

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (this "IGA") is made as of the 3rd day of October, 2015 ("Effective Date"), by and between the **BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO**, a county organized and existing under the laws of the State of Ohio ("County"), the **MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT**, a body corporate and politic ("TID"), and the **DAYTON-MONTGOMERY COUNTY PORT AUTHORITY**, a body corporate and politic ("Port") (the County, the TID, and the Port are sometimes referred to individually as a "Party" and collectively as the "Parties") under the following circumstances:

A. The Parties desire to provide for a framework and capacity for economic development entities within the County to work together to compete for and win high value economic development projects ("SEED Projects") under the County's newly-developed [*Strategic Enhancement of Economic Development Program*] (commonly referred to as the "Montgomery County SEED Program") (the "SEED Program");

B. The Parties recognize that the Parties have limited resources and expending their respective resources on prospective SEED Projects will be dependent upon: (i) the existence of an executed MOU with the applicable SEED Partner (as described in Section 4 below), and (ii) the Parties' assessment of the feasibility and value of such proposed SEED Project.

C. The County, acting through the Montgomery County Office of Community and Economic Development created pursuant to Section 307.07 of the Ohio Revised Code ("MCED"), has a unique capability to provide marketing support in connection with economic development initiatives, and the ability to jointly finance and construct public projects and/or share certain governmental powers with other governmental agencies;

D. The County created the TID for the purpose of undertaking transportation projects and concomitant economic development activities within the County, and the TID has the capability to apply for up to \$250,000 of project support for appropriate SEED Projects under the Ohio Department of Transportation TID Grant Program, and to field a team experienced in conducting projects with property owners and communities, including the planning, development, design, financing and construction of public infrastructure;

E. The Port has the capability to work with the SEED Program by providing bond funding capacity, sale/leaseback/sales tax reduction strategies, and its other capabilities related to working with private developers and owners regarding the acquisition, financing, holding and transferring of private property;

F. The Parties recognize that projects maybe be proposed as viable SEED Projects in a number of ways, including: (i) a prospect for a SEED Project ("SEED Prospect") may approach a governmental entity, including the State (through JobsOhio or otherwise), the County or a local community in which suitable property is located; (ii) a governmental entity may respond to an RFP, site seeker request, cold call or other

solicitation from a SEED Prospect or its representative, such as a national commercial real estate broker; or (iii) a prospect may be working with or approaching a developer that owns and/or controls property set aside for economic development or a property owner not in the business of developing commercial property;

G. The Parties desire to quickly and effectively respond to SEED Prospects with pre-arranged: (i) strategies to house SEED Projects on identified properties (“SEED Properties”); (ii) potential developable SEED Properties (via option or otherwise) with an identified land acquisition price; (iii) ready access or a plan for ready access to public infrastructure and identified costs and financing strategies related thereto; (iv) land use, zoning and building strategies that allow for development; (v) streamlined and effective local government land use, zoning, permitting and inspection administration; and (vi) identified incentives from the Parties and others based upon the nature of the SEED Project, the investment to be made in connection with the SEED Project, the jobs to be retained and/or created and other critical criteria (collectively, “SEED Program Requirements”); and

H. In order to fulfill the SEED Program Requirements, the County desires to specifically appoint (pursuant to Section 307.07 of the Ohio Revised Code) the Director of the MCED (“Director”) to manage the SEED Program on the County’s behalf and to enter into certain agreements that will support the SEED Program.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this IGA, with the intent to be legally bound, agree as follows:

1. **Definitions.** For purposes of this IGA, the following terms will have the following meanings:

A. *County Financial Support.* “County Financial Support” means one or both of the following: (i) funding allocated by the County from the County’s economic development funds, and (ii) project financing supported by the County’s balance sheet.

B. *Imminent.* A project is “Imminent” if it is scheduled to commence construction within the next twelve to twenty-four month period.

