

Mayor William P. Doyle  
Councilor Marshall Archer  
Councilor Jim Purdy  
Councilor Joseph Gunn



Councilor Lynn H. Copeland  
Councilor Alan R. Minthorn  
Councilor Jodi L. MacPhail  
Councilor Nathan D. Johnston

**SACO CITY COUNCIL MEETING  
TUESDAY, APRIL 21, 2020 – 6:30PM  
ONLINE MEETING VIA ZOOM (SEE BELOW FOR MORE INFORMATION)**

- I. CALL TO ORDER**
- II. RECOGNITION OF MEMBERS PRESENT**
- III. PLEDGE OF ALLEGIANCE**
- IV. GENERAL**
- V. COMMITTEE CORRESPONDENCE TO COUNCIL**
- VI. PUBLIC COMMENT**
- VII. APPROVAL OF MINUTES:** April 13, 2020
- VIII. CONSENT ITEMS**
- IX. ACTION ITEMS**
  - A. Credit Enhancement Agreement between the City of Saco, ME and A. Duie Pyle, Inc. **P2**
- X. NEW BUSINESS**
  - A. Preparation for Budget Approval Presentation
  - B. Department Budget Presentations:
    - Police Department
    - Water Resource Recovery Department
    - Planning & Development
    - Human Resources
    - Dyer Library
    - Biddeford Saco Old Orchard Beach Transit
    - Saco Main Street
- XI. ADMINISTRATIVE UPDATE**
- XII. COUNCIL DISCUSSION AND COMMENT**
- XIII. EXECUTIVE SESSION:** N/A
- XIV. REPORT FROM EXECUTIVE SESSION**
- XV. ADJOURNMENT**

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**INFO ON COUNCIL MEETINGS WHILE CITY HALL IS CLOSED TO THE PUBLIC**

For up to date information on watching Council meetings and submitting public comments, visit [sacomaine.org/watchmeetings](http://sacomaine.org/watchmeetings)

**ELECTED OFFICIALS EMAIL ADDRESSES**

To reach Saco's Elected Officials use first letter of first name last name @sacomaine.org.

Ex: [bdoyle@sacomaine.org](mailto:bdoyle@sacomaine.org). See a list of the Elected Officials above.

Starting with Mayor Bill Doyle, Councilor Archer, Ward 1, Councilor Purdy, Ward 2, etc.

**MEETING ITEM COMMENTARY**

- AGENDA ITEM:** **First Reading:** Credit Enhancement Agreement between the City of Saco, Maine and A. Duie Pyle, Inc.
- STAFF RESOURCE:** Denise M. Clavette, Planning & Economic Development Director  
Jessa Berna, Economic Development Specialist
- COUNCIL RESOURCE:** Jim Purdy, City Councilor (Liaison Economic Development Commission)
- BACKGROUND:** A Credit Enhancement Agreement (CEA) for A. Duie Pyle, Inc. (Company) is being presented for consideration. This application is for the CEA, that will be a part of the existing TIF #7 Spring Hill Omnibus Tax Increment Financing District. The Credit Enhancement Agreement will be for 13 years, with the following terms: A. Duie Pyle will receive 100% of the TIF revenues, and the City will receive 0% of TIF revenue for the entirety of the CEA.
- The CEA was reviewed by the Economic Development Commission at their April 13, 2020 meeting with the recommendation to go to First Reading at the City Council meeting scheduled on April 21, 2020. The Council Order for this Credit Enhancement Agreement, which will be part of the First Reading, Public Hearing and Second and Final Reading will be as follows: “The City Administrator is hereby authorized and directed to enter into a credit enhancement agreement with A. Duie Pyle in substantially the form as presented to the City Council.”
- EXHIBITS:**
1. Credit Enhancement Agreement between the City of Saco, Maine and A. Duie Pyle.
  2. CEA Captured Assessed Value & TIF Projection Table
- RECOMMENDATION:** Staff supports this Credit Enhancement Agreement and recommends the City Council approve the First Reading of this CEA and schedule a public hearing for May 18<sup>th</sup>, 2020.
- SUGGESTED MOTION:** *“I move to approve the first reading on the Order regarding the approval of entering into a Credit Enhancement Agreement between the City of Saco, Maine A. Duie Pyle in substantially the form presented to the Council and further move to schedule a public hearing on May 18, 2020”*

**CREDIT ENHANCEMENT AGREEMENT**

**between**

**CITY OF SACO, MAINE**

**and**

**A. DUIE PYLE, INC.**

**DATED: \_\_\_\_\_, 2020**

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**THIS CREDIT ENHANCEMENT AGREEMENT**, made and entered into as of \_\_\_\_\_, 2020 by and between the **City of Saco** (the “City”), a municipal corporation and political subdivision of the State of Maine located in York County, Maine, and **A. DUIE PYLE, INC.** (the “Developer”), a Maine limited liability company with an address of 85 Industrial Park Road, Saco, Maine 04074;

