



BOARD OF TRUSTEES MEETING
 THURSDAY – MAY 8, 2025 – 9:30 A.M.
 MONTGOMERY COUNTY ADMINISTRATION BUILDING
 10TH FLOOR MEETING ROOM - 1002

BUSINESS MEETING

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PUBLIC COMMENT

EXECUTIVE SESSION

ADJOURN

NEXT MEETING

Thursday, June 12, 2025 @ 9:30 A.M.
 Montgomery County Administration Building
 10th Floor Meeting Room - 1002

MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

RESOLUTION NUMBER 2025-33

RESOLUTION APPROVING THE MINUTES OF THE REGULAR BOARD MEETING OF APRIL 10, 2025 OF THE MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT BOARD OF TRUSTEES

WHEREAS, the Board of Trustees of the Montgomery County Transportation Improvement District (TID) did meet in the regular board meeting on May 8, 2025; and

WHEREAS, the TID Board has reviewed the minutes of the April 10, 2025, meeting and found them, as prepared, to be a full and accurate account of the mentioned meeting.

BE IT THEREFORE RESOLVED, by the Board of Trustees of the Montgomery County Transportation Improvement District that the minutes of the regular board meeting on April 10, 2025, are hereby approved as prepared and appended to this resolution.

BE IT FURTHER RESOLVED, copies of this resolution be provided to the Executive Director, Secretary/Treasurer, Finance Director, and TID's General Counsel.

Adopted the 8th day of May, 2025.

Chairperson, Montgomery County Transportation Improvement District

Attest:

Secretary/Treasurer



MINUTES OF THE APRIL 10, 2025 BOARD MEETING

The two hundred and ninety-first meeting of the Montgomery County Transportation Improvement District ("TID") Board of Trustees convened in Room 1002 on the 10th Floor of the Montgomery County Administration Building in Dayton, Ohio on April 10, 2025.

The TID staff shared visuals of the Benchwood Station Improvement Project Roundabout before the meeting was called to order.

Mr. Hibner called the meeting to order at 9:33 AM.

VOTING BOARD

Walt Hibner
Stephanie Keinath
Rob Beeler
Suzanne Beck
Dave Bills

STAFF

Vanessa Glotfelter, Executive Director
Veronica Hull, Administrative/Operations Mgr.
Mike Eddy, Project Manager
Sean Fraunfelter, Finance Director
Nick Endsley, General Counsel

OTHERS IN ATTENDANCE

Tawana Jones, Montgomery Co. Econ. Dev.	Jay Hamilton, Mead + Hunt
Scott Seaman, GPD Group	Tracy Jones, O.R. Colan Associates
Alissa Nicholson, TEC Engineering	Dan Hoying, LJB, Inc.
	Casey Reichert, Choice One

Business Meeting

■ Minutes of March 13, 2025 {Resolution 2025-26}

Mr. Hibner referred the Board to Resolution 2025-26 and the minutes of March 13, 2025, TID Board of Trustees meetings, copies of which were included in the Board Packet.

Following discussion and response to Board questions and comments, adoption of Resolution 2025-26, approving the minutes of March 13, 2025, as presented, was moved by Mr. Beeler, seconded by Ms. Beck, and unanimously approved.

■ Audit Update

Mr. Fraunfelter provided the Board with a brief update on the 2024 Audit. He explained that the auditor, Charles E. Harris & Associates, Inc. would be on-site the week of April 14, and the audit should be completed by June.

■ Financial Report: March 2025 {Resolution 2025-27}

Mr. Hibner referred the Board to Resolution 2025-27 and the Financial Reports for March 2025, copies of which were included in the Board Packet.

Mr. Fraunfelter highlighted the following items in the March 2025 Financial Report:

- (1) Austin Road (#702) on Packet Page 9 and noted the following:
 - (a) The receipt of \$28,454.92 of the debt service payment for the Lyons Road Pedestrian Access Project and explained that the corresponding expenditure would be reflected in the April Financial Reports; and

(b) The reporting of \$41,841.59 of the Ohio Department of Transportation (“ODOT”) Federal Highway Administration (“FHWA”) funding program encumbrance paid directly to LJB, Inc. for the Church Connector Project. He explained that the TID, as the Local Public Agency (“LPA”), is required to monitor, track, and report on funds disbursed per the LPA Agreement.

(2) I-70/75 Development Fund (#707) on Packet Pages 19 and 20 and noted the following:

- (a) The receipt of \$57,942.60 for construction of the Benchwood Station Improvement Project;
- (b) The receipt of \$52,417.14 for debt service payment of the 70/75 Airport Logistics Access Project (“US-40”) from both Montgomery County and the City of Union;
- (c) The negative entry of \$52,417.14 for the “City of Union TIF Deposit” was for the transfer of tax increment financing (“TIF”) revenue held by the TID applied to the City of Union’s portion of the US-40 debt service payment; and
- (d) The receipt of \$241,900.00 from the City of Union for the Wastewater Treatment Phase 2 Project.

(3) The bank reconciliation summary on Packet Page 38 and noted the unrestricted cash balance of \$1,847,598.79 as of March 31, 2025.

Following discussion and response to Board questions and comments, adoption of Resolution 2025-27, approving the March 2025 Financial Reports, as presented, was moved by Ms. Beck, seconded by Mr. Bills, and unanimously approved.

■ Bills & Expenses: March 2025 {Resolution 2025-28}

Mr. Hibner referred the Board to Resolution 2025-28 and the summary of bills and expenses for March 2025, copies of which were included in the Board Packet.

Ms. Glotfelter highlighted expenditures from March 2025 authorized by the TID staff, identified routine project expenses, and recommended approval.

Mr. Hibner asked if the payment to Mr. Stanley closed out the TID’s obligation. Ms. Glotfelter stated Mr. Stanley had been advised that additional expenditure requests would need to be submitted to her for approval. Mr. Fraunfelter confirmed that this expenditure was accrued in the 2024 accounting record.

Following discussion and response to Board questions and comments, adoption of Resolution 2025-28, approving the payment of bills and expenses for March 2025, as presented, was moved by Mr. Beeler, seconded by Ms. Beck, and unanimously approved.

Benchwood Station Improvement Project

■ Brumbaugh Construction Change Order {Resolution 2025-29}

Mr. Eddy recommended that the Resolution be tabled until final costs are verified.

Consideration of Resolution 2025-29 was tabled.

Martindale Road Extension Phase II Project

■ City of Union Project Management & Financing Agreement Amendment {Resolution 2025-30}

■ City of Union and City of Dayton Escrow Agreement {Resolution 2025-31}

Mr. Hibner referred the Board to (1) Resolution 2025-30, approving an amendment to the Project Management & Financing Agreement (“PMFA”) with the City of Union, and (2) Resolution 2025-31, authorizing an Escrow Agreement with the City of Union and City of Dayton for the Martindale Road Extension Phase II Project, copies of which were included in the Board Packet.

Ms. Glotfelter provided the Board with a brief overview of the PMFA Amendment and explained that it added funding for additional engineering and right-of-way acquisition. She explained that the Escrow Agreement provides a guarantee that the funds for the property acquisition would be held and managed by the TID on behalf of the Cities of Union and Dayton.

Following discussion and response to Board questions and comments, adoption of (1) Resolution 2025-30, approving the First Amendment of the Project Management & Financing Agreement with the City of Union, and (2) Resolution 2025-31, authoring an Escrow Agreement between the TID, City of Union, and City of Dayton for the acquisition of right-of-way related to the Martindale Road Extension Phase II Project, as presented, was moved by Ms. Keinath, seconded by Ms. Beck, and unanimously approved.

■ Public Comments

No public comments were offered.

■ Next Meeting

Mr. Hibner confirmed that the next regularly scheduled Montgomery County TID Board meeting would be held in Room 1002 on the 10th floor of the Montgomery County Administration Building on Thursday, May 8, 2025, at 9:30 AM.

■ Executive Session

Mr. Hibner suggested that the Board recess to executive session.

Mr. Endsley explained that an executive session would be necessary to (1) consider confidential negotiations with other political subdivisions with respect to requests for economic development assistance involving public infrastructure improvements directly related to economic development projects, and (2) discuss and consider personnel matters.

Ms. Keinath moved that the Board recess to executive session for the purposes indicated by Mr. Endsley. Mr. Bills seconded the motion. Ms. Keinath voted for the motion. Ms. Beck voted for the motion. Mr. Hibner voted for the motion. Mr. Bills voted for the motion. Mr. Beeler voted for the motion.

The Board recessed to executive session at 9:48 AM. Mr. Endsley, Ms. Glotfelter, and Mr. Fraunfelter joined the Board in executive session.

The Board returned to open session. Upon returning to open session, the Board adopted the following:

■ Engagement of Steven Stanley by the former developer of Austin Landing {Resolution 2025-32}

Following discussion and additional comments, adoption of Resolution 2025-32, approving the Engagement of Mr. Stanley with the former developer of Austin Landing, including without limitation the Austin East Project, to the extent in conflict with applicable law, including without limitation Section 102.03 of the Ohio Revised Code, as presented, was moved by Ms. Beck, and seconded by Ms. Keinath, and the Board unanimously approved.

■ Adjourn

With no further business, the meeting was adjourned.

Suzanne Beck, Secretary-Treasurer

05/08/2025
Date

**MONTGOMERY COUNTY
TRANSPORTATION IMPROVEMENT DISTRICT**

RESOLUTION NUMBER 2025-34

**RESOLUTION APPROVING
APRIL 2025 FINANCIAL REPORTS**

WHEREAS, the Finance Director of the Montgomery County Transportation Improvement District (“TID”) presented reports concerning the financial condition of the TID through April 30, 2025 to the Board of Trustees of the TID during the Board’s meeting on May 8, 2025; and

WHEREAS, the TID Board has reviewed the attached financial reports.

BE IT THEREFORE RESOLVED, by the Board of Trustees of the Montgomery County Transportation Improvement District that the attached TID’s financial reports through April 30, 2025, be and are hereby approved as prepared and appended to this resolution.

BE IT FURTHER RESOLVED, copies of this resolution be provided to the Executive Director, Secretary/Treasurer, Finance Director, and TID’s General Counsel.

Adopted the 8th day of May, 2025.

Chairperson, Montgomery County Transportation Improvement District

Attest: _____
Secretary/Treasurer

Statement of Activity - MTD and YTD by Fund

700 - Operating Fund

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
Revenues					
4131.000.00 County	300,000	0.00	300,000.00	300,000.00	0.00
4510.000.00 Interest On Cash Balances	100,000	14,476.73	43,031.39	57,508.12	(42,491.88)
4600.000.00 Charges For Service	116,000	0.00	0.00	0.00	(116,000.00)
4600.024.00 Union Development Fee	0	4,000.00	12,000.00	16,000.00	16,000.00
4600.043.00 Sycamore Trails	184,000	0.00	0.00	0.00	(184,000.00)
Total Revenues	700,000	18,476.73	355,031.39	373,508.12	(326,491.88)
Expenditures (All non-capitalized costs)					
7110.010.00 Wages	450,000	32,052.08	96,156.24	128,208.32	321,791.68
7110.030.00 Bonuses	0	0.00	61,300.00	61,300.00	(61,300.00)
7120.000.00 PERS	55,000	4,487.29	15,602.41	20,089.70	34,910.30
7130.000.00 Workers Compensation	5,500	444.57	1,745.71	2,190.28	3,309.72
7140.000.00 Medicare	6,000	443.96	2,232.60	2,676.56	3,323.44
7150.000.00 Health Insurance	95,000	7,689.00	22,029.00	29,718.00	65,282.00
7151.000.00 Dental Insurance	0	283.56	850.68	1,134.24	(1,134.24)
7160.000.00 Disability Insurance	8,000	337.03	1,011.09	1,348.12	6,651.88
7170.000.00 Holding Account	0	0.00	400.00	400.00	(400.00)
7310.000.00 Contract Services	15,000	0.00	0.00	0.00	15,000.00
7310.021.00 Contract Services - Eddy	50,000	1,150.00	3,650.00	4,800.00	45,200.00
(Unallocated)					
7310.022.00 Contract Services - Eddy	0	550.00	2,150.00	2,700.00	(2,700.00)
(Miamisburg)					
7311.000.00 Internet	8,500	0.00	10.00	10.00	8,490.00
7312.000.00 Audit & Accounting	43,000	2,415.00	4,232.25	6,647.25	36,352.75
7312.001.00 Payroll Processing Charges	3,500	91.30	371.85	463.15	3,036.85
7315.000.00 Internet Service	0	550.00	1,425.42	1,975.42	(1,975.42)
7320.000.00 Legal Expenses	50,000	0.00	3,355.05	3,355.05	46,644.95
7330.007.00 Web Page Expenses	3,500	0.00	0.00	0.00	3,500.00
7330.014.00 Public Relations	8,500	2,222.50	1,587.50	3,810.00	4,690.00
7510.000.00 Office Supplies	3,000	685.43	512.81	1,198.24	1,801.76
7510.003.00 Cellular Phone	0	300.00	900.00	1,200.00	(1,200.00)
7510.006.00 Postage	3,000	1,631.79	12.60	1,644.39	1,355.61
7510.010.00 Dues & Subscriptions	25,000	1,134.00	8,941.99	10,075.99	14,924.01
7510.011.00 Conference Room Rental	0	0.00	4,267.56	4,267.56	(4,267.56)
7510.012.00 Office Rent	9,000	0.00	0.00	0.00	9,000.00
7510.020.00 Miscellaneous Supplies	5,500	71.24	1,008.26	1,079.50	4,420.50
7520.000.00 Travel	20,000	0.00	1,041.94	1,041.94	18,958.06
7520.020.00 Milage Reimbursment	0	475.75	2,659.33	3,135.08	(3,135.08)
7520.030.00 Meals	0	171.32	1,395.82	1,567.14	(1,567.14)
7520.035.00 Parking	0	24.00	1,725.00	1,749.00	(1,749.00)
7530.000.00 Miscellaneous Supplies	0	0.00	253.09	253.09	(253.09)
7920.000.00 Bank Service Charges	2,000	285.76	527.43	813.19	1,186.81
7930.000.00 Insurance	35,000	0.00	0.00	0.00	35,000.00
8110.000.00 Computers	5,000	0.00	0.00	0.00	5,000.00
8300.000.00 Other	25,000	0.00	0.00	0.00	25,000.00
Total Expenditures	934,000	57,495.58	241,355.63	298,851.21	635,148.79
Excess Revenue Over (Under) Expenditures	(234,000)	(39,018.85)	113,675.76	74,656.91	308,656.91

Statement of Activity - MTD and YTD by Fund

702 - Austin Road

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
Revenues					
4100.020.24 Township	56,910	0.00	28,454.92	28,454.92	(28,455.08)
4100.020.37 Township	47,000	0.00	0.00	0.00	(47,000.00)
4100.021.08 Township Phase 2	808,806	0.00	0.00	0.00	(808,806.00)
4111.004.13 Church Connector Federal Earmark	549,377	0.00	92,438.05	92,438.05	(456,938.95)
4132.000.13 City of Miamisburg	107,600	0.00	0.00	0.00	(107,600.00)
4132.000.30 City of Miamisburg	146,587	0.00	73,293.58	73,293.58	(73,293.42)
4132.000.42 City of Miamisburg	66,568	0.00	0.00	0.00	(66,568.00)
Total Revenues	1,782,848	0.00	194,186.55	194,186.55	(1,588,661.45)
Expenditures (All non-capitalized costs)					
5110.000.37 Acquisition - Austin East	12,000	0.00	0.00	0.00	12,000.00
5310.000.13 Engineering Services-Church Connector	626,977	0.00	92,438.05	92,438.05	534,538.95
5320.000.13 Project Management - Church Connector	25,000	0.00	0.00	0.00	25,000.00
5320.000.37 Project Management - Austin East	25,000	0.00	0.00	0.00	25,000.00
5521.000.42 Inspection Services-Deer Valley	2,481	0.00	1,107.25	1,107.25	1,373.75
5530.000.42 Construction - Deer Valley	117,493	0.00	0.00	0.00	117,493.00
6310.000.37 Legal-Austin East	10,000	0.00	0.00	0.00	10,000.00
6310.001.13 Misc legal exp - Church Conn	5,000	0.00	0.00	0.00	5,000.00
8610.000.24 Debt Service-Principal	49,669	24,649.52	0.00	24,649.52	25,019.48
8610.000.30 Debt Service-Principal	125,404	0.00	62,234.95	62,234.95	63,169.05
8610.001.08 Debt Service-Principal Ph2	570,000	0.00	0.00	0.00	570,000.00
8630.000.24 Debt Service-Interest	7,240	3,805.40	0.00	3,805.40	3,434.60
8630.000.30 Debt Service-Interest	21,184	0.00	11,058.63	11,058.63	10,125.37
8630.001.08 Debt Service-Interest Ph2	238,806	0.00	0.00	0.00	238,806.00
Total Expenditures	1,836,254	28,454.92	166,838.88	195,293.80	1,640,960.20
Excess Revenue Over (Under) Expenditures	(53,406)	(28,454.92)	27,347.67	(1,107.25)	52,298.75

Montgomery County Transportation Improvement District

Income and Expense Report by Project

08 - Austin Landing

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.021.08 Township Phase 2	808,806	0.00	0.00	0.00	(808,806.00)
Total Revenues	808,806	0.00	0.00	0.00	(808,806.00)
<u>Expenditures (All non-capitalized costs)</u>					
8610.001.08 Debt Service-Principal Ph2	570,000	0.00	0.00	0.00	570,000.00
8630.001.08 Debt Service-Interest Ph2	238,806	0.00	0.00	0.00	238,806.00
Total Expenditures	808,806	0.00	0.00	0.00	808,806.00
Excess Revenue Over (Under) Expenditures	0	0.00	0.00	0.00	0.00

13 - Church Connector Road

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4111.004.13 Church Connector Federal Earmark	549,377	0.00	92,438.05	92,438.05	(456,938.95)
4132.000.13 City of Miamisburg	107,600	0.00	0.00	0.00	(107,600.00)
Total Revenues	656,977	0.00	92,438.05	92,438.05	(564,538.95)
<u>Expenditures (All non-capitalized costs)</u>					
5310.000.13 Engineering Services-Church Connector	626,977	0.00	92,438.05	92,438.05	534,538.95
5320.000.13 Project Management - Church Connector	25,000	0.00	0.00	0.00	25,000.00
6310.001.13 Misc legal exp - Church Conn	5,000	0.00	0.00	0.00	5,000.00
Total Expenditures	656,977	0.00	92,438.05	92,438.05	564,538.95
Excess Revenue Over (Under) Expenditures	0	0.00	0.00	0.00	0.00

24 - Lyons Bridge Project

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.020.24 Township	56,910	0.00	28,454.92	28,454.92	(28,455.08)
Total Revenues	56,910	0.00	28,454.92	28,454.92	(28,455.08)
<u>Expenditures (All non-capitalized costs)</u>					
8610.000.24 Debt Service-Principal	49,669	24,649.52	0.00	24,649.52	25,019.48
8630.000.24 Debt Service-Interest	7,240	3,805.40	0.00	3,805.40	3,434.60
Total Expenditures	56,909	28,454.92	0.00	28,454.92	28,454.08
Excess Revenue Over (Under) Expenditures	1	(28,454.92)	28,454.92	0.00	(1.00)

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Montgomery County Transportation Improvement District

Income and Expense Report by Project

30 - Lower Miambsburg Road

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4132.000.30 City of Miamisburg	146,587	0.00	73,293.58	73,293.58	(73,293.42)
Total Revenues	146,587	0.00	73,293.58	73,293.58	(73,293.42)
<u>Expenditures (All non-capitalized costs)</u>					
8610.000.30 Debt Service-Principal	125,404	0.00	62,234.95	62,234.95	63,169.05
8630.000.30 Debt Service-Interest	21,184	0.00	11,058.63	11,058.63	10,125.37
Total Expenditures	146,588	0.00	73,293.58	73,293.58	73,294.42
Excess Revenue Over (Under) Expenditures	(1)	0.00	0.00	0.00	1.00

Montgomery County Transportation Improvement District
Income and Expense Report by Project

PACKET PAGE: 13

37 - Austin East

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.020.37 Township	47,000	0.00	0.00	0.00	(47,000.00)
Total Revenues	47,000	0.00	0.00	0.00	(47,000.00)
<u>Expenditures (All non-capitalized costs)</u>					
5110.000.37 Acquisition - Austin East	12,000	0.00	0.00	0.00	12,000.00
5320.000.37 Project Management - Austin East	25,000	0.00	0.00	0.00	25,000.00
6310.000.37 Legal-Austin East	10,000	0.00	0.00	0.00	10,000.00
Total Expenditures	47,000	0.00	0.00	0.00	47,000.00
Excess Revenue Over (Under) Expenditures	0	0.00	0.00	0.00	0.00

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Montgomery County Transportation Improvement District

Income and Expense Report by Project

42 - Deer Valley

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4132.000.42 City of Miamisburg	66,568	0.00	0.00	0.00	(66,568.00)
Total Revenues	66,568	0.00	0.00	0.00	(66,568.00)
<u>Expenditures (All non-capitalized costs)</u>					
5521.000.42 Inspection Services-Deer Valley	2,481	0.00	1,107.25	1,107.25	1,373.75
5530.000.42 Construction - Deer Valley	117,493	0.00	0.00	0.00	117,493.00
Total Expenditures	119,974	0.00	1,107.25	1,107.25	118,866.75
Excess Revenue Over (Under) Expenditures	(53,406)	0.00	(1,107.25)	(1,107.25)	52,298.75

Montgomery County Transportation Improvement District

Statement of Activity - MTD and YTD by Fund

703 - 725/741 Development Fund

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.030.31 Township - Other	265,219	0.00	0.00	0.00	(265,219.00)
4132.000.52 JEDD Revenue	101,853	0.00	0.00	0.00	(101,853.00)
4132.001.52 City of Miamisburg	101,853	0.00	0.00	0.00	(101,853.00)
Total Revenues	468,925	0.00	0.00	0.00	(468,925.00)
<u>Expenditures (All non-capitalized costs)</u>					
5500.000.52 Construction - 70/725 Ped Acc	200,690	0.00	0.00	0.00	200,690.00
6310.001.52 Misc legal exp - 75/725 Ped Acc	3,016	0.00	0.00	0.00	3,016.00
8610.000.31 Debt Service-Principal	232,974	0.00	0.00	0.00	232,974.00
8620.000.31 Debt Service-Interest	32,245	0.00	0.00	0.00	32,245.00
Total Expenditures	468,925	0.00	0.00	0.00	468,925.00
Excess Revenue Over (Under) Expenditures	0	0.00	0.00	0.00	0.00

Montgomery County Transportation Improvement District
Income and Expense Report by Project

31 - Vienna Parkway

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.030.31 Township - Other	265,219	0.00	0.00	0.00	(265,219.00)
Total Revenues	265,219	0.00	0.00	0.00	(265,219.00)
<u>Expenditures (All non-capitalized costs)</u>					
8610.000.31 Debt Service-Principal	232,974	0.00	0.00	0.00	232,974.00
8620.000.31 Debt Service-Interest	32,245	0.00	0.00	0.00	32,245.00
Total Expenditures	265,219	0.00	0.00	0.00	265,219.00
Excess Revenue Over (Under) Expenditures	0	0.00	0.00	0.00	0.00

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Montgomery County Transportation Improvement District
Statement of Activity - MTD and YTD by Fund

