

April 11, 2024

**SERVICE COMMITTEE**

April 15, 2024

*Committee and Council Meetings can be viewed by accessing YouTube or Facebook  
Following Street Committee*

Council Chambers

**AGENDA**

1. Consider **Ordinance No. 24-15** AN ORDINANCE CHANGING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY, GENERALLY DESCRIBED AS 417 GARFIELD AVENUE, CITY OF NEWARK, LICKING COUNTY, OHIO, PARCEL TAX ID# 054-196872-00.000, FROM THAT OF SINGLE-FAMILY RESIDENCE RH – HIGH DENSITY DISTRICT TO TFR – TWO-FAMILY RESIDENCE DISTRICT, ZONING CODE OF THE CITY OF NEWARK, OHIO.
2. Consider **Resolution 24-39** A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SERVICE FOR THE CITY OF NEWARK, OHIO, TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF HEATH AND THE LICKING COUNTY TRANSPORTATION IMPROVEMENT DISTRICT FOR PHASE ONE OF THE THORNWOOD DRIVE-FAYE ROAD INTERSECTION IMPROVEMENTS PROJECT
3. Consider **Resolution 24-40** A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SERVICE FOR THE CITY OF NEWARK, OHIO, TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE LICKING COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, THE BOARD OF COUNTY COMMISSIONERS OF LICKING COUNTY, AND THE CITY OF HEATH FOR THE CONSTRUCTION OF CERTAIN IMPROVEMENTS TO THORNWOOD DRIVE KNOWN AS THE THORNWOOD DRIVE PROJECT
4. Other items at the discretion of the Chair

BY: \_\_\_\_\_

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION OF CERTAIN REAL PROPERTY, GENERALLY DESCRIBED AS 417 GARFIELD AVENUE, CITY OF NEWARK, LICKING COUNTY, OHIO, PARCEL TAX ID# 054-196872-00.000, FROM THAT OF SINGLE-FAMILY RESIDENCE RH – HIGH DENSITY DISTRICT TO TFR – TWO-FAMILY RESIDENCE DISTRICT, ZONING CODE OF THE CITY OF NEWARK, OHIO.

WHEREAS, an application for change of zoning classification has been filed with the Office of the Engineer and with the Clerk of this Council; and

WHEREAS, pursuant to Article 4.12 of the Charter of the City of Newark, Ohio, this ordinance shall be referred to the Planning Commission immediately after its first reading; and

WHEREAS, the Planning Commission shall hold a public hearing upon such application and the Clerk of Council shall cause notice of such hearing to be publicized one time at least seven (7) days prior to the date of such public hearing; and

WHEREAS, upon the return of the ordinance to Council by the Planning Commission, Council shall hold a public hearing upon such application and the Clerk of Council shall cause notice of such hearing to be publicized one time at least seven (7) days prior to the date of such public hearing, which hearing shall constitute a second reading of this ordinance and shall take such action as is appropriate pursuant to Article 4.12 of the Charter of the City of Newark, Ohio.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEWARK, COUNTY OF LICKING, AND STATE OF OHIO, THAT:

**Section 1:** The zoning map as established by Ordinance 08-33 (A) is hereby revised by changing the zoning classification for the following described property from SINGLE-FAMILY RESIDENCE RH – HIGH DENSITY DISTRICT TO TFR – TWO-FAMILY RESIDENCE DISTRICT, Zoning Code of the City of Newark.

**SEE EXHIBIT “A” FOR LEGAL DESCRIPTION**

**Section 2:** Pursuant to Article 4.12(C) of the Charter of the City of Newark, Ohio, a vote of at least six (6) members shall be necessary to adopt or defeat the ordinance in the event the Planning Commission has recommended approval or has made no recommendation. An affirmative vote of at least seven (7) Council members shall be necessary to adopt a zoning ordinance that the Planning Commission has recommended against approval.

**Section 3:** The Newark Planning Commission is hereby authorized and directed to make the change described herein on the aforementioned zoning map.

**Section 4:** This ordinance shall become effective at the earliest time permitted by Section 4.07 of the Charter of the City of Newark, Ohio.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
Clerk of Council

DATE FILED WITH MAYOR: \_\_\_\_\_

DATE APPROVED BY MAYOR: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

FORM APPROVED:   
Director of Law

DESCRIPTION APPROVED: \_\_\_\_\_  
Brian Morehead, Engineer

Prepared by the Office of the Director of Law

**NOTICE OF HEARING**

Notice is hereby given that the Newark City Council shall at a later date to be determined and announced hereafter, take action upon Ordinance No. \_\_\_\_\_. Said Ordinance accepts a proposed amendment to the Zoning Map attached to Ordinance 08-33 (A) which would allow the change of zoning classification of certain real property, generally described as 417 Garfield Avenue, City of Newark, Licking County, Ohio. The amendment would change the zoning of the property from Single-Family Residence RH – High Density District to TFR – Two-Family Residence District, , Zoning Code of the City of Newark, Ohio.

The text or a copy of the text of such Ordinance, together with a copy of Ordinance 08-33 (A) and the Zoning Map attached thereto, and the maps, plans, and reports submitted by the Newark Planning Commission relative to said zoning are on file, for public examination, in the office of the Clerk of Newark City Council, 40 West Main Street, Newark, Ohio.

Notice is further given that a public hearing on said Ordinance shall be held before the Newark City Council during the meeting of Council which begins at 7:00 p.m. on \_\_\_\_\_, at which time and place any interested person may be heard.

BY ORDER OF THE CITY COUNCIL OF NEWARK, OHIO.

JANINE PAUL  
Clerk of Council

TO THE ADVOCATE

Please publish the foregoing Notice of Hearing one day only, to wit: on \_\_\_\_\_.

