

ORDINANCE NO. 18-016

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A TAX INCREMENT FINANCING AGREEMENT WITH CENTRAL OHIO TRANSIT AUTHORITY

WHEREAS, this Council previously passed Ordinance 13-33 on November 5, 2013 (the "Gender Road Public Improvement TIF Ordinance"), declaring improvements to certain parcels of real property to be a public purpose and requiring the owners of such parcels to make service payments in lieu of taxes on the improvements to parcels to fund those public improvements described in the Gender Road Public Improvement TIF Ordinance, all as provided in Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code; and

WHEREAS, this Council previously amended Ordinance 13-33 on with the Ordinance 16-037 passed on December 19, 2016 adding certain acreage to the TIF area, defined by the TIF Ordinance; and

WHEREAS, this Council desires to enter into an agreement with the owners of certain parcels in the Gender Road Public Improvement TIF area who, conditioned upon reimbursement by the City of Canal Winchester through the Gender Road Public Improvement TIF, are willing to construct public roads, water, sanitary sewer, and public pedestrian facilities that substantially benefit the TIF area;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF CANAL WINCHESTER, FRANKLIN COUNTY, OHIO AS FOLLOWS:

Section 1: That Council hereby authorizes and directs the Mayor to enter into a Tax Incentive Financing Agreement with Central Ohio Transit Authority, in a form substantially similar to the agreement attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Canal Winchester, Franklin County, Ohio.

Section 3: That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

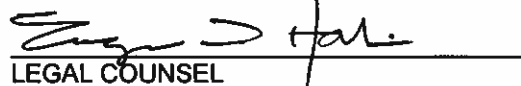
DATE PASSED 5/7/18


PRESIDENT OF COUNCIL

ATTEST Amanda M Jackson
CLERK OF COUNCIL


MAYOR

DATE APPROVED 5-8-18

APPROVED AS TO FORM:

LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

Amanda M Jackson
Finance Director/Clerk of Council

TAX INCREMENT FINANCING AGREEMENT

PREAMBLE:

THIS TAX INCREMENT FINANCING AGREEMENT (the "*Agreement*") is made and entered into this ____ day of _____, 2018 (the "*Effective Date*"), by and between the CITY OF CANAL WINCHESTER, OHIO ("*City*"), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the "*State*") and its Charter, and the CENTRAL OHIO TRANSIT AUTHORITY, an Ohio regional transit authority (the "*Developer*" or "*COTA*" and together with the City, the "*Parties*"), under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Article I hereof).

RECITALS:

WHEREAS, the Developer owns or will own certain parcels of real property as described on Exhibit A attached hereto (the "*Developer Property*"), and Developer will construct the Private Improvements (as herein defined) on the Developer Property; and

WHEREAS, the Parties have determined that certain Public Infrastructure Improvements will need to be constructed to facilitate the development of the Private Improvements; and

WHEREAS, in accordance with the TIF Statutes and pursuant to the TIF Ordinance, the Parties have entered into this Agreement to provide generally for the development and financing of the Public Infrastructure Improvements; and

WHEREAS, the City has determined pursuant to the TIF Ordinance that it would be in the best interests of the City to contract with the Developer to provide for the construction and installation of the Public Infrastructure Improvements in the manner described herein;

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the Parties hereto agree and obligate themselves as follows:

ARTICLE I

DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 shall have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

Section 1.2. Definitions. As used herein:

"*Agreement*" means this Tax Increment Financing Agreement by and between the City and the Developer and dated as of the Effective Date.

“Authorized City Representative” means the Mayor of the City. The City may from time to time provide a written certificate to the Developer signed on behalf of the City by the Mayor designating an alternate or alternates who shall have the same authority, duties and powers as the Authorized City Representative.

“Authorized Developer Representative” means the President/Chief Executive Office of the Developer. The Developer may from time to time provide a written certificate to the City signed on behalf of the Developer by the President/Chief Executive Officer of the Developer designating an alternate or alternates or a substitute who shall have the same authority, duties and powers as the Authorized Developer Representative.

“City” means the City of Canal Winchester, Ohio, an Ohio municipality.

“City Council” means the City Council of City.

“Construction Documents” means this Agreement and the Drawings and Specifications as such documents may be revised or supplemented from time to time with the approval of the Authorized City Representative and the Authorized Developer Representative, which Drawings and Specifications contain the detailed construction plans and specifications for the Public Infrastructure Improvements and when completed, will be placed on file with the Authorized City Representative on behalf of the City.

“Cost of the Work” means the actual costs of the construction, design, management, and installation of the Public Infrastructure Improvements that are reflected in **EXHIBIT B**.

“County” means the County of Franklin, Ohio.

“Developer” means the **Central Ohio Transit Authority**, an Ohio regional transit authority organized and existing under the laws of the State, including any successors or assigns thereof permitted under this Agreement.