707 - I70/75 Development

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.012.41 EDGE	500,000	0.00	0.00	0.00	(500,000.00)
4100.015.56 OPWC Funding Ring Rd	2,500,000	0.00	0.00	0.00	(2,500,000.00)
4100.020.47 Township	963,084	603,508.33	57,942.60	661,450.93	(301,633.07)
4100.030.26 County	104,834	0.00	52,417.14	52,417.14	(52,416.86)
4100.030.49 County	43,850	0.00	0.00	0.00	(43,850.00)
4100.031.49 County Engineer	131,500	0.00	0.00	0.00	(131,500.00)
4110.000.15 City of Union TIF Deposit	2,562,275	788,192.95	(52,417.14)	735,775.81	(1,826,499.19)
4110.001.32 SIB Draw - OSR/DL paid from code 32	0	0.00	7,470.00	7,470.00	7,470.00
4110.001.41 SIB Draw - OSR/DL paid from code 41	0	0.00	15,525.00	15,525.00	15,525.00
4110.001.45 SIB Draw - OSR/DL paid from code 45	0	0.00	3,500.00	3,500.00	3,500.00
4110.001.49 SIB Draw - Fred/OSR paid from code 49	3,439,739	0.00	0.00	0.00	(3,439,739.00)
4110.001.54 SIB Draw - MD Ph2 paid from code 54	45,215	0.00	57,144.79	57,144.79	11,929.79
4110.001.56 SIB Draw - Ring paid from code 56	1,500,000	0.00	101,728.04	101,728.04	(1,398,271.96)
4110.002.15 Union Projects Agreement	48,000	0.00	0.00	0.00	(48,000.00)
4110.002.38 SIB Draw - OSR/DL paid from code 38	461,875	0.00	0.00	0.00	(461,875.00)
4110.002.56 TID Grant - Ring Rd	1,000,000	0.00	0.00	0.00	(1,000,000.00)
4110.003.15 City of Union Project Deposit	1,000,000	0.00	0.00	0.00	(1,000,000.00)
4110.003.32 City of Union - Lighthner/Peters	0	0.00	5,151.00	5,151.00	5,151.00
4110.003.51 City of Union Project Deposit	667,850	119,104.00	363,130.00	482,234.00	(185,616.00)
4110.005.44 SBIG 629 Grant-Douglas	124,073	0.00	0.00	0.00	(124,073.00)
4110.005.56 SBIG 629 Grant-Ring Rd	362,309	0.00	0.00	0.00	(362,309.00)
4110.010.15 SIB Draw - Martindale Rd Phase 1	2,933	0.00	2,932.50	2,932.50	(0.50)
4132.000.36 City of Dayton - Maintenance payment	25,000	0.00	25,000.00	25,000.00	0.00
4132.001.26 City Union	104,834	0.00	52,417.14	52,417.14	(52,416.86)
4132.002.26 City of Vandalia	29,252	0.00	14,626.20	14,626.20	(14,625.80)
Total Revenues	15,616,623	1,510,805.28	706,567.27	2,217,372.55	(13,399,250.45)
<u>Expenditures (All non-capitalized costs)</u>					
5110.000.56 Acquisition Costs	7,500	0.00	0.00	0.00	7,500.00
5310.000.47 Engineering Services-Benchwood Station	11,160	3,010.35	0.00	3,010.35	8,149.65
5310.001.41 Engineering Services-OSR Curve	0	0.00	15,525.00	15,525.00	(15,525.00)
5310.001.54 Engineering Services-Martindale Ext Ph 2	6,713	0.00	11,712.75	11,712.75	(4,999.75)
5310.001.56 Engineering Services-Ring Road Ph 1	198,691	40,000.00	101,693.50	141,693.50	56,997.50
5310.003.38 Engineering Services-DLR/OSR	13,565	0.00	0.00	0.00	13,565.00
5310.005.32 Engineering Services- Lightner/Peters	5,150	0.00	5,151.00	5,151.00	(1.00)
5330.000.47 ROW/Appraisals-Benchwood Station	55,000	0.00	0.00	0.00	55,000.00
5330.000.56 Right Of Way - Ring Road Appraisal Svcs	0	0.00	8,250.00	8,250.00	(8,250.00)
5521.000.36 Support Services - Dayton Maintenance Pmt	25,000	0.00	25,000.00	25,000.00	0.00
5521.000.47 Inspection Svcs-Benchwood	100,249	9,150.00	68,345.00	77,495.00	22,754.00
5530.000.44 Construction-Douglas Way Ext	276,237	0.00	0.00	0.00	276,237.00
5530.000.47 Construction-Benchwood Station	804,145	591,076.50	358,574.45	949,650.95	(145,505.95)
5530.000.49 Construction - FP/OSR Peters/OSR	3,439,689	0.00	0.00	0.00	3,439,689.00
5530.001.38 Construction - DLR/OSR	453,912	0.00	0.00	0.00	453,912.00
5530.008.15 Construction - Union Paving	984,500	0.00	0.00	0.00	984,500.00
5530.008.51 Construction - Ph2 WWTP	663,735	119,104.00	363,130.00	482,234.00	181,501.00
5540.001.49 Project Management Fee - Fred/OSR	160,400	0.00	0.00	0.00	160,400.00
5540.001.54 Project Management Fee - Martindale Ph2	25,000	0.00	0.00	0.00	25,000.00

Statement of Activity - MTD and YTD by Fund

707 - I70/75 Development

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
5540.001.56 Project Management Fee - Ring Rd	30,000	0.00	0.00	0.00	30,000.00
5540.002.15 Project Management Fee - Paving	15,000	0.00	0.00	0.00	15,000.00
5540.003.15 Project Management Fee - Proj Agrmt	48,000	0.00	0.00	0.00	48,000.00
6300.000.15 Legal Expenses	50,000	0.00	0.00	0.00	50,000.00
6310.000.43 Misc Legal-Miller Lane	0	0.00	(1,875.00)	(1,875.00)	1,875.00
6310.000.49 Misc Legal-FP/OSR Peters/OSR	13,468	0.00	0.00	0.00	13,468.00
6310.000.51 Misc Legal-WWTP Ph 2	4,115	0.00	0.00	0.00	4,115.00
6310.000.54 Misc Legal-Martindale Ph 2	13,502	0.00	862.50	862.50	12,639.50
6310.001.15 Union Project Mgmt/Development	63,000	0.00	0.00	0.00	63,000.00
6310.001.43 Misc Legal-Benchwood Station	0	0.00	1,875.00	1,875.00	(1,875.00)
6310.001.47 Misc Legal-Benchwood Station	20,000	0.00	1,875.00	1,875.00	18,125.00
6310.001.56 Misc Legal-Ring Road Ph 1	23,183	0.00	0.00	0.00	23,183.00
6310.003.41 Misc Legal-Dayton Freight-OSR	0	0.00	2,070.00	2,070.00	(2,070.00)
6310.005.15 Misc Legal-Union Paving Project	500	0.00	0.00	0.00	500.00
8400.006.15 Return of SIB Reimburseables-Martindale	150,000	0.00	0.00	0.00	150,000.00
8610.000.15 Debt Service-Principal	1,402,665	0.00	0.00	0.00	1,402,665.00
8610.000.26 Debt Service-Principal	199,259	0.00	98,887.74	98,887.74	100,371.26
8610.001.15 Debt Service-Principal (DP Bond Fund)	100,000	0.00	0.00	0.00	100,000.00
8630.000.15 Debt Service-Interest	69,121	0.00	0.00	0.00	69,121.00
8630.000.26 Debt Service-Interest	39,661	0.00	20,572.75	20,572.75	19,088.25
8630.001.15 Debt Service-Interest (DP Bond Fund)	3,637	0.00	0.00	0.00	3,637.00
Total Expenditures	9,475,757	762,340.85	1,081,649.69	1,843,990.54	7,631,766.46
Excess Revenue Over (Under) Expenditures	6,140,866	748,464.43	(375,082.42)	373,382.01	(5,767,483.99)

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Montgomery County Transportation Improvement District
Income and Expense Report by Project

15 - Airpark Boulevard

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
Revenues					
4110.000.15 City of Union TIF Deposit	2,562,275	788,192.95	(52,417.14)	735,775.81	(1,826,499.19)
4110.002.15 Union Projects Agreement	48,000	0.00	0.00	0.00	(48,000.00)
4110.003.15 City of Union Project Deposit	1,000,000	0.00	0.00	0.00	(1,000,000.00)
4110.010.15 SIB Draw - Martindale Rd Phase 1	2,933	0.00	2,932.50	2,932.50	(0.50)
Total Revenues	3,613,208	788,192.95	(49,484.64)	738,708.31	(2,874,499.69)
Expenditures (All non-capitalized costs)					
5530.008.15 Construction - Union Paving	984,500	0.00	0.00	0.00	984,500.00
5540.002.15 Project Management Fee - Paving	15,000	0.00	0.00	0.00	15,000.00
5540.003.15 Project Management Fee - Proj Agrmt	48,000	0.00	0.00	0.00	48,000.00
6300.000.15 Legal Expenses	50,000	0.00	0.00	0.00	50,000.00
6310.001.15 Union Project Mgmt/Development	63,000	0.00	0.00	0.00	63,000.00
6310.005.15 Misc Legal-Union Paving Project	500	0.00	0.00	0.00	500.00
8400.006.15 Return of SIB Reimbursables-Martindale	150,000	0.00	0.00	0.00	150,000.00
8610.000.15 Debt Service-Principal	1,402,665	0.00	0.00	0.00	1,402,665.00
8610.001.15 Debt Service-Principal (DP Bond Fund)	100,000	0.00	0.00	0.00	100,000.00
8630.000.15 Debt Service-Interest	69,121	0.00	0.00	0.00	69,121.00
8630.001.15 Debt Service-Interest (DP Bond Fund)	3,637	0.00	0.00	0.00	3,637.00
Total Expenditures	2,886,423	0.00	0.00	0.00	2,886,423.00
Excess Revenue Over (Under) Expenditures	726,785	788,192.95	(49,484.64)	738,708.31	11,923.31

Montgomery County Transportation Improvement District
Income and Expense Report by Project

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26 - SR40 Project

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.030.26 County	104,834	0.00	52,417.14	52,417.14	(52,416.86)
4132.001.26 City Union	104,834	0.00	52,417.14	52,417.14	(52,416.86)
4132.002.26 City of Vandalia	29,252	0.00	14,626.20	14,626.20	(14,625.80)
Total Revenues	238,920	0.00	119,460.48	119,460.48	(119,459.52)
<u>Expenditures (All non-capitalized costs)</u>					
8610.000.26 Debt Service-Principal	199,259	0.00	98,887.74	98,887.74	100,371.26
8630.000.26 Debt Service-Interest	39,661	0.00	20,572.75	20,572.75	19,088.25
Total Expenditures	238,920	0.00	119,460.49	119,460.49	119,459.51
Excess Revenue Over (Under) Expenditures	0	0.00	(0.01)	(0.01)	(0.01)

Montgomery County Transportation Improvement District
Income and Expense Report by Project

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32 - Lightner Road

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4110.001.32 SIB Draw - OSR/DL paid from code 32	0	0.00	7,470.00	7,470.00	7,470.00
4110.003.32 City of Union - Ligthner/Peters	0	0.00	5,151.00	5,151.00	5,151.00
Total Revenues	0	0.00	12,621.00	12,621.00	12,621.00
<u>Expenditures (All non-capitalized costs)</u>					
5310.005.32 Engineering Services- Lightner/Peters	5,150	0.00	5,151.00	5,151.00	(1.00)
Total Expenditures	5,150	0.00	5,151.00	5,151.00	(1.00)
Excess Revenue Over (Under) Expenditures	(5,150)	0.00	7,470.00	7,470.00	12,620.00

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Montgomery County Transportation Improvement District

Income and Expense Report by Project

36 - Vandalia Maintenance Agreement

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
Total Revenues	0	0.00	0.00	0.00	0.00
<u>Expenditures (All non-capitalized costs)</u>					
5521.000.36 Support Services - Dayton Maintenance Pmt	25,000	0.00	25,000.00	25,000.00	0.00
Total Expenditures	25,000	0.00	25,000.00	25,000.00	0.00
Excess Revenue Over (Under) Expenditures	(25,000)	0.00	(25,000.00)	(25,000.00)	0.00

Montgomery County Transportation Improvement District
Income and Expense Report by Project

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38 - Dogleg

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4110.002.38 SIB Draw - OSR/DL paid from code 38	461,875	0.00	0.00	0.00	(461,875.00)
Total Revenues	461,875	0.00	0.00	0.00	(461,875.00)
<u>Expenditures (All non-capitalized costs)</u>					
5310.003.38 Engineering Services-DLR/OSR	13,565	0.00	0.00	0.00	13,565.00
5530.001.38 Construction - DLR/OSR	453,912	0.00	0.00	0.00	453,912.00
Total Expenditures	467,477	0.00	0.00	0.00	467,477.00
Excess Revenue Over (Under) Expenditures	(5,602)	0.00	0.00	0.00	5,602.00

Montgomery County Transportation Improvement District
Income and Expense Report by Project

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41 - Springfield-Peters Pike

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.012.41 EDGE	500,000	0.00	0.00	0.00	(500,000.00)
4110.001.41 SIB Draw - OSR/DL paid from code 41	0	0.00	15,525.00	15,525.00	15,525.00
Total Revenues	500,000	0.00	15,525.00	15,525.00	(484,475.00)
<u>Expenditures (All non-capitalized costs)</u>					
5310.001.41 Engineering Services-OSR Curve	0	0.00	15,525.00	15,525.00	(15,525.00)
6310.003.41 Misc Legal-Dayton Freight-OSR	0	0.00	2,070.00	2,070.00	(2,070.00)
Total Expenditures	0	0.00	17,595.00	17,595.00	(17,595.00)
Excess Revenue Over (Under) Expenditures	500,000	0.00	(2,070.00)	(2,070.00)	(502,070.00)

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Montgomery County Transportation Improvement District

Income and Expense Report by Project

43 - BT - Miller Lane

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
Total Revenues	0	0.00	0.00	0.00	0.00
<u>Expenditures (All non-capitalized costs)</u>					
6310.000.43 Misc Legal-Miller Lane	0	0.00	(1,875.00)	(1,875.00)	1,875.00
6310.001.43 Misc Legal-Benchwood Station	0	0.00	1,875.00	1,875.00	(1,875.00)
Total Expenditures	0	0.00	0.00	0.00	0.00
Excess Revenue Over (Under) Expenditures	0	0.00	0.00	0.00	0.00

Montgomery County Transportation Improvement District
Income and Expense Report by Project

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44 - Douglas Way

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4110.005.44 SBIG 629 Grant-Douglas	124,073	0.00	0.00	0.00	(124,073.00)
Total Revenues	124,073	0.00	0.00	0.00	(124,073.00)
<u>Expenditures (All non-capitalized costs)</u>					
5530.000.44 Construction-Douglas Way Ext	276,237	0.00	0.00	0.00	276,237.00
Total Expenditures	276,237	0.00	0.00	0.00	276,237.00
Excess Revenue Over (Under) Expenditures	(152,164)	0.00	0.00	0.00	152,164.00

Montgomery County Transportation Improvement District
Income and Expense Report by Project

45 - Union Airpark Blvd Ext

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4110.001.45 SIB Draw - OSR/DL paid from code 45	0	0.00	3,500.00	3,500.00	3,500.00
Total Revenues	0	0.00	3,500.00	3,500.00	3,500.00
<u>Expenditures (All non-capitalized costs)</u>					
Total Expenditures	0	0.00	0.00	0.00	0.00
Excess Revenue Over (Under) Expenditures	0	0.00	3,500.00	3,500.00	3,500.00

Montgomery County Transportation Improvement District
Income and Expense Report by Project

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47 - Benchwood Station

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.020.47 Township	963,084	603,508.33	57,942.60	661,450.93	(301,633.07)
Total Revenues	963,084	603,508.33	57,942.60	661,450.93	(301,633.07)
<u>Expenditures (All non-capitalized costs)</u>					
5310.000.47 Engineering Services-Benchwood Station	11,160	3,010.35	0.00	3,010.35	8,149.65
5330.000.47 ROW/Appraisals-Benchwood Station	55,000	0.00	0.00	0.00	55,000.00
5521.000.47 Inspection Svcs-Benchwood	100,249	9,150.00	68,345.00	77,495.00	22,754.00
5530.000.47 Construction-Benchwood Station	804,145	591,076.50	358,574.45	949,650.95	(145,505.95)
6310.001.47 Misc Legal-Benchwood Station	20,000	0.00	1,875.00	1,875.00	18,125.00
Total Expenditures	990,554	603,236.85	428,794.45	1,032,031.30	(41,477.30)
Excess Revenue Over (Under) Expenditures	(27,470)	271.48	(370,851.85)	(370,580.37)	(343,110.37)

Income and Expense Report by Project

49 - Frederick Pike/OSR Imp Proj

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.030.49 County	43,850	0.00	0.00	0.00	(43,850.00)
4100.031.49 County Engineer	131,500	0.00	0.00	0.00	(131,500.00)
4110.001.49 SIB Draw - Fred/OSR paid from code 49	3,439,739	0.00	0.00	0.00	(3,439,739.00)
Total Revenues	3,615,089	0.00	0.00	0.00	(3,615,089.00)
<u>Expenditures (All non-capitalized costs)</u>					
5530.000.49 Construction - FP/OSR Peters/OSR	3,439,689	0.00	0.00	0.00	3,439,689.00
5540.001.49 Project Management Fee - Fred/OSR	160,400	0.00	0.00	0.00	160,400.00
6310.000.49 Misc Legal-FP/OSR Peters/OSR	13,468	0.00	0.00	0.00	13,468.00
Total Expenditures	3,613,557	0.00	0.00	0.00	3,613,557.00
Excess Revenue Over (Under) Expenditures	1,532	0.00	0.00	0.00	(1,532.00)

Montgomery County Transportation Improvement District
Income and Expense Report by Project

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51 - Wastewater Treatment Plant

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4110.003.51 City of Union Project Deposit	667,850	119,104.00	363,130.00	482,234.00	(185,616.00)
Total Revenues	667,850	119,104.00	363,130.00	482,234.00	(185,616.00)
<u>Expenditures (All non-capitalized costs)</u>					
5530.008.51 Construction - Ph2 WWTP	663,735	119,104.00	363,130.00	482,234.00	181,501.00
6310.000.51 Misc Legal-WWTP Ph 2	4,115	0.00	0.00	0.00	4,115.00
Total Expenditures	667,850	119,104.00	363,130.00	482,234.00	185,616.00
Excess Revenue Over (Under) Expenditures	0	0.00	0.00	0.00	0.00

Montgomery County Transportation Improvement District
Income and Expense Report by Project

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54 - Martindale Phase 2

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4110.001.54 SIB Draw - MD Ph2 paid from code 54	45,215	0.00	57,144.79	57,144.79	11,929.79
Total Revenues	45,215	0.00	57,144.79	57,144.79	11,929.79
<u>Expenditures (All non-capitalized costs)</u>					
5310.001.54 Engineering Services-Martindale Ext Ph 2	6,713	0.00	11,712.75	11,712.75	(4,999.75)
5540.001.54 Project Management Fee - Martindale Ph2	25,000	0.00	0.00	0.00	25,000.00
6310.000.54 Misc Legal-Martindale Ph 2	13,502	0.00	862.50	862.50	12,639.50
Total Expenditures	45,215	0.00	12,575.25	12,575.25	32,639.75
Excess Revenue Over (Under) Expenditures	0	0.00	44,569.54	44,569.54	44,569.54

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Montgomery County Transportation Improvement District
Income and Expense Report by Project

56 - Ring Road

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4100.015.56 OPWC Funding Ring Rd	2,500,000	0.00	0.00	0.00	(2,500,000.00)
4110.001.56 SIB Draw - Ring paid from code 56	1,500,000	0.00	101,728.04	101,728.04	(1,398,271.96)
4110.002.56 TID Grant - Ring Rd	1,000,000	0.00	0.00	0.00	(1,000,000.00)
4110.005.56 SBIG 629 Grant-Ring Rd	362,309	0.00	0.00	0.00	(362,309.00)
Total Revenues	5,362,309	0.00	101,728.04	101,728.04	(5,260,580.96)
<u>Expenditures (All non-capitalized costs)</u>					
5110.000.56 Acquisition Costs	7,500	0.00	0.00	0.00	7,500.00
5310.001.56 Engineering Services-Ring Road Ph 1	198,691	40,000.00	101,693.50	141,693.50	56,997.50
5330.000.56 Right Of Way - Ring Road Appraisal Svcs	0	0.00	8,250.00	8,250.00	(8,250.00)
5540.001.56 Project Management Fee - Ring Rd	30,000	0.00	0.00	0.00	30,000.00
6310.001.56 Misc Legal-Ring Road Ph 1	23,183	0.00	0.00	0.00	23,183.00
Total Expenditures	259,374	40,000.00	109,943.50	149,943.50	109,430.50
Excess Revenue Over (Under) Expenditures	5,102,935	(40,000.00)	(8,215.46)	(48,215.46)	(5,151,150.46)

Montgomery County Transportation Improvement District

Statement of Activity - MTD and YTD by Fund

708 - City of Brookville

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4110.000.00 City of Brookville	146,874	0.00	0.00	0.00	(146,874.00)
Total Revenues	146,874	0.00	0.00	0.00	(146,874.00)
<u>Expenditures (All non-capitalized costs)</u>					
8610.000.00 Debt Service-Principal	99,208	0.00	0.00	0.00	99,208.00
8630.000.00 Debt Service-Interest	47,666	0.00	0.00	0.00	47,666.00
Total Expenditures	146,874	0.00	0.00	0.00	146,874.00
Excess Revenue Over (Under) Expenditures	0	0.00	0.00	0.00	0.00

Montgomery County Transportation Improvement District

Statement of Activity - MTD and YTD by Fund

710 - 675 Development Fund

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4110.000.00 City of Centerville	7,629	15,440.50	3,474.07	18,914.57	11,285.57
4111.002.00 SIB Draws for 675/Wilmington Interchange	81,183	1,110.31	0.00	1,110.31	(80,072.69)
4111.003.00 TRAC Funding	61,032	8,882.42	27,792.55	36,674.97	(24,357.03)
4111.004.00 SIB Draws paid with Trac submissions Ph2	7,629	0.00	0.00	0.00	(7,629.00)
4112.000.00 Greene County	0	0.00	2,363.15	2,363.15	2,363.15
Total Revenues	157,473	25,433.23	33,629.77	59,063.00	(98,410.00)
<u>Expenditures (All non-capitalized costs)</u>					
5310.000.00 Engineering Services	22,635	0.00	0.00	0.00	22,635.00
5310.001.00 675/Wilm Eng Serv	76,290	11,103.03	23,631.50	34,734.53	41,555.47
6300.000.00 Legal Expenses-675/Wilmington	200	0.00	0.00	0.00	200.00
8610.000.00 Debt Service-Principal	81,894	34,133.23	0.00	34,133.23	47,760.77
8630.000.00 Debt Service-Interest	20,938	8,857.32	0.00	8,857.32	12,080.68
Total Expenditures	201,957	54,093.58	23,631.50	77,725.08	124,231.92
Excess Revenue Over (Under) Expenditures	(44,484)	(28,660.35)	9,998.27	(18,662.08)	25,821.92