**WITNESSETH THAT**

**WHEREAS**, the City designated the Spring Hill Development and Tax Increment Financing District Municipal (the “District”), pursuant to Chapter 206 of Title 30-A of the Maine Revised Statutes, and approved a municipal development program and financial plan for the District (the “Development Program”) on March 29, 2002. The District and Development Program were approved by the State of Maine Department of Economic and Community Development (the “Department”) on March 29, 2002; and

**WHEREAS**, the City approved the First Amendment to the District (the “First Amendment”) and such First Amendment was approved by the Department on October 7, 2008; and

**WHEREAS**, on February 19, 2019, the City approved the Second Amendment to the District (the “Second Amendment”), renaming the District the **Spring Hill Omnibus Municipal Development and Tax Increment Financing District** and amending the project list; and the Department approved the Second Amendment on June 17, 2019; and

**WHEREAS**, the approved Development Program for the District provides that in the discretion of the City up to one hundred percent (100%) of the Tax Increment Revenues generated by new development within the District may be returned to the Developer during the remaining term of the District, pursuant to a credit enhancement agreement, for the purpose of defraying the Developer’s project costs; and

**WHEREAS**, the City and the Developer have agreed as to the portion of the Tax Increment Revenues associated with the Developer’s Project (as hereinafter defined) that will be paid to the Developer; and

**WHEREAS**, the City and the Developer desire and intend that this Credit Enhancement Agreement be and constitute one of the credit enhancement agreements contemplated by the Development Program by virtue of its omnibus status; and

**WHEREAS**, as required by Section 3.05 of the Development Program and the Department approval, the City held a public hearing on \_\_\_\_\_, 2020 at which this Credit Enhancement Agreement was authorized;

**NOW, THEREFORE**, in consideration of the foregoing recitals and in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

## ARTICLE I DEFINITIONS

### Section 1.1. Definitions.

The terms defined in this Article I shall, for all purposes of this Agreement, have the meanings herein specified, unless the context clearly requires otherwise:

“Act” means chapter 206 of Title 30-A of the Maine Revised Statutes and regulations adopted thereunder, as amended from time to time.

“Agreement” shall mean this Credit Enhancement Agreement between the City and the Developer dated as set forth above, as it may be amended from time to time.

“Captured Assessed Value” means the amount, stated as a percentage, of Increased Assessed Value that is retained in each Tax Year during the term of the District, as specified in section 2.3 hereof.

“Commissioner” means the Commissioner of the Department of Economic and Community Development.

“Current Assessed Value” means the then-current assessed value of all taxable real property constituting Developer’s Project within the Developer Property as determined by the City’s Assessor as of April 1<sup>st</sup> of each Tax Year during the term of this Agreement.

“Department” shall have the meaning given such term in the recitals hereto.

“Developer” shall have the meaning given such term in the first paragraph hereto.

“Developer Project” means the A. Duie Pyle facilities located on Developer Property including only those improvements that are related to the transportation and logistics operation of the Developer. To the extent the Developer Property is used in the future partially or completely by other entities and operations, such endeavors and facilities related thereto shall not be considered to be part of Developer Project.

“Developer Project Cost Subaccount” means the subaccount within the Development Program Fund in which the Developer Tax Increment Revenues shall be deposited.

“Developer Property” means the property identified as 85 Industrial Park Road (City Tax Map as Map 72, Lot 002).

“Developer Tax Increment Revenues” means that portion of all real property taxes assessed by and paid to the City in any Tax Year, in excess of any special assessment by City or any State or special district tax, upon the Captured Assessed Value, allocated and pledged to the Developer pursuant to Articles II and III of this Agreement, to support the Developer Project on the Developer Property.

“Development Program” shall have the meaning given such term in the recitals hereto.

“Development Program Fund” means the Municipal TIF Development Program Fund

described in section IV(D) of the Development Program and established and maintained pursuant to Article II hereof and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund shall consist of a Project Cost Account with at least one subaccount: the Developer Project Cost Subaccount.

“District” shall have the meaning given such term in the first recital hereto.

“Effective Date” shall mean the date of execution of this Agreement.

“Financial Plan” means the financial plan described in section IV of the Development Program.

“Fiscal Year” means July 1<sup>st</sup> to June 30<sup>th</sup> of the subsequent calendar year or such other fiscal year as the City may from time to time establish.

“Increased Assessed Value” means, for each Fiscal Year during the term of this Agreement, the amount by which the Current Assessed Value for such year exceeds the Original Assessed Value. If the Current Assessed Value is less than or equal to the Original Assessed Value in any given Tax Year, there is no Increased Assessed Value in that Tax Year.