JANINE PAUL  
Clerk of Council

DESCRIPTION APPROVED  
JARED N. KNERR  
LICKING COUNTY ENGINEER

Approved By JW Sep 22, 2022

0212120123A254108000

0212120123A254109000

TRANSFERRED

Sep 22, 2022  
Michael L. Smith  
LICKING COUNTY AUDITOR  
SEC 319.902 COMPLIED WITH  
MICHAEL L. SMITH  
By: TG 240.00

InstrID:202209220023090	9/22/2022
Pages:2 F: \$34.00	9:27 AM
Bryan A. Long	T20220024596
Licking County Recorder	

AMBASSADOR TITLE MAILBOX  
19782

**GENERAL WARRANTY DEED\***  
(See Sections 5302.05 and 5302.06 of Ohio Revised Code)

C.J.W. Limited, an Ohio Limited Liability Company, organized and existing under the laws of the State of Ohio, for valuable consideration paid, grants, with general warranty covenants, to **Mid Ohio Property Management, LLC**, an Ohio Limited Liability Company, the following REAL PROPERTY:

Situated in the State of Ohio, County of Licking, and in the City of Newark and being further described as follows:

PARCEL NO. 1: Being Inlot Thirty-Eight Hundred Sixty-Four (3864) in Augustus H. Heisey's Addition tot he City of Newark, Ohio, according to a plat thereof recorded in Volume 3, page 254, of the Records of Plat in the Recorder's Office of said County.

PARCEL NO. 2: Being Inlot Thirty-Eight Hundred Sixty-Five (3865) in Augustus H. Heisey's Addition tot he City of Newark, Ohio, according to a plat thereof recorded in Volume 3, page 254, of the Records of Plat in the Recorder's Office of said County.

Parcel No: 054-196872-00.000  
Property Address: 417 Garfield Avenue, Newark, OH 43055

EXCEPT real estate taxes and special assessments, if any, which grantors and grantees respectively shall pay pro-rata, as estimated to and from the date of closing and SUBJECT to restrictions, easements, rights of way and leases of record.

Prior Instrument Reference: Instrument #200207230027116 of the Records of Licking County, Ohio.

C.J.W. Limited, an Ohio Limited Liability Company, grantor has caused its name to be subscribed hereto by William E. Hoekstra, Member, thereunto duly authorized by its Members.

*DESCRIPTION*  
**APPROVED** *For zoning*  
By *Ben Wood 9/5/24*  
Div. of Engineering  
City of Newark, Ohio

Executed on this 20th day of September, 2022.

C.J.W. Limited,  
an Ohio Limited Liability Company

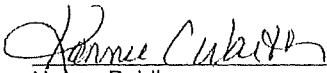
  
by: William E. Hoekstra, Member

State of Ohio, County of Licking, ss:

*This is an acknowledgement clause. No oath or affirmation was administered to the signer:*

Before me, a Notary Public in and for said County and State, personally appeared William E. Hoekstra, Member of C.J.W. Limited, an Ohio Limited Liability Company, whose identity was known or proven to me and who did sign the foregoing instrument and acknowledge the signing hereof to be his voluntary act and deed.

IN TESTIMONY THEREOF, I have hereunto set my hand and official seal at Newark, Ohio, this 20th day of September, 2022.

  
Notary Public



KONNIE C WARTH  
Notary Public, State of Ohio  
My Commission Expires 09-09-2026

This instrument prepared by: Robin Lyn Green, Attorney at Law

RESOLUTION NO. 24-39

BY: \_\_\_\_\_

A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SERVICE FOR THE CITY OF NEWARK, OHIO, TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF HEATH AND THE LICKING COUNTY TRANSPORTATION IMPROVEMENT DISTRICT FOR PHASE ONE OF THE THORNWOOD DRIVE-FAYE ROAD INTERSECTION IMPROVEMENTS PROJECT

WHEREAS, the City of Newark, along with the City of Heath and the Licking County Transportation Improvement District have determined that certain improvements to Thornwood Drive and Faye Road would be beneficial for economic development; and,

WHEREAS, the City of Newark, the City of Heath, and the Licking County Transportation Improvement District have determined that funding commitments from each respective entity is necessary to facilitate this project; and,

WHEREAS, the parties wish to formalize a framework for payment of the pertinent costs related to these improvements by way of an intergovernmental agreement; and,

WHEREAS, it is the City's desire, in order to promote development in the area and to improve traffic patterns, to move forward with execution of this agreement, a preliminary draft of which is attached to this Resolution as Exhibit "A"; and,

WHEREAS, execution of this intergovernmental agreement is necessary for this project to move forward in a timely manner to receive state funding.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEWARK, COUNTY OF LICKING AND STATE OF OHIO, THAT:**

**SECTION ONE:** The Director of Public Service is hereby authorized to enter into an intergovernmental agreement with the City of Heath and the Licking County Transportation Improvement District for certain improvements to Thornwood Drive and Faye Road.

**SECTION TWO:** This Resolution shall become effective at the earliest time permitted by Article 4.07 of the Charter of the City of Newark, Ohio.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

DATE FILED WITH MAYOR: \_\_\_\_\_

DATE APPROVED BY MAYOR: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

FORM APPROVED: \_\_\_\_\_  
DIRECTOR OF LAW

Prepared by the Office of the Director of Law



**INTERGOVERNMENTAL  
AGREEMENT 2024-01**

By and Between

THE CITY OF NEWARK, LICKING COUNTY, OHIO

And

THE CITY OF HEATH, LICKING COUNTY, OHIO

And

THE LICKING COUNTY TRANSPORTATION  
IMPROVEMENT DISTRICT

[Thornwood Drive-Faye Road Intersection Improvements Project: Phase 1 Work]

## INTERGOVERNMENTAL AGREEMENT 2024-01

This Intergovernmental Agreement 2024-01 (this "Agreement") is made and entered into on the date last executed below (the "Effective Date"), by and between the CITY OF NEWARK, OHIO ("NEWARK"), a political subdivision located in Licking County Ohio and pursuant to its Charter and Ordinances; CITY OF HEATH, OHIO ("HEATH"), a political subdivision located in Licking County Ohio and pursuant to its Charter and Ordinances and, the LICKING COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, a transportation improvement district and a body both corporate and politic created pursuant to ORC Chapter 5540 (the "LCTID").