C. *MOU and MOUs.* An “MOU” is a Memorandum of Understanding, and “MOUs” are Memoranda of Understanding.

D. *SEED Community Development Project.* A “SEED Community Development Project” means a project that: (i) is Imminent, (ii) is designed to better utilize an important underutilized community property or amenity, (iii) has material community economic and/or other support for the project, (iv) will result in significantly increased economic opportunity and/or activity within the County, or (v) has such other attributes as the Parties deem important to the economic vitality of the County and its residents.

E. *SEED Employment Project.* A “SEED Employment Project” means a project that: (i) is Imminent, (ii) has material private financing capacity in place, (iii) has one or more specific employers who will conduct business at the project, and as a result, the project is likely to result in retention of a significant number of direct jobs within a twenty-four month period or produce a significant number of new direct jobs within a thirty-six month period, or (iv) has an identified developer with a strong market commitment, and the financial wherewithal to develop and carry the project until appropriate user(s) are identified and installed on the project.

F. *SEED Property.* A “SEED Property” means a greenfield property or a previously developed property that: (i) is marketable, (ii) can support uses that are appropriate to the site, (iii) will support the significant development required of a SEED Project (including potentially a mixed use project), (iv) is under control of a Party or a local government interested in participating in the SEED Program via ownership, an option or otherwise, (v) is Shovel Ready or can be made Shovel Ready within a twelve to eighteen month time period, (vi) can generate private or public funding for necessary Shovel Ready improvements given the location, likely utilization, increase in real estate values and income tax opportunities generated from the SEED Project

G. *Shovel Ready.* A property is “Shovel Ready” if it has availability of roadway access, acceptable transportation corridor(s), gas, electricity, communications, water, sewer, storm water and other utilities, and zoning with conditions appropriately supporting the nature of the prospective uses.

H. *State.* The “State” means the State of Ohio.

2. **Appointing Director to Manage SEED Program.**

A. The Parties desire that the County appoint the Director to manage the SEED Program on the County’s behalf. The County hereby appoints the Director to manage the SEED Program, to negotiate and to enter into agreements with third parties, including SEED Partners (defined below) who will support the SEED Program, and to work with the Parties, SEED Partners and others to develop SEED Projects and, when appropriate, present the SEED Projects to the County for consideration regarding providing County Financial Support.

B. The Director will work with the Executive Director of the TID and the President of the Port Authority (with input from their respective Boards) to establish criteria against which to measure the success of the SEED Program (“Success Criteria”). The Director will provide an annual report to the Parties as to the activities of the SEED Program and its results compared to the Success Criteria.

3. **Identifying Potential SEED Partners.** The Parties intend to work with local governments: (i) who desire to work with the Parties and (ii) who have identified one or more material and strategically significant economic development opportunities within their boundaries (each a “SEED Opportunity”). A local government that meets the foregoing criteria will be a potential “SEED Partner”.

4. **Working with SEED Partners.** The Parties will work with Seed Partners as follows:

A. *Entering MOUs.* The Director, the Port and the TID will enter into MOUs with SEED Partners that will: (i) identify the SEED Opportunity, and (ii) identify and implement specific strategies related to the SEED Opportunity, including strategies related to a SEED Property, a SEED Employment Project or a SEED Community Development Project, and (iii) establish a SEED Partner's responsibilities (including supporting the land use, zoning, permitting and inspection administration for SEED Program Requirements) and the Parties' expected responsibilities for SEED Program Requirements.

B. *Signing MOU Addendums.* A Party may be a signatory to one or more Addendum to an MOU with respect to a specific SEED Project and the Party's obligations with respect to such specific SEED Project.

5. **Parties' Specific Activities.** The Parties will: (i) identify properties within the County that can become SEED Properties and fulfill the requirements of SEED Projects, (ii) work with SEED Partners to assess potential SEED Properties for their Shovel Ready status, (iii) work with SEED Partners and SEED Prospects on SEED Employment Projects, and (iii) work with SEED Partners and others on SEED Community Development Projects.