“Original Assessed Value” means one million seventy-three thousand dollars (\$1,073,000), the taxable assessed value of the Developer Property as of March 31, 2019 (April 1, 2018), provided, however that in the event that a City revaluation occurs and results in an increase or decrease of any Developer Property that was included as a part of the initial Original Assessed Value as of April 1, 2018, the Original Assessed Value then in effect shall be increased or decreased by a like amount and such adjusted Original Assessed Value shall thereafter (subject to another City revaluation) be the Original Assessed Value for the purposes of this Agreement.

“Project Cost Account” means the project cost account described in the Financial Plan Section of the Development Program and established and maintained pursuant to Title 30-A M.R.S.A. § 5227(3)(A)(1) and Article II hereof.

“Property Tax” means any and all *ad valorem* property taxes levied, charged or assessed against real property located in the District by the City, or on its behalf.

“State” means the State of Maine.

“Tax Increment Revenue Cap” shall have the meaning given to such term in Section 2.3.

“Tax Payment Date” means the later of the date(s) on which Property Taxes levied by the City on real and personal property located in the District are (a) due and payable, or (b) are actually paid by or on behalf of the Developer to, and received by, the City.

“Tax Year” shall have the meaning given such term in 30-A M.R.S.A. § 5222(18), as amended, to wit: April 1<sup>st</sup> to March 31<sup>st</sup>. “Term” shall mean all Tax Years in the period beginning from April 1, 2019 - March 31, 2020 through April 1, 2031 - March 31, 2032.

“City” shall have the meaning given such term in the first paragraph hereto.



**Section 1.2. Interpretation and Construction.**

In this Agreement, unless the context otherwise requires:

- (a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after, and the term “heretofore” means before, the date of delivery of this Agreement.
- (b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.
- (c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public or governmental bodies, as well as any natural persons.
- (d) Any headings preceding the texts of the several Articles and sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.
- (e) All approvals, consents and acceptances required to be given or made by any signatory hereto shall not be withheld unreasonably.
- (f) All notices to be given hereunder shall be given in writing and, unless a certain number of days is specified, within a reasonable time.
- (g) If any clause, provision or section of this Agreement shall be ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

**ARTICLE II**  
**DEVELOPMENT PROGRAM FUND AND FUNDING REQUIREMENTS**

**Section 2.1. Creation of Development Program Fund.**

The City has created and established a segregated fund in the name of the City designated as the “Spring Hill Omnibus Municipal Development and Tax Increment Financing District Program Fund” (hereinafter the “Development Program Fund”) to be funded by tax payments actually made by properties located within the District, and in accordance with the terms and conditions of, the Development Program and 30-A M.R.S.A. § 5227(3)(A). The Development Program Fund is pledged to and charged with the payment of project costs as outlined in the Financial Plan of the Development Program and as provided in 30-A M.R.S.A. § 5227(3)(A)(1), in the manner and priority provided in 30-A M.R.S.A. § 5227(3)(B), and as set forth in Section 3.1(b) below.

**Section 2.2. Liens.**

The City shall not create any liens, encumbrances or other interests of any nature whatsoever, nor shall it hypothecate the Developer Project Cost Subaccount of the Development Program Fund described in section 2.1 hereof or any funds therein, other than the interest in favor of the Developer hereunder in and to the amounts on deposit; provided, however, that nothing herein shall prohibit the creation of property tax liens on property in the District in accordance with and entitled to priority pursuant to Maine law.

**Section 2.3. Captured Assessed Value; Deposits into Development Program Fund; Cap on Tax Increment Revenues.**

- (a) For each Tax Year of the Term, the City shall capture in the District, for purposes of depositing Property Taxes associated therewith, the percentage of the Increased Assessed Value determined in accordance with the following table:

Tax Year	Captured Percentage
2019	100%
2020	100%
2021	100%
2022	100%
2023	100%
2024	100%
2025	100%
2026	100%
2027	100%
2028	100%
2029	100%
2030	100%
2031	100%

(b) In each of said Tax Years, the City shall deposit into the Developer Project Cost Subaccount of the Development Program Fund, within twenty (20) business days of each Tax Payment Date, that portion of the tax payment made by Developer as represents Developer Tax Increment Revenues.

(c) Notwithstanding anything to the contrary contained herein, the City shall have the authority to decide to discontinue all or a portion of the City Project Cost Subaccount deposits and instead make those deposits to the City's general fund without further action or consents required by the Developer.

**Section 2.4. Use of Monies in Development Program Fund.**

All monies in the Development Program Fund that are allocable to and/or deposited in the Developer Project Cost Subaccount shall in all cases be used and applied to fund fully the

City's payment obligations to Developer described in Articles II and III hereof.