### Recitals:

A. The LCTID is authorized by ORC Chapter 5540 (1) to finance, construct, maintain, repair, and operate street, highway, and other transportation projects and (2) to construct, reconstruct, improve, alter, and repair roads, highways, public places, buildings, and other infrastructure and other transportation projects.

B. The projects undertaken by the LCTID and exercise of its authority, pursuant to ORC Chapter 5540, are essential governmental functions and considered to contribute to the improvement of the prosperity, health, safety, and welfare of the people of Licking County, Ohio and the State, and is consistent with and will promote industry, commerce, distribution, and research activity within the County, the region and the State.

C. HEATH, NEWARK and the LCTID, in conjunction with Licking County Engineer's Office ("LCEO"), have recognized that it is a priority to engage and cooperate to the greatest extent practical, in the development of the transportation improvement project known as the "*Thornwood Drive-Faye Road Intersection Improvements Project*", with the purpose of the Project being to construct a 1 or 2 lane roundabout, and to otherwise improve the Thornwood Drive to Faye Drive intersection and roadway extending south to match the typical section at the recently improved Genesee and Wyoming Railroad Crossing. The Project is approximately 0.3 mi in length and will include pavement reconstruction and widening from an existing 18-20 ft wide 2-lane section to a 3-lane section and includes other improvements north to match the typical section of the Thornwood Drive "The Hill" ODOT PID 109931 project, and as further set forth, described and designed on the Project plans and documents on file with the LCTID, HEATH, NEWARK and the LCEO (referred to herein as the "*Thornwood Drive-Faye Road Intersection Improvements Project*" or the "Project").

D. The Project was incorporated into the LCTID Program, pursuant to ORC Section 5540.03(A)(4) and related ORC sections and designated by action of the LCTID Board of Trustees, and the Parties intend for the LCTID to manage and administer the Project work, with funding required for the Project to be provided for through revenue sources available to the LCTID, currently by and through NEWARK and the Ohio Department of Transportation ("ODOT"), as further set forth in this Agreement.

E. Furthermore, the Parties believe it is most efficient and effective to proceed with the Project improvements in four (4) phases, as follows: *Phase 1* consisting of the Project preliminary engineering (the "Phase 1 Work" as hereinafter defined, which phase is to commence

commensurate forthwith in accordance with the terms and conditions set forth in this Agreement); *Phase 2* consisting of the detailed design and utility work; *Phase 3* consisting of right of way acquisition and utility relocation; and, *Phase 4* consisting of the construction and construction engineering and inspection work..

F. It is further acknowledged and agreed to by the Parties that as the Phase 1 Work proceeds and future Project plans and costs are developed for Phases 2 through 4, the Parties will coordinate and collaborate to advance and complete Phases 2 through 4 of the Project, which the Parties intend will be facilitated through future amendments to this Agreement or such other documents and agreements as required, subject to the requisite approval of the Parties' respective legislative bodies.

G. The LCTID secured reimbursement-based grant funding for the Project through the Ohio Department of Transportation or "ODOT", as set forth in the ODOT Grant Agreement (as hereinafter defined). Per the terms of the ODOT Grant Agreement, the LCTID intends to provide the ODOT Grant Funding (as hereinafter defined), as part of this joint effort, to assist in advancing and funding the Project, as further set forth herein. However, the ODOT Grant Funding is awarded to the LCTID on a reimbursement basis and NEWARK intends to provide an advance of funding to the LCTID, in the amount of \$125,000.00 (the NEWARK Phase 1 Advance" as hereinafter defined), as is required by the LCTID to commence the Phase 1 Work and to pay for Project Cost Items (as hereinafter defined), and for accessing the ODOT Grant Funding, for which the LCTID will seek reimbursement of related Project costs.

H. It is acknowledged and agreed by the Parties that the LCTID will administer and manage the Phase 1 Work, in coordination and in conjunction with NEWARK, HEATH, the LCEO and, as appropriate, ODOT, including, but not limited to, the retention of a qualified consultant(s) to provide necessary engineering services to complete the Phase 1 Work, currently estimated to be in the amount of \$ \_\_\_\_\_, utilizing the NEWARK Phase 1 Advance.

I. The LCTID is specifically authorized by ORC § 5540.03(A)(10) to receive and accept loans and grants for or in aid of the construction, maintenance, or repair of any Project from the federal or any state or local government; and NEWARK are specifically authorized by ORC § 5540.02(F) to make appropriations from moneys available to NEWARK and not otherwise appropriated to pay costs incurred by the LCTID in the exercise of its functions under Chapter 5540 of the ORC.

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements in this Agreement, HEATH, NEWARK and the LCTID agree, with the foregoing Recitals incorporated herein by reference and expressly made a binding and integral part of this Agreement, as follows:

### *Article I Definitions; Construction*

**Section 1.01. Definitions.** As used in this Agreement, the following terms shall have the following meanings, unless the context or use clearly indicates another meaning or intent:

“*Agreement*” means this Intergovernmental Agreement, as the same may be amended from time to time.

“*Business Day*” means any day other than a Saturday, Sunday, or legal holiday.

“*Day*” means a calendar day, unless specifically designated as a Business Day.

“*Effective Date*” has the meaning given to such term in the introductory paragraph of this Agreement.

“*LCTID Management Fee*” means the management fee in the amount \$50,000.00, which shall be payable on or before \_\_\_\_\_, 2024 to the LCTID as part of the Project Cost Items for administering and managing the Phase 1 Work and the related ODOT Grant Funding, as required of the LCTID by the ODOT Grant Funding Agreement.

“*NEWARK Phase 1 Advance*” means NEWARK’S commitment to deliver an advance of funding to the LCTID, in the amount of \$125,000.00, to fund Project Cost Items for the Phase 1 Work, on or before the Payment Date of \_\_\_\_\_, 2024. The LCTID will repay this advance amount to NEWARK on or before January 30, 2027.

“*ODOT Grant Agreement*” means the ODOT Grant Agreement No. 39502, dated February 22, 2024, entered into between ODOT and the LCTID and procured by the LCTID through ODOT’s Silicon Heartland Regional Transportation Projects program, providing for ODOT funding for the Project in the maximum amount of \$4,000,000.00 for eligible Project costs, in the form on file with the LCTID and ODOT.

