

RESOLUTION APPROVING A PERFORMANCE AGREEMENT AND AN ESCROW ACCOUNT FOR SPIRE INSTITUTE IN HARPERSFIELD TOWNSHIP

WHEREAS, Jake Brand, Director of Planning and Development, has submitted an agreement for the approval of the Board, as follows:

This agreement is entered into between the **BOARD OF COUNTY COMMISSIONERS OF ASHTABULA COUNTY, OHIO, Old Courthouse, 2nd Floor, 25 West Jefferson Street, Jefferson, Ohio 44047-1092** and, **Geneva Sports LLC d/b/a SPIRE Institute** (the "Developer"), whose mailing address is 5201 Spire Circle, Geneva, OH 44041, the developer of a proposed road to be known as Endurance Way (the "Subdivision"), a subdivision located in Harpersfield Township, and **Benesch, Friedlander, Coplan & Aronoff** (the "Escrow/Bond Agent");

WHEREAS, the Developer agrees to establish an Escrow (the "Account") with an Escrow agent acceptable to the Board in the amount of \$5,881,717.16, as determined by the Board, upon the recommendation of the Ashtabula County Engineer, to cover the estimated cost of construction of the improvements, plus 10% required for any contingencies, in accordance with the Subdivision Regulations (the "Improvements"). Said Account shall be effective for the Term of Agreement and shall be in favor of the Board to be withdrawn by the Board if necessary for the purposes set forth hereunder.

WHEREAS, the Escrow/Bond agent agrees to hold in the Account the amount of \$5,881,717.16, as determined by the Board, to cover the estimated cost of construction of the Improvements for the Term of Agreement, said funds to be disbursed only upon mutual agreement of the Developer, the Escrow agent, and the Board.

WHEREAS, the Board agrees to accept this Agreement in lieu of cash or other surety for the guarantee of satisfactory construction and installation of all required improvements as determined by the Board, upon the recommendation of the County Engineer under the Term of Agreement. The Board shall draw on the \$5,881,717.16 if the Developer fails or refuses to construct and install all required improvements, or otherwise, by the developer's own action or in action, causes any breach of this agreement. Any amount drawn on the \$5,881,717.16 shall be limited to the minimum amount needed to complete Improvements in accordance with the Subdivision Regulations.

WHEREAS, funds due for the payment in the amount of \$5,881,717.16 shall be deposited upon signing of this agreement.

THEREFORE, BE IT RESOLVED, By the Board of Commissioners of Ashtabula County, Ohio, that the escrow funds for the project described above will be placed in an account until such time a notice of release is received and the account would be closed.

**ASHTABULA COUNTY COMMISSIONERS
CERTIFICATION PAGE**

Resolution No. 2024-345

July 18, 2024

**RESOLUTION APPROVING A PERFORMANCE AGREEMENT AND AN ESCROW
ACCOUNT FOR SPIRE INSTITUTE IN HARPERSFIELD TOWNSHIP**

Upon the motion of J.P. Ducro IV, seconded by Casey R. Kozlowski.

VOTE:

Kathryn L. Whittington

Aye

J.P. Ducro IV

Aye

Casey R. Kozlowski

Aye

CERTIFICATE OF CLERK

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of a resolution acted upon and duly passed by the Board of County Commissioners of Ashtabula County, Ohio, on the date noted above.



Lisa Hawkins, Clerk of the Board
Board of County Commissioners
Ashtabula County, Ohio

PERFORMANCE AGREEMENT
for
SPIRE INSTITUTE AND ACADEMY
and
COUNTY OF ASHTABULA, OHIO

THIS PERFORMANCE AGREEMENT (the "Agreement") made at Jefferson, County of Ashtabula (the "County"), Ohio, commencing on the date of execution by the Parties (the "Date of Commencement"), and continuing through December 31, 2025 (the "Term of Agreement") from the Date of Commencement, by and between the following parties: (1) Geneva Sports LLC d/b/a SPIRE Institute (the "Developer"), whose mailing address is 5201 Spire Circle, Geneva, OH 44041; (2) Benesch, Friedlander, Coplan & Aronoff, (the "Escrow Agent"), whose mailing address is 41 S. High Street, Ste. 26, Columbus OH 43215; and (3) the Ashtabula County Board of County Commissioners (the "Board"), on behalf of Ashtabula County, whose mailing address is 25 West Jefferson Street, Jefferson, OH 44047.

