



CITY OF WASHINGTON, ILLINOIS

City Council Agenda Communication

Agenda Ref # <u>X111-B</u>	First Reading: <u>2-1-21</u>
	Second Reading: _____
	☐ Passed ☐ Failed

3420 (04-21)

Meeting Date: February 1, 2021

Prepared By: Jon Oliphant, AICP, Planning & Development Director

Agenda Item: First Reading Ordinance – Core & Main Freedom Parkway Property Sales Tax Revenue Sharing Agreement

Explanation: Core & Main has been exploring a relocation to a new site in the region for a few years as it has outgrown its current location at 115 N. Cummings Lane. A similar business under at least three different names has been at that site since 1970. It has maximized the space at its current location and expressed considerable interest in a new site, which would allow it to construct a building to its exact specifications and have additional outside storage space. It identified a location at the southwest corner of Freedom Parkway and N. Cummings to be a good fit to allow an expansion of its business. The business submitted a letter of intent indicating that it plans to purchase five acres of land on the property owned by Sam Miller. A 10,000 square foot building is initially proposed for its office and indoor warehouse. Core & Main would also look to sell its current property in coordination with the development of its new site.

There is a significant cost for the relocation and eventual construction. The move would allow for one of the larger sales tax generators to continue operating in Washington and the new space should allow its business to grow. The location at Freedom and N. Cummings would also be the second business to locate in that area in the last two years and the first that would directly utilize Freedom Parkway. There only figures to be more demand for development along this corridor once the road is eventually constructed, as both water and sewer are currently installed. The Freedom Phase I engineering is nearing completion and the desire would be to then proceed into Phase II engineering and potentially allow for a shovel-ready project later in 2021.

Fiscal Impact: In order to assist with the cost of the move and construction, consideration should be given to offering City financial assistance. Staff had two prior discussions with the Finance and Personnel Committee about offering a portion of the home rule sales tax to the business. Specific parameters within the attached agreement would be set up to protect both the City and the business. A cap of \$20,000 would be offered to Core & Main for up to each of the first eight full years following the completion of the project. This would only apply if the business generates \$50,000 in home rule sales tax each year, which it currently exceeds. The home rule sales tax would be rebated to Core & Main for each additional dollar it generates beyond \$50,000 with a maximum rebate of \$20,000 per year. The Enterprise Zone would also apply another incentive to the development.

Recommendation/

Committee Discussion Summary: The consideration of offering this development incentive was initially discussed at the March 2020 Finance and Personnel Committee meeting. An update was given to the committee in July and the desire was to offer this for ten years, which was reduced to eight years following a recommendation by the City Treasurer.

Action Requested: Staff recommends approval of the attached home rule sales tax sharing agreement to assist with the land acquisition and development for a prominent city business. It would help retain a longstanding business that employs 14 people and is a significant sales tax generator. It is great that Core & Main wishes to continue making Washington one of its branch locations.

ORDINANCE NO. _____

(Adoption of this ordinance would approve a sales tax revenue sharing agreement with Core & Main LP)

**AN ORDINANCE APPROVING AND AUTHORIZING THE
EXECUTION AND DELIVERY OF THE SALES TAX REVENUE SHARING
AGREEMENT BETWEEN THE CITY OF WASHINGTON AND CORE & MAIN LP**

WHEREAS, the City of Washington ("City") is a home-rule unit as defined in Section 6 of Article VII of the Illinois Constitution of 1970; and

WHEREAS, Core & Main LP, a Florida limited partnership ("Owner"), wishes to construct a new building for its operations at the intersection of Freedom Parkway and N. Cummings Lane; and

WHEREAS, the agreement to rebate a portion of the home rule sales tax revenue is contained in the Sales Tax Revenue Sharing Agreement, a copy of which is attached hereto, and by reference expressly made a part hereof; and

WHEREAS, the City has the authority to promote the health, safety, and welfare of its inhabitants, to encourage private development in order to enhance the local tax base and to enter into contractual agreements with third parties for the purposes of achieving these purposes; and

WHEREAS, in order to promote the construction, the City has agreed to enter into a sales tax revenue sharing agreement with Owner and to rebate a portion of the home rule sales tax generated at the new location.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASHINGTON, TAZEWELL COUNTY, ILLINOIS, pursuant to the City's home-rule authority, as follows:

Section 1. That the above Recitals are hereby made a part of this Ordinance.