“*ODOT Grant Funding*” means funding specifically allocated to the LCTID by ODOT pursuant to LCTID Grant Agreement No. 39502, in the maximum amount of \$4,000,000.00, for eligible Project Costs and for use, on a reimbursement basis per the ODOT Grant Agreement, on file with the LCTID and ODOT.

“*Party*” means, individually, either HEATH, NEWARK, or the LCTID; and “*Parties*” means, collectively, HEATH, NEWARK, or the LCTID.

“*Payment Date*” means the date of \_\_\_\_\_, 2024, which is the due date for payment by NEWARK to the LCTID of: 1.) the NEWARK Phase 1 Advance in the amount of \$125,000.00, and 2.) the TID Management Fee in the amount of \$50,000.00, for a total amount of \$175,000.00 which the LCTID requires before it can proceed to retain the required consultant services and to commence the Phase 1 Work.

“*Phase 1 Work*” means certain preliminary engineering, including survey work, geotech work, environmental work and related engineering services to be performed by the consultant services firm retained by the LCTID and managed by and through the LCTID, in cooperation with NEWARK and the LCEO, per documents, agreements, scopes and plans on file with the LCTID developed for performance of this work, with the cost of the Phase 1 Work currently estimated to be in the amount of \$ \_\_\_\_\_, to be funded with the NEWARK Phase 1 Advance and the ODOT Grant Funding.

“*Project*” means the Thornwood Drive-Faye Road Intersection Improvements Project and has the meaning given to such term in Recital C. and as further described and delineated in accordance with the developed Project plans and documents on file with the LCTID, LCEO, HEATH and NEWARK.

“*Project Cost Item*” or “*Project Cost Items*” means, for purposes of this Agreement, costs of the Phase 1 Work activities, services and/or work items, including the LCTID Management Fee, to facilitate and complete the Phase 1 Work.

“*ORC*” means the Ohio Revised Code, as the same may be amended from time to time.

“*State*” means the State of Ohio.

“*Term*” has the meaning given to such term in Section 4.01.

***Section 1.02. References to Parties.*** Any reference in this Agreement to HEATH, NEWARK, or the LCTID, or to any members or officers of HEATH, NEWARK, or the LCTID, includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

***Section 1.03. Statutory References.*** Any reference in this Agreement to a section or provision of the Constitution of the State, or to a section, provision, or chapter of the ORC shall include such section, provision, or chapter as modified, revised, supplemented, or superseded from time to time; provided, however, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this Section if it constitutes in any way an impairment of the rights or obligations of HEATH, NEWARK, or the LCTID under this Agreement.

***Section 1.04. Adverbs; Other References.*** Unless the context indicates otherwise, the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” and similar terms used in this Agreement refer to this Agreement; and, unless otherwise indicated, references in this Agreement to articles, sections, subsections, clauses, exhibits, or appendices are references to articles, sections, subsections, clauses, exhibits, or appendices of this Agreement.

***Section 1.05. Number and Gender.*** All terms and words used in this Agreement, regardless of the number and gender in which they are used, shall be deemed and construed to include any other number (singular or plural) and any other gender (masculine, feminine, or neuter) as the context or sense of this Agreement or any article, section, subsection, or clause herein may require, the same as if such words had been fully and properly written in the appropriate number and gender.

***Section 1.06. Captions.*** The captions or headings at the beginning of each article and section of this Agreement are merely guides or labels for the convenience of the Parties to assist in identifying those articles and sections, are not intended to be a part of the context of this Agreement, and shall not be deemed to modify, to explain, to enlarge, or to restrict any of the provisions hereof.

**Section 1.07. Ambiguity.** The Parties have participated jointly in the negotiation and drafting of this Agreement. Should any ambiguity or question of intent or interpretation arise with respect to any provision of this Agreement, including any exhibit hereto, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.

**Section 1.08. Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law; but, if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

## **Article II Scope of Agreement**

**Section 2.01. Cooperation and Consent.** The LCTID, NEWARK and HEATH acknowledge and agree that the Parties shall cooperate to the greatest extent practical in the development, funding and construction of the Project, which will contribute to the improvement of the prosperity, health, safety, and welfare of all of the people of HEATH and NEWARK, and the County and, furthermore, NEWARK and HEATH expressly consent and approve of the LCTID's administration and management of the Phase 1 Work pursuant to the exercise of its powers and authority pursuant to ORC Chapter 5540 and related sections, and in conjunction with the LCEO, as determined by the LCTID to be necessary and appropriate for completion of the Phase 1 Work and consistent with the terms and conditions of the Agreement, so as to facilitate the development, acquisition and construction of the Project in their respective jurisdictions. It is further hereby noted that the Project extends into the jurisdiction of both NEWARK and HEATH.

**Section 2.02. General Agreement Regarding Funding and Phase 1 Work.** NEWARK and the LCTID acknowledge and agree as follows:

- (a) NEWARK explicitly agrees to remit the NEWARK Phase 1 Advance to the LCTID, in the amount of \$125,000.00, to aid in initiating and funding the Phase 1 Work and pay for the Project Cost Items and, accordingly, make payment of both the NEWARK Phase 1 Advance, as well as the TID Management Fee, in the amount of \$50,000.00 to the LCTID on or before \_\_\_\_\_, 2024.
- (b) The LCTID explicitly agrees to:
  - i) administer and manage the Phase 1 Work, in coordination and collaboration with HEATH, NEWARK, the LCEO and, as appropriate, ODOT and perform all the related responsibilities thereby required or appropriate, including, but not limited to, the management, administration and performance of activities required, including, in consultation with NEWARK, the retention of a qualified consultant services firm(s) so as to complete and deliver the Phase 1 Work, however, the LCTID's obligation relative to retention of the aforementioned consultant services firm(s) and otherwise, so as to complete and deliver the Phase 1 Work, is expressly conditioned upon the receipt by the LCTID of the

NEWARK Phase 1 Advance and TID Management Fee by the Payment Date.

