

AMENDMENT No. 1
TO DONATION AGREEMENT

This amendment made this 9th day of May, 2018, to the Donation Agreement dated May 22, 2007, ("Agreement") is entered into by and between the city of Worcester, Massachusetts ("City") and Berkshire Bank (successor by merger to Commerce Bank & Trust Company) of 24 North Street, Pittsfield, Massachusetts, a bank organized under the laws of Massachusetts ("Berkshire").

RECITALS

Whereas, with the support of Commerce Bank & Trust Company, numerous upgrades and improvements were made to Commerce Bank Field at Foley Stadium ("Commerce Bank Field") in 2007; and

Whereas, now, a decade later, the artificial turf and track surfaces should be replaced, and certain other repairs and improvements are needed on the Commerce Bank Field; and

Whereas, the cost for the needed modernization is anticipated to be substantial and places a financial burden on the school department; and

Whereas, as a result of a merger, Berkshire is the successor to Commerce Bank & Trust Company, including in respect of the Agreement;

Whereas, Berkshire has offered to make an additional donation to assist with certain improvements, subject to the conditions set forth below; and

Whereas, the Parties wish to extend the Agreement to facilitate these improvements; and

Whereas, on _____, _____, the City Council, acting upon the recommendation of the City Manager, adopted a loan order in the amount of Six Hundred Thousand (\$600,000.00) Dollars for the purpose of funding improvements to Commerce Bank Field; and,

Whereas, the Superintendent of Schools has recommended that Berkshire's additional donation be accepted on the terms and conditions proposed by Berkshire, and the Worcester School Committee voted to accept this additional donation upon these conditions on May 17, 2018, and,

Whereas, the City Manager has recommended that Berkshire's additional donation be accepted on the terms and conditions proposed by Berkshire, and the City Council of the City of Worcester voted to accept this additional donation upon these conditions on _____;

NOW, THEREFORE, intending to be legally bound, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. **Article 1**, entitled "Definitions" at the definition of:

1. "Expiration Date", subsection (b) is hereby amended to delete "December 31, 2017" and insert in lieu thereof "December 31, 2027."

2. "Commerce Trademarks", the marks "Commerce Bank, a division of Berkshire Bank", "Berkshire" and "Berkshire Bank" are added to the definition, and the mark "Commerce Bank & Trust Company" is deleted from the definition.

B. Article 5, entitled "Other Benefits," is hereby amended by deleting Section 5.1(d) in its entirety and inserting in lieu thereof, the following Section 5.1(d):

(d) **Annual Event Days.** Berkshire Bank shall have the right, subject to availability, to use the Facility rent-free for events up to thirty (30) hours during each calendar year of this Agreement. In each such instance, Berkshire Bank shall specify in advance the specific times of use desired for such events. Berkshire Bank shall (1) maintain appropriate event insurance as other sponsors of similar events are required to maintain and name the City as an additional insured under all such insurance and (2) pay or promptly reimburse the City for all event expenses incurred by the City or other third party in connection with such use at the standard rates therefor and otherwise in accordance with normal licensee contractual terms and conditions. Nothing shall prevent Berkshire Bank from using its event days for the benefit of non-profit or other similar organizations.

C. Article 7, entitled "Donation" is hereby amended by inserting the following immediately after Section 7.2, labeling them as Sections 7.3 and 7.4, respectively.

7.3 Amendment No. 1 New Donation. Berkshire Bank shall make a new donation to the City in the amount of Five Hundred Thousand (\$500,000.00) Dollars within fifteen (15) calendar days from the date on which the City Council approves the donation or the date of this Amendment, whichever is later, to be used by the City in conjunction with other funds for certain improvements to Commerce Bank Field and to the Foley Stadium infrastructure, as detailed in the attached Exhibit C.

7.4 Amendment No. 1 Improvements. The foregoing new donation will be used to defray the costs of improvements identified in Exhibit C, attached hereto and incorporated herein.

D. Article 10, entitled "Notices" is hereby inserted following immediately after Article 9, as follows:

Article 10

Notices

10.1 All notices or demands hereunder shall be in writing and shall be deemed to have been duly given when personally delivered or when delivered by generally recognized overnight carrier as evidenced by the carrier's tracking system to the addresses that follow (or to such other address as either party may designate by notice given in accordance with the provisions of this Section 10.1):

- (i) Notices to City:

City Manager
455 Main Street, City Hall
Worcester, MA 01608

and

Superintendent
Worcester Public Schools
20 Irving Street
Worcester, MA 01608

(ii) Notices to Berkshire:

Berkshire Bank
66 West Street
Pittsfield, MA 01201
Attention: Elizabeth Mach, SVP Marketing Officer

with copies to

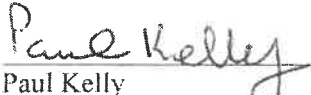
Commerce Bank, a Division of Berkshire Bank
386 Main St
Worcester, MA 01608
Attention: Paul Kelly, Commercial Regional President

and

Berkshire Bank
24 North Street
Pittsfield, MA 01201
Attention: Wm. Gordon Prescott, General Counsel

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have executed this Amendment as of the day and year first written above.

BERKSHIRE BANK



Paul Kelly
Regional Vice President for Eastern
and Central Massachusetts

CITY OF WORCESTER

Edward M. Augustus, Jr.,
City Manager

Maureen Binienda, Superintendent
Worcester Public Schools

Approved as to Form:

David M. Moore, City Solicitor

EXHIBIT C

The Parties further clarify that the particular improvements, in order of priority, are as follows:

The new donation from Berkshire to the City shall be used first to pay for the complete replacement of the artificial turf field with a new artificial turf surface. The remaining funds from the new donation will next be applied to pay for resurfacing and restriping of the running track, and then to the procurement of a new scoreboard, a new public announcement system, and turf grooming equipment, in that order, for use at Commerce Field. Finally, the parties agree that the City will undertake repainting of the exterior façade of the Stadium, spectator seating areas and football goal posts affixed in the Commerce Field and flag poles.

The City's contribute of up to Six Hundred Thousand (\$600,000.00) Dollars will be used first to pay for any funding shortfall for such artificial turf field replacement, and then to fund the remaining five (5) projects, in the order identified, until such funding is exhausted.

Berkshire will have a meaningful voice in the development of specifications for the improvements prior to their being procured by the City.

The City will reasonably endeavor to complete the first five (5) improvements for the 2018 football season, and complete the repainting by June 1, 2019. In the event that there are significant delays, the City will confer with Berkshire regarding its revised schedule.