WHEREAS the Board is party to a grant agreement with the State of Ohio, Department of Development, wherein the Board is Grantee and the State of Ohio, Department of Development is Grantor (the "Grant Agreement"), a draft of which is attached hereto as Exhibit A, for the release of grant funds in the amount of \$1,056,900.51 (the "Grant Funds") in order to develop a new roadway under the Ohio 629 Roadwork Development Program ("the 629 Program") created to promote economic development, business expansion and job creation by providing roadwork improvement funding for the establishment of a new road called "Endurance Way", which will include a 2,100-linear foot road (the "Project");

WHEREAS, an eligible grantee under the 629 Program must be a state agency, municipality, township, county, port authority, public airport or other units of local or quasi-local governments, but private organizations may receive funds to construct public roadways if deemed appropriate by the Director of the Ohio Department of Development;

WHEREAS, the Director of the Ohio Department of Development has deemed the funding of Endurance Way appropriate for funding;

WHEREAS, the County is a partner to the Developer in the development of the public portions of Endurance Way, and will serve as Grantee under the Grant Agreement to draw down funds under the 629 Program;

WHEREAS, the Developer agrees to undertake portions of the Board's responsibilities under the Grant Agreement; and

WHEREAS, this Agreement is contingent upon execution of the Grant Agreement according to terms agreeable to the Developer and the County.

THE ABOVE PARTIES AGREE to the following conditions, which are hereby established in accordance with the requirements of the Ashtabula County Subdivision Regulations sections 482, 486, and 490 (the "Subdivision Regulations").

A. The Developer Agrees:

1. To establish an escrow account (the "Account") with the Escrow Agent in the amount of one hundred ten percent (110%) of the Ashtabula County Engineer's approved estimate in accordance with the Subdivision Regulations. Said Account shall be effective for the Term of Agreement and shall be in favor of the Board to be withdrawn by the Board if necessary for the purposes set forth hereunder.
2. To obtain, and provide proof of, such additional funds from other sources to pay the costs of the Project in excess of the Grant Funds no later than the time such funds will be required to pay Project costs as and when such costs are incurred and payable. The Developer agrees that no Grant Funds will be disbursed to reimburse Project costs unless and until it obtains the additional funds necessary to pay the balance of the Improvement costs.
3. To cause the Project to be constructed within the Term of Agreement. Notwithstanding the foregoing, if Developer anticipates the Project will not be completed within the Term of Agreement, Developer will cooperate with the Board so that an extension is requested at least sixty (60) days before the end of the Term of Agreement, pursuant to Section 4(a) of the Grant Agreement.
4. To use funds in the Account solely for construction of the Project and not for any other purpose; said funds are to be disbursed only upon mutual agreement of the Developer, the Escrow Agent, and the Board.
5. To submit to the Board evidence of all expenses to be reimbursed with Grant Funds, which shall be supported by contracts, invoices, vouchers, paid receipts and other documentation as appropriate.
6. To notify the County Engineer not less than two (2) days prior to any Project-related construction.
7. To request other payments on a basis of the percentage of work satisfactorily constructed and installed within the Term of Agreement; said percentage to be determined by the County Engineer based on the itemized cost figures cited in Section D of this Agreement.
8. To cooperate with the Board to provide information requested in order for the Board to submit performance reports pursuant to Section 7(a) of the Grant Agreement which is incorporated by reference as if fully set forth herein.
9. To cooperate with the Board to provide information requested in order for the Board to submit a closeout report pursuant to Section 7(b) of the Grant Agreement, including the number of jobs created/retained as a result of the Project.