Montgomery County Transportation Improvement District

Statement of Activity - MTD and YTD by Fund

712 - Miamisburg Downtown Projects

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4132.000.50 City of Miamisburg	3,951,938	258,044.38	452,193.06	710,237.44	(3,241,700.56)
Total Revenues	3,951,938	258,044.38	452,193.06	710,237.44	(3,241,700.56)
<u>Expenditures (All non-capitalized costs)</u>					
5530.000.50 Construction - Sycamore Trails	3,951,938	258,044.38	452,193.06	710,237.44	3,241,700.56
5540.000.50 Project Management Fee - Sycamore Trails	309,000	0.00	0.00	0.00	309,000.00
Total Expenditures	4,260,938	258,044.38	452,193.06	710,237.44	3,550,700.56
Excess Revenue Over (Under) Expenditures	(309,000)	0.00	0.00	0.00	309,000.00

Montgomery County Transportation Improvement District Income and Expense Report by Project

50 - Sycamore Trails

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4132.000.50 City of Miamisburg	3,951,938	258,044.38	452,193.06	710,237.44	(3,241,700.56)
Total Revenues	3,951,938	258,044.38	452,193.06	710,237.44	(3,241,700.56)
<u>Expenditures (All non-capitalized costs)</u>					
5530.000.50 Construction - Sycamore Trails	3,951,938	258,044.38	452,193.06	710,237.44	3,241,700.56
5540.000.50 Project Management Fee - Sycamore Trails	309,000	0.00	0.00	0.00	309,000.00
Total Expenditures	4,260,938	258,044.38	452,193.06	710,237.44	3,550,700.56
Excess Revenue Over (Under) Expenditures	(309,000)	0.00	0.00	0.00	309,000.00

Montgomery County Transportation Improvement District

Statement of Activity - MTD and YTD by Fund

715 - Riverside

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
4131.000.00 City of Riverside (or earmarks)	544,930	0.00	176,571.59	176,571.59	(368,358.41)
Total Revenues	544,930	0.00	176,571.59	176,571.59	(368,358.41)
<u>Expenditures (All non-capitalized costs)</u>					
5310.001.00 Engineering Svcs-SS4A Study	509,930	0.00	38,658.57	38,658.57	471,271.43
5540.000.00 Project Management Fee - Riverside	25,000	0.00	0.00	0.00	25,000.00
6300.000.58 Legal Expenses-Woodman Gateway	10,000	0.00	1,380.00	1,380.00	8,620.00
Total Expenditures	544,930	0.00	40,038.57	40,038.57	504,891.43
Excess Revenue Over (Under) Expenditures	0	0.00	136,533.02	136,533.02	136,533.02

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Montgomery County Transportation Improvement District

Income and Expense Report by Project

58 - Woodman Gateway

For 4/30/2025

	Current Budgeted Amounts	Current Month to Date Actual 04/30/2025	Prior Periods Year to Date Actual	Year to Date Actual	Budget Variance Positive (Negative)
<u>Revenues</u>					
Total Revenues	0	0.00	0.00	0.00	0.00
<u>Expenditures (All non-capitalized costs)</u>					
6300.000.58 Legal Expenses-Woodman Gateway	10,000	0.00	1,380.00	1,380.00	8,620.00
Total Expenditures	10,000	0.00	1,380.00	1,380.00	8,620.00
Excess Revenue Over (Under) Expenditures	(10,000)	0.00	(1,380.00)	(1,380.00)	8,620.00

**Montgomery County TID
Bank Reconciliation
All Accounts**

As Of April 30, 2025

		Key Bank Checking	120,487.72	Reconciliation of TID Unrestricted Cash Balance	
		Less Outstanding Checks	(11,115.63)		
		Key Bank Savings	804,317.59	Adjusted Bank Balance	5,023,824.15
		Star Ohio	4,110,134.48	Less Funds held for other:	
		US Bank - Austin Landing	-	Sycamore Trails	(309,000.03)
		Reconciliation issue	(0.01)	Austin Landing Trust	-
		Adjusted balance	5,023,824.15	Church Connector	(4,095.74)
				Air Cargo (Concord)	(22,743.84)
				675 Development	(19,295.38)
				Terrington PS/Deer Valley	(53,086.19)
				Union	(2,843,358.33)
Fund	700 Operating Fund		1,787,346.37		
	702 Austin Road			Unrestricted TID Cash Balance for operations - CM	1,772,244.64
	TID Deficit Carry on unreimbursed (b/c reserves)		-	Unrestricted TID Cash Balance for operations - PM	1,847,598.79
	Austin East		(9,361.45)		
	Miamisburg Funds:			Project Carrying Costs	
	Church Connector		4,095.74	Austin East	9,361
	Austin Landing Phase 1/2 Trust		-	Riverside	4,580
	Terrington PS/Deer Valley		53,086.19	725/741 Pedestrian Access	690
	703 725/741 Development Fund		(689.98)	Benchwood	592
	707 I70/I75 Development Fund		-		15,223
	City of Union TIF Deposits (used for others)		1,750,181.65	TID Fees 2025 year to date:	
	City of Union - Other Projects		1,093,176.68	Union Development Fees	16,000
	City of Union - Lightner		-		
	Benchwood Station		(591.80)	Other Operating Revenue - Montgomery County	300,000
	Air Cargo (Concord)		22,743.84		
	710 675 Development Fund		19,295.38		
	712 Downtown Miamisburg				
	Riverfront Park Phase 2		-		
	Sycamore Trails		309,000.03		
	715 Riverside		(4,580.00)		
	716 Clay Twp/Clayton		121.50		
	Total		5,023,824.15		
	Variance		-		

**MONTGOMERY COUNTY
TRANSPORTATION IMPROVEMENT DISTRICT
RESOLUTION NUMBER 2025-35**

**RESOLUTION APPROVING APRIL 2025
CHANGE ORDERS, CONTRACTS & AGREEMENTS, PAYMENT OF BILLS AND EXPENSES
APPROVED BY THE EXECUTIVE DIRECTOR AND TID STAFF**

WHEREAS, the Executive Director of the Montgomery County Transportation Improvement District (TID) has presented to the Board of Trustees of the TID, on behalf of the Secretary/Treasurer, the attached report to be approved for payment; and

WHEREAS, the TID Board has reviewed the attached report and found it appropriate for payment or to enter into agreement.

BE IT THEREFORE RESOLVED by the Board of Trustees of the Montgomery County Transportation Improvement District that the attached list of Change Orders, Contracts and Agreements including Bills and Expenses of April 2025 be and is hereby approved for payment.

BE IT FURTHER RESOLVED by the board that copies of this resolution be provided to the Executive Director, Secretary/Treasurer, Finance Director, and TID's General Counsel.

Adopted the 8th day of May, 2025.

Chairperson, Montgomery County Transportation Improvement District

Attest: _____
Secretary/Treasurer

MONTGOMERY COUNTY TID
Bills & Expenses for Board Approval, Expense Report Approved by Board Members, Expenses Approved by the TID Staff
For April 1 - 30, 2025

OPERATIONS		
ACCE	\$ 283.56	Disability Benefits
Back To Business IT (The GreenTree Group)	\$ 550.00	Managed / On Call Services - February
Bureau of Worker's Compensation	\$ 444.57	Monthly Contributions
Dayton Area Chamber of Commerce	\$ 40.00	Dayton Area Logistics Registration (S. Morton)
Fraunfelter Accounting Services	\$ 2,415.00	Accounting Services - March
Vanessa Glotfelter	\$ 490.98	Expense Report - March/ Credit Card - April
Veronica Hull	\$ 171.24	Expense Report - March
Mike Eddy, Consultant	\$ 1,750.92	Professional Services - March
Microsoft	\$ 245.10	Monthly Licenses/Subscription Fees
Montgomery County Human Services	\$ 7,884.00	Health Benefits - February
Montgomery County Purchasing	\$ 1,655.79	Annual Mailroom Service Charge/Parking/Postage
Sam Morton	\$ 311.33	Expense Report - March
Office Supplies/Misc.	\$ 7.99	Office / Paper / Printing Supplies
Public Employees Retirement System	\$ 4,487.29	Monthly Contribution
Rasor	\$ 2,222.50	Public Outreach / Communications - February
Rotary Club of Dayton	\$ 250.00	Application Fee (S. Morton)
Superior Dental	\$ 283.56	Dental Benefits
675/WILMINGTON INTERCHANGE		
LJB, Inc.	\$ 11,103.03	Professional Services - AER / TRAC Funded Tasks
SYCAMORE TRAILS		
Double Jay Construction	\$ 258,044.38	Construction - Pay Application #12
BENCHWOOD STATION		
Brumbaugh Construction	\$ 29,652.50	Construction - Pay Application #11
CTL Engineering, Inc.	\$ 9,150.00	Inspections Services
LJB, Inc.	\$ 3,010.35	Engineering Services
Security Fence Group, Inc.	\$ 561,424.00	Pre-Purchase Lightpole Package
RING ROAD PROJECT		
Arcadis Engineering Services	\$ 40,000.00	Engineering Services
WASTEWATER TREATMENT PHASE 2		
Balsbaugh Excavating	\$ 119,104.00	Construction - Pay Application #14

MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

RESOLUTION NUMBER 2025-36

RESOLUTION APPROVING THE LOCAL-LET PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE WOODMAN GATEWAY PROJECT, PID 122972, AND AUTHORIZING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND EXECUTE THE AGREEMENT

WHEREAS, in 2021, the City of Riverside (“City”) engaged the Montgomery County Transportation Improvement District (“TID”) to assist in the planning and development of specific infrastructure projects along Woodman Drive/Harshman Road between Airway Road and Springfield Street (“Corridor”), and a feasibility study to evaluate multiple alternatives to address the issues identified in connection with the City’s commissioned safety study; and

WHEREAS, by action of Resolution 2025-16, the Board approved a Project Management & Financing Agreement (“PMFA”) with the City for the TID to perform anticipated roadway improvements that include a roadway extension from a new roundabout at Springfield Street and Woodman Drive, continuing south through the existing curves around Area B of Wright Paterson Air Force Base, and terminating at a new roundabout connecting Bayside Drive and Longview Avenue in connection with the proposed Woodman Gateway Project (“Project”); and

WHEREAS, Section 5501.33 (D) of the Ohio Revised Code provides that the Ohio Department of Transportation (“ODOT”) may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects in performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT; and

WHEREAS, it is the mutual desire of both ODOT and the TID, in consultation with the City, that the TID act as the responsible Local-Let Agency (“LPA”) for the administration and implementation of funds for the Project; and

NOW THEREFORE BE IT RESOLVED, by the Board of Trustees of the Montgomery County Transportation Improvement District that the attached LPA Agreement with ODOT be and is hereby approved.

BE IT FURTHER RESOLVED, by the Board that the Executive Director be and is hereby authorized to execute the attached Local-Let Project Agreement, incorporating changes that may be required in final negotiations with ODOT and the City of Riverside, provided that the Executive Director and the General Counsel determine that such changes are not materially detrimental to the TID or the Project.

BE IT FURTHER RESOLVED, by the Board that copies of this resolution be provided to the Executive Director, Secretary/Treasurer, Finance Director, TID's General Counsel, City of Riverside, and Ohio Department of Transportation District 7.

Adopted the 8th day of May, 2025.

Chairperson, Montgomery County Transportation Improvement District

Attest: _____

Secretary/Treasurer

MOT WOODMAN GATEWAY
COUNTY-ROUTE-SECTION

122972
PID NUMBER

41964
AGREEMENT NUMBER

NLXMNJRZIKE4
SAM UNIQUE ENTITY ID

NLXMNJRZIKE4
CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223, and the Montgomery County TID, (LPA), 451 West Third Street, 10th Floor Dayton, Ohio 45422-1075

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the **Ohio Revised Code** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The MOT Woodman Gateway (PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:

A. FEDERAL

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures
- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs
- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be \$1,875,000. ODOT shall provide to the LPA 80 percent of the eligible costs, up to a maximum of \$1,500,000 in Federal 4R47 funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100% locally funded work, and all cost overruns and contractor claims in excess of the maximum(s) indicated in 3.1 above.

4. PROJECT DEVELOPMENT AND DESIGN

4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication). Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the

PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes. ODOT's Office of Local Programs

- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT.
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act (NEPA) and related regulations, including but not limited to the requirements of the National Historic Preservation Act, and for securing all necessary permits.
- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at ODOT's Office of Contracts. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.
- 5.5 The LPA shall require its consultant(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice (BMP) criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and procedures.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a Utility Relocation Agreement with each utility prior to the letting of construction.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.
- 6.8 Unless by prior written agreement, the LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.

- 6.9 No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the “Authorization to Advertise” notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.

7. ADVERTISING, SALE, AND AWARD

- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the “Authorization to Advertise” notification from ODOT. Should advertising or work commence prior to the receipt of the “Authorization to Advertise” notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Manager as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT’s Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 21 calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and letting the contracts.
- 7.4 The LPA must incorporate ODOT’s LPA Bid Template in its entirety in project bid documents. The template includes–Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.
- 7.5 The LPA shall require the contractor to be enrolled in, and maintain good standing in, the Ohio Bureau of Workers’ Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers’ Compensation, and the LPA must require the same of any of its subcontractors.
- 7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30%of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.
- 7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100%locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State’s website at

<https://ohioauditor.gov/findings.html> . If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.
- 7.10 Per ORC 9.75(B), the LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this Agreement, if applicable.

8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections, and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this Agreement.
- 8.2 The LPA must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.
- 8.3 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with

pending invoices or paid costs. To ensure prompt payment, the measurement of quantities and the recording for payment should be performed daily as the items of work are completed and accepted.

- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio (STATE). ODOT shall pay the Contractor or reimburse the LPA within 30 days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the mechanic's lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the mechanic's lien is resolved.

- 8.7 Payment or reimbursement to the LPA shall be submitted to:

Montgomery County TID
451 West Third Street, 10 th floor
Dayton, Ohio 45422-1075

- 8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.
- 8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.
- 8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim(s) including requests for information and/or documents and/or to testify.
- 8.11 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of

time, ODOT may determine that the LPA is no longer eligible for future participation in any federally funded programs.

- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.
- 8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.
- 8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.
- 8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the STATE for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all

solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.

10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:

(a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally assisted programs of the U.S. DOT, 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

(b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(c) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.

(d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the

STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
 - (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
 - (2) cancellation, termination, or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.
- 11.2 The LPA shall not allow its consultant(s) and/or contractor(s) to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.
- 11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such neglect or

failure are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or STATE or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with 30 days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.

- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so, requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.
- 12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director

and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in ORC 126.30.

- 13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees, or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

- 14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Vanessa A. Glotfelter, PE	Blake A. Simpson, P.E.
Montgomery County TID	Ohio Department of Transportation
451 West Third Street, 10th Floor	1001 St. Marys Avenue
Dayton, Ohio 45422-1075	Sidney, Ohio 45365
vglotfelter@mctid.org	blake.simpson@dot.ohio.gov

15. GENERAL PROVISIONS

- 15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: *[LPA official must initial the option selected.]*

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1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.

- (A) The LPA **does not** currently maintain an ODOT approved Federally compliant time-tracking system¹, **and**
- (B) The LPA **does not** intend to have a Federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
- (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

¹ A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

☐

2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.²

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
- (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐

3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.³

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐

4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.⁴

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 %of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

³ [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

⁴ [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

- 15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.
- 15.3 *Financial Reporting and Audit Requirements:* One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-Federal entities, including ODOT's LPA sub-recipients, that have aggregate Federal awards expenditures from all sources of \$750,000 or more in the non-Federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

- 15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this Agreement.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

- 15.5 *Ohio Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.
- 15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

- 15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.
- 15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the STATE. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

- 15.12 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: Montgomery County TID

**STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION**

By:

By:

Title:

Pamela Vest Boratyn
Director

Date:

Date:

**MONTGOMERY COUNTY
TRANSPORTATION IMPROVEMENT DISTRICT
RESOLUTION NUMBER 2025-37**

**RESOLUTION APPROVING A DEVELOPMENT AGREEMENT WITH THE CITY OF UNION,
STREAMS EDGE PROPERTIES, LLC, AND DAYTON FREIGHT LINES, INC. FOR
THE OLD SPRINGFIELD ROAD/PETERS PIKE IMPROVEMENT PROJECT**

WHEREAS, the Board of Trustees ("Board") of the Montgomery County Transportation Improvement District ("TID"), by action of Resolution 2012-25, entered into an Intergovernmental Agreement ("IGA") for Logistics Development & Financing Plans with the City of Union ("Union") and various other local governments for the planning & development of manufacturing & distribution facilities in the vicinity of the I-70/I-75 Interchange and the Dayton International Airport; and

WHEREAS, by action of Resolution 2021-29, the Board approved a Projects Agreement with Union for the development and construction of infrastructure projects in connection with economic development in Union which will create substantial benefits to Union and its constituents, as well as to the County and the region at large; and

WHEREAS, Streams Edge Properties LLC ("Owner"), has acquired or has control of approximately 56 acres fronting on Old Springfield Road, known as parcel number A01100204 0013 ("Development Parcel"); and

WHEREAS, the Owner and Dayton Freight Lines, Inc. ("Lessee") plan to build facilities on the Development Parcel that will support the Lessee's operations that will require the improvement of roadways and related infrastructure adjacent to and in the vicinity of the Development Parcel; and

WHEREAS, Union and the TID have determined certain improvements of the roadways and related infrastructure adjacent to and in the vicinity of the Development parcel are necessary in order to support the Owner and the Lessee and has negotiated a development agreement to memorialize the respective obligations which contains the specific terms and commitments of each party; and

WHEREAS, the Owner has committed to contribute \$1,000,000 to support the Old Springfield Road/Peters Pike Improvement Project ("Project") so that future anticipated economic development within Union will be served by better roadway access; and

NOW, THEREFORE, BE IT RESOLVED, the Executive Director recommends approval of the attached Dayton Freight Development Agreement with Union, the Owner, and the Lessee; and

BE IT FURTHER RESOLVED, by the Board that the Executive Director, with the concurrence of the General Counsel, be and is hereby authorized to negotiate and execute the Development Agreement with the Owner, Lessee, and Union, incorporating such future changes necessary to accommodate final negotiated terms that the Executive Director and the General Counsel determine are not materially detrimental to the TID or the Project.

BE IT FURTHER RESOLVED, that copies of this Resolution be provided to the Executive Director, Secretary/Treasurer, Finance Director, TID's General Counsel, City of Union, Dayton Freight Lines, Inc., and Streams Edge Properties, LLC.

Adopted the 8th day of May, 2025.

Chairperson, Montgomery County Transportation Improvement District

Attest: _____

Secretary/Treasurer

PROJECT DAYTON FREIGHT DEVELOPMENT AGREEMENT

THIS PROJECT DAYTON FREIGHT DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into as of this ____ day of _____, 2025 (the “**Effective Date**”), by and between the City of Union, Ohio (the “**City**”), Streams Edge Properties LLC, an Ohio limited liability company (the “**Owner**”), Dayton Freight Lines, Inc, an Ohio corporation (“**Lessee**”) and the Montgomery County Transportation Improvement District, a body corporate and politic (the “**District**”) under the following circumstances:

A. The City is located in Montgomery County, Ohio (the “**County**”) and the City has within its boundaries a 2,000+ acre logistics and distribution park known as the Union Global Logistics Air Park (the “**Park**”) with immediate proximity to the I-70 and I-75 Interchange and the Dayton International Airport;

B. The City and the District (collectively the “**Public Entities**”) have demonstrated experience in working with Owners and others to facilitate development within the Park, including designing, engineering, acquiring right-of-way, financing and constructing public infrastructure. and in particular, the Public Entities designed, engineered, acquired right-of-way, financed and constructed Union Airpark Boulevard to service that certain Procter & Gamble Dayton Mixing Center (“**Mixing Center**”) located in the City immediately west of Union Airpark Boulevard and to service other businesses located and to be located within the Park;

C. In recognition of: (i) the attractive geographic location of the Park, (ii) the transportation and other public infrastructure currently provided within the Park, including the recently constructed Union Airpark Boulevard and related improvements, and (iii) the Public Entities’ willingness to design, engineer, acquire right-of-way, finance and construct additional public infrastructure within the Park to service businesses located and to be located within the Park, Owner has acquired or has control of approximately 56 acres fronting on Old Springfield Road and identified by the Montgomery County, Ohio Auditor (the “**Auditor**”) as parcel number A01100204 0013 and having the legal description set forth in **Exhibit A** to this Agreement (the “**Development Parcel**”);

D. Owner and the Lessee plan to build facilities on the Development Parcel that will support the Lessee’s operations (the “**Project**”) that will require the improvement of roadways and related infrastructure adjacent to and in the vicinity of the Development Parcel.

E. Owner intends to lease the Project to Lessee for a term of no less than five years (the “**Lease**”);

F. the Public Entities will finalize detailed design and engineering (“**Detailed Design and Engineering**”), will acquire (and/or accept via donation) the “**Necessary Rights-of-Way**” and will finance and construct the “**Public Infrastructure**” all as generally depicted on **Exhibit B** attached hereto (the “**Ring Road Completion Plan**”), and which specifically includes: (i) the widening and upgrading of approximately 1800 linear feet of Old Springfield Road fronting the Development Parcel (collectively the “**Road Project**”), (ii) for certain water, sanitary sewer, lighting and other utilities servicing the Road Project

(the “*Utilities*”), and (iii) acceptance and conveyance of storm water resulting from the construction of the Road Project and other public infrastructure that benefits the Project (collectively the “*Storm Water Contributing Improvements*”) consistent with: (x) the State of Ohio EPA storm water best management provisions for discharge of storm water, (y) the “*Project Approved Site Plan*” in the form as approved by the City in the future and (z) additional Ohio EPA water quality volume to offset three acres of impervious surface attributable to the Public Infrastructure;

G. At the request of Owner and Lessee (each a “*Project Party*” and collectively the “*Project Parties*”) to support the Project and subject to the provisions of the provisions of a Donated Necessary Rights-of-Way and Easement Agreement, to be prepared by or on behalf of the City (the “*Easement Agreement*”), pursuant to which: (i) the City will accept via donation the “*Necessary Rights-of-Way*” pursuant to one or more Limited Warranty Deeds, (ii) Owner will grant any necessary temporary rights of entry and/or construction easements to allow the City and its contractors to enter onto the Development Parcel for the purpose of performing its obligations under this Agreement, (iii) Owner will grant any necessary utility easement(s), and (iv) Owner will grant any necessary drainage easement(s) (collectively, items, (i), (ii), (iii) and (iv) are the “*Donated Rights*”) and the Easement Agreement shall specifically provide for the waiver of any rights Owner (as the sole owner) may have under Ohio law related to the acquisition of such Donated Rights by the Public Entities;

H. Owner has advised the Public Entities that Owner will commence construction of the Project at such time as Owner determines it to be economically feasible (the “*Project Commencement Date*”);

I. In order to support the Project, Owner desires that the Public Infrastructure be completed and available for use on or before the “*Project Substantial Completion Date*”, which is defined as the date, as certified by Owner’s engineer when construction of the Project is sufficiently completed so that the Project can be utilized for the purposes for which it was intended, and the Public Entities intend to finalize detailed design and engineering, acquire the Necessary Rights-of-Way, and finance and construct Public Infrastructure having an estimated total project cost of \$2,600,000;

J. To induce the City to construct the Public Infrastructure, Owner will pay to the City, within 15 days after the execution and delivery of a fully executed version of this Agreement to each of Owner, the City and the District (the “*Contribution Date*”), a contribution in the amount of \$1,000,000.00 (the “*Contribution*”);

K. The City: (i) has constructed certain roadway and related public infrastructure improvements that directly benefit the Development Parcel and (ii) has determined that there is an imminent need for additional roadway and related public infrastructure improvements (in addition to the Public Infrastructure) that will directly benefit the Development Parcel, and the Public Entities have initiated certain planning, design and preliminary engineering with respect to such additional roadway and related public infrastructure improvements, and such previously constructed and to be constructed

roadways and related public infrastructure improvements, all as more specifically described on **Exhibit C** attached hereto (the “***Directly Benefitting Improvements***”);

L. The Project Parties acknowledge that the future successful completion of the Public Infrastructure and the other Directly Benefitting Improvements will directly benefit the Development Parcel, by providing, among other things: (i) a unified approach to traffic co-ordination throughout the Park allowing for the effective use of the Park by Lessee and its suppliers, customers and employees, (ii) providing certain traffic and other safety features, and (iii) supporting certain future amenities and benefits that will be enjoyed by Lessee and its employees;

M. In order to support the financing and debt service payments related to the Public Infrastructure and the other Directly Benefitting Improvements, the City has enacted via Ordinance 1758 passed on September 12, 2022, certain tax increment financing legislation that will apply to certain parcels within the Park, including the Development Parcel, (the “***TIF Legislation***”), and the obligations resulting therefrom will run with the land and levy an obligation on the Development Parcel, including the obligations of Owner and each subsequent owner of the Development Parcel to pay certain service payments in lieu of taxes “***Service Payments***” as provided for in the TIF Legislation; and

N. The Parties (as defined below) acknowledge that the Development Parcel is included within that certain Community Reinvestment Area identified with the Ohio Development Services Agency as Community Reinvestment Area 2 (Zone No: 113-78470-01) and certified as of March 9, 1981 (the “***Union CRA***”), which provides that the assessed valuation of each new structure on the Development Parcel (each a “***New Structure Improvement***”) shall be exempt from taxation for a fifteen year period at a 100% exemption level for which the owner(s) of the Project would be required to pay real estate taxes, and, the Parties agree that as a result of the Union CRA and the agreements of the parties contained herein, Owner (and any future owners, if applicable) will have the benefits with respect to the Union CRA as set forth in Section 2.E. hereof;

NOW, THEREFORE, in consideration of the above, City, the District, Owner and Lessee (collectively the “***Parties***”) agree follows:

1. **The Project and the Public Infrastructure.** Owner hereby agrees that Owner will commence the Project on or before the Project Commencement Date and will thereafter diligently prosecute the Project to substantial completion, subject in each case to Force Majeure. For purposes of this Agreement, “substantial completion,” “substantially complete” and words of similar import with respect to the construction of a vertical structure will mean the issuance of a temporary certificate of occupancy, certificate of substantial completion (or all approvals for the issuance thereof) or similar document customarily issued by the City.