**Section 2.5. Monies Held in Segregated Account.**

All monies paid into the Developer Project Cost Subaccount under the provisions hereof and the provisions of the Development Program shall be held by the City for the benefit of the Developer in a segregated account. The City shall never be under any obligation to deposit into the Developer Project Cost Subaccount, any funds other than Developer Tax Increment Revenues received by the City from Developer, the City's obligations under this Agreement extending only to funds that are Developer Tax Increment Revenues actually paid by Developer to the City. Interest earnings thereon shall be retained by the City for the City's own use.

**ARTICLE III  
PAYMENT OBLIGATIONS**

**Section 3.1. Developer Payments.**

(a) The City agrees to pay Developer, within thirty (30) days following the payment of the final installment of Property Tax for the Tax Year during the Term, all amounts then on deposit in the Developer Project Cost Subaccount; *provided, however*, the City shall have no obligation to make payment while any mechanics' liens shall be encumbering the Developer Property for a period of more than thirty (30) days. Upon the discharge or other termination of any such mechanics' liens, the City shall pay any amounts previously withheld on account thereof.

(b) Notwithstanding anything to the contrary contained herein, if, with respect to the payment of the final installment of Property Tax for the Tax Year, any portion of the Property Taxes assessed against real property within the Developer Property for the Tax Year concerned remains unpaid, because of a valuation dispute or otherwise, the Property Taxes actually paid with respect to that Tax Year shall be applied, first, to payment in full of taxes due in respect of the Original Assessed Value; and second, to the extent of funds remaining, to payment of the Developer Tax Increment Revenues for the Tax Year concerned.

**Section 3.2. Failure to Make Payment.**

If the City should fail or be unable to make any of the payments at the time and in the amount required under the foregoing provisions of this Article III; or if the amount deposited into the Developer Project Cost Subaccount is insufficient to reimburse the Developer for the full amount Developer has actually paid in taxes, the amount or installment so unpaid shall continue as a limited obligation of the City, under the terms and conditions hereinafter set forth, until the amount unpaid shall have been fully paid. The Developer shall have the right to initiate and maintain an action to specifically enforce the City's payment obligations hereunder.

**Section 3.3. Manner of Payments.**

The payments provided for in this Article III shall be paid directly to the Developer at the address specified in Section 8.7 hereof in the manner provided hereinabove, for the Developer's own use and benefit so long as such use is consistent with the requirements of the Act, by check

drawn by the City on the Developer Project Cost Subaccount of the Development Program Fund.

**Section 3.4. Obligations Unconditional.**

Subject to Developer's compliance with the terms and conditions of this Agreement, the Obligations of the City to make the payments described in this Agreement in accordance with the terms hereof shall be absolute and unconditional, and the City shall not suspend or discontinue any payment hereunder or terminate this Agreement for any cause, other than by court order or by reason of a final judgment by a court of competent jurisdiction that the District is invalid or otherwise illegal.

**Section 3.5. Limited Obligation.**

The City's obligations of payment hereunder shall be limited obligations of the City payable solely from Developer Tax Increment Revenues pledged therefor under this Agreement and actually received by the City from or on behalf of the Developer. The City's obligations hereunder shall not constitute a general debt or a general obligation or charge against or pledge of the faith and credit or taxing power of the City, the State of Maine, or of any municipality or political subdivision thereof, but shall be payable solely from that portion of Tax Increment Revenues actually deposited by City from taxes paid by Developer into the Developer Project Cost Subaccount of the Development Program Fund and payable to Developer hereunder. This Agreement shall not directly, indirectly or contingently obligate the City, the State of Maine, or any other City or political subdivision to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment, excepting the City's obligation to levy property taxes upon the Developer Project and the pledge established under this Agreement of the Developer Tax Increment Revenues received by the City from Developer.

**ARTICLE IV  
PLEDGE**

**Section 4.1. Pledge of and Grant of Security Interest in Developer Project Cost Subaccount.**

In consideration of this Agreement and other valuable consideration and for the purpose of securing payment of the amounts provided for hereunder to the Developer by the City, according to the terms and conditions contained herein, and in order to secure the performance and observance of all of the City's covenants and agreements contained herein, and subject to section 2.3(c) above, the City hereby grants a security interest in and pledges to the Developer the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof and all sums of money and other securities and investments therein.

**Section 4.2. Perfection of Interest.**

(a) To the extent reasonably necessary to satisfy the requirements of this Agreement, the City will at such time and from time to time as requested by Developer establish the Developer Project Cost Subaccount as defined herein and addressed further in Section 2.1 hereof as a segregated fund under the control of an escrow agent, trustee or other fiduciary selected by Developer so as to perfect Developer's interest therein. The cost of establishing and monitoring such a fund shall be borne exclusively by the Developer. In the event such a fund is established

under the control of a trustee or fiduciary the City shall cooperate with the Developer in causing appropriate financing statements and continuation statements naming the Developer as pledgee of all such amounts from time to time on deposit in the fund to be duly filed and recorded in the appropriate State offices as required by and permitted under the provisions of the Maine Uniform Commercial Code or other similar law as adopted in the State of Maine and any other applicable jurisdiction, as from time to time amended, in order to perfect and maintain the security interests created hereunder.