- ii) only utilize the funds pledged in (a) above for the Project Cost Items and will allocate those funds so designated for the Phase 1 Work further in accordance with Section 2.03 below.
- (c) In the event the LCTID does not receive the payment due by the Payment Date, pursuant to (a) above, the LCTID will immediately notify NEWARK in writing, by both facsimile transmission and via electronic mail, that it has not made this payment and that the payment is due immediately.
- (d) The LCTID further agrees to repay to NEWARK, on or before January 30, 2027, the amount of the NEWARK Phase 1 Advance received by the LCTID. The LCTID shall direct said reimbursement payment to such account as instructed, in writing, by NEWARK. NEWARK shall provide the LCTID with such instructions within 15 business days of the execution of this Agreement.

***Section 2.03. Application of the NEWARK Phase 1 Advance.***

- (a) The LCTID will apply the NEWARK Phase 1 Advance for the sole purpose of paying Project Cost Items as set forth herein and to utilize the NEWARK Phase 1 Advance to access the reimbursement-based ODOT Grant Funding and to apply those available funds towards the Project and the LCTID's obligations and responsibilities in connection with the Phase 1 Work and Project Cost Items, and in accordance with ORC Chapter 5540 and other applicable law and agreements.
- (b) The Project funding shall be deposited and maintained in a Project account as established by the LCTID and will be accounted for in accordance with all applicable laws, agreements, and accepted accounting standards.
- (c) The Parties acknowledge and agree: (1) that the NEWARK Phase 1 Advance constitutes a specific commitment of Project funding by NEWARK; and, (2) that the LCTID is relying upon the Project funding commitment to facilitate and complete the Phase 1 Work, and will utilize the Project funding solely to pay for the Project Cost Items.

***Section 2.04. Relationship of the Parties.***

- (a) Neither this Agreement nor the relationship among the Parties established pursuant to this Agreement shall constitute or be deemed to be that of a partnership, joint venture, employment, master and servant, or principal and agent. Neither Party shall have any authority to make, and neither Party shall make, any representations, warranties, or statements on behalf of the other Party, and neither Party shall bind, or be liable for the debts or obligations of, the other Party. In the performance of its services hereunder, the LCTID is and shall at all times be an independent contractor, free and clear of any dominion or control by the other Party, except as specifically provided herein. The number of employees, consultants and

contractors used by the LCTID in the performance of its obligations hereunder, their selection, and the hours of labor and the compensation for services performed shall be reasonably determined by the LCTID in good faith and in the best interests of the successful completion of the Phase 1 Work. Each Party shall pay, and shall be solely responsible for, its operating expenses, including, but not limited to, the wages of its employees and any and all taxes, licenses, and fees levied or assessed on such Party in connection with or incident to the performance of this Agreement by any governmental agency for unemployment compensation insurance, old age benefits, social security or any other taxes on the wages of such Party, its agents, its employees, and its representatives.

- (b) Nothing in this Agreement shall (1) modify, alter, or impair in any way any pre-existing contractual arrangement or agreement between or among HEATH, NEWARK, or the LCTID or (2) preclude any Party from entering into other agreements with respect to matters not specifically addressed in this Agreement.

**Section 2.05. Extent of Covenants; No Personal Liability.** All covenants, obligations, and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, trustee, officer, agent, or employee of any Party in other than his or her official capacity; and neither the NEWARK, the LCTID or HEATH, or any member of their respective Boards or City Council, nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement or by reason of the covenants, obligations, or agreements of the Parties contained in this Agreement.

**Section 2.06. Liability of the Parties.** No Party shall have any liability to any other Party for any mistakes or errors in judgment or for any act or omission believed in good faith to be in the scope of authority conferred upon such other Party by this Agreement.

**Section 2.07. No Third-Party Beneficiary.** Only the Parties shall have any rights under this Agreement. No other persons or entities, shall have any rights under this Agreement or be deemed to be third-party beneficiaries of this Agreement.

### **Article III Representations and Further Agreements**

**Section 3.01. Representations of the LCTID.** To induce the Parties to enter into this Agreement, the LCTID Board of Trustees represents as follows:

- (a) it is a transportation improvement district and a body both corporate and politic duly organized and validly existing under the laws of the State;
- (b) it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder;
- (c) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action on the part of the LCTID and the LCTID Board



of Trustees; and this Agreement, when executed and delivered by the LCTID, will constitute a legal, valid, and binding obligation of the LCTID; and

- (d) the execution, delivery, and performance of this Agreement do not, and will not, (1) violate any provision of law applicable to the LCTID or (2) result in a default under any agreement or instrument to which the LCTID is a party or by which it is bound.

**Section 3.02. Representations of NEWARK.** To induce the LCTID to enter into this Agreement, the NEWARK City Council represents as follows:

- (a) it is the duly constituted and duly elected governing body of NEWARK under the laws of the State;
- (b) it has full power and authority to execute and to deliver this Agreement and to perform its obligations hereunder;
- (c) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action on the part of NEWARK; and this Agreement, when executed and delivered by the NEWARK City Council, will constitute a legal, valid, and binding obligation of NEWARK; and
- (d) the execution, delivery, and performance of this Agreement do not, and will not, (1) violate any provision of law applicable to the NEWARK or (2) result in a default under any agreement or instrument to which NEWARK is a party or by which either the NEWARK City Council or NEWARK is bound.

**Section 3.03. Representations of HEATH.** To induce the LCTID to enter into this Agreement, the HEATH City Council represents as follows:

- (a) it is the duly constituted and duly elected governing body of HEATH under the laws of the State;
- (b) it has full power and authority to execute and to deliver this Agreement and to perform its obligations hereunder;
- (c) the execution, delivery, and performance of this Agreement have been duly authorized by all requisite action on the part of HEATH; and this Agreement, when executed and delivered by the HEATH City Council, will constitute a legal, valid, and binding obligation of HEATH; and
- (d) the execution, delivery, and performance of this Agreement do not, and will not, (1) violate any provision of law applicable to HEATH or (2) result in a default under any agreement or instrument to which HEATH is a party or by which either the HEATH City Council or HEATH is bound.