2. **Project Parties’ Representations, Warranties, Acknowledgments and Understandings.**

A. The Project Parties hereby jointly and severally represent and warrant to the City as follows as of the date hereof:

(i) Owner is a limited liability company duly organized and validly existing under the laws of the State of Ohio, licensed to do business in the State of Ohio, has properly filed all certificates and reports required to be filed by under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement. Lessee is a corporation duly organized and validly existing under the laws of the State of Ohio, licensed to do business in the State of Ohio, has properly filed all certificates and reports required to be filed by under the laws of the State of Ohio, and is not in violation of any laws of the State of Ohio relevant to the transactions contemplated by this Agreement.

(ii) Each Project Party has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized, executed and delivered by each Project Party and all actions necessary have been taken to constitute this Agreement. Upon a Project Party's execution and delivery of this Agreement, all obligations of such Project Party under this Agreement will be binding obligations of such Project Party, subject to any limitations or conditions precedent described in this Agreement.

(iii) The execution, delivery and performance by a Project Party of this Agreement and the consummation of the transactions contemplated hereby will not violate any applicable laws, or any writ or decree of any court or governmental instrumentality, or the organizational documents of such Project Party, or any mortgage, indenture, lease, contract, agreement or other undertaking to which such Project Party is a party or which purports to be binding upon such Project Party or upon any of its assets, nor is such Project Party in violation or default of any of the foregoing.

(iv) There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of either Project Party, threatened against or affecting either Project Party at law or in equity or before or by any governmental authority which impairs or prohibits either Project Party from entering into this Agreement or performing any of either Project Party's obligations herein.

B. A Project Party will give prompt notice in writing to each of the Public Entities of such Project Party's acquiring knowledge of the occurrence or existence of any litigation, labor dispute or governmental proceeding or investigation affecting such Project Party that could reasonably be expected to substantially interfere with a Project Party's performance under this Agreement or materially and adversely affect a Project Party's financial condition to the extent it would materially impair such Project Party's obligations under this Agreement.

C. Owner owns the Development Parcel in fee simple, and has recorded its ownership interest as set forth in that certain Correction Deed dated July 1, 2022 filed with the Montgomery County, Ohio Recorder (File # 2022-00066117).

D. The Project Parties have been advised by the City that, in accordance with Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code (the “**Revised Code**”), (collectively referred to herein as the “**TIF Act**”) the City has passed the TIF Legislation determining that, 100% of the increase in assessed value of the Development Parcel subsequent to the effective date of the TIF Legislation (which increase in assessed value is hereinafter referred to as the “**Improvement**” as defined in the Revised Code Section 5709.40(A)) is declared to be a public purpose and will be exempt from taxation in accordance with the Revised Code Section 5709.40(B) for a period commencing with the first tax year that begins after the effective date of the TIF Legislation and in which an Improvement attributable to a new structure on the Development Parcel first appears on the tax list and duplicate of real and public utility property for the Development Parcel (the “**First Tax Year**”) and ending on the earlier of: (a) the exemption period provided in the TIF Legislation as enacted, or amended, if applicable, or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the Revised Code and the TIF Legislation (the “**TIF Exemption Period**”).

E. Based on the Project Substantial Completion Date, the Auditor will determine the assessed property value for the Project subsequent to the Project Substantial Completion Date, and the applicable First Tax Year, and Owner (or a future owner, if applicable) will be obliged to pay Service Payments for the First Tax Year in the subsequent calendar year.

F. The Parties hereby agree, that Owner (or a future owner, if applicable) shall have the benefit of the Union CRA, as follows, (the “**CRA Exemption**”): 100% of the Service Payments resulting from the construction of the New Structure Improvements due and payable for the First Tax Year and for the subsequent fourteen tax years (for a total of fifteen tax years) (the “**CRA Exemption Period**”).

G. The Parties hereby agree that the underlying value of the Development Parcel unrelated to increases in value resulting from the Project (including the New Structure Improvements) will not be deemed an Improvement under the TIF Legislation and will be subject to normal real property taxation and Owner (and any future owner) will pay such taxes pursuant to the laws and regulations applicable to such normal real property taxation.

H. The Parties hereby agree that any increases in value of the Development Parcel (herein referred to as the “**Land-Based Valuation Increase**”) will be deemed an Improvement under the TIF Legislation and will be subject to the Owner’s (and any future owner’s) obligation to pay Service Payments with respect to 100% of the Land Based Valuation Increase during the entire TIF Exemption Period.

I. The Parties hereby agree, that upon expiration of the CRA Exemption Period, Owner (and any future owner) shall be obligated to pay Service Payments with respect to 100% of the New Structure Improvements during the remainder of the TIF Exemption Period.

J. The Project Parties acknowledge that Owner has adequate access to the Development Parcel via the current roadways serving the Development Parcel, and Owner will be able to initially conduct the construction of the Project and Lessee will be able to utilize the Project, based upon the current roadways, utilities and other infrastructure servicing the Development Parcel.

K. The Project Parties acknowledge that the Public Entities' willingness to provide financial and other support for the Project and specifically to fund the Public Infrastructure is based, in part, upon the representations, warranties and promises of The Public Parties set forth in this Agreement, and each of the Project Parties acknowledges that the Public Entities are relying upon such representations, warranties and promises.

3. **Obligations of The Project Parties.** In furtherance of the intent and purposes of this Agreement, and addition to other obligations of the Project Parties specifically provided for in this Agreement, the Project Parties hereby agrees to perform the following obligations:

A. Owner will submit site plans for review by the City, and cooperate with the City to finalize the "***Project Approved Site Plan***". Owner will: (i) perform the required site work on the Development Parcel, and (ii) construct the Project, all as set forth on the Project Approved Site Plan, subject to applicable permits issued therefore.

B. Owner will exercise reasonable efforts to prosecute the construction of the Project, subject to Force Majeure.

C. Owner will pay the Contribution on or before the Contribution Date.

D. Owner will make, during the TIF Exemption Period, all Service Payments as contemplated pursuant to the TIF Legislation, in full, and on a timely basis. The Service Payments with respect to the Development Parcel shall be payable to the Treasurer of Montgomery County, Ohio. The Service Payments shall be calculated in the same manner as real estate taxes are assessed pursuant to Chapter 5713 of the Revised Code, subject to the CRA Exemption, and shall be included on the real estate tax bill delivered to Owner in accordance with such Chapter. Subject to the CRA Exemption, the Service Payments will be collected in the same manner and in the same amount as the real property taxes that would have been charged and collected against the Improvement if it were not exempt from taxation pursuant to the TIF Legislation.

E. Owner's obligation to pay Service Payments as required under the Declarations of Covenants (defined below) are absolute obligations and shall not be reduced, delayed, modified, waived or forgiven by either Public Entity for any reason, without the approval of both Public Entities.

F. Lessee agrees to use good faith efforts to meet with the Vandalia-Butler City School District to attempt to identify internship or other educational opportunities, together with other monetary and non-monetary forms of sponsorships, that can be provided by Lessee, should Lessee choose to provide such benefits.

G. During the TIF Exemption Period, neither Project Party shall contest or file a complaint (including, without limitation, a complaint filed in accordance with Revised Code Sections 5715.13 or 5715.19) against the real property tax land valuation of the Development Parcel as established by the Auditor that seeks a market or assessed valuation below \$60,000.00 per acre.

I. As requested by the City, Owner will execute and deliver to the City the Easement Agreement. Lessee hereby acknowledges that its rights under the Lease are subordinate to the City's rights under the Easement Agreement and will promptly execute such recordable further assurances with respect to the same upon a Public Entity's written request.

J. Owner will execute and deliver to the City the Declaration of Covenants and Imposition of Continuing Priority Lien (the "***Declaration of Covenants***") in recordable form and in the form of **Exhibit D** attached hereto and including the acknowledgement that the Public Infrastructure and Directly Benefitting Improvements will directly benefit the Developed Property and the Project, as contemplated pursuant to Revised Code Section 5709.40 (and that the Service Payments shall be used to finance, pay debt service on, and maintain the foregoing) by providing for, among other things: (i) a unified approach to traffic co-ordination throughout the Park allowing for the effective use of the Park by Lessee and its suppliers, customers and employees, (ii) certain traffic and other safety features, (iii) certain essential storm water management improvements, and (iv) certain amenities and benefits to Lessee and its employees. Lessee hereby acknowledges that its rights under the Lease are subordinate to the Declaration of Covenants and will promptly execute such recordable further assurances with respect to the same upon a Public Entity's written request.

K. Owner agrees that the Declaration of Covenants shall require Owner and any subsequent owner of the Development Parcel to pay an "***Allocable Lighting Cost Share***" for each calendar year which shall be established by the City pursuant to a mechanism determined by the City, which may include the following: (x) identifying the electricity usage costs for electrical power for the street lighting located within the Park for such calendar year (the "***Annual Usage Cost***"), (y) dividing the Annual Usage Cost by the total then assessed property value per parcel (as determined by the Auditor or if no such determination has then been made by the Auditor with respect to a parcel, as reasonably determined by the City) (each a "***Parcel Assessment***") of all parcels located within the Park that have substantially completed vertical commercial improvements on such parcels within the Park to determine an "***Annual Usage Cost per Dollar of Assessment***"), and (z) multiplying the Annual Usage Cost per Dollar of Assessment by the Parcel Assessment for the Development Parcel and providing an invoice to Owner (or, if applicable a future owner) for its period of ownership of the Development Parcel.

L. Other than the obligations to (i) pay the Service Payments, (ii) pay the Contribution, (iii) donate the Donated Rights, (iv) comply with the provisions of the Easement Agreement, and (v) comply with the provisions of the Declaration of Covenants, so long as Owner holds fee title to the Development Parcel, Owner shall have no further obligation to reimburse, pay or donate to any Public Entity for any other costs pursuant to

this Agreement. Lessee hereby guarantees the performance of each and every obligation by Owner under this Agreement as if Lessee is the primary obligor with respect to such obligation.

4. The City's Representations, Warranties, Acknowledgments and Understandings.

A. The City has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized and executed and delivered by the City and all actions necessary have been taken to constitute this Agreement. Upon the City's execution and delivery of this Agreement, all provisions of this Agreement will be binding obligations of the City, subject to any limitations specifically set forth in this Agreement.

B. There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of the City, threatened against or affecting the City at law or in equity or before or by any governmental authority or third party which impairs or prohibits the City from entering into this Agreement or any of the other agreements contemplated herein or which would materially and adversely affect the City's access to the funds necessary to finance Public Infrastructure or which impairs or prohibits the City from performing any of the City's obligations herein or in any of the foregoing agreements.

C. The Development Parcel is zoned within the City's L-I – Light Industrial Zoning District which classification permits industrial activities including, without limitation, warehouse, distribution and manufacturing activities.

5. The District's Representations, Warranties, Acknowledgments and Understandings.

A. The District has full power and authority to execute and deliver this Agreement and to carry out the transactions provided for herein. This Agreement has by proper action been duly authorized and executed and delivered by the District and all actions necessary have been taken to constitute this Agreement. Upon the District's execution and delivery of this Agreement, all provisions of this Agreement will be binding obligations of the District, subject to any limitations specifically set forth in this Agreement.

B. There are no actions, suits, proceedings or governmental investigations pending, or to the knowledge of the District, threatened against or affecting the District at law or in equity or before or by any governmental authority or third party which impairs or prohibits the District from entering into this Agreement (or which prohibits the District entering into the other agreements contemplated by this Agreement) or which impairs or prohibits the District from performing any of the District's obligations herein or in any of the foregoing agreements.

6. Obligations of the Public Entities. In addition to other obligations of the Public Entities specifically provided for in this Agreement, the City and the District agree to perform their respective following obligations:

A. The City and District will each fulfill its respective obligations under the agreements contemplated by this Agreement to which they are a party.

B. The City agrees to promptly certify to the Montgomery County Auditor an application provided by Owner for a CRA Exemption for the Project, which would be a 15-year, 100% real property tax exemption for new structures consistent with Section 3735.67 of the Revised Code. Further, the City agrees it will not amend or revoke the CRA designation as to the Project or modify the incentives under that designation for the Project, prior to the expiration of the CRA Exemption without the written consent of Owner. The CRA Exemption shall apply irrespective of whether the Development Parcel and/or the Project is owned by Owner or a successor in title.

E. Pursuant to Section 5709.911(A) of the Revised Code, the City shall file each application for exemption with respect to the TIF Legislation as it pertains to the Development Parcel.

C. The City is providing for the financing and construction of the Public Infrastructure by entering into that certain “***Project Management and Financing Agreement***” to be dated on or about the date hereof.

D. Based upon the powers of the District pursuant to Chapter 5540 of the Revised Code, and the powers conferred upon the District pursuant to this Agreement and the Project Management and Financing Agreement, and such other agreements the District elects to enter into to support its authority, the District will: let, manage, supervise, assemble property with respect to, finance and construct the Public Infrastructure and enter into such consulting, construction and other contracts as necessary or helpful in fulfilling the Public Entities’ obligations under this Agreement.

E. Throughout the construction of the Project, the Public Entities will each cooperate with the Project Parties and keep the Project Parties apprised of the Public Entities’ progress with respect to the financing and construction of the Public Infrastructure, including any delays in performance.

F. Throughout the construction of the Project, the Public Entities will each cooperate with each other and with the Project Parties, to accomplish the purposes and intents of this Agreement.

G. The District will assist the Project Parties in working with the Public Entities and others to timely obtain variances, permits and other approvals that may be required in connection with the Project.

H. The City will assist Owner in connection with the application for, and timely issuance of permits necessary or useful to the Project, including rights of access to Old Springfield Road and the Utilities.

I. The Public Entities will finalize the Detailed Design and Engineering and will acquire (and/or accept via donation) pursuant to the Easement Agreement the

Necessary Rights-of-Way and will finance and construct the Public Infrastructure as generally depicted on the Ring Road Completion Plan.

J. The City will cause the Public Infrastructure to be substantially completed on or before December 31, 2026 (the “**Public Infrastructure Substantial Completion Date**”), subject to Force Majeure (defined below), and such substantial completion of the portion of the Road Project included within the Public Infrastructure is defined as the date, as certified by a Public Entity’s engineer when such construction is sufficiently completed so that the applicable portion of the Road Project included in the Public Infrastructure can be utilized for the purposes for which it was intended).

7. **Project Party Defaults.** The occurrence of any of the following shall be a “**Project Party Default**” under this Agreement.

A. The failure of Owner to fulfill any of Owner’s obligations with respect to the TIF Legislation.

B. The dissolution of a Project Party, the insolvency of a Project Party, or (i) the commencement of a voluntary case under Title 11 of the United States Code entitled “Bankruptcy” as now or hereinafter in effect, or any successor thereto (the “**Bankruptcy Code**”); (ii) an involuntary case is commenced against a Project Party under the Bankruptcy Code not dismissed within one-hundred twenty days after its filing; (iii) a trustee (as defined in the Bankruptcy Code or otherwise), assignee for the benefit of creditors or receiver is appointed for, or takes charge of, all or substantially all of the property of a Project Party; (iv) a Project Party commences any other proceeding under any reorganization, arrangement, readjustment of debt, relief of debtors, dissolution, insolvency, or liquidation or similar law of any jurisdiction whether now or hereafter in effect relating to a Project Party or there is commenced against a Project Party any such proceedings that is not dismissed within one hundred twenty days after its filing; (v) a Project Party is adjudicated insolvent or bankrupt; or (vi) any action is taken for the purpose of effecting any of the foregoing or the filing of any bankruptcy or insolvency proceedings by or against a Project Party which is not dismissed or removed in one hundred twenty (120) days.

C. A failure by a Project Party to perform or observe any of its material obligations under this Agreement and the failure of a Project Party to correct such failure within sixty days after receipt of written notice thereof from a Public Entity; provided, however if the nature of the default is such that it cannot reasonably be cured within sixty days, and an event of default shall not be deemed to have occurred if a Project Party commences to cure the default within such sixty day period and thereafter diligently completes such cure.

8. **Remedies for the Public Entities in the Event of a Project Party Default.** In the event of a Project Party Default involving the payment of money by a Project Party to or for the benefit of a Public Entity hereunder (including without limitation Service Payments), the Public Entity to whom those sums are owed may sue one or both Project Parties in a court of competent jurisdiction to recover all amounts due. In the event of a Project Party Default not involving the

payment of money by a Project Party the Public Entity to whom the obligation is owed may sue either or both Project Parties in a court of competent jurisdiction for direct damages or for specific performance. In addition to the foregoing, the Public Entities shall have the right to cease construction of the Public Infrastructure upon the failure of Owner to make the Contribution on the Contribution Date.

9. **Public Entities Public Infrastructure Completion Default.** The occurrence of the following shall be a “**Public Infrastructure Completion Default**”: the default by a Public Entity with respect to its obligations (subject to Force Majeure) to complete the Public Infrastructure on or before the first anniversary of the Public Project Infrastructure Substantial Completion Date, and such default is not waived by Owner in writing or (y) remedied by the Public Entity within sixty days after written notice from Owner or (z) if the nature of such Public Infrastructure Completion Default is non-monetary and is such that it cannot reasonably be cured within sixty days, then an event of default shall not be deemed to have occurred if the applicable Public Entity commences to cure the Public Infrastructure Completion Default within such sixty day period and thereafter diligently completes the cure of such Public Infrastructure Completion Default.

10. **Remedies for the Project Parties in the Event of a Public Infrastructure Completion Default.**

A. The Public Entities shall perform all the construction work with respect to the Public Infrastructure with a single contractor (the “**Contractor**”). In the event of a Public Infrastructure Completion Default, a Project Party may: (i) assume, the existing construction agreement with the Contractor (the “**Contract**”), and any or all of the other contracts and all designs, plans and specifications related thereto, and/or (ii) elect to cause the Public Entities to terminate the Contractor and such Project Party may retain another construction contractor or contractors to complete the remaining portion of the Public Infrastructure, in which event the Public Entities shall terminate the existing Contract with the Contractor without cost to either Project Party.

B. In the event a Project Party elects to proceed under item 10. A. (i) above, the District will promptly assign to such Project Party the Contract with respect to the Public Infrastructure, together with permits or other rights which may be necessary or convenient for such Project Party to complete the Public Infrastructure and the Public Entities agree to cooperate with such Project Party in connection with such Project Party’s completion of such Public Infrastructure.

C. If a Project Party assumes the Contract, the Public Entities, as applicable, shall draw upon the borrowing related to such Public Infrastructure (the “**Borrowing**”) and make progress payments to such Project Party in connection with such Project Party’s construction of the Public Infrastructure (which amount shall not exceed the portion of the maximum price under such Contract that has not been completed prior to the Project Party’s undertaking the completion of the Public Infrastructure, and therefore, subject to payment to the Contractor by the City for such completed work).

D. The Public Entities shall provide in the Contract that the Project Party shall have third party beneficiary rights under the Contract to seek remedies from the Contractor for costs incurred by a Project Party in completing the Public Infrastructure in excess of the amounts paid to a Project Party under this Section 10, subject to any limitations of liability protecting the Contractor or any third party as specifically provided for in the Contract or under Ohio law.

E. To the extent a Project Party assumes the obligation to complete any Public Infrastructure, the Public Entities shall cooperate with such Project Party with respect to the same. The District and the City, to the extent applicable, hereby grant to each Project Party an irrevocable license in, over, under and across such property as is reasonably necessary for the purpose of exercising the self-help rights described in this Section; provided however that a Project Party's exercise of such remedies under this Section 10 shall not terminate or disturb the Public Entity(ies) fee ownership in and to the Public Infrastructure and public rights-of-way or future maintenance rights and responsibilities related to the Public Infrastructure and public rights-of-way.

F. To the extent a Project Party exercises any rights under this Section 10, such Project Party shall take such actions as a Public Entity reasonably requests to dedicate the Public Infrastructure to public use.

11. **General Public Entity Default.** The occurrence of the following shall be a "**General Public Entity Default**"): a failure by the District or the City to perform or observe any of its material obligations under this Agreement other than related to a Public Infrastructure Completion Default and the failure of the applicable Public Entity(ies) to correct such failure within sixty days after receipt of written notice thereof from Owner; provided, however if the nature of the default is non-monetary and is such that it cannot reasonably be cured within sixty days, then an event of default shall not be deemed to have occurred if the applicable Public Entity(ies) commence to cure the default within such sixty day period and thereafter diligently completes such cure.

12. **Remedies for the Project Parties in the Event of a General Public Entity Default.** In the event of a General Public Entity Default, either or both Project Parties may pursue any remedy available to it at law or in equity against the City, including requiring the City to enforce the obligations of the District or assume the obligations of the District under the Project Management and Financing Agreement.

13. **Compliance with Laws.** Each of the Parties agrees to comply with all applicable Federal, State and local laws, rules, orders and regulations in performing its obligations hereunder.