(b) If the establishment of a segregated fund in accordance with this Section 4.2, becomes reasonably necessary to satisfy the requirements of this Agreement, the City's responsibility shall be limited to delivering the amounts required by this Agreement to the escrow agent, trustee or other fiduciary designated by the Developer. The City shall have no liability for payment over of the funds concerned to the Developer by any such escrow agent, trustee or other fiduciary, or for any misappropriation, investment losses or other losses in the hands of such escrow agent, trustee or other fiduciary. Notwithstanding any change in the identity of the Developer's designated escrow agent, trustee or other fiduciary, the City shall have no liability for misdelivery of funds if delivered in accordance with Developer's most recent written designation or instructions actually received by the City.

#### **Section 4.3. Further Instruments.**

The City shall, upon the reasonable request of the Developer, from time to time execute and deliver such further instruments and take such further action as may be reasonable and as may be required to carry out the provisions of this Agreement; provided, however, that no such instruments or actions shall pledge the credit of the City, and provided further that the cost of executing and delivering such further instruments (including the reasonable and related costs of counsel to the Town with respect thereto) shall be borne exclusively by the Developer.

#### **Section 4.4. No Disposition of Development Program Fund.**

Except as permitted hereunder, the City shall not sell, lease, pledge, assign or otherwise dispose, encumber or hypothecate any interest in the Development Program Fund and will promptly pay or cause to be discharged or make adequate provision to discharge any lien, charge or encumbrance on any part thereof not permitted hereby.

#### **Section 4.5. Access to Books and Records.**

All non-confidential books, records and documents in the possession of the City relating to the District, the Development Program, this Agreement and the monies, revenues and receipts on deposit or required to be deposited into the Developer Project Cost Subaccount shall at all reasonable times be open to inspection by the Developer, its agents and employees.

## **ARTICLE V DEFAULTS AND REMEDIES**

#### **Section 5.1. Events of Default.**

Each of the following events shall constitute and be referred to in this Agreement as an "Event of Default":

(a) Any failure by the City to pay any amounts due to Developer when the same shall become due and payable;

(b) Any failure by the City to deposit into the Developer Project Cost Subaccount of the Development Program Fund on a timely basis, funds the City receives from the Developer that the City is required under this Agreement to deposit into the Development Program Fund;

(c) Any failure by the City or the Developer to observe and perform in all material respects any covenant, condition, agreement or provision contained herein on the part of the City or Developer to be observed or performed, which failure is not cured within thirty (30) days following written notice thereof;

(d) Any failure by the Developer to pay when due, any real or personal property taxes lawfully assessed by the City to Developer; and

(e) If a decree or order of a court or agency or supervisory authority having jurisdiction in the premises of the appointment of a conservator or receiver or liquidator of, any insolvency, readjustment of debt, marshaling of assets and liabilities or similar proceedings, or for the winding up or liquidation of the Developer's affairs shall have been entered against the Developer or the Developer shall have consented to the appointment of a conservator or receiver or liquidator in any such proceedings of or relating to the Developer or of or relating to all or substantially all of its property, including without limitation the filing of a voluntary petition in bankruptcy by the Developer or the failure by the Developer to have an involuntary petition in bankruptcy dismissed within a period of ninety (90) consecutive days following its filing or in the event an order for release has been entered under the Bankruptcy Code with respect to the Developer;

### **Section 5.2. Remedies on Default.**

Subject to the provisions contained in Section 8.11 below concerning dispute resolution, whenever any Event of Default described in Section 5.1 hereof shall have occurred and be continuing, the nondefaulting party, following the expiration of any applicable cure period, shall have all rights and remedies available to it at law or in equity, including the rights and remedies available to a secured party under the laws of the State of Maine, and may take whatever action as may be necessary or desirable to collect the amount then due and thereafter to become due, to specifically enforce the performance or observance of any obligations, agreements or covenants of the nondefaulting party under this Agreement and any documents, instruments and agreements contemplated hereby or to enforce any rights or remedies available hereunder. Further, the non-defaulting party may elect to terminate this Agreement upon 30 days' written notice to the defaulting party provided the Event of Default is not cured within such 30 day period.