**Section 3.04. Good Faith and Fair Dealing.** The Parties hereby acknowledge that this

Agreement imposes upon each of them a duty of good faith and fair dealing in its implementation.

**Section 3.05. Notice of Disagreement.** The Parties acknowledge and agree that the performance of certain of the agreements contained herein is to be undertaken in a mutual and cooperative fashion, and, to ensure such cooperative effort, each Party agrees promptly to notify the other of disagreements arising hereunder and to act in good faith to promptly resolve such disagreements.

**Section 3.06. Assignment.** No Party may assign this Agreement, in whole or in part, voluntarily or involuntarily, by operation of law, or otherwise, without the prior written consent of the other Party, which consent shall not unreasonably be withheld.

**Section 3.07. Amendment; Waiver.** This Agreement may not be modified, altered, amended, or discharged, or any rights hereunder waived, except by an instrument in writing executed by all Parties. No waiver of any term, provision, or condition of this Agreement, in any one or more instances, shall be deemed to be, or construed as, a further or continuing waiver of any such term, provision, or condition or as a waiver of any other term, provision, or condition of this Agreement.

#### **Article IV Term; Remedies**

**Section 4.01. Term.** This Agreement shall become effective on the Effective Date. Unless sooner terminated pursuant to the other provisions of this Agreement, the term of this Agreement shall be for the period from and after \_\_\_\_\_, 2024 to and including January 30, 2027 (the "Term").

**Section 4.02. Termination.** If no portion of the Phase 1 Work is outstanding and no Project Cost Items remain outstanding and related requirements have been met, this Agreement may terminate, prior to the expiration of the Term, upon the mutual agreement of the Parties to terminate this Agreement, unless it is otherwise amended to proceed with Phases 2 through Phase 4 of the Project.

#### **Article V Miscellaneous**

**Section 5.01. Time is of the Essence.** Time is of the essence in the compliance with the terms and conditions of this Agreement. Whenever, under the terms of this Agreement, the time for performance falls on a Day other than a Business Day, such time for performance shall be on the next Business Day.

#### **Section 5.02. Notices.**

- (a) Except as otherwise provided herein, any notice provided for in this Agreement shall be in writing and shall be deemed to have been duly given as follows:
  - (1) upon receipt, when delivered personally to a Party at its address as hereinafter set forth; or

- (2) one Business Day after being delivered to a reputable overnight courier service, prepaid, marked for next-day delivery to a Party at its address as hereinafter set forth; or
  - (3) on the third Business Day after being mailed by United States mail, registered or certified, return receipt requested, postage prepaid, addressed to a Party at its address as hereinafter set forth; or
  - (4) upon confirmation of receipt by telephone at the number specified for confirmation, if sent by facsimile transmission to a Party at its facsimile number as hereinafter set forth.
- (b) All notices to be given to the LCTID pursuant to this Agreement shall be sent to the LCTID at the following address:

The Licking County Transportation Improvement District  
c/o Jared Knerr, P.E., P.S.  
20 S. Second Street  
Newark, OH 43055  
Facsimile: (740) 670-5295  
Email: jknerr@lcounty.com

- (c) All notices to be given to NEWARK pursuant to this Agreement shall be sent to the NEWARK at the following address:

City of NEWARK  
Attention: Engineer Brian Morehead  
40 West Main Street  
Newark, Ohio 43055  
Facsimile (740) 349-5911  
Email: bmorehead@newarkohio.net

- (d) All notices to be given to HEATH pursuant to this Agreement shall be sent to HEATH at the following address:

City of HEATH  
Attention: Mayor Johns  
1287 Hebron Road  
Heath, OH 43056  
Facsimile: XXXXXX  
Email: XXXXXX

- (e) Any Party may at any time change its address and/or facsimile number for such notices, requests, demands, or statements by giving the other Parties written notice thereof in accordance Section 5.02(a) hereof.

**Section 5.03. Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the State of Ohio in all respects, including matters of construction, validity, and performance.

**Section 5.04. Entire Agreement.** This Agreement (including the recitals and exhibits hereto, which are by this reference incorporated herein and made a part hereof) sets forth all understandings between the Parties respecting the subject matter of this transaction, and all prior agreements, understandings, and representations, whether oral or written, representing this subject matter are merged into and superseded by this written Agreement. No course of prior dealings among the Parties and no usage of trade shall be relevant or admissible to supplement, to explain, or to vary any of the terms of this Agreement.

**Section 5.05. Binding Effect.** This Agreement, and the terms, covenants, and conditions hereof, shall be binding upon and inure to the benefit of the Parties and, subject to the prohibitions of assignment set forth herein, their respective administrators, successors, and assigns.

**Section 5.06. Counterparts; Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts. The Parties further agree that facsimile signatures and signatures provided electronically in .pdf format by the Parties shall be binding to the same extent as original signatures.

**[Signature Pages To Follow]**

**IN WITNESS WHEREOF**, this Agreement has been duly executed and delivered for, in the name of, and on behalf of the Parties by their duly authorized officers, all as of the Effective

Date.

**LCTID:  
THE LICKING COUNTY  
TRANSPORTATION IMPROVEMENT  
DISTRICT**

By: \_\_\_\_\_  
Secretary-Treasurer

**HEATH:  
THE CITY OF HEATH, OHIO**

By: \_\_\_\_\_  
City Administrator

By Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, 2024  
Verified and Certified:

\_\_\_\_\_  
Clerk of Council

Approved as to Form:

\_\_\_\_\_  
City Director of Law

**NEWARK:  
THE CITY OF NEWARK, OHIO**

By: \_\_\_\_\_  
City Administrator

By Resolution No. \_\_\_\_\_ dated \_\_\_\_\_, 2024  
Verified and Certified:

\_\_\_\_\_  
Clerk of Council

Approved as to Form:

\_\_\_\_\_  
City Director of Law

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, fiscal officer of the City of NEWARK, Licking County, Ohio (the "City"), hereby certifies that the moneys required (if any) to meet the obligations of the City for the year 2024 under the foregoing Agreement have been lawfully appropriated and are in the treasury of the City or are in the process of collection to the credit of an appropriate fund free from any previous encumbrances.