14. **Notices.** All notices given by the parties hereunder will be deemed given if personally delivered, or delivered by Federal Express, UPS or other recognized overnight courier for next business day delivery, 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 either Party may designate by notice to other Party given in the manner prescribed herein. Notices will be deemed given on the date of receipt or refusal of delivery.

To the City: City of Union, Ohio
118 North Main Street
Union, Ohio 45322
Attention: John Applegate, City Manager

With a copy to: Joseph Moore, Law Director
118 North Main Street
Union, Ohio 45322
Attention: Joseph P. Moore, Esq.

To the District: Montgomery County Transportation Improvement District
451 W. Third Street, 10th Floor
Dayton, Ohio 45422
Attention: Vanessa Glotfelter, Executive Director

With a copy to: Sebaly, Shillito + Dyer
Attn: General Counsel for the Montgomery County
Transportation Improvement District
220 E. Monument Ave., Suite 500
Dayton, Ohio, 45402

To Owner: Streams Edge Properties LLC
6450 Poe Avenue, Suite 311
Dayton, Ohio 45414
Attention: Anthony Rocco

With a Copy to: Streams Edge Properties LLC
6450 Poe Avenue, Suite 311
Dayton, Ohio 45414
Attention: Eric (EJ) Olson, Esq.

To Lessee: Dayton Freight Lines, Inc.
6450 Poe Avenue, Suite 311
Dayton, Ohio 45414
Attention: Anthony Rocco

With a Copy to: Streams Edge Properties LLC
6450 Poe Avenue, Suite 311
Dayton, Ohio 45414
Attention: Eric (EJ) Olson, Esq.

15. **Applicable Laws.** In connection with Owner's construction of the Project, Owner will obtain and maintain all necessary City and other governmental permits, licenses and other approvals and will comply in all material respects with all federal, state and local laws, codes, ordinance and other governmental requirements applicable thereto.

16. **Assignment.** Neither Project Party shall assign its rights or obligations under this Agreement without the consent of the City, which consent shall not be unreasonably withheld; provided, however, that Owner may assign without the consent of the City or the District, any of its rights or obligations under this Agreement, in whole or in part, (a) to Lessee, (b) to an affiliate of Owner who will acquire fee title to the Development Parcel or (c) to any other person or entity who acquires fee title to the Development Parcel, and provided, however, further, Lessee may assign its rights or obligations under this Agreement to an entity that acquires operating control over Lessee's assets, whether via a merger, purchase of stock, acquisition of substantially all Lessee's assets or other change of control transaction. Any attempted assignment that fails to fulfill the provisions set forth in this Agreement, shall be void. A Project Party will provide prior written notice to the City of any assignment of any of its rights or obligations hereunder.

17. **Entire Agreement; Amendment.** This Agreement (including the exhibits hereto) contain 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. This Agreement may be amended only by a written amendment signed by all Parties being bound by the terms of such amendment.

18. **Governing Law.** This Agreement will be governed by and construed and enforced in accordance with the laws of the State of Ohio. All actions regarding this Agreement will be brought in a Federal Court for the Southern District of Ohio located in Dayton, Ohio, and each Project Party agrees that venue in such court is proper. The Parties hereby waive trial by jury with respect to any and all disputes arising under this Agreement.

19. **Binding Effect.** This Agreement will be binding upon and will inure to the benefit of and be enforceable by and against the Parties and their respective successors and permitted assigns. Each Party represents and warrants that it is executing this Agreement with the full and proper authority and that the Parties whose names appear hereon are duly authorized and empowered to make and execute this Agreement. This Agreement shall be binding upon future owners of the Development Parcel until the full benefit of the City's rights to receive Service Payments has expired.

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

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

22. **Time is of the Essence.** Time is of the essence with respect to the performance by the parties of their respective obligations under this Agreement; provided that the time period for the performance of any obligation shall be extended pursuant to the applicable force majeure provisions excusing performance from the timely performance of such obligation.

23. **Official Capacity.** All representations, warranties, covenants, agreements and obligations of the District under this Agreement 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 District in other than his or her official capacity. No official or employee of the District will be personally liable to a Project Party, or to any successor in interest, in the event of any default or breach by the District or for any amount which may become due to such Project Party or any successor to such Project Party or on any obligations under the terms and conditions of his Agreement. The District represents that to its knowledge, all of the representations, warranties, covenants, agreements and obligations of the District under this Agreement are permitted by applicable law. All representations, warranties, covenants, agreements and obligations of the City under this Agreement 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 City in other than his or her official capacity. No official or employee of the City will be personally liable to a Project Party, or to any successor in interest, in the event of any default or breach by the City or for any amount which may become due to such Project Party or any successor to such Project Party or on any obligations under the terms and conditions of his Agreement. The City represents that to its knowledge, all of the representations, warranties, covenants, agreements and obligations of the City under this Agreement are permitted by applicable law.

24. **District Approval.** This Agreement will not be effective unless and until approved by the Board of Trustees of the District and the City Council of the City. Execution of this Agreement by the Executive Director of the District will be deemed, conclusively, to be evidence of approval of this Agreement by the Board of Trustees of the District. Execution of this Agreement by the City Manager will be deemed, conclusively, to be evidence of approval of this Agreement by the City Council of the City. In the event that any provision of this Agreement requires the approval or agreement of the District, including without limitation changes or modifications to the Road Project, such approval or agreement may be given on behalf of the District by the Executive Director of the District and on behalf of the City by the City Manager of the City.

25. **Waiver.** No consent or waiver, express or implied, by a party to or 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 a Party. No waiver will be effective unless provided in writing and signed by the Party against whom it is sought to be enforced.

26. **Counterparts.** This Agreement 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.

27. **Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party, 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.

28. **Force Majeure.** If any Party hereto is delayed in or prevented from performing any obligation under this Agreement (excluding, however, the payment of money) by reason of Force Majeure, that party's performance of such obligation will be excused for a period equal to the period of delay actually caused by the Force Majeure. For purposes of this Agreement, "**Force Majeure**" means acts of God; strikes; lockouts; labor troubles; inability to procure materials; inclement weather; governmental laws or regulations; war or other national or state emergency (including, without limitation, plagues, epidemics, quarantines, pandemics, orders or other matters related to COVID-19, or any matters similar or related to any one or more thereof); casualty; orders or directives of any legislative, administrative, or judicial body or any governmental department; inability to obtain any licenses, permissions or authorities (despite commercially reasonable pursuit of such licenses, permissions or authorities); and other similar or dissimilar causes beyond the non-performing party's reasonable control. The Parties acknowledge and agree that (a) as of the date of this Agreement, a national or regional pandemic, quarantine and other conditions exist that are related to COVID-19; (b) the impact of such pandemic, quarantine and other conditions on the parties' respective rights and obligations under this Agreement is not yet fully known; and (c) the execution and delivery of this Agreement with the knowledge of such ongoing pandemic, quarantine and other conditions will in no way whatsoever preclude, impair or other adversely affect the relief to which a Party is entitled as a result of the same being a Force Majeure event (i.e., just as though such ongoing pandemic, quarantine and other conditions had not existed as of the date of this Agreement).

29. **Special Damages.** The District will not be liable to any Party under this Agreement for any reason. The City will not be liable to any Party for (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement, or (b) any penalties or diminishments in value of the Project of the Development Parcel. No Project Party will be liable to any Party for (a) any indirect, reliance, exemplary, incidental, speculative, punitive, special, consequential or similar damages that may arise in connection with this Agreement or (b) any lost or foregone tax revenues.

30. **Written Assurances.** Each Party may request of another Party a certificate certifying that this Agreement is in full force and effect (unless such is not the case, in which the responding Party will specify the basis for such claim), that the requesting Party is not in default of any term, provision or condition of this Agreement beyond any applicable notice and cure provision (or specifying each such claimed default) and certifying such other matters reasonably requested by the requesting Party. The foregoing certificate may be for the benefit of the requesting Party or any existing or prospective lender, tenant, investor or purchaser. Upon any such request, the Party to whom the request is made agrees to provide the requested certificate within a reasonable period of time. Upon full satisfaction of the duties and obligations of Owner under this Agreement to perform work, pay fees, or donate property, the Public Entities shall, at the request of Owner or a subsequent owner, issue a certificate in recordable form confirming that the specified obligations have been fully satisfied for purposes of this Agreement with respect to the Development Parcel, and the parties agree that such obligations shall be deemed to be fully satisfied for all purposes of this Agreement.

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

**MONTGOMERY COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT**

By:_____

Its:_____

CITY OF UNION OHIO

By:_____

Its:_____

STREAMS EDGE PROPERTIES LLC
An Ohio limited liability company

By:_____

Its:

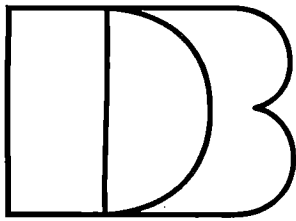
DAYTON FREIGHT LINES, INC.
An Ohio corporation

By:_____

Its:

Exhibit A

Legal Description of Development Parcel



**Donald Bohning
& Associates**

7979 Hub Parkway
Valley View, Ohio 44125

T 216.642.1130

F 216.642.1132

Consolidated Parcel

56.6665 Acres

DGB 5237

June, 2022

Legal Description

Situated in the City of Union, County of Montgomery, and State of Ohio, and known as being part of the West Half of the Southwest Quarter of Section 5, Township 3, Range 6 East, of part of Original Butler Township, and bounded and described as follows:

Beginning at railroad spike found in the centerline of Old Springfield Road, 60 feet wide, at its intersection with the westerly line of said Section 5;

Thence North 00 degrees 18 minutes 52 seconds West along the westerly line of said Section 5, 1475.82 feet to a stone monument (SC0581) found in northwest corner of said SW Quarter of Section 5, being also the southerly line of a 77.636 acre parcel of land conveyed to R.H. Oaks, Farms, LLC by deed recorded as I.R. Deed 05-00011097 of Montgomery County Deed Records;

Thence South 89 degrees 28 minutes 56 seconds East along the Half Section line of said Section 5, 1740.29 feet to a point at its intersection with the westerly line of a 6.952 acre parcel of land conveyed to The City of Dayton by deed recorded as Deed M.F. 95-427 C04 of Montgomery County Deed Records, and from which point a 1" iron pipe (leaning) found bears South 0 degrees 20 minutes 38 seconds East, 0.31 feet;

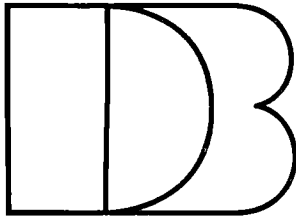
Thence South 00 degrees 20 minutes 38 seconds East along the westerly line of said land conveyed to The City of Dayton, 310.03 feet to the southwesterly corner, thereof and from which point a 1" pinch top pipe (bent) found bears North 89 degrees 39 minutes 22 seconds East, 0.23 feet; North 0 degrees 20 minutes 38 seconds West, 0.20 feet;

Thence South 89 degrees 28 minutes 55 seconds East along the southerly line of said land conveyed to The City of Dayton, 284.50 feet to its intersection with the westerly line of a 6.029 acre parcel of land conveyed to Brian K. Stonoff & Brenda K. Smith, Trustee by deed recorded as I.R. Deed 20-022747 of Montgomery County Deed Records, and from which point a 1" pinch top pipe found bears North 0 degrees 18 minutes 51 seconds East, 0.37 feet;

Thence South 00 degrees 18 minutes 51 seconds West along the westerly line of said land conveyed to Brian K. Stonoff & Brenda K. Smith, Trustee and the westerly line of a 5.00 acre parcel of land conveyed to The City of Dayton recorded in Deed Book 2430, Page 610 of Montgomery County Deed Records, 759.68 feet to a 1 1/4" iron pipe found in the centerline of Old Springfield Road, passing over an iron pin set 30.50 feet from centerline;

Thence South 79 degrees 38 minutes 58 seconds West along the centerline of Old Springfield Road, 1024.53 feet to a railroad spike found at an angle point, therein;

Thence South 79 degrees 39 minutes 43 seconds West along the centerline of Old Springfield Road, 347.64 feet to a railroad spike found at an angle point, therein;



**Donald Bohning
& Associates**

7979 Hub Parkway
Valley View, Ohio 44125

T 216.642.1130

F 216.642.1132

Consolidated Parcel
56.6665 Acres
DGB 5237

Thence South 80 degrees 01 minutes 31 seconds West along the centerline of Old Springfield Road, 77.69 feet to a broken nail found at an angle point, therein;

Thence South 78 degrees 28 minutes 58 seconds West along the centerline of Old Springfield Road, 302.12 feet to a p.k. nail found at an angle point, therein;

Thence South 76 degrees 58 minutes 05 seconds West along the centerline of Old Springfield Road, 299.61 to the place of beginning, and containing 56.6665 acres of land, of which 1.4130 acres lie within the right of way of Old Springfield Road, according to the survey by Michael A. Ackerman of Donald G. Bohning & Associates, Inc. dated June, 2022.

The courses used in this description are referenced to observation made with the Ohio Department of Transportation Ohio Real Time Network to The Ohio State Plane Coordinate System South Zone, NAD83 (2001) Datum on June 23, 2021 and are used to indicate angles only.

This description is based upon an actual field survey in June, 2021 as recorded in the Montgomery County Engineer's Record of Land Surveys in Volume 2022, Page 0224 under my direct supervision, Michael A. Ackerman Registered Surveyor No. 8196 of the State of Ohio, and that all monuments found or set correctly represent the boundaries herein described.

Michael A. Ackerman
Registered Surveyor No. 8196

m:\adcadd\p\5000-5499\5237\documents\legals\56.6665 ac. overall - aug 2021.doc



CITY OF UNION, OHIO

APPROVED

PAUL W. GRUNER, P.E., P.S.
MONTGOMERY COUNTY ENGINEER

APPROVED FOR POINT OF BEGINNING, DATE 9/13/22

ACREAGE AND CLOSURE ONLY

DATE 10/03/2022 FILE NO. 2022-0224 BY John P. Cappelletti

BY Wayne Btl

John P. Cappelletti
City Manager

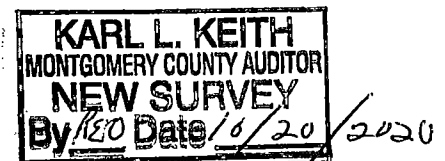


Exhibit B

Ring Road Completion Plan



23 TRIANGLE PARK DRIVE
CINCINNATI, OHIO 45246
(513) 942-3141
www.arcadis.com

REVISION:

SUBMISSION:

- ☐ PRELIMINARY ENGINEERING SET
- ☒ AGENCY REVIEW SET
- ☐ CONSTRUCTION DOCUMENT SET
- ☐ AS-BUILT DOCUMENT SET

TAMP:

CTID

OLD SPRINGFIELD
PHASE 2 ROADWAY
IMPROVEMENTS

MONTGOMERY COUNTY, OHIO

DESIGN	DRAFT	CHECK
JAG	JAG	JBK

BI NO.: 132906

DATE: MAY 2025

SCALE:

HORIZONTAL: 1" = 100'

HEET TITLE:

DAYTON FREIGHT
DEVELOPMENT

SHEET NO.: 1/1

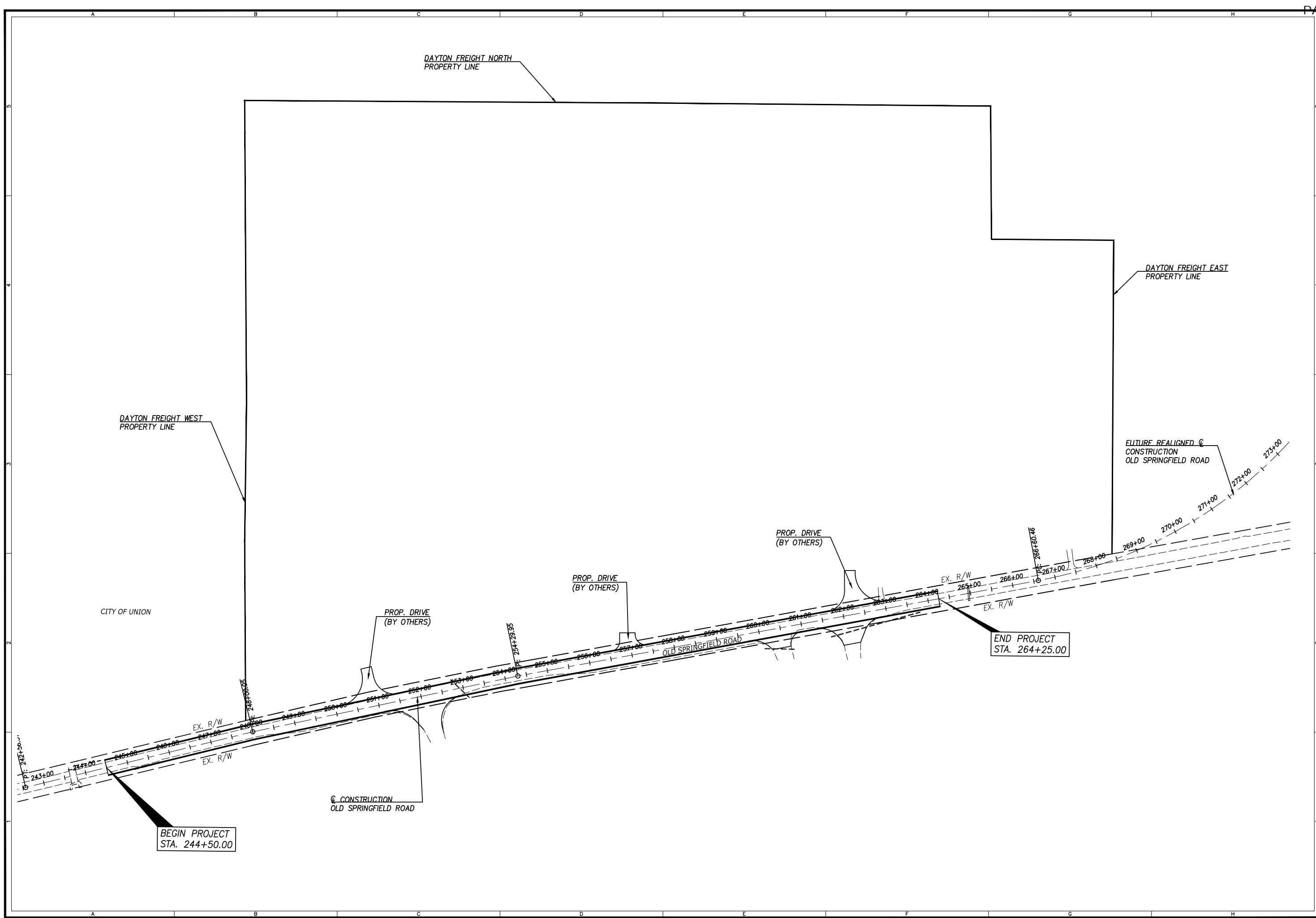


Exhibit C

Directly Benefitting Improvements

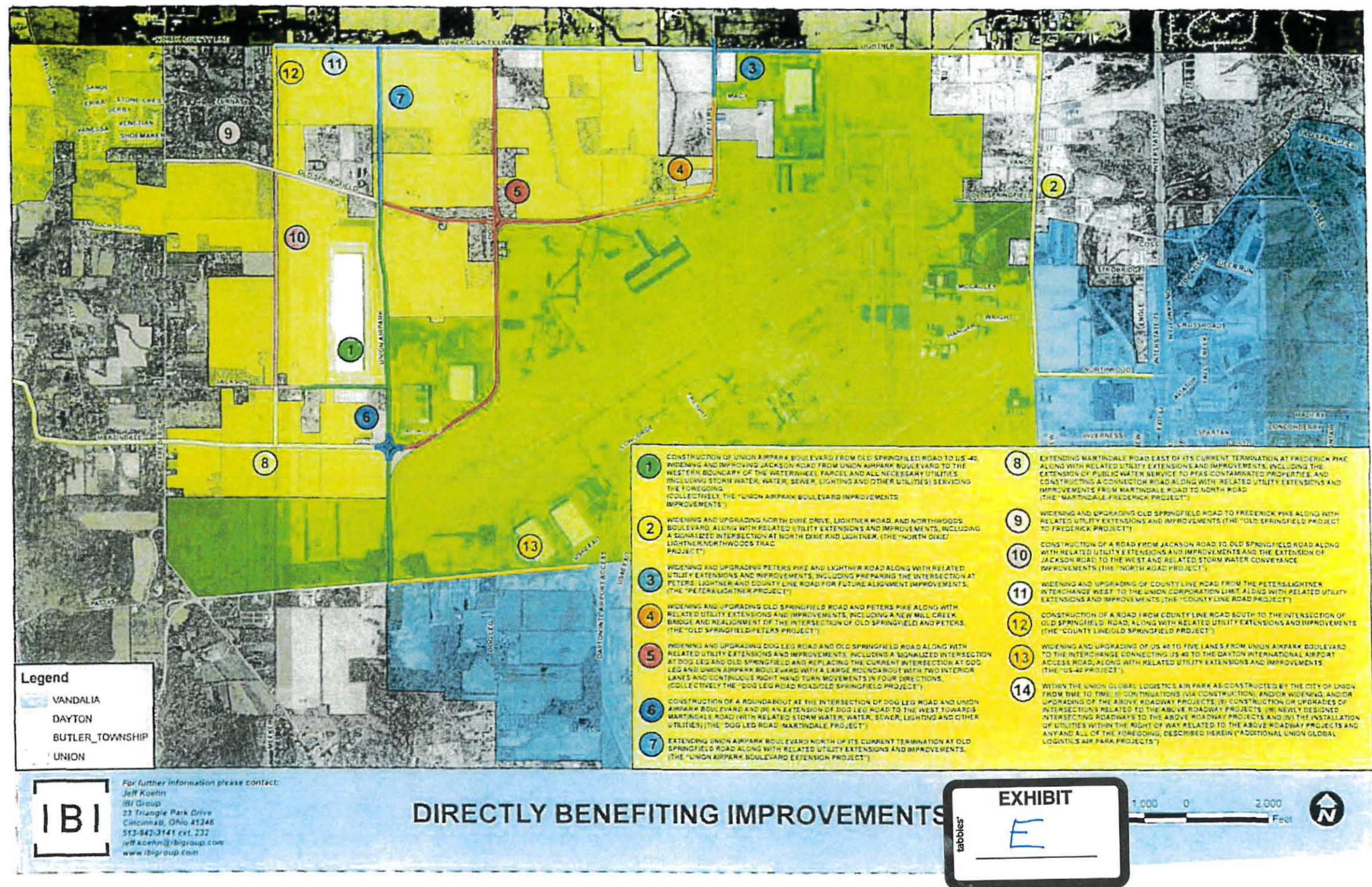


Exhibit D

Declaration of Covenants

3877628.9

DECLARATION OF COVENANTS AND IMPOSITION OF CONTINUING PRIORITY LIEN

This DECLARATION OF COVENANTS AND IMPOSITION OF CONTINUING PRIORITY LIEN (this “***Declaration***”) is made by Stream’s Edge Properties, LLC, an Ohio limited liability company (the “***Declarant***”), whose address is 5450 Poe Avenue, Suite 311, Dayton, Ohio 45414, which, for good and valuable consideration, the receipt of which is hereby acknowledged, including, without limitation, the undertaking by the City of Union, Ohio (the “***City***”), with its principal offices at 118 North Main Street, Union, Ohio 45322, to provide funding for public infrastructure improvements to support the development of the Property (as hereinafter defined) and public infrastructure improvements serving the Property, pursuant to and as further described in the Project Dayton Freight Development Agreement by and between the Declarant, the City and the Montgomery County Transportation Improvement District effective as of the [REDACTED] day of [REDACTED], 2025 makes the covenants set forth herein and encumbers the following real property:

Situated in the City of Union, Montgomery County, Ohio, and being more particularly described in **Exhibit A** attached to this Declaration and made a part hereof (the “***Parcel***”).

