A FULL-SERVICE SUPERMARKET AND WHOLESALE GROCERY STORE WITHIN THE CITY OF TROTWOOD.**

**WHEREAS**, Gordon Food Services, Inc. (“GFS”) desires to locate a full-service supermarket and wholesale grocery within the City of Trotwood, Ohio; and

**WHEREAS**, the City desires to see the former Best Buy building located at 5031 Salem Avenue, which has sat vacant for many years, be redeveloped and occupied by GFS; and

**WHEREAS**, the City pledges to provide to GFS a ten-year development incentive in the form of compensation payable to GFS from the City’s non-tax funds (the “Incentive Compensation Program”), based on a percentage of the local withholding taxes paid to the City by GFS for all new employees hired and employed by the Company between the opening date of the Trotwood Store and December 31, 2033 who have not previously worked at the Company’s store located at 5380 Salem Avenue in Trotwood; and

**WHEREAS**, the City Manager recommends that City Council authorize the City Manager to enter into the Development Agreement with GFS.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROTWOOD, STATE OF OHIO:**

**SECTION I:** The Trotwood City Council accepts the recommendation of the City Manager and hereby authorizes the City Manager to enter into a Development Agreement with GFS.

**SECTION II:** The City Manager is hereby authorized to enter into a Development Agreement with GFS that is in substantial conformity with the Development Agreement attached hereto and incorporated herein as Exhibit A, subject to the Law Director’s approval of the same.

**SECTION III:** This Resolution shall take effect and be in force from and after the date of its passage.

Passed on this 3rd day of July, 2023.

TROTWOOD, OHIO 45426

3035 OLIVE ROAD

CITY OF TROTWOOD

ATTEST:

  
KARA B. LANDIS  
CLERK OF COUNCIL

APPROVED:

  
MARY A. MCDONALD  
MAYOR

  
YVETTE F. PAGE  
VICE-MAYOR

**CERTIFICATE OF RECORDING OFFICER**

I, the undersigned, hereby certify that the foregoing is a true and correct copy of Resolution No. R23-40 adopted by the Trotwood City Council at a regular scheduled meeting held on the 3rd day of July, 2023, and that I am duly authorized to execute this certificate.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
KARA B. LANDIS  
CLERK OF COUNCIL

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between **Gordon Food Services, Inc., incorporated under the laws of the State of Ohio** (hereinafter referred to as the “Company”) and **The City of Trotwood, Ohio, an Ohio municipal corporation** (hereinafter referred to as the “City”).

### **WITNESSETH THAT:**

**WHEREAS**, the Trotwood City Council is committed to the promotion of economic development and the creation of jobs within the City’s corporate limits; and

**WHEREAS**, the City desires to assist the Company with promoting the creation and retention of jobs in the City of Trotwood; and

**WHEREAS**, the City desires to establish a full-service grocery store in the City of Trotwood and provide residents more grocery options and eliminating Trotwood as a “food desert”; and

**WHEREAS**, the City desires to see the former Best Buy building at 5031 Salem Avenue in Trotwood, Ohio, which has sat vacant for many years, be redeveloped and occupied by the Company; and

**WHEREAS**, the City desires to assist the Company in locating its new supermarket store within the City of Trotwood and the City further finds that the project will create jobs and will encourage economic activity.

**NOW, THEREFORE**, the City and the Company, in consideration of the mutual promises and covenants set forth herein, do agree as follows:

### **ARTICLE 1.           COMPANY COMMITMENT.**

The Company shall provide a full-service supermarket and wholesale grocery store and will occupy a facility located at 5031 Salem Avenue in the City of Trotwood for its new grocery store (the “Trotwood Store”). The Company will invest Seven Million Dollars (\$7,000,000.00) for the redevelopment of the retail space into the new Trotwood Store. The Company’s improvements will include, but may not be limited to, site development, construction, fixed assets, relocation, parking, and landscaping.

The Company will retain twenty (20) positions from its current store located at 5380 Salem Avenue in Trotwood and will create no fewer than ten (10) new jobs with the expansion of the Trotwood Store. The average hourly rate of pay will be approximately \$16.00 per hour. The ten (10) new jobs will create a payroll of approximately Three Hundred Fifty Thousand Dollars (\$350,000.00) per year.

The Company commits to maintaining the Trotwood Store at 5031 Salem Avenue, Trotwood, Ohio for at least twenty (20) years.

The Company shall be responsible as the “Project Manager” for all aspects of this project. All work, which specifically includes but is not limited to the construction and site development, shall be performed in accordance with all federal, state, and local laws, and all zoning, building, and fire code requirements. The Company shall comply with the requirements of the building and use standards determined by mutual consent of the Company and the City and the Trotwood Codified Ordinances.

**ARTICLE 2.            CITY COMMITMENT.**

As an incentive for the Company’s development of the Trotwood Store, the City will commit to provide a ten-year development incentive in the form of compensation payable to the Company from the City’s non-tax funds (the “Incentive Compensation Program”). The amount of compensation payable by the City to the Company shall be based on a percentage of the local withholding taxes paid to the City by the Company for all new employees hired and employed by the Company between the opening date of the Trotwood Store and December 31, 2033 who have not previously worked at the Company’s store located at 5380 Salem Avenue in Trotwood, subject to the Company’s compliance with all other terms of this Agreement. The Incentive Compensation Program is based upon the rate established for purposes of general municipal operations and currently levied at the rate of 2.25% per annum, and is payable as follows:

	<u>Percent</u>	<u>Payable</u>
Year 1 (2024)	100%	Year 2
Year 2 (2025)	100%	Year 3
Year 3 (2026)	80%	Year 4
Year 4 (2027)	80%	Year 5
Year 5 (2028)	60%	Year 6
Year 6 (2029)	60%	Year 7
Year 7 (2030)	40%	Year 8
Year 8 (2031)	40%	Year 9
Year 9 (2032)	20%	Year 10
Year 10 (2033)	20%	Year 11

The City will issue the Incentive Compensation Program payment amount within sixty (60) days after its receipt from the Company of its annual W-2 reconciliation.