### **Section 5.3. Remedies Cumulative.**

Subject to the provisions of Section 8.11 below concerning dispute resolution, no remedy herein conferred upon or reserved to any party is intended to be exclusive of any other available remedy or remedies but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. Nothing in this Agreement shall be deemed to excuse any non-payment of

municipal taxes by Developer, or to limit in any way, the City's rights and remedies in that event. In the event the Developer pays some, but not all, taxes that are due, the portion paid will be allocated first to any delinquent taxes; second (to the extent of funds remaining) to taxes due on the original assessed value of the property; third (to the extent of funds remaining) to any delinquent taxes on increased assessed value from prior tax years; and last (to the extent of funds remaining) to payment of the Developer's share of the tax increment revenues. Delay or omission to exercise any right or power accruing upon any Events of Default to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights or remedies upon the occurrence of an Event of Default shall not impair any such right or power or be considered or taken as a waiver or relinquishment for the future of the right to insist upon and to enforce, from time to time and as often as may be deemed expedient, by injunction or other appropriate legal or equitable remedy, strict compliance by the parties hereto with all of the covenants and conditions hereof, or of the rights to exercise any such rights or remedies, if such Events of Default be continued or repeated.

## **ARTICLE VI EFFECTIVE DATE, TERM AND TERMINATION**

### **Section 6.1. Effective Date and Term.**

This Agreement shall remain in full force from the Effective Date hereof and shall expire upon the later of the expiration of the Term or the payment of all amounts due to the Developer hereunder as of expiration of the Term and the performance of all obligations on the part of the City hereunder, unless sooner terminated pursuant to Section 3.4 or any other applicable provision of this Agreement.

### **Section 6.2. Cancellation and Expiration of Term.**

At the acceleration, termination or other expiration of this Agreement in accordance with the provisions of this Agreement, the City and the Developer shall each execute and deliver such documents and take or cause to be taken such actions as may be necessary to evidence the termination of this Agreement.

## **ARTICLE VII ASSIGNMENT AND PLEDGE OF DEVELOPER'S INTEREST**

### **Section 7.1. Consent to Pledge and/or Assignment.**

The City hereby acknowledges that the Developer may assign its rights hereunder to a successor owner of the Developer Project and may also from time to time pledge and assign its right, title and interest in, to and under this Agreement as collateral for financing for the Developer Project, although no obligation is hereby imposed on the Developer to make such assignment or pledge. Recognizing this possibility, the City hereby consents and agrees to the pledge and assignment of all the Developer's right, title and interest in, to and under this Agreement and in, and to the payments to be made to Developer hereunder, to third parties as collateral or security for financing the Development Program, on one or more occasions during the term hereof. The City agrees to execute and deliver any assignments, pledge agreements, consents or other confirmations required by such prospective pledgee or assignee, including

without limitation recognition of the pledgee or assignee as the holder of all right, title and interest herein and as the payee of amounts due and payable hereunder. The City agrees to execute and deliver any other documentation as shall confirm to such pledgee or assignee the position of such assignee or pledgee and the irrevocable and binding nature of this Agreement and provide to such pledgee or assignee such rights and/or remedies as the Developer or such pledgee or assignee may reasonably deem necessary for the establishment, perfection and protection of its interest herein. Any obligation of the City under this section shall be conditioned upon pledgee or assignee's or Developer's satisfaction of Developer's obligations under this Agreement. Notwithstanding the foregoing, the City shall not be obligated to make payment to any such assignee or pledgee so long as there is any uncured default on the part of Company hereunder. Developer agrees that any payment by the City made in good faith to an assignee or pledgee hereunder shall, to the extent of such payment so made, discharge the City's obligation to Developer hereunder.

**Section 7.2. Pledge, Assignment or Security Interest.**

Except as provided in Section 7.1 hereof for the purpose of securing financing for the Developer Project or an assignment to a successor entity or an affiliate entity, the Developer shall not transfer or assign any portion of its rights in, to and under this Agreement without the prior written consent of the City, through its City Council, which consent shall not be unreasonably withheld.

**ARTICLE VIII  
MISCELLANEOUS**

**Section 8.1. Successors.**

In the event of the dissolution, merger or consolidation of the City or the Developer, the covenants, stipulations, promises and agreements set forth herein, by or on behalf of or for the benefit of such party shall bind or inure to the benefit of the successors and assigns thereof from time to time and any entity, officer, board, commission, agency or instrumentality to whom or to which any power or duty of such party shall be transferred.

**Section 8.2. Parties-in-Interest; No Partnership or Joint Venture.**

Except as herein otherwise specifically provided, nothing in this Agreement expressed or implied is intended or shall be construed to confer upon any person, firm or corporation other than the City and the Developer any right, remedy or claim under or by reason of this Agreement, it being intended that this Agreement shall be for the sole and exclusive benefit of the City and the Developer. This Agreement is not intended to create any form of partnership or joint venture between the City and the Developer.

**Section 8.3. Severability.**

In case any one or more of the provisions of this Agreement shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement and this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained herein.