Section 2. That the Sales Tax Revenue Sharing Agreement between the City of Washington, Tazewell County, Illinois, and Core & Main LP, a copy of which is attached hereto as Exhibit A, and by reference expressly made a part hereof, be, is hereby accepted and approved.

Section 3. That the Mayor and City Clerk of the City of Washington be, and hereby are, authorized, empowered, and directed to enter into and execute said Sales Tax Revenue Sharing Agreement on behalf of the City in substantially the form of the document attached hereto as Exhibit A, and by reference expressly made a part hereof, and to make, execute, and deliver any and all documents necessary for the effectiveness thereof.

Section 4. That this ordinance shall be in full force and effect from and after its passage and approval by the City Council of the City of Washington, Tazewell County, Illinois.

Section 5. That all ordinances or parts thereof in conflict herewith are hereby expressly repealed.

PASSED AND APPROVED in due form of law at a regular meeting of the City Council of the City of Washington, Tazewell County, Illinois, on the _____ day of _____, 2021.

Ayes:

Nays:

Mayor

ATTEST:

City Clerk

SALES TAX REVENUE SHARING AGREEMENT

This **SALES TAX REVENUE SHARING AGREEMENT** (this “**Agreement**”) is entered into as of the ____ day of _____, 2021 (“**Effective Date**”), by and between **CORE & MAIN LP**, a Florida limited partnership (“**C&M**”), and the **CITY OF WASHINGTON**, an Illinois home rule municipal corporation (the “**City**”). C&M and the City are hereinafter individually sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

BACKGROUND

A. **WHEREAS**, the City is a home-rule unit as defined in Section 6 of Article VII of the Illinois Constitution of 1970;

B. **WHEREAS**, C&M currently operates a facility located at 115 N Cummings Ln, Washington, IL 61571;

C. **WHEREAS**, C&M is the contract purchaser of approximately 5 acres of real property located at the Southwest corner of the proposed intersection of Freedom Parkway and N. Cummings Lane in the City (the “**Property**”);

D. **WHEREAS**, C&M intends to acquire the Property and undertake the development and construction of a new location for its operations in the City (the “**Project**”);

E. **WHEREAS**, the City seeks to encourage commencement and completion of the Project and, in order to make the Project economically feasible, the City has agreed to rebate to C&M a portion of the Sales Taxes (as defined below) that are generated by the Project and received by the City in accordance with the terms of this Agreement (the “**Rebate**”); and

F. **WHEREAS**, C&M would not proceed with the acquisition of the Property and the construction of the Project without the Rebate.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals**. The recitals set forth above are expressly incorporated into this Agreement by this reference thereto as if fully set forth in this Section 1.

2. **Definitions**. For purposes of this Agreement, the following terms shall have the meanings set forth below.

a. **Commencement Date**. January 1 immediately following the date on which C&M transacts business on the Property that generates Sales Tax, or January 1, 2023,

whichever shall first occur.

b. **Municipal Code.** The Municipal Code of the City of Washington.

c. **Payment Date.** That date which is within sixty (60) days of the last to occur of: (i) the receipt of the necessary documentation from the Illinois Department of Revenue (“IDOR”) to establish the amount of retailers’ occupation tax collected from, and paid to the State by, C&M; and (ii) the actual receipt by the City from the IDOR of the total amount of the City’s periodic distributive share of such retailers’ occupation tax collected from, and paid to the State by, C&M.

d. **Remittance Statement.** A written statement prepared by the City setting forth the amount of Sales Taxes remitted to C&M concurrently therewith.

e. **Sales Taxes.** Shall mean the home rule sales taxes imposed from time to time by and paid to the City.

f. **State.** The State of Illinois.