6. **Designing Shovel Ready Plans.** For each SEED Property, the Parties will design a Shovel Ready plan that will: (i) identify the infrastructure requirements to give the SEED Property Shovel Ready status, (ii) determine the financial costs related to the infrastructure requirements, (iii) prioritize the SEED Property with respect to the investment in other SEED Properties within a SEED Partner's boundaries and the County generally, (iv) identify currently available revenue streams to support infrastructure development for the SEED Property, (v) identify the financing strategy and incentives for the infrastructure development, (vi) identify the SEED Partner's support necessary to achieve Shovel Ready status, (vii) identify the availability of third party resources and incentives (e.g., ODOT, OPWC, MVRPC, JobsOhio) to make the SEED Property available for Shovel Ready status, (viii) consider the use of County Financial Support to assist in achieving Shovel Ready status (but the Parties agree that any agreement related to County Financial Support will specifically provide that the County is not seeking a share of future income tax related to the ultimate use of the SEED Property, except to the extent and for the period necessary to repay the County Financial Support), (ix) identify the revenue streams likely to be generated as a result of the infrastructure investment and incentives and the control and allocation of those revenue streams to repayment of the County Financial Support and the SEED Partner's financial support, (x) establish an anticipated schedule for infrastructure development, and (xi) develop rough site plans for possible use by owners and SEED Prospects.

7. **Securing Non-Exclusive Options.** The Parties will secure Non-Exclusive Options ("NEOs") on SEED Properties ("Optioned Properties") for the benefit of the Port (assignable to other Parties) that provide for the following: (i) set an agreed upon price with the owner that is commercially reasonable and can lead to interest by SEED Prospects, (ii) establish ability for the Parties to take down the Optioned Property in segments via separate parcels or lot splits, (iii) permit a Party to act as an agent for the owner to apply for the appropriate zoning (or

PUD status with specified parameters) and obligate the owner to support the zoning or PUD application, (iv) continue for at least five years (unless renewed) or the sale of the Optioned Property to a third party for an active project (e.g., not to a developer speculating and holding the Optioned Property), (v) establish how to manage existing or future brokerage fees, and (vi) set forth the payment of nominal consideration (e.g., \$2500) plus the provision of development and marketing support. The Parties agree that, in order to allow the Parties to maintain the relationship with the SEED Prospects, the NEOs will not require assignability to SEED Prospects as the Parties (most likely the Port) can acquire the SEED Property and simultaneously transfer the SEED Property to the SEED Prospect.

8. **Marketing SEED Properties.** The Parties will market SEED Properties to SEED Prospects who have: (i) the financial ability and intention to construct one or more SEED Projects, (ii) expressed an interest in locating a SEED Project within a region that includes the County or for which the County meets the identified criteria, and/or (iii) attributes which make the Parties believe that the County can effectively compete for the SEED Project. The Parties or a SEED Partner may determine that a prospect should be included as a SEED Prospect because of: (i) the proximity of the prospect's other activities within or near the County, (ii) customer, industry cluster, employment or other matches that prove the County is an especially attractive location for the prospect, or (iii) for other reasons acceptable to the Parties.

9. **Assisting SEED Prospects.** The Parties will work closely with SEED Prospects to provide a coordinated experience regarding the development and implementation of SEED Projects, including assisting SEED Prospects to identify properties, access necessary public infrastructure, develop properties, make capital investment in buildings and equipment, finance properties, building and equipment, and employ individuals, including County residents.

10. **Financing SEED Projects.** The Parties will prepackage financing strategies to support SEED Projects, including: (i) the identification of specific financial and other resources that will be committed to a SEED Prospect that promises certain levels of investment, and job retention and/or growth, (ii) the application for and coordination of all third party incentives and financings (including Dayton Development Coalition/JobsOhio), (iii) the establishment of tax incremental financing, joint economic development districts, income tax, where appropriate (including working with SEED Partners, local school districts, attorneys and others to agree upon and approve necessary legislation and contracts), (iv) the acquisition of SEED Property (including strategies for the write down of the SEED Property, where appropriate), (v) the acquisition of all necessary right of way (via options or purchases) for public infrastructure, and (vi) the coordination with utility providers and others.