**Section 8.4. No Personal Liability of Officials of the City; No Waiver of Maine Tort Claims Act.**

No covenant, stipulation, obligation or agreement of the City contained herein shall be deemed to be a covenant, stipulation or obligation of any present or future elected or appointed official, officer, agent, servant or employee of the City in his or her individual capacity, and neither the City Councilors nor any official, officer, employee or agent of the City shall be liable personally with respect to this Agreement or be subject to any personal liability or accountability by reason hereof. Nothing contained herein is intended as a waiver of, and the City expressly reserves all protections and immunities under, the Maine Tort Claims Act, 14 M.R.S.A. § 8101 *et seq.* Developer agrees to indemnify and hold the City harmless from any loss, including court costs and reasonable attorney's fees in the event of litigation, incurred by the City as the result of the City's participation in this Agreement or in the TIF Development Program that is the subject of this Agreement, other than costs and fees incurred in connection with a breach by City of its obligations hereunder.

**Section 8.5. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same Agreement.

**Section 8.6. Governing Law; Venue for Suits**

The laws of the State of Maine shall govern the construction and enforcement of this Agreement.

Any suit to construe or enforce the provisions of this Agreement must be brought in the District or Superior Courts of York County, Maine; and otherwise shall be void. Developer expressly waives any claim to jurisdiction of the United States District Court over disputes arising under this Agreement, whether on account of diversity of citizenship or federal subject matter.

**Section 8.7. Notices.**

All notices, certificates, requests, requisitions or other communications by the City or the Developer pursuant to this Agreement shall be in writing and shall be sufficiently given and shall be deemed given on the third business day after mailing by registered or certified first class mail, postage prepaid, return receipt requested, addressed as follows:

If to the City:

City Administrator  
City of Saco  
300 Main St.  
Saco, ME 04072

With a copy to:

Director of Planning and Development  
City of Saco  
300 Main St.  
Saco, ME 04072

If to the Developer:

A. Duie Pyle, Inc.  
ATTN: General Counsel  
P.O. Box 564  
650 Westtown Road  
West Chester, PA 19381-0564

With a copy to:

Thomas G. Leahy, Esq.  
Monaghan Leahy, LLP  
95 Exchange Street  
P.O. Box 7046  
Portland, Maine 04112-7046

Either of the parties may, by notice given to the other, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent hereunder.

**Section 8.8. Amendments.**

This Agreement may be amended only with the concurring written consent of both of the parties hereto.

**Section 8.9. Benefit of Assignees or Pledges.**

The City agrees that this Agreement is executed in part to induce assignees or pledgees to provide financing for the Developer Project and accordingly all covenants and agreements on the part of the City as to the amounts payable hereunder are hereby declared to be for the benefit of any such assignee or pledgee from time to time of the Developer's right, title and interest herein. No such assignment or pledge shall limit in any way, Developer's obligations hereunder.

**Section 8.10. Integration.**

This Agreement completely and fully supersedes all other prior or contemporaneous understandings or agreements, both written and oral, between the City and the Developer relating to the specific subject matter of this Agreement and the transactions contemplated hereby.

**Section 8.11. Dispute Resolution.**

In the event of a dispute regarding this Agreement or the transactions contemplated by it,

the parties hereto will use all reasonable efforts to resolve the dispute on an amicable basis. If the dispute is not resolved on that basis within sixty (60) days after one party first brings the dispute to the attention of the other party, then either party may file an appropriate action for legal or equitable relief. If the Developer defaults in any of its obligations under this Agreement, the City shall be entitled to recover from Developer its reasonable attorneys' fees incurred in enforcement of such obligations.

**Section 8.12. Tax Laws and Valuation Agreement.**

The parties acknowledge that all laws of the State now in effect or hereafter enacted with respect to taxation of property shall be applicable and that the City, by entering into this Agreement, is not excusing any non-payment of taxes by Developer. Without limiting the foregoing, the City and the Developer shall always be entitled to exercise all rights and remedies regarding assessment, collection and payment of taxes assessed on Developer's property. In addition, the Development Program makes certain assumptions and estimates regarding valuation, depreciation of assets, tax rates and estimated costs. The City and the Developer hereby covenant and agree that the assumptions, estimates, analysis and results set forth in the Development Program shall in no way (a) constitute a contractual obligation or binding representation of either party as to such assumptions, estimates, analysis or results; (b) prejudice the rights of any party or be used, in any way, by any party in either presenting evidence or making argument in any dispute which may arise in connection with valuation of or abatement proceedings relating to Developer's property for purposes of ad valorem property taxation or (c) vary the terms of this Agreement even if the actual results differ substantially from the estimates, assumptions or analysis.

**IN WITNESS WHEREOF**, the City and the Developer have caused this Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by the duly authorized officers, all as of the date first above written.