3. **Rebate Amount.** Beginning on the Commencement Date, the City agrees to remit to C&M, on or before the Payment Date, a portion of the Sales Taxes generated by the Project during the term of this Agreement and actually received by the City in accordance with the following formula:

a. **Threshold.** No rebate will be paid on the first Fifty Thousand and No/100 Dollars (\$50,000.00) of Sales Taxes generated by the Project in the applicable calendar year (the “Threshold”);

b. **Rebate Amount.** After the Threshold, One Hundred and No/100 Percent (100.00%) of the next Twenty Thousand and No/100 Dollars (\$20,000.00) of Sales Taxes generated by the Project in the applicable calendar year will be rebated to C&M (the “Rebate Amount”);

c. **Cap.** After the Rebate Amount, no rebate will be paid to C&M of Sales Taxes generated by the Project in the applicable calendar year.

4. **Rebate Termination.**

a. The obligation of the City to pay the Rebate Amount shall terminate upon the expiration of the term of this Agreement as set forth in Section 6. Nothing in this Agreement shall obligate the City to make any payment toward the Rebate Amount from any source of funds other than the Sales Taxes generated by the Project during the term of this Agreement and actually received by the City. It is understood that C&M shall pay the City any and all costs, expenses and fees, as and when customarily charged by the City, pursuant to duly enacted ordinances, as they may be changed (increased or decreased), from time to time hereafter.

b. The obligation of the City to pay the Rebate Amount shall likewise terminate in the event the Project shall, at any time after opening to the public, cease to operate for a period of more than six (6) consecutive months, plus any period of closure due to: (i) casualty, repair, reconstruction, remodeling, or re-fixturing if C&M is proceeding with reasonable diligence to complete the work and reopen for business; or (ii) unavoidable events outside the reasonable control of C&M, including but not limited to acts of God, condemnation, other governmental rules, orders, acts or requirements, war, insurrection, riot and labor disputes (but excluding financial inability or economic conditions).

c. The obligation of the City to pay the Rebate Amount shall terminate if, after the six-month anniversary of the completion of the Project, C&M: (i) continues to use the real estate commonly known as Tazewell County Parcel Identification Number 02-02-15-300-005 and/or (ii) fails to take reasonable efforts to sell Tazewell County Parcel Number 02-02-15-300-005. The City shall provide written notice of its intent to terminate paying the Rebate Amount for a violation under this paragraph and give C&M ten business days to cure the violation.

d. C&M and the City acknowledge that the City's obligation to pay the Rebate Amount assumes that the current provisions of Illinois law concerning the payment of a distributive share to the City of the Sales Taxes by the State of Illinois or the IDOR ("**Sales Tax Distribution Law**") will continue to exist in the same or substantially the same form during the term of this Agreement, but further acknowledge that the Illinois General Assembly has from time to time considered modifying or repealing the Sales Tax Distribution Law. In the event that the State of Illinois amends or repeals the Sales Tax Distribution Law in any way that eliminates the distribution of any of the Sales Taxes to the City, or that modifies the distribution of any of the Sales Taxes to the City in any way that prevents the City and C&M from determining with a reasonable degree of certainty the amount of Sales Taxes generated by the Project and paid to the City, the obligation of the City to pay the Rebate Amount shall terminate as of the effective date of such amendment or repeal of the Sales Tax Distribution Law with respect to the underlying Sales Taxes affected by such amendment or repeal.

5. **Payments.** The City shall make payments to C&M on each Payment Date from and after the Commencement Date for the term of this Agreement and shall concurrently deliver to C&M a Remittance Statement reflecting such payments. Such payments shall be made solely from the Sales Taxes generated from the Project that is collected directly by, or remitted to, the City during the term of this Agreement and agreed to be rebated by the City to C&M pursuant to this Agreement. The payments shall be sent to C&M at the address set forth in Section 9 or to such other address as C&M may provide by notice.