“Developer’s Completion Certificate” shall have the meaning set forth in Section 4.3(a) hereof.

“Developer TIF Reimbursement Amount” means the amount of the cost to design, manage, and construct the Public Infrastructure Improvements which shall not exceed **Nine Hundred Forty-nine Thousand, Five Hundred Thirteen, and 00/100 U.S. Dollars (\$949,513.00)**.

“Developer Property” means the property described on Exhibit A attached hereto.

“Drawings and Specifications” shall have the meaning set forth in Section 5.1 hereof.

“Effective Date” means the date as defined in the preambles of this Agreement.

“Engineer” means **Transystems Corporation of Ohio**, an Ohio for profit corporation, or any other architectural or engineering firm licensed to perform architectural and engineering services within the State of Ohio and appointed by the City with the consent of the Authorized Developer Representative, which consent shall not be unreasonably withheld or delayed.

“Engineer’s Completion Certificate” shall have the meaning set forth in Section 4.3(b) hereof.

“Event of Default” means an Event of Default under Section 7.1 hereof.

“Force Majeure” means acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any other cause or event not reasonably within the control of the Developer or the City, as the case may be, excluding, however, the inability of the Developer to obtain financing for its obligations hereunder.

“Notice Address” means:

as to City: City of Canal Winchester
36 S. High St.
Canal Winchester, Ohio 43110
Attention: Mayor

as to Developer: **Central Ohio Transit Authority**
33 N. High St., Columbus, OH 43215
Attn: Michael L. Bradley, V.P. Planning & Services Development
[bradleyml@cota.com; (614) 275-5867]

& copies to:

Sam Abdullah, Senior Associate Counsel
[abdullahus@cota.com; (614) 308-4269]

“Person” shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

“Private Improvements” means the project proposed to be constructed by the Developer consisting of approximately 4.42 acres, which consists of the public park and ride and Outparcels “A” and “B”.

“Public Infrastructure Improvements” means the public infrastructure improvements as generally described in **EXHIBIT-A**, **EXHIBIT B** and **EXHIBIT D**, each attached hereto and incorporated herein by reference and which will be more specifically described in the Construction Documents.

“Public Infrastructure Improvements Site” means the real property depicted on **EXHIBIT A** as the 0.067 acre, more or less, Trillium Avenue right-of-way, and 0.086 acre, more or less, sanitary sewer easement, which are attached to this Agreement and incorporated by reference.

“State” means the State of Ohio.

“TIF Fund” mean the Gender Road Municipal Public Improvement Tax Equivalent Fund created in Section 3 of the TIF Ordinance.

“TIF Ordinance” means Ordinance No. 13-33 passed on October 7, 2013 by the City Council.

“TIF Statutes” means collectively, Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code, as those sections may be amended from time to time.

“Work” means the construction of the Public Infrastructure Improvements in accordance with this Agreement.

Section 1.3. Interpretation. Any reference in this Agreement to City or to any officers of City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code shall include such 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 shall be applicable solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

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 Agreement; and the term “*hereafter*” means after, and the term “*heretofore*” means before, the date of this Agreement. 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 Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

Section 1.4. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

Section 1.5. Conflicts among the TIF Ordinance, TIF Agreement and Construction Documents. Where there is a conflict between the TIF Ordinance, the Agreement and the Construction Documents, the conflict shall be resolved by providing the better quality or greater quantity and compliance with the more stringent requirement.

If an item is shown on the Drawings but not specified, the Developer shall provide the item of the same quality as similar items specified, as determined by the Engineer. If an item is specified but not shown on the Drawings, it shall be located as directed by the Engineer.

ARTICLE II

GENERAL AGREEMENT AND TERM

Section 2.1. General Agreement Among Parties. For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties, the Parties shall cooperate in the manner described herein to facilitate the construction of the Public Infrastructure Improvements.

Section 2.2. Term of Agreement. This Agreement shall become effective as of the Effective Date and shall continue until the Parties have satisfied their respective obligations as set forth in this Agreement, unless sooner terminated in accordance with the provisions set forth herein.

ARTICLE III

REPRESENTATIONS AND COVENANTS OF THE PARTIES

Section 3.1. Representations and Covenants of City. City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of City, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to City, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Agreement, and the covenants and agreements of City contemplated herein are valid and binding obligations of City, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by City wherein an unfavorable ruling or decision would materially and adversely affect City's ability, to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

(g) The TIF Ordinance has been duly passed and shall be in full force and effect on the earliest date permitted by law.

(i) It will timely deposit into the TIF Fund all service payments received by it regarding the Developer Property.

(j) It will not transfer, encumber, spend, or use any monies intended for deposit into the TIF Fund from the Developer Property, except as provided in this Agreement.