TOGETHER WITH any of the following items either now or in the future located on, affixed to, used in the operation of, or otherwise benefiting the land (or any part of the land) described above: all buildings, structures and improvements; all fixtures used in the operation of the real estate; all easements, rights-of-way, licenses, privileges and other appurtenances; and all proceeds thereof (collectively, the “***Property***”).

The City acknowledges that the Declarant or its successors or assigns may from time to time subject the Property to one or more mortgages subordinate to this Declaration that secure the debt or other obligations of the Declarant.

The Declarant acknowledges and agrees that the Parcel will directly benefit from access to and use of certain Directly Benefitting Improvements, all as identified on **Exhibit B** attached hereto (the “***Directly Benefitting Improvements***”), and the Declarant hereby expressly acknowledges that the Directly Benefitting Improvements will directly benefit the Parcel as contemplated pursuant to the ORC Section 5709.40 and other statutory provisions, and that the Service Payments shall be used to pay debt service, refinance and/or maintain the Directly Benefitting Improvements to provide, among other things: (i) a unified approach to traffic co-ordination throughout the Union Global Logistics Air Park (the “***Park***”) allowing for the effective

use of the Park by Declarant, its anticipated tenant and future owners and future tenants and such entities respective suppliers, customers and employees, (ii) providing certain traffic and other safety features, and (iii) providing certain amenities and benefits to the anticipated tenant and future owners and future tenants and their employees.

The City and the Declarant agree that it is necessary and appropriate and in the best interests of the City and the Declarant to provide for each entity that owns or becomes an owner of the Parcel (each an “**Owner**,” and if the Parcel is split as provided below and there are multiple owners, the “**Owners**”) to make the payments described in this Declaration.

The Declarant and City further covenant as follows:

SECTION 1. Service Payments. The Owner will make the service payments in lieu of taxes (the “**Service Payments**”) for the Parcel it owns attributable to its period of ownership of the Parcel (including, without limitation, any unpaid amounts at the time the Owner acquired the Parcel) pursuant to and in accordance with the requirements of Ohio Revised Code (“**ORC**”) Sections 5709.40, 5709.42 and 5709.43 (the “**TIF Act**”) and the City Ordinance No. 1758 adopted by City Council on September 12, 2022, and specifically referencing the Parcel (the “**TIF Ordinance**”).

If the Parcel is split into multiple tax parcels (each a “**Parcel**” hereunder) the Service Payments due after the split shall be allocated based on the assessed valuation of the resultant Parcel as determined by the Montgomery County, Ohio Auditor (the “**Auditor**”), and prior thereto, (during such time as the assessed valuations are not complete and in effect), the Service Payments shall be allocated by the Owner of the Parcel immediately prior to such split among the resultant Parcels; provided, however, the applicable Owner must submit its proposed allocation of Service Payments to the City for its approval, which approval shall not be unreasonably withheld, conditioned or delayed. If the applicable Owner does not propose an allocation, or if the City does not approve the applicable Owner’s proposed allocation by the 35th day preceding the next date such Service Payments are due, the City’s reasonable estimate of the relative assessed valuations of the Parcels shall apply. Absent manifest error, and for any period or part thereof prior to such time as the assessed valuations are completed by the Auditor and are in effect, any allocation and determination in accordance with this Section will be final and binding on all Owners of the Parcels. The Owner will cooperate with the City to cause any allocation created pursuant to this Section to be filed with the Montgomery County, Ohio Recorder (the “**Recorder**”) within 30 days after the allocation.

The Service Payments for the Parcel (including any penalties and interest) will be made in accordance with the requirements of the TIF Act and the TIF Ordinance and 100% of the increase in assessed value of the Parcel subsequent to the effective date of the TIF Legislation (which increase in assessed value is hereinafter referred to as the “**Improvement**” as defined in the Revised Code Section 5709.40(A)) is declared to be a public purpose and will be exempt from taxation in accordance with the Revised Code Section 5709.40(B) for a period commencing with the first tax year that begins after the effective date of the TIF Legislation and in which an Improvement attributable to a new structure on the Parcel first appears on the tax list and duplicate of real and public utility property for the Parcel and ending on the earlier of: (a) the exemption period provided in the TIF Legislation as enacted, or amended, if applicable, or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the Revised Code and the TIF Legislation (the “**TIF Exemption Period**”), after credit for: (i) the CRA Exemption (defined below) on New Structure Improvements (defined below) and (ii) any other payments received by the City under ORC Sections 319.302, 321.24, 323.152 and 323.156, or any successor provisions thereto, as the same may be amended from time to time had the exemption granted by the TIF Ordinance not been granted.

The Parcel is included within that certain Community Reinvestment Area identified with the Ohio Development Services Agency as Community Reinvestment Area 2 (Zone No: 113-78470-01) and certified as of March 9, 1981, pursuant to which upon acquisition by Declarant, the assessed valuation of each new structure on such Parcel (“**New Structure Improvement**”) shall be exempt from taxation as follows: 100% of the assessed valuation of each New Structure Improvement for the first fifteen year period commencing for each New Structure Improvement on the first day of the first tax year after completion of the New Structure Improvement (the “**CRA Exemption Period**”), with each such exemption being sometimes referred to herein as a “**CRA Exemption**”, and all obligations hereunder shall be subject to the Declarant’s rights in connection with such CRA Exemption.

The underlying value of the Parcel unrelated to increases in value resulting from the Improvements (including the New Structure Improvements) will not be deemed an Improvement under the TIF Legislation and will be subject to normal real property taxation. Any increases in value of the Parcel (the “**Land-Based Valuation Increase**”) will be deemed an Improvement under the TIF Legislation and will be subject to the an Owner’s obligation to pay Service Payments with respect to 100% of the Land Based Valuation Increase during the entire TIF Exemption Period. Upon expiration of the CRA Exemption Period, the Owner shall be obligated to pay Service

Payments with respect to 100% of the New Structure Improvements during the remainder of the TIF Exemption Period

The Service Payments, when due, must be made semiannually to the Treasurer of Montgomery County, Ohio (or to such county treasurer's designated agent for collection of the Service Payments), on or before the date on which real property taxes would otherwise be due and payable for the Parcel. Any late payments will bear penalties and interest at the then current rate established under ORC Sections 323.121 and 5703.47 or any successor provisions thereto, as the same may be amended from time to time.

SECTION 2. Binding Nature of Obligations; Additional Obligations. The Owner's obligations under this Declaration, including without limitation its obligation to make Service Payments, are absolute and unconditional covenants running with the land and are binding and enforceable by the City, and the Owner shall make all Service Payments without abatement, diminution or deduction (except as provided under the CRA Exemption for the CRA Exemption Period), regardless of any cause or circumstances whatsoever, including, without limitation, any defense, set-off, recoupment or counterclaim which the Owner may have or assert against the City or anyone acting by or on behalf of the City, or damage to or destruction of the Property.

The Declarant, on behalf of itself and each subsequent Owner, agrees that each of its covenants contained in this Declaration, including without limitation the obligation to make Service Payments, is a covenant running with the land and that they will, in any event and without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City against the Property and the Owner, without regard to whether the City has at any time been, remains or is an owner of any land or interest therein to, or in favor of, which these covenants relate. During the term of this Declaration, the Owner will cause all instruments of conveyance of interests in all or any portion of the Property to subsequent mortgagees, successors, lessees, assigns or other transferees to be made subject to this Declaration. The City has the right in the event of any breach of any covenant herein contained that remains uncured after all applicable periods of notice, cure and grace, including without limitation the Owner's obligation to make Service Payments, to exercise all legal and equitable rights and remedies and to maintain all actions or suits at law or in equity as against the Owner and any transferee, successor and assign thereof as may be necessary to enforce the Owner's obligations hereunder, and to maintain all other proper proceedings to which it may be entitled to cure that breach.

The Declarant, on behalf of itself and each subsequent Owner, further agrees that all covenants herein, including without limitation its obligation to make Service Payments, whether or not these covenants are included by the Declarant in any deed to its successors and assigns, are binding upon each subsequent Owner and are enforceable by the City, and that any future Owner of the Property, or any successors or assigns of the Declarant or such Owner, will be treated as an Owner for all purposes of this Declaration.

The Declarant, on behalf of itself and each subsequent Owner, further agrees that its covenants herein, including without limitation its obligation to make Service Payments, will remain in effect so long as the Service Payments can be collected pursuant to the TIF Act, the TIF Ordinance or this Declaration unless otherwise modified or released in writing by the City in a written instrument filed in the Official Records of the Recorder.

The Declarant, on behalf of itself and each subsequent Owner, further agrees that the covenants herein, including without limitation its obligation to make Service Payments, have priority over any other lien or encumbrance on the Property, except for all Permitted Encumbrances and such other title exceptions as are approved in writing by the City, and the Declarant will cause any and all holders of mortgages or other similar liens existing on the Property as of the time of recording of this Declaration to subordinate such mortgage or lien to this Declaration based upon commercially reasonable terms, to the extent such holders of mortgages or liens are not already subordinate by virtue of recording priority. The City and the Owner acknowledge that the provisions of ORC Section 5709.91, which specify that the Service Payments will be treated in the same manner as taxes for all purposes of the lien described in ORC Section 323.11 including, but not limited to, the priority of the lien and the collection of Service Payments, applies to the Property.

At the City's option and at its request, the Owner hereby agrees to provide such title evidence with respect to the Property, at no cost to the City, as is necessary to demonstrate to the City's satisfaction that this Declaration is prior and superior to any other liens, encumbrances or other title exceptions, except for Permitted Encumbrances (as defined in Section 7). The parties hereto agree for themselves and their respective successors, assigns and transferees, to execute any further agreements, documents or instruments as may be reasonably necessary to fully effectuate the purpose and intent of this Declaration to the extent permitted by this Declaration and in compliance with all laws and ordinances controlling this Declaration.

The Owner shall follow the State of Ohio Environmental Protection Agency storm water best management provisions in effect as of the date hereof, and as amended from time to time, for

the discharge of storm water with respect to the Parcel owned by the Owner, including appropriate retention ponds or detention basins and other facilities that will support the retention and/or detention of storm water resulting from the construction of public infrastructure that benefits the Parcel (collectively the “***Storm Water Management Obligations***”).

The Owner shall pay an “***Allocable Lighting Cost Share***” for each calendar year which shall be established by the City pursuant to a mechanism determined by the City, which may include the following: (x) identifying the electricity usage costs for electrical power for the street lighting located within the Park for such calendar year (the “***Annual Usage Cost***”), (y) dividing the Annual Usage Cost by the total then assessed property value per parcel (as determined by the Auditor or if no such determination has then been made by the Auditor with respect to a parcel, as reasonably determined by the City) (each a “***Parcel Assessment***”) of all parcels located within the Park that have substantially completed vertical commercial improvements on such parcels within the Park to determine an “***Annual Usage Cost per Dollar of Assessment***”, and (z) multiplying the Annual Usage Cost per Dollar of Assessment by the Parcel Assessment for the Parcel and providing an invoice to Owner for its period of ownership of the Parcel.

SECTION 3. Exemption Applications. The City shall prepare, and the Owner, after its review and approval, which will not be unreasonably withheld, conditioned or denied, will file all applications for real property tax exemption together with other required documents and information with the appropriate officials of the State of Ohio and Montgomery County as required to effect and maintain during the term of this Declaration the exemption from real property taxation as provided by the TIF Ordinance. The City agrees to cooperate and to execute those further documents and provide that further information as are reasonably required in connection therewith. The Owner will continuously use commercially reasonable efforts to keep the exemption under the TIF Ordinance in force, not permitting the same to lapse or be suspended or revoked for any reason within the Owner’s reasonable control.

The Owner shall not file an application for real property tax exemption as to any Parcel under any provision of law other than pursuant to the TIF Ordinance without the express prior written consent of the City. In the event that the Owner fails to timely file any application for real property tax exemption required by ORC Section 5709.911, the Owner’s execution of this Declaration, and any subsequent Owner’s acceptance of the conveyance of any of the Property, shall be deemed to constitute the Owner’s written consent to an application filed by the City in accordance with ORC Section 5709.911.

SECTION 4. **Maintenance of TIF by City.** The City will not, so long as this Declaration remains effective and without the consent of the Owner:

- (a) claim or assert in any administrative or legal proceeding (including, without limitation, by filing or amending an exemption application) that any portion of the Property is exempt from real property taxation under any authority other than the TIF Ordinance (including, without limitation, the relevant portions of the TIF Act);
- (b) claim or assert in any administrative or legal proceeding that the Owner is required to pay Service Payments with respect to any portion of the Property under any authority other than the TIF Ordinance (including, without limitation, the relevant portions of the TIF Act);
- (c) collect any payments in lieu of taxes with respect to a Parcel pursuant to any legislation other than the TIF Ordinance and this Declaration; or
- (d) amend or repeal the TIF Ordinance in any way that would reduce the length or percentage or exemption granted thereunder.

SECTION 5. **Default; Remedies.** The following are defaults under this Declaration (provided, however with respect to defaults by an Owner: (i) such default shall only be a default with respect to the defaulting Owner and (ii) any remedy with respect to such default may be imposed only upon such Owner and the Parcel or portion thereof that is owned by such Owner at the time of the default):

- (a) the failure of the Owner to pay on its due date any Service Payment, or any installment thereof, including any applicable late payment charges, which failure continues for more than thirty (30) days following delivery of a written notice of default thereof by the City;
- (b) the failure of the Owner to perform or observe any other material covenant made by it in this Declaration, which failure continues for more than thirty (30) days following delivery of a written notice of default thereof by the City;
- (c) The failure by the City to observe its covenants set forth in Section 4;
- (d) the failure of the City to perform or observe any other covenant made by it in this Declaration, which failure continues for more than thirty (30) days following delivery of a written notice of default thereof by the Owner;

(e) the filing by the Owner of a petition for the appointment of a receiver or a trustee with respect to it or any of its property;

(f) the entry of an order for relief pursuant to any Chapter of Title 11 of the U.S. Code, as the same may be amended from time to time, with the Owner as debtor; or

(h) the filing by the Owner of an insolvency proceeding with respect to itself or any proceeding with respect to the Owner for compromise, adjustment or other relief under the laws of any country or state relating to the relief of debtors.

The provisions of this Declaration may be enforced, alone or together, to the fullest extent permitted by law, against the defaulting party by the City or the Owner. As the remedy at law for the breach of any of the terms of this Declaration may be inadequate, each enforcing party has a right of temporary and permanent injunction, specific performance and other equitable relief that may be granted in any proceeding brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. The waiver of any default by a party does not constitute a waiver by all parties or a waiver of other defaults. All rights and remedies granted herein are cumulative, non-exclusive and in addition to any and all rights and remedies that City or the Owner may have or may be given by reason of any law, statute, or otherwise, and no failure to exercise or delay in exercising any remedy shall effect a waiver of such party's right to exercise such remedy thereafter.

It is the further intention and agreement of the Declarant, as owner of fee title to the Property and on behalf of all future Owners (with respect to the portion of the Property owned by such future Owner(s)), that this Declaration constitutes and be deemed to be a lien encumbering and running with the Property to secure the obligations of the Owner (with respect to the portion of the Property owned by such Owner, such that if an Owner of a portion of the Property fails to make a Service Payment, then lien rights related to such failure may only be enforced with respect to that portion of the Property owned by the subject Owner at the time of its failure to make a required Service Payment), to make Service Payments (and, if applicable, pay interest and penalties) and perform other obligations under this Declaration, and is intended to have the same lien rights as real estate taxes and the same priority, and the Owner will not contest those lien rights or priority. In furtherance of the foregoing, the City may, upon an Owner's default of its obligations, and without limiting any other right or remedy otherwise available to the City, foreclose upon that lien (with respect to the portion of the Property owned by such Owner), pursuant to the procedures and requirements of Ohio law relating to either mortgages, liens or delinquent real estate taxes, and the Owner will not contest the validity of any such lien or

procedures; provided, however, that the Owner shall have at least one hundred twenty (120) days' prior notice and the ability to cure (within such notice period), the underlying failure prior to the foreclosure of such lien.

Notwithstanding anything herein to the contrary, no partner, equity interest holder, employee, officer, member (in each case, existing now or in the future) of (directly or indirectly) the Declarant (or of any Owner of any portion of the Property), shall have any personal liability or obligations arising in connection with this Declaration, and neither Declarant nor any Owner of any portion of the Property shall be liable to any third-party asserting a claim pursuant to this Declaration, and neither Declarant nor any Owner of any portion of the Property shall be liable for any for any special, punitive or consequential damages in connection with this Declaration.

SECTION 6. **Eminent Domain**. If title to or the temporary use of the Property or any part thereof shall be taken under the exercise of the power of eminent domain, the Owner must promptly give or cause to be given written notice thereof to the City describing the nature and extent of such taking, except in the event the City is the cause of such taking.

SECTION 7. **Taxes, Assessments and Liens**. The Owner will pay, when due, (i) all taxes, assessments and levies of every type or nature levied or assessed against the Property as and when they are due and payable, and (ii) any claim, lien or encumbrance against the Property prior to or on parity with the lien of this Declaration, other than the Permitted Encumbrances. The Owner may contest the amount or the payment of any such tax, assessment, levy, claim, lien or encumbrance in good faith by an appropriate proceeding.

For purposes of this Declaration, the term "***Permitted Encumbrances***" means: (a) all legal highways; (b) any matters of record as of date this Declaration is recorded in the office of the Recorder; (c) all zoning and building laws, ordinances, and regulations; and (d) all real estate taxes and assessments not yet due and payable.

If the Owner fails to pay, when due, any claim, lien or encumbrance that is prior to or on parity with this Declaration, other than the Permitted Encumbrances, or any tax, assessment, or levy, and if any such failure or condition is not cured within 30 days after written notice from or on behalf of the City to the Owner (except that no notice or cure period is required if the action is necessary to protect the security of this Declaration), then the City, at its option, may pay the claim, lien, encumbrance, tax, assessment, or levy and any penalty or interest on the same. The defaulting Owner must pay to the City, within 10 days after written demand, all sums of money advanced by

the City under the provisions of this Paragraph, together with interest on each advance at the rate of ten percent per year. All such advances and interest on the same will be immediately due and are secured by this Declaration.

SECTION 8. **Notices.** Any notice required or permitted to be given to the Owner or the City is deemed given if mailed by certified or registered United States mail, postage prepaid, addressed to the applicable party at its address first set forth above in this Declaration. Each of the Owner and the City may, from time to time, change its notice address by giving written notice to the other party at that party's then current notice address, in accordance with the provisions of this Section.

SECTION 9. **Duration of Declaration; Termination.** The provisions of the Storm Water Management Obligations and the Allocable Lighting Cost Share (the "*Surviving Terms*"), shall survive until such time as the City and the Declarant agree in writing to terminate such Storm Water Management Obligations or such Allocable Lighting Cost Share (as applicable) and record the same with the Recorder. This Declaration is effective on the date that it is executed and delivered to the City. Except with respect to the Surviving Terms, this Declaration shall automatically terminate upon the expiration of the real property tax exemption provided by the TIF Ordinance, as the same may be amended pursuant to the TIF Act, for that Parcel (or portion thereof). This Declaration will survive any foreclosures, bankruptcy, or lien enforcement proceedings. Upon the termination of this Declaration as to any Parcel with respect to any of the foregoing, and upon the request of the Owner, the City will execute and deliver to the Owner those documents and instruments as the Owner reasonably requests to evidence the termination.

SECTION 10. **Reporting Requirements.** During each year that the tax exemptions granted pursuant to the TIF Ordinance remain in effect, the Owner agrees to use reasonable efforts to provide within 30 days following notice from the City, the information that is required to be provided in any reports that the City actually files with the Director of the Ohio Development Services Agency in accordance with the TIF Act.

SECTION 11. **Severability.** Any provision of this Declaration that is prohibited or unenforceable is ineffective only to the extent of the prohibition or unenforceability, without invalidating the remaining provisions.

SECTION 12. **Estoppel Certificate.** The City covenants that within fifteen days of receiving a written request from the Owner it will deliver to the Owner an estoppel certificate

certifying as to the status of the obligations secured hereby, in such reasonable detail as the Owner may request.

SECTION 13. **Interpretation; Amendments.** Any reference to a section or provision of the Constitution of the State of Ohio, or a section, provision or chapter of the ORC includes the section, provision or chapter as modified, revised, supplemented or superseded from time to time; *provided*, that no amendment, modification, revision, supplement or superseding section, provision or chapter will be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of any party under this Declaration. No presumption will apply in favor of any party in the interpretation of this Declaration or in the resolution of any ambiguity of any provision hereof. Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder” and similar terms refer to this Declaration; and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Declaration. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Declaration, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Declaration. The Declaration may not be amended except by written instrument executed by the City and (with respect to each applicable portion of a Parcel), the then applicable Owner and recorded in the office of the Recorder; any other purported amendment is void.

SECTION 14. **Governing Law.** This Declaration is made under the laws of the State of Ohio and is for all purposes governed by and construed in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes, and other matters in question among the parties, their respective agents, and employees arising out of or relating to this Declaration or its breach must be filed and decided in a court of competent jurisdiction within Montgomery County, Ohio.

SECTION 15. **Waiver of Jury Trial.** THE OWNER AND THE CITY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS DECLARATION, ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER DOCUMENT EXECUTED IN CONNECTION WITH THIS DECLARATION.

SECTION 16. **Counterparts; Captions.** This Declaration may be executed in counterpart, and in several counterparts, each of which is an original and all of which constitute

one and the same Declaration. Captions have been provided herein for convenience only and do not affect the construction or interpretation of this Declaration.

This Instrument Prepared By:

Beverly F. Shillito

Sebaly Shillito + Dyer, a legal professional association

220 E. Monument Ave, Suite 500

Dayton, Ohio 45402

EXECUTED this ____ day of _____, 2025.

DECLARANT:

STREAM'S EDGE PROPERTIES, LLC

An Ohio limited liability company

By: _____

Name:

Title:

STATE OF _____)
) ss:
 COUNTY OF _____)

On this ____ day of _____, 2025, before me, a notary public in and for said County, personally came _____, the _____ of Stream's Edge Properties, LLC on behalf of Stream's Edge Properties, LLC in the foregoing Agreement, and acknowledged the signing thereof to be his voluntary act and deed.

Witness my official signature and seal on the day and year last above written.