6. **Term.** The term of this Agreement shall end on the eighth (8th) anniversary of the Commencement Date. This Agreement shall remain in effect, notwithstanding the foregoing, for purposes of audit, final accounting, and payment and for purposes of enforcement actions hereon.

7. **Mutual Assistance.** The City and C&M agree to do all things necessary or appropriate to carry out, and to aid and assist each other in carrying out, the terms of this Agreement and in implementing the Parties' intent, as reflected by the terms of this Agreement, including, without limitation, the giving of such notices, the holding of such public hearings, the enactment by the City of such resolutions and ordinances and the taking of such actions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and as may be necessary to give effect to the terms and provisions of this Agreement and the Parties' intentions as reflected by the terms of this Agreement. No waiver of City regulations shall be inferred from this Agreement, except as specifically set forth.

8. **Reporting.** C&M shall provide the City with certified copies (i.e., certified by a representative of C&M) of all ST-1 and/or ST-2 sales tax reporting forms, or any successor reporting forms, filed with the State relating to the operation of the Project promptly after filing same with the State. To the maximum extent permitted by law, the City shall maintain the confidentiality of the information contained in the ST-1 and/or ST-2 reports provided by C&M to the City, but shall be permitted to disclose such information to such City employees and consultants as the City, in its sole discretion, deems appropriate in order to monitor compliance and audit this Agreement. To the extent permitted by law, the City shall refuse to disclose information received from the State or otherwise contained in such ST-1 and/or ST-2 or similar reporting form pursuant to the applicable exemptions from the Illinois Freedom of Information Act or similar statute, and in the event the City receives a request pursuant to the Illinois Freedom of Information Act or similar statute which the City determines to be exempt, then the City shall notify C&M prior to the City refusing to provide such information, and provide C&M with a copy of the request. C&M shall then have the opportunity, within three (3) business days (or such lesser period of time as may be necessary for the City to respond to the request within the statutory time period), to notify the City as to whether it consents or objects to the request. If no notice is given within said time period, the City may disclose the information.

9. **Notices.** All notices, demands, consents, approvals and other communications which are required or desired to be given by either Party to the other hereunder shall be in writing and shall be hand delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the appropriate Party at its address set forth below, or at such other address as such Party shall have last designated by notice to the other. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three days after mailing; provided, however, that if any such notice or other communication shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending Party receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communication.

All notices to the City shall be
sent to:

City of Washington
Attn: City Clerk
301 Walnut Street
Washington, IL 61571

With a copy to:

Derek A. Schryer
Davis & Campbell L.L.C.
401 Main Street, Suite 1600
Peoria, IL 61602

All notices to C&M shall be sent to:

With a copy to:

10. **Indemnification.** C&M hereby agrees to indemnify, defend and hold the City and its officers, agents and employees harmless from and against any losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses (including without limitation, attorneys' fees and court costs) suffered or incurred by the City arising from or in connection with (a) the performance or non-performance by C&M of its obligations under this Agreement, (b) the failure of C&M to pay contractors or materialmen in connection with the Project, or (c) any and all liability, damages, claims, causes of action and responsibility whatsoever on account of any injury to any person or damage to any property arising out of or in any way connected with the Project.

11. **Default/Remedies.** The failure of a Party to materially comply with its obligations under this Agreement shall constitute a default by such Party. The Party claiming the occurrence of such default shall notify the other Party of same specifying the nature of the default and shall demand performance by the defaulting Party within thirty (30) day of the date of the notice specifying such default. Unless, within such thirty (30) day period either (a) the defaulting Party, (i) cures such default, or (ii) if it is not reasonable to sure the default within said thirty (30) day period, the Party in default commences action to cure such default and completes the curing of such default within a reasonable time or (b) the Party claiming default, by written notice given to

the defaulting Party, either waives the default or grants the defaulting Party a longer period to cure, then, after the expiration of such thirty (30) period or such longer period as the Party claiming the default may grant or the Party in default may be entitled under the foregoing clause (a)(ii), without, in any such case, such default not being cured or waived, the Party claiming the default may pursue all remedies available at law and equity, including specific performance.