The Incentive Compensation Program provided for herein shall terminate if the Company fails to locate its supermarket grocery store within the City of Trotwood or later relocates outside of the City of Trotwood during the period of the Incentive Compensation Program.

**ARTICLE 3. TERM AND TERMINATION.**

The Incentive Compensation Program shall commence on January 1, 2024, and shall terminate on December 31, 2033, unless extended to a later date by agreement of the parties or terminated by either party in accordance with the terms of this Agreement.

Either party may terminate this Agreement upon thirty (30) days prior written notice to the other party. Such notice shall specify the reasons for termination, if any, and state the date such termination is effective. In the event of termination, the City shall not be obligated to pay any compensation as a result of the Incentive Compensation Program after the effective date of termination. Upon such termination, the parties shall be relieved of their respective obligations.

**ARTICLE 4. INDEMNIFICATION.**

The Company agrees to defend, indemnify, and hold harmless the City, its elected officials, officers, employees, and agents from and against all liability for any claims, losses, damages and expenses (including reasonable attorney's fees) of whatsoever kind and nature, to the extent that such claims, losses, damages, or expenses are caused by or arise out of the performance or nonperformance of this Agreement and/or the acts, omissions or conduct of the Company, its agents, employees, and representatives, including any acts and omissions related to the financing, preparation of plans, specifications, design, and construction of the project.

During the entire period of project construction and renovation, the Company will require all contractors and sub-contractors for the project to be in compliance with all federal, state, and local laws, and to maintain adequate and reasonable comprehensive general liability insurance in the amount, form, and with carriers acceptable to the City, naming the City, its elected officials, officers, employees, and agents as additional insureds on all said insurance policies.

**ARTICLE 5. TAX REPRESENTATION.**

The Company hereby certifies that at the time this Agreement is executed: the Company does not owe any delinquent taxes to the City of Trotwood and/or Montgomery County, Ohio and does not owe delinquent taxes for which the Company is liable under Chapters 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Ohio Revised Code or, if such delinquent taxes are owed, the Company currently is paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof; and the Company has not filed a petition in bankruptcy under 11 U.S.C. Section 101, et seq., or such a petition has not been filed against the Company. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes.

**ARTICLE 6. NOTICES AND DEMANDS.**

Any notice, demand, or other communication required under this Agreement by one party to the other party shall be sufficiently given if it is sent by certified U.S. mail, postage prepaid, return receipt requested or delivered personally, and:

(A) In the case of the City is addressed to:

Quincy Pope, City Manager  
3035 Olive Road  
Trotwood, Ohio 45426

(B) In the case of the Company is addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 7. AMENDMENT.**

The parties may amend this Agreement, provided that no such amendment shall be effective unless it is reduced to a writing, and makes specific reference to this Agreement, executed by a duly authorized representative of each party to this Agreement.

**ARTICLE 8. ENTIRE AGREEMENT/INTEGRATION.**

This Agreement represents the entire and integrated Agreement between the parties. This Agreement supersedes all prior and contemporaneous communications, representations, understandings, agreements, or contracts, whether oral or written, relating to the subject matter of this Agreement.

**ARTICLE 9. SEVERABILITY.**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any provision of this Agreement void shall in no way affect the validity or enforceability of any other provision of this Agreement. Any void, unenforceable, invalid, or illegal provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if the Agreement did not contain the particular provision.

**ARTICLE 10. GOVERNING LAW.**

This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to the principles thereof relating to conflicts or choice of laws.

**ARTICLE 11.           NON-DISCRIMINATION.**

The Company shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, ancestry, national origin, place of birth, age, marital status, or handicap with respect to employment, upgrading, demotion, transfer, recruitment or recruitment advertising, lay-off determination, rates of pay, or other forms of compensation, or selection for training, including apprenticeship.

**ARTICLE 12.           RECORDS AND RETENTION.**

Company shall use Generally Accepted Accounting Principles ("GAAP") in recording and documenting all costs and expenditures for the development activities under this Agreement. Such costs and expenditures pertaining in whole or in part to this Agreement and the development activities shall be supported by properly executed payrolls, time records, invoices, contracts, vouchers or other accounting documents and shall be clearly identified and readily accessible to City, or its designees. At any time during normal business hours and as often as City may deem necessary, Company shall make available to City, or its designees, all of its records with respect to all matters covered under this Agreement. Company will permit City, or its designees to audit, examine, and make excerpts or transcripts from such records.

Company shall retain all records relating in whole or part to this Agreement and the development activities for a period of ten (10) years from the date this Agreement is terminated.

**ARTICLE 13.           MEETINGS.**

Company shall meet with the City at such times as the City may request to discuss and review progress of the development activities and/or performance of this Agreement. Company shall furnish the City such status reports and information as the City may request from time to time.

**INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, this Agreement is hereby entered into on the date first set forth above.

Witnessed by:

**Gordon Food Services, Inc.**

\_\_\_\_\_

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

Date: \_\_\_\_\_

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

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

Witnessed by:

**City of Trotwood, Ohio**

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

Quincy Pope, City Manager

APPROVED AS TO FORM CORRECTNESS  
AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
Christopher R. Conard  
City of Trotwood Law Director