WITNESS:  
\_\_\_\_\_

**CITY OF SACO**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: City of Saco City Administrator Duly Authorized by  
Vote of the City of Saco City Council on \_\_\_\_ \_\_, 2020

WITNESS:  
\_\_\_\_\_

**A DUIE PYLE, INC.**  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_  
Duly Authorized

**Exhibit A-1 | Captured Assessed Value & TIF Revenue Projections**  
*Spring Hill Omnibus TIF District - A. Duie Pyle Credit Enhancement Agreement*

Fiscal Year	CEA Year	Original Assessed Value	Increased Assessed Value	Total Assessed Value	Percent of Value Captured in TIF	Estimated Assessment Ratio	TIF District Projected Captured Assessed Value	Projected Mil Rate FY 19-20 19.38	Total Projected TIF Revenue	Projected Company Revenue 100%
2019-2020	1	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2020-2021	2	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2021-2022	3	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2022-2023	4	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2023-2024	5	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2024-2025	6	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2025-2026	7	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2026-2027	8	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2027-2028	9	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2028-2029	10	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2029-2030	11	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
2020-2031	12	\$1,073,000	\$1,341,700	\$2,414,700	100%	100%	\$1,341,700	19.38	\$26,002	\$26,002
<b>12-year total:</b>									<b>\$312,026</b>	<b>\$312,026</b>
<b>12-year average:</b>									<b>\$26,002</b>	<b>\$26,002</b>

**Assumptions:**

1. Projections show anticipated increased assessed values, captured assessed values, and TIF revenues for the period of the assumed 12-year CEA with A. Duie Pyle.
2. Projections exclude all TIF revenues for other parts of Spring Hill Omnibus TIF District.
3. Projections include projected mil rates based on 2019-2020 fiscal year actual mil rate, held constant for remainder of District term.
4. Assumes 100% of the increased assessed value is captured in the District and available for municipal project costs.
5. Projections are much less likely to be accurate farther into the future and are for demonstrative purposes only.

**Exhibit A-2 | Tax Shift Benefits**

*Spring Hill Omnibus TIF District - A. Duie Pyle Credit Enhancement Agreement*

Fiscal Year	TIF Year	State Aid to Education Benefit	County Tax Benefit	State Revenue Sharing Benefit	Total Tax Shift Benefits
2019-2020	1	-	-	-	\$0
2020-2021	2	-	-	-	\$0
2021-2022	3	-	\$648	\$1,432	\$2,080
2022-2023	4	\$10,975	\$648	\$1,432	\$13,055
2023-2024	5	\$10,975	\$648	\$1,432	\$13,055
2024-2025	6	\$10,975	\$648	\$1,432	\$13,055
2025-2026	7	\$10,975	\$648	\$1,432	\$13,055
2026-2027	8	\$10,975	\$648	\$1,432	\$13,055
2027-2028	9	\$10,975	\$648	\$1,432	\$13,055
2028-2029	10	\$10,975	\$648	\$1,432	\$13,055
2029-2030	11	\$10,975	\$648	\$1,432	\$13,055
2020-2031	12	\$10,975	\$648	\$1,432	\$13,055
2031-2032		\$10,975	\$648	\$1,432	\$13,055
2032-2033		\$10,975	\$648	\$1,432	\$13,055
2033-2034		\$10,975	-	-	\$10,975
<b>Totals:</b>		<b>\$131,701</b>	<b>\$7,781</b>	<b>\$17,182</b>	<b>\$156,664</b>
<b>Averages:</b>		<b>\$10,975</b>	<b>\$648</b>	<b>\$1,432</b>	<b>\$12,051</b>

**Assumptions:**

1. Data sources include the 2019 mil rate reported and predicted by the City of Saco, York County's FY2020 Tax Commitment, the State Treasurer's Office Municipal Revenue Sharing projections for FY2021 (07/01/2020 - 06/30/2021) published 03/05/20, the Maine Department of Education 2020-2021 ED 279 form as of 01/30/20 for Saco Public Schools. State Treasurer's Office Municipal Revenue Sharing projections are known to be inaccurate due to changes in projected State revenues resulting from Covid-19 impacts, but no updated set of projections has yet been completed on which to base these projections. Any impact from Covid-19 to the Municipal Revenue Sharing projections would reduce the total subsidy provided to the City and thus the tax shifts resulting in this analysis would be somewhat overstated compared to reality.
2. Tax shift losses are comprised of declining subsidies in revenue sharing and increasing obligations to pay county taxes. Tax shift losses occur a couple of years following the year in which the new assessed value is first recognized in the assessment. No tax shift losses occur when a TIF captures all of the new value.
3. These projections assume that the formulas and general inputs for state subsidies and county taxes do not change over time and they assume that all other values in other communities are static relative to one another except for the new value assessed. The projections are less likely to be accurate farther into the future.
4. Assumes the assessment ratio in the City is 100% when new property value arrives, such that the market value of new property is used for assessment purposes.
5. The projections above assume that no tax increment financing district is put in place, thus the mil rate is reduced by as a result of the full new value in the City. This analysis factors in tax shift impacts resulting from the project's new assessed value into future commitments and mil rate calculations to arrive at projected property tax payments.