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
*Fiscal Officer, City of NEWARK, Ohio*

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, Fiscal Officer for the Licking County Transportation Improvement District (the "LCTID"), hereby certifies that the funds required (if any) to meet the obligations of the COUNTY for the year 2024 under the foregoing Agreement have been lawfully appropriated and are in the treasury of the LCTID or are in the process of collection to the credit of an appropriate fund free from any previous encumbrances.

Dated: \_\_\_\_\_, 2024

\_\_\_\_\_  
*Secretary-Treasurer,*  
Licking County Transportation Improvement District

**City of Newark**  
**Division of Engineering**

**MEMORANDUM**

TO : Service Committee  
FROM: Brian Morehead, City Engineer  
DATE : 10 April 2024  
RE : Committee Agenda – Legislation with LCTID

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Please allow time on your next agenda to discuss submitting legislation to Council for the following projects:

As you may know, we are indirectly receiving up to \$4,000,000 through the Governor's Silicon Heartland project funding to be used in toward Thornwood Drive improvements, and the tricky part is that the funding has to run through the Licking Co. Transportation Improvement District (LCTID). Basically, the TID will contract for the engineering and construction work, the City will need to front the money for each of these phases, provide it to the TID, the TID will pay the bills, then get reimbursed back from the State of Ohio, and finally the TID can then turn around and pay the City back, up to \$4,000,000. All of this needs to be completed by 12/31/2026, per the State's funding requirements. The two agreements below will help move the project forward.

1. Intergovernmental Agreement for Phase 1 of Thornwood Drive-Faye Drive Improvements - In order to use the funding in the tight time frames, we have moved forward with an engineering solicitation on the portion of Thornwood Drive from Faye Drive south to the Railroad crossing, and we have a cost proposal to get this design moving. There is an opportunity for the survey work to begin immediately, if we can authorize that portion of the work. This would be critical to making the necessary schedule work. The approval of the Intergovernmental Agreement is needed for the LCTID to authorize the work to begin.
2. Intergovernmental Agreement for supplemental funding for Thornwood Drive Corridor Improvements – This agreement between Newark, Heath, Licking County and Licking County TID would provide funding assurances to supplement the currently identified sources, in the event that current funding is not sufficient to complete the project.

Please let me know if you have any further questions before the meeting.

cc: David Rhodes, Service Director  
City Engineer, File 202124, 202409

RESOLUTION NO. 24-40

BY: \_\_\_\_\_

A RESOLUTION AUTHORIZING AND DIRECTING THE DIRECTOR OF PUBLIC SERVICE FOR THE CITY OF NEWARK, OHIO, TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE LICKING COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, THE BOARD OF COUNTY COMMISSIONERS OF LICKING COUNTY, AND THE CITY OF HEATH FOR THE CONSTRUCTION OF CERTAIN IMPROVEMENTS TO THORNWOOD DRIVE KNOWN AS THE THORNWOOD DRIVE PROJECT

WHEREAS, the City of Newark, Ohio (“City”) in cooperation with the Licking County Transportation Improvement District (TID), the Board of County Commissioners of Licking County, Ohio, and the City of Heath, Ohio, are desirous of constructing improvements to Thornwood Drive, a road running generally North and South on the western edges of City of Newark and the City of Heath in Licking County in order to provide the traveling public a better, more efficient, route of travel from Interstate 70 to State Route 16 (“Thornwood Drive Project” or “Project”); and,

WHEREAS, the City, in cooperation with the other parties, seeks to cooperate in providing for certain funding assurances to supplement current funding sources to complete such Project in the event current funding is not sufficient to complete it, and:

WHEREAS, the City agrees that the completion of the Project is in the best interest of the City; and,

WHEREAS, execution of this intergovernmental agreement, a preliminary draft of which is attached to this Resolution as Exhibit “A”, is necessary for this project to move forward in a timely manner to receive state funding.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEWARK, COUNTY OF LICKING AND STATE OF OHIO, THAT:**

**SECTION ONE:** The Director of Public Service is hereby authorized to enter into an intergovernmental agreement with the Board of County Commissioners of Licking County, the City of Heath, and the Licking County Transportation Improvement District for certain improvements to Thornwood Drive.

**SECTION TWO:** This Resolution shall become effective at the earliest time permitted by Article 4.07 of the Charter of the City of Newark, Ohio.

Passed this \_\_\_\_\_ day of \_\_\_\_\_, 2024.



\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST: \_\_\_\_\_  
CLERK OF COUNCIL

DATE FILED WITH MAYOR: \_\_\_\_\_

DATE APPROVED BY MAYOR: \_\_\_\_\_

\_\_\_\_\_  
MAYOR

FORM APPROVED: \_\_\_\_\_  
DIRECTOR OF LAW

Prepared by the Office of the Director of Law

## **INTERGOVERNMENTAL AGREEMENT**

This Intergovernmental Agreement (“Agreement”) is made and entered into as of the last date of the signatures appearing on the executing page hereof (the “Effective Date”) by and between the Licking County **Transportation Improvement District** (“TID”), a district and political subdivision created pursuant to Ohio Revised Code Section 5540.02, having its address at 20 S. 2nd Street, 3rd floor, Newark, OH 43055; the **Board of County Commissioners of Licking County, Ohio** a political subdivision (the “County” or “Commissioners”), having its address at 20 S. 2nd Street, 4th floor, Newark, OH 43055; the City of Newark, a political subdivision (“Newark”), having its address at 40 W. Main Street, Newark, OH 43055; and, the City of Heath, a political subdivision (“Heath”), having its address at 1287 Hebron Road, Heath, OH 43056. Each district or political subdivision may be referred to as a “Party” in this Agreement, and collectively all districts/political subdivisions shall be referred to as “Parties.” All Parties are political subdivisions and/or body corporate and politic, validly existing under the laws of the State of Ohio.