 Notary Public

ACCEPTED AND AGREED:

CITY OF UNION, OHIO,
an Ohio municipal corporation

By: _____
John P. Applegate, City Manager

Approved as to form:

City Law Director

**MONTGOMERY COUNTY
TRANSPORTATION IMPROVEMENT DISTRICT
RESOLUTION NUMBER 2025-38**

**RESOLUTION APPROVING THE EXECUTIVE DIRECTOR TO NEGOTIATE AND ENTER INTO A
PROJECT MANAGEMENT AND FINANCING AGREEMENT WITH THE CITY OF UNION FOR
OLD SPRINGFIELD ROAD/PETERS PIKE IMPROVEMENT PROJECT**

WHEREAS, the Board of Trustees ("Board") of the Montgomery County Transportation Improvement District ("TID") and the City of Union, Ohio ("Union"), by action of Resolution 2021-29 authorized the 2021 City of Union Projects Agreement identified certain projects for the development and construction in anticipation of various infrastructure improvement projects to support economic development within Union and encourage public and private development in Union; and

WHEREAS, by action of Resolution 2025-37, the Union and the TID intend to enter into the Dayton Freight Development Agreement for the Old Springfield Road/Peters Pike Improvement Project ("Project") to memorialize their respective tasks including the design, engineering, financing, and construction; and

WHEREAS, Union desires to engage the TID in order to support the Project and enter into a Project Management & Financing Agreement ("PMFA") to memorialize each party's respective rights and obligations with respect to such financing and/or construction for the Project, including those memorialized in the Dayton Freight Development Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Trustees of the Montgomery County Transportation Improvement District that the Executive Director be approved to negotiate and execute the attached Old Springfield Road/Peters Pike Improvement Project Management & Financing Agreement with Union.

BE IT FURTHER RESOLVED by the Board that the Executive Director be and is hereby authorized to negotiate and execute the agreement, incorporating changes that may be required in final negotiations with Union, provided that the Executive Director and the General Counsel determine that such changes are not detrimental to the TID or the project.

BE IT FURTHER RESOLVED, by the Board that copies of this resolution be provided to the Executive Director, Secretary/Treasurer, Finance Director, TID's General Counsel, and City of Union.

Adopted the 8th day of May, 2025.

Chairperson, Montgomery County Transportation Improvement District

Attest: _____
Secretary/Treasurer

OLD SPRINGFIELD ROAD/PETERS PIKE IMPROVEMENT PROJECT MANAGEMENT AND FINANCING AGREEMENT

THIS OLD SPRINGFIELD ROAD/PETERS PIKE IMPROVEMENT PROJECT MANAGEMENT AND FINANCING AGREEMENT (this “**Agreement**”) is made and entered into as of this ____ day of _____ 2025 (the “**Effective Date**”), by and between the **CITY OF UNION, OHIO**, an Ohio municipal corporation (the “**City**”) and the **MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT**, a transportation district and body corporate and politic duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “**TID**”, and together with the City, the “**Parties**”) under the following circumstances:

- A. On or about May 10, 2021, the Parties entered into that certain 2021 Union Projects Agreement (the “**Projects Agreement**”), whereby the Parties: (i) identified certain projects for the construction and development of streets, highways, interchanges and other infrastructure improvements for areas within the City to encourage public and private development in the City, and to enhance the viability of development within the City generally (the “**Identified Projects**”); and (ii) set forth a framework for the joint planning, financing, construction, acquisition, improvement and implementation of the Identified Projects;
- B. The Identified Projects include the Old Springfield Road/Peters Pike Improvement Project, which comprises the following (which are collectively referred to as the “**Project**” for the purposes of this Agreement): (i) the widening and upgrading of approximately 2,000 linear feet of Old Springfield Road (the “**Road Project**”); (ii) certain water, sanitary sewer, lighting and other utilities servicing the Road Project, and (iii) acceptance and conveyance of storm water resulting from the construction of the Road Project and other adjacent detention basins.
- C. The Parties intend to enter into that certain Project Dayton Freight Development Agreement (the “**Development Agreement**”) pursuant to which the Parties intend to design, engineer, finance and construct the Project;
- D. The Projects Agreement provides that to the extent the Parties mutually desire to proceed to finance and/or construct an Identified Project, the Parties will negotiate and enter into a Project Management and Financing Agreement to set forth their respective rights and obligations with respect to such financing and/or construction (a “**PMFA**”); and
- E. The Parties desire to accomplish the Project by entering into this Agreement as a PMFA pursuant to the Projects Agreement and to set forth in more detail each of their respective obligations with respect to the Project, and therefore, the City, and the TID, acting pursuant to Resolution No. 2025-____ adopted by its Board of Trustees on _____, have each authorized the execution of this Agreement.

NOW, THEREFORE, in consideration of the above, and based upon the mutual promises contained below, the Parties agree to the foregoing and as follows:

1. **The Project.** The Parties hereby agree to cooperate to design, construct, and finance the Project as set forth in this Agreement. Subject to the terms and conditions of this Agreement, and based upon: (A) the powers of the TID pursuant to Chapter 5540 of the Revised Code; and (B) the City's obligations in this Agreement, the TID will let, manage, supervise, finance and construct the Project and enter into such consulting, design, engineering, construction and other contracts as necessary or helpful in fulfilling the TID's obligations under this Agreement. Throughout the construction of the Project, the TID will cooperate with the City, respond to requests from the City and keep the City apprised of the TID's progress with respect to the Project. Subject to the terms and conditions of this Agreement, the TID will deliver the Project on a turnkey basis.

2. **Project Scope.** A visual depiction of the scope of the Project is set forth in Exhibit A attached hereto (the "**Scope**"). The Parties acknowledge that they may further refine the Scope or add additional tasks to the Scope during the course of the development of the Project. To the extent the City desires to provide for the design, engineering, right-of-way acquisition, financing, and/or construction of an extension to the Road Project so that Old Springfield Road and/or Peters Pike are improved (together with related utilities) beyond the eastern terminus of the Road Project (the "**Eastern Expansion Project**"), and the Parties mutually desire for the TID to assist with the Eastern Expansion Project, the Parties will negotiate and enter into an amendment to this Agreement to memorialize the Parties' respective rights and obligations related thereto.

3. **Project Schedule.** The schedule for the Project is set forth in Exhibit B attached hereto (the "**Schedule**"). The Parties agree to use their reasonable commercial efforts to adhere to the Schedule and to fulfill all their obligations under this Agreement so the Schedule is met.

4. **Project Budget.**

A. The budget for the Project is set forth in Exhibit C (the "**Budget**"). The Parties acknowledge that they may further develop or modify the Budget during the course of the development of the Project by amending the Budget in a writing executed by all Parties. The City acknowledges that the Budget contains, and the City hereby grants the TID the right to retain, a fee as compensation to the TID for the TID's services related to the Project (the "**TID Management Fee**").

B. The City will fulfill its payment obligations hereunder and as set forth in the Budget by timely paying the amounts of such obligations (including amounts related to any contingencies) to the TID, including any necessary advances with respect thereto (less fees payable to the TID) in a segregated fund for the benefit of the Project (the "**Fund**") and the TID will use the Fund solely to accomplish the Project. Within forty five (45) days after construction of the Project is completed, the TID will deliver the balance of the Fund, if any, to the City.

C. Notwithstanding anything in this Agreement to the contrary, the TID will not be obligated to provide for any products or services related to the Project in excess of

the funds actually received by the TID from the City or third party funding sources, less the TID Management Fee.

5. Funding for the Project.

A. In General. As a general matter, the City will be obligated to fund all amounts necessary to complete the Project in a timely manner so as to maintain the Schedule, whether via a borrowing or alternative source of funds. Without limiting the foregoing, the City will be responsible to fund the amounts set forth in the Budget in excess of the funds received from third parties.

B. Utilization of Funds. The TID will determine, with the consultation of the City, the method and sequencing of the utilization of funds available to the TID for the Project, with the goals of achieving efficient fund allocation and maximization of reimbursement from third party sources.

6. Project Construction. The following provisions will apply to the design and construction of the Project:

A. *Contracting*. The TID will enter into contracts or otherwise arrange for the provision of all products and services necessary to complete the design and construction of the Project in accordance with the TID's policies with regards to procurement (collectively, the "**Contracts**"). The Contract with the general contractor of the Project shall include language as required by the Development Agreement that the Contract shall include third party beneficiary rights for the benefit of Streams Edge Properties LLC and Dayton Freight Lines, Inc. (collectively the "**Benefitted Parties**") to seek remedies for costs incurred by the Benefitted Parties as permitted in any applicable remedies provision of the Development Agreement related to a "Public Infrastructure Completion Default" as defined in the Development Agreement, all subject to any limitations of liability protecting the general contractor or any third party as specifically provided for in the Contract or under Ohio law.

B. *Work under the Contracts*. During construction, the TID, in co-ordination with the City, will inspect and determine whether the work done under the Contracts is sufficient and completed in accordance with the Contracts.

C. *Performance Bonds and Contractor Insurance Requirements*. The TID will require any contractors submitting a quote to supply a bond and the selected contractor to provide a performance bond and a separate payment bond (or other alternatives acceptable to the TID) in the full amount of the construction cost estimate. The TID will also require that the selected contractor have and maintain a commercial and general liability insurance policy with minimum coverage amounts of at least \$2,000,000 per occurrence with a deductible of not more than \$10,000. The TID will also require that each selected contractor and each subcontractor maintain during the life of its contract and subcontract, workers compensation insurance pursuant to Ohio law, public liability insurance with minimum coverage amounts of \$2,000,000 per occurrence, and property damage insurance with minimum coverage amounts of \$2,000,000 per

occurrence. The TID may impose additional insurance obligations upon the contractor in the TID's discretion or as required by any funding source for the Project. All such policies will name the City as additional insured via broad form endorsement on a primary and non-contributory basis, and will be issued by carriers with a *Best's Insurance Reports* policyholder's rating, to the extent commercially reasonable, of "A" (but in any event, not less than "A-") and a financial size category of "X" or better. All policies will contain provisions for thirty (30) days' written notice to the TID prior to expiration or cancellation.

D. *Project Supervision.* All activities related to the Project will be performed under the general supervision and direction of the TID and in co-ordination with the City. The TID, in co-ordination with the City, will provide inspection and monitoring activities sufficient to ensure compliance with the Scope, all written specifications for the Project, and any Contracts.

E. *Contract Administration.* The TID, in co-ordination with the City, will administer all Contracts including monitoring the performance of all parties under the Contracts. The TID, in co-ordination with the City, will work to resolve any disputes, complaints or claims related to the Contracts. The TID will administer all change orders under any of the Contracts. The TID will maintain all required documentation for the Contracts including all change orders.

F. *Payments.* The TID will pay all third party invoices for services performed or goods supplied for the Project so long as the services performed or goods provided pursuant to such invoice are satisfactory and such invoices are within the Budget. The TID will keep the City apprised of the progress of the Project as compared to the Budget at the Progress Meetings and will provide the City such supporting information as reasonably requested on a timely basis.

G. *Construction Completion.* The TID, in co-ordination with the City, will conduct a final inspection of the construction of the Project when the contractor indicates that the construction has been substantially completed. The TID will determine the need for any corrective or additional work and create the punch list detailing the additional work. The TID will provide the punch list to the contractor (and any applicable subcontractors) in writing along with a specified time frame or specified date for completion of the prescribed work. Upon final completion of construction of the Project, the TID will arrange for obtaining all necessary approvals/consents from any regulatory bodies (the "Consents"). Upon completion of the punch list and obtaining the Consents, the construction of the Project will be completed.

H. *Insurance.* The TID will obtain and maintain comprehensive general accident and public liability insurance with coverage limits in the minimum amounts as to death or bodily injury and as to property damage with respect to the Project and its construction in amounts the TID will determine from time to time. The TID will provide to the City, upon request, certificates of insurance or other evidence reasonably satisfactory to the City that the insurance required hereunder has been obtained and in full force and effect.

7. **Progress Meetings.** During the course of the Project, the Parties agree to meet weekly to discuss the progress of the Project (the “**Progress Meetings**”). The Progress Meetings will take place in person or electronically. In addition to the foregoing, the TID may periodically submit information updates to the City detailing progress achieved. The Parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements.

8. **City Obligations.** The City will throughout the performance of this Agreement perform the activities provided for in this Agreement, cooperate and coordinate with and assist the TID, join with the TID in signing and granting any applications or permits or other documents necessary to complete the Project. The City will perform its responsibilities, obligations, and services, including reviews and approvals of the TID’s submissions and recommendations, in a timely manner so as not to delay or interfere with the TID’s performance of its obligations under this Agreement or to have a negative impact on the Schedule.

9. **Notices.** All notices hereunder will be in writing and will be deemed to have been duly given if delivered by hand or mailed by certified mail, postage prepaid and addressed as follows:

If to the City:	City of Union, Ohio 118 North Main St. Union, Ohio 45322 Attention: City Manager
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If to the TID:	Montgomery County Transportation Improvement District 451 W. Third St., 10 th Floor Dayton, Ohio 45422 Attention: Executive Director
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The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent.

10. **Disclaimer of Warranties/Limitation of Liability.** **THE CITY AGREES THAT THE TID DOES NOT GUARANTEE OR WARRANT THE SERVICES OR THE COMPLETION OF THE PROJECT. THE SERVICES ARE PROVIDED ON AN “AS IS” BASIS. THE TID DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IN NO EVENT WILL THE TID BE LIABLE OR RESPONSIBLE TO THE CITY FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE AND LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER ANY THEORY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO**

EVENT WILL THE TID'S TOTAL LIABILITY HEREUNDER EXCEED THE FEES (NOT INCLUDING ANY FEES PAID TO THE TID TO REIMBURSE THE TID FOR EXPENSES INCURRED BY THE TID INCLUDING WITHOUT LIMITATION UNDER ANY CONTRACT) ACTUALLY COLLECTED BY THE TID.

11. **Fiscal Officer Certification.** The Fiscal Officer of the City hereby certifies that the monies required to meet the obligations of the City during the current fiscal year under this Agreement have been appropriated lawfully for that purpose, and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Pursuant to Section 5705.44 of the Ohio Revised Code, the Fiscal Officer of the City covenants that any requirement herein of an expenditure of City monies in any future fiscal year will be included in the annual appropriation measure for that future fiscal year as a fixed charge. The certifications in this Section 11 are given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

12. **Construction and Interpretation.** No Party will be deemed to be the draftsman of this Agreement, and it will not be interpreted or construed in favor of or against any Party. Words in the singular will include the plural, and vice versa, and words in the masculine will include the feminine and/or neuter, and vice versa, where the context so requires for a reasonable interpretation of this Agreement. All Exhibits referred to in and attached to this Agreement are incorporated by reference.

13. **Additional Parties to the Agreement.** The Parties agree that additional governmental entities (the "**Additional Parties**") may be added to this Agreement by the unanimous consent of the City and the TID by having such governmental entities enter into an acknowledgement to this Agreement (the "**Acknowledgement**"). Each Acknowledgement will set forth for such Party: (A) the notice information required by Section 9 hereof; and (B) if required, a fiscal officer's certificate pursuant to Sections 5705.41 and 5705.44 of the Ohio Revised Code. Each Additional Party will be deemed to be a Party under this Agreement.

14. **Miscellaneous.** This Agreement and any Exhibit attached hereto may only be amended by written instrument executed by the Parties. All covenants, obligations and agreements of the Parties contained in this Agreement will be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement will be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, agent or employee of any of the Parties other than in their official capacity, and no member of the City Counsel of the City, or TID Board of Trustees, and no City or TID official executing this Agreement, will be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein, and replaces and supersedes all prior agreements. The waiver, by any Party hereof of any breach of any provision of this Agreement will not be construed as, or constitute, a continuing waiver or a waiver of any other breach of any provision

of this Agreement. The headings contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

[Remainder of Page Intentionally Blank. Signature Page Follows.]

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

CITY OF UNION, OHIO

**CITY OF UNION FISCAL OFFICER
(SECTION 11 ONLY)**

John Applegate, City Manager

By:_____

**MONTGOMERY COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT**

Vanessa A. Glotfelter, Executive Director

- 9 -

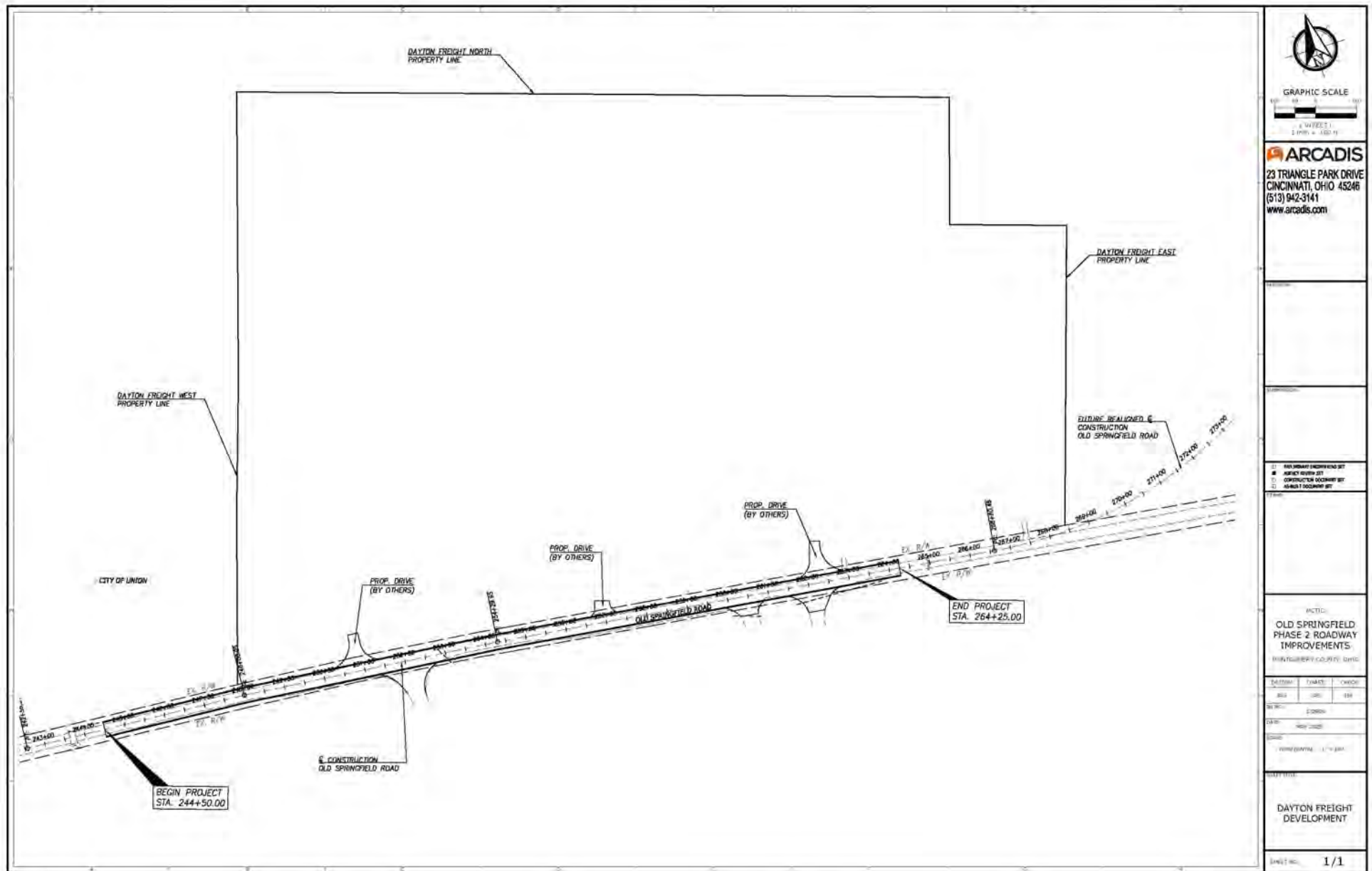


Exhibit B

PROJECT SCHEDULE

Construction shall commence on or before 06/01/2025 and substantially complete on or before 06/01/2026.

*Dates are subject to change based on acquisitions of resources for the project

Exhibit C

PROJECT BUDGET

**OLD SPRINGFIELD ROAD/PETERS PIKE IMPROVEMENT
SOURCES & USES - 5/1/2025**

SOURCES

Dayton Freight Development Agreement	\$	1,000,000	3984966.3
Montgomery County ED/GE Grant	\$	500,000	
City of Union/Other Sources	\$	662,175	
ODOT SIB Loan 230002	\$	<u>437,825</u>	
TOTAL	\$	2,600,000	

USES

Engineering	\$	427,500	
Right-of-Way/Acquisition	\$	-	
Construction & Inspection	\$	2,000,000	
TID Project Management	\$	90,000	10K for Phase 1 + 4% Construction estimated @ \$2M
Legal & Accounting	\$	20,000	
Contingency	\$	<u>62,500</u>	
TOTAL	\$	2,600,000	

**MONTGOMERY COUNTY
TRANSPORTATION IMPROVEMENT DISTRICT
RESOLUTION NUMBER 2025-39**

**RESOLUTION APPROVING BALSBAUGH EXCAVATING CONSTRUCTION AGREEMENT FOR THE
OLD SPRINGFIELD ROAD/PETERS PIKE IMPROVEMENT PROJECT RELATED TO THE DAYTON
FREIGHT DEVELOPMENT AT A COST NOT TO EXCEED \$2,000,000**

WHEREAS, the Board of Trustees ("Board") of the Montgomery County Transportation Improvement District ("TID") and the City of Union, Ohio ("Union"), by action of Resolution 2021-29 authorized the 2021 City of Union Projects Agreement in anticipation of various infrastructure improvement projects to support economic development prospects in Union, including the Dayton Freight Old Springfield Road/Peters Pike Improvement Project ("Project"); and

WHEREAS, the Board, by action of Resolution 2021-32, authorized the selection and engagement of Balsbaugh Excavating ("Balsbaugh") as the lead construction contractor for the projects listed in the 2021 City of Union Projects Agreement; and

WHEREAS, by action of Resolution 2025-38, the Board authorized a Project Management & Financing Agreement with the City of Union to memorialize the responsibilities and commitments for the Project; and

WHEREAS, the Executive Director and Union have negotiated the terms of an agreement with Balsbaugh (1) for the widening and upgrading of approximately 2,000 linear feet , (2) certain water, sanitary sewer, lighting and other utilities, and (3) acceptance and conveyance of storm water resulting from the construction of the Project and other adjacent detention basins; and

NOW, THEREFORE, BE IT RESOLVED, by the Board of Trustees of the Montgomery County Transportation Improvement District that the attached Construction Agreement with Balsbaugh Excavation be and is hereby approved in an amount not to exceed \$2,000,000.00.

BE IT FURTHER RESOLVED, by the Board that the Executive Director be and is hereby authorized to execute the Construction Agreement with Balsbaugh, incorporating such changes that may be required in final negotiations with Balsbaugh, with the concurrence of Union and General Counsel, provided that the Executive Director and the General Counsel determine that the changes are not materially detrimental to the TID or the Project.

BE IT FURTHER RESOLVED, by the Board that copies of this resolution be provided to the Executive Director, Secretary/Treasurer, Finance Director, TID's General Counsel, City of Union, and Balsbaugh Excavating, Inc.

Adopted the 8th day of May, 2025.

Chairperson, Montgomery County Transportation Improvement District

Attest: _____
Secretary/Treasurer

CONSTRUCTION AGREEMENT
BALSBAUGH EXCAVATING, INC.
OLD SPRINGFIELD ROAD/PETERS PIKE IMPROVEMENT PROJECT

THIS CONSTRUCTION AGREEMENT (the “**Agreement**”) is made the ____ day of _____, 2025 (the “**Effective Date**”), by and between **BALSBAUGH EXCAVATING INC.** (the “**Contractor**”), and **MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT** (the “**District**”) on behalf of the **CITY OF UNION** (the “**Local Government**”), under the following circumstances:

A. Contractor is qualified, experienced and willing to provide the Work (as defined in Article II of this Agreement), which relates to the **OLD SPRINGFIELD ROAD/PETERS PIKE IMPROVEMENT PROJECT** (the “**Project**”) identified in the **2021 CITY OF UNION PROJECTS AGREEMENT**; and

B. The District desires to have Contractor perform the Work and Contractor desires to perform the Work as set forth in this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I
The Contract Documents

1.1. For purposes of this Agreement, the “**Contract Documents**” consist of the following, all of which are as fully a part of the Agreement as if attached to this Agreement or repeated herein: (i) this Agreement; (ii) the drawings and specifications provided by the District to Contractor; (iii) the itemized quote attached hereto as **Exhibit A**, including without limitation all related specifications, affidavits and certificates; and (iv) any Change Orders (as defined in Section 6.1 below). In the event of a conflict between the terms or conditions contained in any of the Contract Documents, the parties hereby agree that the provision containing terms most favorable to the District will govern. In the event of a conflict between the terms contained in any of the Contract Documents and anything submitted to the District by Contractor as part of its bid submission, the parties hereby agree that the terms most favorable to the District will govern.