In the event legal action or other proceeding is brought for enforcement of this Agreement or with respect to an alleged breach, default or misrepresentation, the successful or prevailing Party shall be entitled to recover from the non-prevailing Party its reasonable attorneys' fees and related costs (including any fees and costs incident to appeals) in addition to any other relief hereunder to which such Party may be entitled.

12. **Governing Law.** This Agreement shall be governed by the laws of the State of Illinois.

13. **Appropriation.** To the extent the City is required to do so by law, the City has taken (or shall take) such actions as may be required from time to time to appropriate funds pursuant to Illinois law to satisfy its obligations to C&M under this Agreement.

14. **Integration.** This Agreement contains the entire agreement of the Parties with respect to the transactions contemplated by this Agreement. All prior agreements, negotiations, and understandings are expressly merged herein and superseded hereby.

15. **Severability.** Each section of this Agreement, and each sentence, clause or phrase contained in such section, shall be considered severable and if, for any reason, any section, or any sentence, clause or phrase contained in such section, is determined to be invalid or unenforceable, such invalidity or unenforceability shall not impair the operation or affect enforceability or validity of the remaining portions of this Agreement.

16. **Amendment.** This Agreement may be amended by, and only by, a written instrument authorized in accordance with law and signed by both Parties.

17. **Successors and Assigns.** This Agreement shall inure to the benefit of, and be binding upon: (i) the City and any successor corporate authorities of the City; and (ii) C&M. This Agreement may not be assigned by C&M to any grantee, lessee, assign or other third party without the City's consent, which consent may be withheld in the sole discretion of the City.

18. **Effectiveness of this Agreement.** Nothing contained in this Agreement shall be deemed or construed to impose any duty or obligation upon C&M to acquire the Property, to undertake the development and construction of the Project or any other on-site or off-site improvements or to operate the Project, it being expressly acknowledged and agreed, however, that the City's obligations to C&M hereunder are premised and conditioned on the generation of Sales Taxes from the Project as the sole source of reimbursement hereunder.

19. **Counterparts; Facsimile Signatures.** This Agreement may be executed in more than one counterpart, each of which shall be deemed an original, and all of which together shall

constitute one and the same instrument. Facsimile or other electronically transmitted signatures on this Agreement shall constitute originals signatures of the Parties.

20. **Construction.** Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

21. **Time is of the Essence.** Time is of the essence of this Agreement and of each and every provision hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates set forth below their respective signatures, to be effective as of the Effective Date.

CORE & MAIN LP, a Florida limited partnership

By:

Name:

Its:

Date:

STATE OF _____)

) SS

COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, of Core & Mail LP, a Florida limited partnership, who is personally known to me to be the _____ of said limited partnership, appeared before me this day in person and acknowledged that he/she signed and delivered the foregoing Agreement as his/her own free and voluntary act and as the free and voluntary act of said limited partnership for the purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 20____.

Notary Public

CITY OF WASHINGTON, an Illinois home rule
municipal corporation

By:

Name:

Its:

Date:

STATE OF _____)
_____) **SS**
COUNTY OF _____)

I, the undersigned, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, of the City of Washington, an Illinois home rule municipal corporation, who is personally known to me to be the _____ of said municipal corporation, appeared before me this day in person and acknowledged that he/she signed and delivered the foregoing Agreement as his/her own free and voluntary act and as the free and voluntary act of said municipal corporation for the purposes therein set forth.

Given under my hand and official seal this _____ day of _____, 20____.

Notary Public