10. To establish and maintain records related to the Project and the Grant Funds pursuant to Section 8 of the Grant Agreement.
11. To make a good faith effort to employ minority persons in the completion and operation of the Project and in the fulfillment of Developer's job creation obligations in the same percentage as the average percentage of minority persons who reside in the county in which the Project is located and any contiguous Ohio counties.
12. Not to discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status or ancestry. Developer shall ensure that applicants for employment are considered for employment, and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status or ancestry. Developer will incorporate the requirements of this paragraph in all of its contracts for any of the work undertaken on the Project (other than subcontracts for standard commercial supplies or raw materials), and Developer will require all of its contractors for any part of such work to incorporate such requirements in all subcontracts for such work.
13. To establish and maintain for at least three (3) years after the End Date or any earlier termination date its records regarding this Agreement, the Grant Funds and the Project, including, but not limited to, financial reports, job creation and retention statistics, and all other information pertaining to Developer's performance of its obligations under this Agreement. If any audit, dispute or litigation is then pending, however, Developer shall maintain such records as may be relevant to such matter until it is finally resolved.
14. To make available to the Board, its agents or other appropriate State agencies or officials, at any time during normal business hours and upon not less than 24 hours prior written notice, all books and records regarding this Agreement, the Grant Funds and the Project which are in the possession or control of Developer, including, but not limited to, records evidencing employment at the Project Site. Board, its agents and other appropriate State agencies and officials may review, audit and make copies of such books and records, and any such inspection of books and records will be undertaken in such a manner as not to interfere unreasonably with the normal business operations of Developer. Developer shall, at its own cost and expense, segregate records to be made available for inspection pursuant to this Section A(14) from Developer's other records of operation.
15. To comply with all applicable federal, state, and local laws in the performance of Developer's obligations under this Agreement, the completion of the Project and the operation of the Project as long as Developer has any obligation to Board under this Agreement. Without limiting the generality of such obligation, Developer shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withholding, and any and all other taxes or payroll deductions required for all employees engaged by Developer in

connection with the Project, and Developer shall comply with all applicable environmental, zoning, planning and building laws and regulations.

16. To certify: (1) it has reviewed and understands Executive Order 2019-11D, (2) has reviewed and understands the Ohio ethics and conflict of interest laws including, without limitation, Ohio Revised Code §§ 102.01 et seq., §§ 2921.01, 2921.42, 2921.421 and 2921.43, and §§ 3517.13(I) and (J), and (3) will take no action inconsistent with those laws and the order, as any of them may be amended or supplemented from time to time. Developer understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of this Agreement and the grant of funds made pursuant to this Agreement and may result in the loss of other contracts or grants with the State of Ohio.
17. To represent and warrant that Developer does not owe: (1) any delinquent taxes to the State of Ohio or a political subdivision of the State of Ohio; (2) any moneys to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State of Ohio; and (3) any other moneys to the State of Ohio, a state agency or a political subdivision of the State of Ohio that are past due, whether or not the amounts owed are being contested in a court of law.
18. To comply with, and to cause its contractors and subcontractors to comply with, any applicable prevailing wage requirements under Ohio Revised Code Chapter 4115 and designate or cause to be designated an individual who shall perform the duties and responsibilities required by law of a prevailing wage coordinator for the Project.
19. To comply with the Board's Procurement Policy, attached hereto as Exhibit B¹.
20. To maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor or the Board) caused by the negligent acts or omissions, or negligent conduct of the Developer, to the extent permitted by law, in connection with the activities of this Agreement or the Grant Agreement.
21. To indemnify and hold harmless the Board, its officers, employees, and agents from and against any and all liability, claims, demands, damages, losses, and expenses, including but not limited to attorney's fees, for (a) any negligent acts, errors, or omissions of the Developer, its officers, employees, and agents in connection with the activities of this Agreement or the Grant Agreement and (b) any breach of this Agreement or the Grant Agreement.

B. The Escrow Agent Agrees:

¹ Developer reserves the right to review the Board's Procurement Policy upon receipt.