ARTICLE II
The Work

2.1. Contractor shall be responsible for causing all of the construction services to be performed as required of Contractor by the Contract Documents, or reasonably inferable from the Contract Documents as necessary to produce the results intended, and includes all labor, materials, equipment, and services provided or to be provided by Contractor to fulfill Contractor’s obligations under the Contract Documents (the “**Work**”).

ARTICLE III
Contractor’s Duties and Status

3.1. Contractor represents, warrants and covenants with the District to furnish its best skill and judgment and the best skill and judgment of Contractor’s employees in performing the Work, and Contractor has the expertise and experience in performing the Work required hereunder. In all stages

of the Work, Contractor shall cooperate with the District, the Local Government, and each of their respective representatives.

3.2. Contractor represents, warrants and covenants that the Work will be performed and completed in a good and workmanlike manner, and in accordance with the Contract Documents, and Contractor warrants that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise. Contractor agrees that all materials used in connection with the Work will be new and of the best quality of the kind specified unless otherwise approved in writing by the District. Contractor will supervise all Work, whether performed by Contractor or by subcontractors, and any work stoppage, delay, or other problem that arises will be immediately reported to the District.

3.3. Contractor shall be solely responsible to select, qualify, and contract with all subcontractors and suppliers for the Work and Contractor will be fully responsible for all work performed by or materials supplied by such subcontractors and suppliers. All labor shall be performed by workers skilled in their respective trades. Contractor shall only employ and permit the use of such labor as shall not result in jurisdictional disputes or strikes.

3.4. Contractor shall not permit any discrimination against or segregation of any person or group of persons in connection with the performance of this Agreement on account of sex, disability, marital status, age, race, religion, color, creed, national origin, veteran status or ancestry, nor shall Contractor or any subcontractor or any other person claiming under or through Contractor establish or permit any such practice or practices of discrimination or segregation in connection with the performance of this Agreement and Contractor's other obligations under this Agreement. In addition, Contractor will, and will cause its subcontractors to, use its best efforts to ensure that applicants for employment are considered for employment and that employees are treated during employment without regard to their sex, disability, marital status, age, race, religion, color, creed, national origin, veteran status or ancestry as required by applicable Laws (as defined in Section 3.14 below), and incorporate the requirements of this paragraph in all of the respective contracts and subcontracts for the Work; provided, however, that the foregoing shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

3.5. Contractor shall obtain all permits and licenses and pay all fees required by all Laws necessary to permit Contractor to lawfully perform and complete the Work.

3.6. Contractor shall provide and pay for all materials, tools, apparatus, construction equipment, and machinery and all utilities, transportation, and other facilities and service necessary for the proper and safe execution and completion of the Work.

3.7. Contractor agrees that all wages paid to laborers and mechanics employed in connection with the Work will be paid at not less than the required prevailing rates of wages for laborers and mechanics for each class of work called for by the Work, if any. The prevailing wages shall be determined and implemented in accordance with the requirements of Chapter 4115 of the Ohio Revised Code. Contractor further agrees that representatives of the District and the Local Government shall have access to the physical location in which Contractor is to perform the Work (the "**Project Site**"), Contractor's personnel, and all documents pertaining to the Work, in order to verify compliance with this Section 3.7.

3.8. Contractor shall at all times keep the Project Site free from any accumulation of rubbish, debris, and waste. Upon completion of the Work and prior to final payment by the District, Contractor shall thoroughly remedy any defects, and leave the Project Site in a clean and orderly condition.

3.9. Contractor shall permit all persons designated by the District and the Local Government to have complete access to the Project Site for all purposes, including but not limited to, inspecting the progress of the Work, and to determine, in general, if the work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with this Agreement. The District and the Local Government shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the District and the Local Government shall not be construed to create an obligation on the part of the District or the Local Government to make on-site inspections to check the quantity or quality of the Work. Neither the District nor the Local Government shall have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work.

3.10. Contractor shall be responsible for all necessary safety precautions and programs in connection with the Work, including but not limited to providing whatever protection may be necessary to prevent injury to any persons, whether employees or business invitees of the Local Government, the District, or Contractor (including any subcontractor) or other persons, or loss or damage to property of the Local Government, the District, or other persons, including all materials and equipment to be incorporated into the Work, if any.

3.11. Contractor shall procure and maintain, at all times during the term of this Agreement, at its own cost and expense, the insurance coverage and limits set forth in Schedule 3.11. All such insurance shall be placed with insurance carriers licensed to do business in Ohio. Contractor hereby waives any rights of recovery for bodily injury or property damage it may otherwise have had against the District or the Local Government, but only to the extent such loss or damage is covered by the insurance required to be carried by Contractor hereunder (Ohio workers' compensation excepted). Contractor shall ensure its insurers will honor this waiver and shall have such policies endorsed with a waiver of subrogation for the benefit of all such parties.

3.12. Contractor will provide and/or assign to the District, or at the request of the District to the Local Government, all guaranties and warranties applicable to any Work performed or supplies or equipment from subcontractors or material suppliers given to Contractor with regard to the Work.

3.13. Contractor agrees to cooperate with, and keep informed, the District at all times. Contractor agrees that the District shall be the primary point of contact for the Local Government, and all inquiries shall be directed to the District.

3.14. Contractor represents, warrants, and covenants that the Work will be performed in accordance with all applicable federal, state, county, or local laws, codes, ordinances, regulations, and rules (collectively, "Laws").

3.15. Upon completion of the Work, Contractor shall provide the District as-built drawings of all completed Work.

3.16. To guarantee the faithful performance of its obligations under this Agreement, Contractor will, within five (5) business days after the execution of this Agreement by both parties, post a performance and maintenance security in the form of a surety bond(s) in an amount equivalent to one hundred percent (100%) of the Contract Price, which must be callable on demand and issued in the form, substance, and by a surety/insurance company acceptable to the District.

3.17. Contractor represents, warrants, and covenants with the District that Contractor is not in violation of or in conflict with any provisions of the Laws applicable to it that would impair its ability to carry out its obligations contained in this Agreement.

3.18. Contractor represents, warrants, and covenants with the District that Contractor is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. That execution, delivery and performance does not and will not violate or conflict with any provision of Law applicable to Contractor and does not and will not conflict with or result in a default under any agreement or instrument to which it is a party or by which it is bound.

3.19. Contractor represents, warrants, and covenants with the District that this Agreement has, by proper action, been duly authorized, executed and delivered by Contractor and all steps necessary to be taken by Contractor have been taken to constitute this Agreement, and its covenants and agreements contemplated herein, as its valid and binding obligations, enforceable in accordance with their terms.

3.20. Contractor represents, warrants, and covenants with the District that there is no litigation pending or threatened against or by Contractor wherein an unfavorable ruling or decision would materially adversely affect its ability to carry out its obligations under this Agreement.

ARTICLE IV

Time of Commencement and Completion

4.1. Contractor shall commence the Work on or before [_____]. Notwithstanding anything in the Contract Documents to the contrary, Contractor shall achieve Substantial Completion of the Work on or before [_____] (the “**Substantial Completion Date**”). For the purposes of this Agreement, “**Substantial Completion**” means Contractor has completed the Work in accordance with the Contract Documents (except for minor punch list items to be completed), and the Work is sufficiently complete so that the Project Site can be utilized for its intended use.

4.2. Contractor shall perform all portions of the Work with all due diligence and at such a pace necessary to achieve Substantial Completion by the Substantial Completion Date. If at any point the District determines in its sole discretion that Contractor likely will not complete the Work by the Substantial Completion Date, the District may: (a) immediately terminate this Agreement upon written notice to Contractor without any further obligation to Contractor other than to pay for all proper Work completed by Contractor prior to such termination, and (b) secure a third party to complete the Work (the “**Third Party Completion Services**”). The District may offset any amounts expended on Third Party Completion Services from any amounts due or owing to Contractor under this Agreement (the “**Offset Amounts**”), and Contractor shall pay to the District all Excess Costs

incurred by the District, if any. For the purposes of this Agreement, “**Excess Costs**” means the amount by which all costs and expenses incurred by the District in securing the Third Party Completion Services exceed the Contract Price (as defined in Section 5.1 below) minus the Offset Amounts and all amounts paid by the District to Contractor prior to the termination of this Agreement by the District in accordance with this Section 4.2. The rights of the District set forth in this Section 4.2 shall be hereinafter referred to as the “**District Termination Rights**.”

4.3. In the event Contractor has not achieved Substantial Completion by the Substantial Completion Date (other than a result of Force Majeure), the District may elect, upon written notice to Contractor, and in lieu of exercising the District Termination Rights, to require Contractor to pay the District \$500 for each day past the Substantial Completion Date Contractor fails to achieve Substantial Completion, which amount shall increase to \$1,000 per day beginning on the date that is thirty (30) days past the Substantial Completion Date (the “**Liquidated Damages**”). Contractor shall pay the full amount of the Liquidated Damages to the District upon receipt of an invoice from the District regarding the same, and the Liquidated Damages are not subject to setoff, deduction, or counterclaim of any kind. The District will have the right to offset any amounts otherwise owing to Contractor by the amount of the Liquidated Damages. Contractor hereby agrees that the damages the District would suffer in the event Contractor fails to achieve Substantial Completion by the Substantial Completion Date would be difficult or impossible to ascertain, and that the Liquidated Damages represent a good faith estimate of such damages. Contractor further agrees that the Liquidated Damages constitute a reasonable sum considering all circumstances existing as of the Effective Date.

4.4. Contractor agrees that time shall be of the essence of this Agreement, and any failure by Contractor to prosecute the Work with all due diligence and at such a pace that Substantial Completion will be achieved by the Substantial Completion Date, shall be deemed a material breach by Contractor of this Agreement. Notwithstanding anything in this Agreement to the contrary, if at any time the District determines in its sole discretion that the Work is being improperly performed, and upon written notice from the District, Contractor fails to remedy such improperly performed Work, the District may place upon the Project Site tools, labor, equipment, and materials necessary to complete the Work, and Contractor shall reimburse the District for all costs incurred by the District in connection with the foregoing. The remedies set forth in this Article IV shall be in addition to, and not in lieu of, any other remedies available to the District at law or in equity.

4.5. The Substantial Completion Date shall not be modified unless such modification is the result of: (a) changes initiated by the District, provided the District has approved in writing any extension of such Substantial Completion Date caused by the changes initiated by the District, or (b) Force Majeure conditions, as set forth in Section 4.7. Contractor shall immediately provide written notice to the District if Contractor becomes aware of an event beyond Contractor’s control that might cause a delay. Notwithstanding any other provision of this Section 4.5, even though the performance of Contractor is delayed by an event or occurrence beyond the control of Contractor, Contractor hereby agrees to use its best efforts to secure, at its sole expense, alternate sources of services, equipment, or materials, if available. To the extent that Contractor fails to secure available alternate sources of services, equipment, or materials, the District is entitled to secure such alternate sources and offset any amounts expended on such alternate sources from amounts due or owing to Contractor under this Agreement. Contractor shall not be paid any additional compensation by the District due to an event or occurrence of the type described in this Section 4.5.

4.6. Upon written notice to Contractor, the District may assign this Agreement and/or the right to exercise the District's remedies under this Agreement, including, but not limited to, the right to liquidated damages and the right to secure Third Party Completion Services, to the Local Government or any other third party.

4.7. Notwithstanding anything in the Contract Documents to the contrary, neither party shall be liable for any delays in performance due to civil unrest, war or other declared national or state emergency; adverse, unseasonable winter conditions which prevent the party required to perform an activity from performing such activity; fire or other casualty; unavailability of necessary materials; and any other unforeseeable, extraordinary events or circumstances that are beyond the control of the party required to perform and that actually prevent such performance ("**Force Majeure**"). Force Majeure does not include any of the following: (i) the shortage or unavailability of funds; (ii) delays in the issuance of governmental permits, licenses or approvals required for the Work; (iii) unavailability of utilities due to delays in the issuance of permits, licenses or approvals necessary to initiate service, (iv) labor disputes; or (v) delays caused by surface and subsurface conditions at the Project Site which are known to Contractor as of the Effective Date. Contractor will give the District notice of the initial occurrence of any individual event of Force Majeure which may materially impact the fulfillment of its obligations under this Agreement. Notwithstanding anything in the Contract Documents to the contrary, in the event the District determines, in its sole discretion, that Contractor likely will not achieve Substantial Completion of the Work by the Substantial Completion Date as a result of Force Majeure, the District may immediately terminate this Agreement and secure Third Party Completion Services, and the District will not be obligated to pay Contractor for any portions of the Work not completed by Contractor prior to the effective date of such termination (a "**Force Majeure Termination**").

ARTICLE V

Stipulated Sum Contract Price

5.1. Notwithstanding anything in the other Contract Documents to the contrary, the District shall pay to Contractor a total of **\$2,000,000.00** for all Work to be performed under this Agreement (the "**Contract Price**"). The Contract Price includes the entire cost of the Work, including but not limited to all sales, consumer use, or similar taxes, payroll taxes, unemployment taxes and similar contributions, all other taxes and contributions required to be paid by all Laws relating to or affecting the Work, and any overhead or profit to Contractor for performance of the Work. The sum of the cost of the Work is guaranteed by Contractor not to exceed the Contract Price, subject to additions and deductions pursuant to any Change Orders. Any costs that would cause the Contract Price to be exceeded shall be paid by Contractor without reimbursement by the District. The Contract Price will be payable in accordance with Articles VII and VIII.

5.2. Contractor acknowledges that Contractor has visited and inspected the Project Site and is familiar with all aspects of the Project Site. If conditions are encountered at the Project Site which are (a) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents; or (b) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then the Contractor shall remain obligated to perform the Work at no increase in the Contract Price.

ARTICLE VI

Changes in the Work

6.1. The District shall have the right to request changes in the Work. Any changes in the Work, or any amendments or modifications of the Contract Documents, including without limitation amendments or modifications to the scope of work, shall be effective only if contained in a change order signed by both parties, which provides for (a) the adjustment, if any, in the Contract Price resulting from the change in the Work, and (b) the extension, if any, of the Substantial Completion Date (a “**Change Order**”).

ARTICLE VII

Progress Payments

7.1. Payments of the Contract Price shall be made by the District to Contractor according to the following procedure: On or before the last day of each month in which Work is completed, Contractor shall submit to the District an application for payment. The application will include a detailed invoice, based upon the portion of the Work completed during such month in accordance with the Contract Documents. Within thirty (30) working days after the last day of the month in which the application is received, the District shall pay directly to Contractor the appropriate amount for which the request for payment is made.

ARTICLE VIII

Final Payment to Contractor

8.1. Final payment of the Contract Price shall be due and payable after all the Work is completed in accordance with the Contract Documents.

8.2. Contractor shall promptly correct all Work rejected by the District as being defective or nonconforming. If the District elects in writing to accept any defective or non-conforming Work, it may do so instead of requiring correction thereof, in which case the amount to be paid hereunder will be appropriately reduced to reflect such defective or non-conforming Work, in the District’s reasonable discretion.

8.3. Acceptance by Contractor of final payment shall constitute a general release by Contractor of the District and the Local Government and a waiver of all claims of Contractor for all things done and furnished in connection with the Work under this Agreement or otherwise and of any act of omission or neglect of the District, the Local Government, and their respective employees, agents, and contractors affecting, relating to, or arising out of the Work or this Agreement. No payment, final or otherwise, shall operate to release Contractor from any of its obligations under this Agreement, including, but not limited to, responsibility for defects in materials and workmanship.

8.4. The District may withhold payment to Contractor, in whole or in part, to such extent as may be necessary, in the District’s sole discretion, to protect the District or the Local Government from any loss, liability, or expense, including but not limited to those arising from (a) defective or

non-conforming Work not remedied; (b) claims or liens filed or reasonable evidence indicating the probable filing of claims or liens; (c) failure of Contractor to make payments properly to subcontractors or for materials or labor; (d) a reasonable doubt that the Work can be completed for the balance of the Contract Price then unpaid or by the Substantial Completion Date; (e) damage to another contractor; (f) failure of Contractor or any subcontractor or materialman to deliver to the District a Contractor's or subcontractor's lien waiver applicable to the Work for which such waiver should have been issued; and (g) failure of Contractor to observe or perform any of the terms, covenants, or conditions of this Agreement.

ARTICLE IX

Miscellaneous Provisions

9.1. This Agreement will be effective on the Effective Date and will continue until the Work has been completed and final payment has been made to Contractor or otherwise until this Agreement is terminated in accordance with its terms.

9.2. The Contract Documents are defined in Article I and, together with any document referenced herein or attached hereto, constitute the entire agreement between the District and Contractor, except for Change Orders issued after the execution of this Agreement.

9.3. Any warranties associated with any items installed as part of the Work will run to the District and the Local Government and all documentation associated with any such warranties shall be given to the District upon completion of the Work. The District may assign such warranties.

9.4. Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership, association or joint venture with Contractor in the conduct of the provisions of this Agreement. Contractor shall at all times have the status of an independent contractor without the right or authority to impose tort, contractual or any other liability on the District. Contractor shall be solely responsible for the compliance with all applicable Laws with respect to Contractor and its employees and contractors. Any and all payroll taxes, social security benefits, insurance requirements, or employment benefits of any kind whatsoever of Contractor or its employees shall be borne exclusively by Contractor and not the District.

9.5. All representations, warranties, covenants, agreements and obligations of the District under this Agreement 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 District in other than his or her official capacity. No official or employee of the District will be personally liable to Contractor, or to any successor in interest, in the event of any default or breach by the District or for any amount which may become due to Contractor or any successor to Contractor or on any obligations under the terms and conditions of this Agreement.

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

9.7. Contractor shall not assign this Agreement without the prior written consent of the District, which consent may be withheld by the District for any reason or for no reason. The District may freely assign or subcontract all or any part of its rights, duties, or obligations under this Agreement, without the consent of Contractor.

9.8. This Agreement shall be governed by the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the District, its agents and employees, and Contractor, its employees and agents, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Montgomery County, Ohio.

9.9. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument.

9.10. No consent or waiver, express or implied, by either party to or of any breach of any covenant, condition, or duty of the other 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. The headings contained in this Agreement were included only for convenience or reference. All rights and remedies are non-exclusive.

9.11. No party shall be deemed to be the draftsman of this Agreement, and it shall not be interpreted or construed in favor of or against any party.

9.12. Notwithstanding anything in this Agreement to the contrary, Sections 1.1, 4.2, 4.3, 4.4, 4.6, 4.7, 5.2, 8.2, 8.3, 8.4, and Articles III, IX, X, and XI will survive the expiration or termination of this Agreement.

9.13. All notices given by the parties hereunder 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 either Party may designate by notice to other Party given in the manner prescribed herein. Notices will be deemed given on the date of receipt.

If to Contractor:

Balsbaugh Excavating Inc.
3286 Phillipsburg Road
Englewood, Ohio 45322
Attention: Dusty Balsbaugh

If to the District:

Montgomery County Transportation Improvement District
451 West Third Street, 10th Floor
Dayton, Ohio 45422
Attention: Executive Director

With a Copy to:

Sebaly Shillito + Dyer
 A Legal Professional Association
 Attn: General Counsel for the Montgomery County
 Transportation Improvement District
 220 E. Monument Avenue, Suite 500
 Dayton, Ohio 45402

**ARTICLE X
 Indemnification**

10.1. Contractor hereby agrees to assume all risk of injuries to property or persons, including death resulting therefrom, arising from the performance of the Work under this Agreement, or in connection therewith, or appertaining thereto, sustained by Contractor, the employees of Contractor, the employees of the District and/or any other person. Contractor does hereby agree to protect, indemnify, and hold harmless the Local Government, the District, any property owner or lessee of property adjacent to the Project Site, public utilities, and any private entity providing financing for the Project, including the officers, elected officials, shareholders, managers, trustees, directors, agents, consultants, representatives, employees, administrators, successors and assigns of each of the foregoing, against any and all actions, causes of action, obligations, penalties, injuries, claims, damages, losses, costs, fees, expenses (including without limitation reasonable attorneys' fees and expenses), demands or liabilities related to or arising from: (a) the performance or nonperformance of the Work; (b) breach of this Agreement by Contractor; (c) death, personal injuries or property damage arising from the performance of the Work under this Agreement by any person as aforesaid for any cause whatsoever, not including, however, any act of negligence, willful misconduct or omission by any such indemnified party; (d) any mechanic's or materialmen's liens or the rights thereto which may be levied against the Project Site due to the Work; or (e) any act of negligence, willful misconduct or omission by Contractor, its employees, agents or subcontractors. In addition, Contractor shall pay all expenses which such indemnified party may incur in the investigation and/or defense of any such claim, including counsel fees and court costs.

10.2. IN NO EVENT SHALL THE LOCAL GOVERNMENT OR THE DISTRICT BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY DELAY DAMAGES, LOST OPPORTUNITY DAMAGES, OR LOST PROFITS INCURRED BY CONTRACTOR AND/OR ITS AFFILIATES, SUBCONTRACTORS, AGENTS, OR EMPLOYEES IN CONNECTION WITH THIS AGREEMENT.

[Remainder of Page Intentionally Blank. Signature Page Follows.]

IN WITNESS WHEREOF, this Agreement is executed by the parties as of the Effective Date.

CONTRACTOR:

BALSBAUGH EXCAVATING INC.

By: _____

Title: _____

Date: _____

THE DISTRICT:

**MONTGOMERY COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT**

By: _____
Vanessa A. Glotfelter, Executive Director

2226269.1

Exhibit A

Quote

Balsbaugh Excavating preliminary quote is \$2,000,000.

Schedule 3.11

Insurance Requirements

Workers' Compensation Insurance - In accordance with Ohio law.

Comprehensive General Liability Insurance with minimum coverage of \$2,000,000 per occurrence.

Contractor's Protective Contingent Liability Insurance with minimum coverage of \$2,000,000 per occurrence (to the extent not covered under the Comprehensive General Liability Insurance policy).

Property Damages Insurance with minimum coverage of \$2,000,000 per occurrence (to the extent not covered under the Comprehensive General Liability Insurance policy).

The policies shall name all subcontractors, the Local Government, Montgomery County, Ohio, the Montgomery County, Ohio Board of County Commissioners, [_____] [***ADD OTHER NECESSARY ENTITIES***], the District, and the District's assignees of the Agreement as additional insureds with primary noncontributory coverage for liability arising out of Contractor's operations. Contractor shall keep this policy in place for no less than five (5) years after substantial completion of the Work.

Certificates of insurance acceptable to the District shall be filed with the District prior to commencement of the Work. These certificates and the insurance policies required by this Schedule 3.11 shall contain a waiver of subrogation as required herein and a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the District and the Local Government. If any of the foregoing insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for payment as set forth in Article VIII.