### **WITNESSETH:**

A. The Parties, in cooperation with others, are desirous of constructing improvements to Thornwood Drive ... a road running, generally North and South on the western edges of Newark and Heath in Licking County ... in order to provide the traveling public a better, more efficient, route of travel from Interstate 70 to State Route 16 (“Thornwood Drive Project”, or “Project”).

B. The Parties desire to cooperate in providing for certain funding assurances to supplement current funding sources to complete such Project in the event current funding is not sufficient to complete it.

C. The Parties agree that completion of the Project is in all Parties’ interests.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter set forth, the Parties hereby Agree as follows:

### **SECTION 1: AUTHORITY**

The Parties each have the authority and power under the Constitution, statutes and laws of the State of Ohio to make road and street improvements, acquire necessary real property and interests therein, including temporary and permanent right-of-way, and enter into agreements with other governmental entities and political subdivisions for the exercise of any and all powers, performance of any function or rendering of any service necessary to construct and maintain the street and road improvements and appurtenances thereto.

## **SECTION 2: COOPERATION STATEMENT**

The Parties agree that they shall cooperate in good faith to facilitate the timely success and funding of the Project. Each Party shall refrain from taking any action that would directly or indirectly delay the Project or endanger the timely success of the Project. The Parties recognize and agree that time is of the essence in the construction of the improvements and Project funding.

## **SECTION 3: RESPONSIBILITIES OF THE PARTIES**

- 3.1. In cooperation with local, State and/or Federal agencies and/or subdivisions, the Parties shall continue to fulfill their responsibilities as it relates to the Project as may be documented by other agreements, contracts, memorandums of understandings, or the like, that have been executed, or that are reasonably contemplated to be executed, as part of completing the Project.
- 3.2. The Parties acknowledge that the funds currently dedicated to this Project may not be sufficient to complete the Project and agree hereby to provide contingent or “backstop” funding in the aggregate amount of \$3,000,000.00 in the following amounts/percentages should they been required in order to compete the Project:
  - a) Licking County: \$1,500,000; 50%
  - b) Newark: \$750,000.00; 25%
  - c) Heath: \$750,000.00; 25%
- 3.3. Should none of these contingent or “backstop” funds be necessary to complete the Project (due to construction being completed under estimated costs, or because other/new funding sources been obtained) the Parties will be relieved of their obligations to provide such contingent or “backstop” funds.
- 3.4. Should a portion of these contingent or “backstop” funds be necessary to complete the Project, the Parties will provide portions of the needed funding in accordance with the allocated percentages above after which the Parties will be relieved of their obligations to provide the remainder of such funds.

## **SECTION 4 EFFECTIVE DATE AND TERMINATION OF AGREEMENT**

- 4.1. This Agreement shall become effective on the last date of the signatures appearing on the executing page hereof.
- 4.2. For the benefit of all Parties and the convenience and welfare of the public, this Agreement shall not be amended, terminated or suspended except by mutual written agreement of all Parties.

**SECTION 5 MISCELLANEOUS TERMS AND CONDITIONS**

- 5.1. Entire Agreement. This Agreement, and any documents incorporated by reference herein, shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the Parties, except as otherwise provided in this Agreement.
- 5.2. Notices. Any notice required to be given hereunder shall be given in writing by e-mail effective upon confirmation of delivery and receipt to the e-addressee, by certified United States mail, postage prepaid with confirmation of delivery and receipt, or by hand delivery addressed to the parties at their respective addresses as set forth below. Each Party shall notify every other party, in writing, promptly upon the change of any information provided below including the name of any person or any street or e-address:

**If to the TID:**

Licking County Transportation  
Improvement District  
Attn: Jared Knerr, Secretary Treasurer  
20 S. 2<sup>nd</sup> Street, 3<sup>rd</sup> floor  
Newark, OH 43255

e-mail: jknerr@lickingcounty.gov

**If to the County:**

The Licking County Board of County  
Commissioners  
Attn: Clerk/Administrator  
20 S. 2<sup>nd</sup> Street, 4th floor  
Newark, OH 43055

e-mail: badzic@lickingcounty.gov

**If to the City of Newark:**

Office of the Newark City Mayor  
Attn: Jeff Hall, Mayor  
40 W. Main Street  
Newark, OH 43255

e-mail: jhall@newarkohio.net

**If to the City of Heath:**

Office of the Heath City Mayor  
Attn: Mark Johns, Mayor  
1287 Hebron Road  
Heath, OH 43056

e-mail: mayor@heathohio.gov

- 5.3. Amendments. This Agreement may be amended by all Parties upon their mutual written agreement. It is anticipated and agreed by the Parties that this Agreement may also be amended to include additional aspect(s) of the Projects by and among some or all of the Parties, as necessary and appropriate, *provided* that such additional aspect(s) be mutually acceptable.

- 5.4. Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Licking County, Ohio.
- 5.5. Headings. The subject headings of the sections and subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by all Parties and no purposes of interpretation shall be made to the contrary.
- 5.6. Waivers. No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 5.7. Ambiguity. The Parties have participated jointly in the negotiation and drafting of this Agreement. Should any ambiguity or question of intent or interpretation arise with respect to any provision of this Agreement, including any exhibit hereto, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.
- 5.8. Severability. If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.
- 5.9. No Third-Party Beneficiary. Only the Parties hereto have any rights under this Agreement. No other persons or entities shall have any rights under this Agreement or be deemed to be third-party beneficiaries of this Agreement.

**REMAINDER OF PAGE LEFT BLANK. SIGNATURE PAGE TO FOLLOW.**

SIGNATURES

**IN WITNESS WHEREOF**, the Parties have unto set their hands according to the date appearing next to their respective signatures.

**On behalf of the Transportation Improvement District:**

Chair:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
TID Counsel

**On behalf of the Board of County Commissioners:**

President:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Licking County Prosecutor

**On behalf of the City of Newark**

Mayor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Law Director

**On behalf of the City of Heath**

Mayor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Law Director

*Accompany Completed Signature Pages with Attachment  
of Related Board/Council Resolutions/Ordinances which  
Document Authority to Enter Agreement*