1. To hold in the Account the amount of \$5,881,717.16, as determined by the Board, to cover the estimated cost of the Project for the Term of Agreement, said funds to be disbursed only upon mutual agreement of the Developer, the Escrow Agent, and the Board.
2. To allow funds in the Account to be used solely for construction of the Project, said funds to be disbursed only upon mutual agreement of the Developer, the Escrow Agent, and the Board, according to a work schedule submitted by the Developer and approved by the Ashtabula County Engineer. If there is a disagreement as to the approval by the Ashtabula County Engineer, the escrow agent shall continue to hold and retain the funds until a final order, judgment or decree issued by a court of competent jurisdiction.
3. To hold not less than five percent (5%) of funds in the Account until the last payment is requested by the Developer and until the Escrow agent receives written notice of release of funds by the Board.
4. To disburse other payments on a basis of the percentage of work satisfactorily constructed and installed within the Term of Agreement, said percentage to be determined by the County Engineer based on the itemized cost figures cited in Section D of this Agreement.

C. The Board Agrees:

1. To accept this Agreement in lieu of cash or other surety for the guarantee of satisfactory construction of all required roadwork improvements as determined by the Board, upon the recommendation of the County Engineer under the Term of Agreement. The Board shall draw on the \$ 5,881,717.16 if the Developer fails or refuses to construct and install all required improvements, or otherwise, by the Developer's own action or in action, causes any breach of this Agreement. Any amount drawn on the \$ 5,881,717.16 shall be limited to the minimum amount needed to complete the Project in accordance with the Subdivision Regulations or cure the breach, as applicable.
2. To promptly notify the Developer in writing upon a determination by the Board that the Developer has breached its obligation hereunder. The Developer shall have thirty (30) days after receipt of such notice to cure the breach(es) specified therein or, if such breach(es) cannot be completely cured within thirty (30) days, to commence such cure and diligently pursue it to a reasonably prompt conclusion. The Board may only draw on the amount of funds held in the account if the Developer fails to timely cure the breach(es).
3. To order the County Engineer to periodically inspect the Project while under construction and to inspect any or all aspects of the Project within seven (7) days after receiving written notice from the Developer or Director of Planning that any or all of the Project has been completed. Within ten (10) days after receiving written notice from the County Engineer, that the Project has been completed in accordance with the Subdivision Regulations, the Board shall notify the Escrow Agent and the Developer that this agreement may be terminated.

4. To cooperate with the Developer as necessary to request an extension of time to complete the Project at least 60 days before the end of the Term of Agreement in accordance with Section 4(a) of the Grant Agreement and Section A(3) above.
5. To cooperate with the Developer as necessary to submit to the Grantor evidence of proper expenditure as described in Section A(5) above.
6. To submit all reports, in cooperation with the Developer, as required under the Grant Agreement.
7. To consider a request by the Developer to maintain confidentiality of records, and discussion thereof during public meetings, in accordance with Ohio Revised Code 122.21(G)(8).
8. To cooperate with the Developer to terminate the Grant Agreement for cause at the Developer's reasonable request.
9. To maintain liability and property insurance in accordance with Section 11 of the Grant Agreement.

D. Cost Itemization of the Project, as determined by the County Engineer:

See Exhibit C, attached.

105% Amount	\$ <u>5,614,366.38</u>
5% Minimum Balance	\$ <u>267,350.78</u>

E. Exculpation and Indemnification of Escrow Agent.

1. Escrow Agent will have no duties or responsibilities other than those expressly set forth in this Agreement. Escrow Agent will be under no liability to any person or entity by reason of any failure on the part of any party to this Agreement (other than Escrow Agent) or any maker, endorser or other signatory of any other document to perform any obligations under this Agreement or under any such other document. Except for this Agreement including the instructions to Escrow Agent, Escrow Agent is not obligated to recognize any agreement between or among of the parties, notwithstanding Escrow Agent's knowledge thereof, other than the Performance Agreement (but only for the purpose of defining any terms defined in this Agreement by reference to the Performance Agreement).
2. Escrow Agent will not be liable for any action taken or omitted by it, or any action suffered by it to be taken or omitted, in good faith and in the exercise of its own judgment, and may rely conclusively on, and will be protected in acting upon, any order, notice, demand, certificate, or opinion or advice of counsel (including counsel chosen by Escrow Agent), statement, instrument report or other paper or document (not only as to its due execution and the validity and effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained) which is reasonably believed by Escrow Agent to be genuine and to be authentically signed or presented.