11. **The MCED's Roles and Responsibilities.** To accomplish the SEED Program, the Parties anticipate that the MCED, acting on behalf of the County, will undertake the following specific roles and responsibilities:

A. Act as liaison to County Commissioners and the County Administrator for the Program;

B. Introduce the SEED Program to potential SEED Partners;

- C. Inventory potential SEED Properties;
- D. Identify planning and zoning requirements to make potential SEED Properties more attractive to SEED Prospects and work with SEED Partners regarding the same;
- E. Have available maps and other materials for SEED Prospects to effectively and quickly evaluate SEED Properties as well as necessary infrastructure to service the SEED Properties;
- F. Identify and implement the SEED Property marketing strategy;
- G. Develop SEED Program marketing materials, in coordination with the Dayton Development Coalition, the Dayton Chamber of Commerce, and others;
- H. Represent the SEED Program at large to potential SEED Prospects and others;
- I. Determine when a potential SEED Prospect has: (i) sufficient interest in a project that will qualify as a SEED Project, and (ii) sufficient economic capacity so that the TID should assume responsibility for the SEED Prospect as described below;
- J. Coordinate workforce development strategies for SEED Projects;
- K. Work with the TID and the Port to finance public and private infrastructure and incentives;
- L. Work with the TID to implement infrastructure construction, including, where appropriate, to enter into joint construction agreements and economic development powers sharing agreements related to such implementation;
- M. Work with the SEED Partners, the State and others to develop incentives from third parties for specific SEED Prospects and SEED Projects; and
- N. Support the TID and the Port with respect to their roles and responsibilities.

12. **The TID's Roles and Responsibilities.** To accomplish the SEED Program, the Parties anticipate that the TID will undertake the following specific roles and responsibilities:

- A. Lead negotiations and contracts with SEED Partners;
- B. Work with the Port to negotiate and document NEOs;
- C. Determine public infrastructure and related estimated expenditure costs to make potential SEED Properties Shovel Ready;

D. Accept responsibility for each identified SEED Prospect that seriously pursues a SEED Project, and act as the point of contact for such SEED Prospect with respect to the identified SEED Project;

E. Lead the development, coordination and implementation of specific planning, zoning, design, utilities, financing and related matters with SEED Partners and others to bring the SEED Project to fruition;

F. Act as the point of contact with the State and other public funders for infrastructure improvements related to a SEED Project;

G. Negotiate with third parties for incentives to support the SEED Prospects and SEED Projects;

H. Lead the negotiations and management of the development agreements and other agreements with SEED Prospects and others to achieve SEED Projects;

I. Act as the project leader to move from negotiated development agreement, through construction and placing the SEED Project in service;

J. Provide contractor selection and construction management services for public infrastructure;

K. Provide and negotiate strategies for the Parties and the SEED Partners to recapture costs incurred in supporting the public infrastructure from incentives and financings related thereto (*e.g.*, reimbursement of advanced preliminary engineering costs or acquisition of right of way); and

L. Support the MCED and the Port with respect to their roles and responsibilities.

13. **The Port's Roles and Responsibilities.** To accomplish the SEED Program, the Parties anticipate that the Port will undertake the following specific roles and responsibilities:

A. Work with the TID to negotiate NEOs with Owners;

B. Hold NEOs;

C. Hold Optioned Properties and transfer Optioned Properties to SEED Prospects;

D. Deploy Port financing resources for public and private improvements, including bond fund supported transactions;

E. Be available to own and lease back SEED Projects;

F. Develop a private investment fund or other vehicles to support private placement of Port deals related to SEED Projects; and

G. Support the MCED and the TID with respect to their roles and responsibilities.

14. **Term and Renewal.** The initial term of this IGA begins on October 1, 2015 and ends on December 31, 2020. This IGA may be renewed for additional five-year terms upon the approval of the Parties.