3. Escrow Agent will be indemnified and held harmless, jointly and severally, by Developer ~~_____~~ from and against any expenses (including, without limitation, reasonable counsel fees and disbursements), damages, or losses suffered by Escrow Agent in connection with any claim or demand which in any way, directly or indirectly, arises out of or relates to this Agreement or the services of Escrow Agent hereunder; but, if Escrow Agent is guilty of willful misconduct or gross negligence under this Agreement then Escrow Agent will bear all losses, damages and expenses arising as a result of such willful misconduct or gross negligence. Promptly after the receipt by Escrow Agent of notice of any such demand or claim or the commencement of any action, suit or proceeding related to such demand or claim, Escrow Agent will notify the other parties in writing. For the purposes of this Agreement, the terms "expense" and "loss" will include, without limitation, all amounts paid or payable to satisfy any such claim or demand, or in settlement of any such claim, demand, action, suit, or proceeding settled with the express written consent of the parties hereto (which consent will not be unreasonably withheld), and all costs and expenses, including, without limitation, reasonable counsel fees and disbursements, paid or incurred in investigating or defending against any such claim, demand, action, suit, or proceeding.

F. Termination and Resignation of Escrow Agent.

1. The Escrow Agent, on having released all of the funds pursuant to the terms of this Agreement, shall be discharged from further obligation hereunder and this Agreement shall thereupon terminate.
2. At any time, upon ten (10) days' prior written notice to Purchaser and Seller, Escrow Agent may resign and be discharged from its duties as Escrow Agent. As soon as practicable after its resignation, Escrow Agent will turn over to a successor escrow agent mutually appointed by the other parties all monies and property held hereunder upon presentation of a document appointing the new escrow agent and evidencing its acceptance thereof.

IN WITNESS WHEREOF, the Developer, the Escrow Agent, and the Board have caused this Agreement to be duly signed in their respective names by their duly authorized officers as of the date hereinbefore written.

Executed on this 11 day of June, 2024.

Developer [Signature]
By: [Signature]
Its: Authorized Person

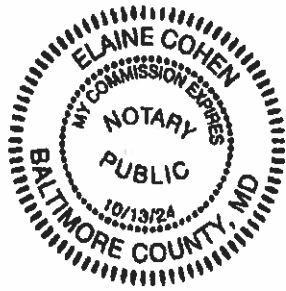
Maryland
State of Ohio, County of Baltimore

The foregoing instrument was acknowledged before me this 11 day of June by Jonathan Ehrfeldt, the owner of the Project, and that the same was their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my name and official seal at Dartmouth, Maryland

Notary Public Elaine Cohen
My Commission Expires 10/13/24
My Residence County Baltimore

SEAL



Escrow Agent

Holly F. Gross

By: Holly F Gross

Its: Agent

State of Ohio, County of Franklin

The foregoing instrument was acknowledged before me this 11th day of June by Benesch, Friedlander, Coplan & Aronoff, Escrow Agent, and that the same was their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my name and official seal at Franklin Co, Ohio.

Notary Public

Leah McCue

SEAL

My Commission Expires

10/21/24

My Residence County

Franklin



Leah McCue
Notary Public, State of Ohio
My Commission Expires
10/21/2024

County of Ashtabula, Board of County Commissioners

 J.P. Ducro

 Casey R. Kozlowski

 Kathryn L. Whittington

Executed before me on the 18th day of July, 2024, by J.P. Ducro, Casey R. Kozlowski and Kathryn L. Whittington, who, under penalty of perjury in violation of Section 2921.11 of the Revised Code, represented to me to be said persons.



Lisa Hawkins, Clerk, Board of Ashtabula County Commissioners

SIGNATURE PAGE

RE: An agreement with Spire Institute Academy
Maria Matter No. 2024-CON-0018
mgmt

Approved as to Legal Form Only:

By: 

Date: 7/2/24