15. **Miscellaneous.**

A. *Notices.* Any notices related to this IGA given by the Parties will be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier, or mailed by U.S. registered or certified mail, postage prepaid, return receipt requested, addressed to the Parties at their address below or at such other addresses as a Party may designate by notice to the other Parties given in the manner prescribed herein. Notices will be deemed given on the date of receipt.

To the County: Board of County Commissioners of Montgomery County, Ohio
Montgomery County Administration Building
451 West Third Street
Dayton, Ohio 45422
Attn: Director of Development

With a copy to: Montgomery County, Ohio Prosecuting Attorney's Office
14 West Fourth Street
Dayton, Ohio 45422
Attn: Civil Division

To the TID: Montgomery County Transportation Improvement District
451 West Third Street, 10th Floor
Dayton, OH 45422

With a copy to: Sebaly, Shillito + Dyer
Attn: Beverly F. Shillito
1900 Kettering Tower
40 North Main Street
Dayton Ohio, 45423

To the Port: Dayton-Montgomery County Port Authority
Attn: Executive Director
8 North Main Street
Dayton, Ohio 45402

With a copy to: Dinsmore & Shohl
Attn: Bradley W. Evers
Fifth Third Center
1 South Main Street, Suite 1300
Dayton, Ohio, 45402

B. *Entire Agreement; Amendment.* The IGA contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, representations or agreements, written or oral, between them respecting the subject matter hereof. The IGA may be amended only by a written amendment signed by all of the Parties.

C. *Governing Law.* This IGA will be governed by and construed and enforced in accordance with the laws of the State.

D. *Captions.* The captions of the sections of this IGA are not part of the context hereof and are only guides to assist in locating such sections and will be ignored in construing this IGA.

E. *Severability.* If any part of this IGA is held by a court of law to be void, illegal or unenforceable, such part will be deemed severed from this IGA and the balance of this IGA will remain in full force and effect and interpreted to the extent legally possible to effectuate the intentions of the Parties.

F. *Official Capacity.* All representations, warranties, covenants, agreements and obligations of the Parties under this IGA will be effective to the extent permitted by applicable law. None of those representations, warranties, covenants, agreements or obligations will be deemed to be a representation, warranty, covenant, agreement or obligation of any present or future officer, agent, employee or attorney of the Parties in other than his or her official capacity.

G. *Waiver.* No consent or waiver, express or implied, by any Party of any breach of any covenant, condition or duty of another Party will be construed as a consent or waiver to or of any other breach of the same or any other covenant, condition or duty to be observed by the other Party. No waiver will be effective unless provided in writing and signed by the Party against whom it is sought to be enforced.


H. *Counterparts.* This IGA may be executed in counterparts, each of which will be deemed to be an original and all of which together will be deemed to be one and the same instrument.

I. *Further Assurances.* In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the Parties, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, any further deliveries and assurances as may be reasonably necessary to consummate the obligations contemplated hereby.

[Remainder of Page Intentionally Blank. Signatures Follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this IGA as of the Effective Date.

BOARD OF COUNTY COMMISSIONERS OF MONTGOMERY COUNTY, OHIO

By: 

Name: Deborah Lieberman

Title: Commissioner

MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

By: 

Name: STEVE STANLEY

Title: EXECUTIVE DIRECTOR

DAYTON-MONTGOMERY COUNTY PORT AUTHORITY

By: 

Name: Jerome J. Brunswick

Title: PRESIDENT & Executive Director

APPROVED AS TO FORM:
MATHIAS A. HECK, JR., Prosecuting Attorney

BY Mary Montgomery DATE 10/16/15
Assistant Prosecuting Attorney