Section 3.2. Representations and Covenants of the Developer. The Developer represents and covenants that:

(a) It is a regional transit authority duly organized and validly existing under the applicable laws of the state of Ohio.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the Developer, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

ARTICLE IV

CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 4.1. General Considerations. In consideration of the Developer's promise to construct or cause to be constructed the Public Infrastructure Improvements, the City agrees, subject to Section 4.4 hereof, to reimburse and/or otherwise pay the Developer the Developer TIF Reimbursement Amount in accordance with Section 6.2 and/or any other applicable provisions of this Agreement.

Section 4.2. Construction of the Public Infrastructure Improvements. The Developer covenants and agrees that it will cause to be constructed and installed all of the Public Infrastructure Improvements in accordance with this Agreement and the Construction Documents.

The Developer shall supervise, perform and direct the Work utilizing qualified personnel, and in accordance with the standards of care normally exercised by construction organizations performing similar work. The Developer shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures for coordinating all portions of the Work.

The Developer shall submit the names of the subcontractors it proposes to use. Under no circumstances will the Developer propose to use any subcontractor who is not specified. The City will promptly reply to the Developer in writing stating whether or not the City has reasonable objection to any such proposed person or entity.

The Developer agrees that the Public Infrastructure Improvements, including all rights-of-way and easements associated therewith, including those identified on **EXHIBIT D** (which is attached hereto and incorporated herein by reference), shall be dedicated for public use upon completion and acceptance as provided in Sections 4.3 and 4.4 hereof.

Section 4.3. Completion of the Public Infrastructure Improvements. The Public Infrastructure Improvements shall be deemed completed upon fulfillment of the following conditions:

- (a) Receipt of written notice (the "*Developer's Completion Certificate*") from the Authorized Developer Representative that the Public Infrastructure Improvements have been completed and are ready for final acceptance by the City, which notice shall (i) generally describe all property acquired or installed as part of the Public Infrastructure Improvements; (ii) state the Cost of the Work, and (iii) state and shall constitute the Developer's representation that the construction, improvement and equipping of the Public Infrastructure Improvements have been completed substantially in accordance with the Construction Documents, all costs then due and payable in connection therewith have been paid, there are no mechanics' liens or to its knowledge, after reasonable inquiry, any basis for such liens, and all obligations, costs and expenses in connection with the Public Infrastructure Improvements have been paid or discharged.

(b) Receipt from the Engineer of a final Certificate of Completion (the "*Engineer's Completion Certificate*") stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's on-site visits and inspections, that the Public Infrastructure Improvements have been satisfactorily completed in accordance with the terms and conditions of the Construction Documents, including all punch list items, that the construction, improvement and equipping of the Public Infrastructure Improvements have been accomplished in a manner that conforms to all then applicable governmental laws, rules and regulations; and that the Public Infrastructure Improvements have been approved by the relevant public authorities.

(c) The Commencement of work associated with this contract will be established immediately following the Developer's issuance of a "Notice to Proceed" for the work described as Public Infrastructure Improvements and Private Infrastructure Improvements. Upon issuance of the Notice to proceed for the construction of work, the Developer will complete the Public Infrastructure Improvements described within the contract documents, with 365 Calendar Days.

Section 4.4. Acceptance of the Public Infrastructure Improvements. The City shall have no obligation to accept the Public Infrastructure Improvements until (a) the Public Infrastructure Improvements have been satisfactorily completed in accordance with the Construction Documents, as evidenced by the Engineer's Completion Certificate and properly dedicated as public rights-of-way and easements to the City; (b) the City has received the Developer's Completion Certificate, the Engineer's Completion Certificate, copies of the approval letters issued by the public authorities as referenced in Section 4.3 herein, and all documents and instruments to be delivered to the City pursuant to the Construction Documents; and (c) the City has received evidence reasonably satisfactory to it that all liens on the Public Infrastructure Improvements, including, but not limited to, tax liens, the lien of any mortgage, and any mechanic's liens, have been or shall be released, or, with respect to mechanic's liens, security therefor has been provided pursuant to Section 5.8 hereof. The City agrees to accept the Public Infrastructure Improvements and the rights-of-way allocable thereto upon satisfaction of the conditions listed in (a) through (c) of the immediately preceding sentence. The acceptance by the City of the Public Infrastructure Improvements shall not relieve the Developer of its responsibility for defects in material or workmanship as set forth in Section 5.10. hereof.

Section 4.5. Extensions of Time. If the Developer or the City is delayed in the commencement or progress of its obligations hereunder by a breach by the other Party of its obligations hereunder, or by failure of the Engineer to act as provided in this Agreement, or by Force Majeure, then the time for performance under this Agreement by the Party so delayed shall be extended for such time as is commercially reasonable under the circumstances.

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ARTICLE V

FURTHER PROVISIONS RELATING TO THE CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS

Section 5.1. Construction Documents. The Developer is causing to be prepared the Construction Documents, which shall be in a form satisfactory to the Authorized City Representative and the Developer. Any working drawings, plans and specifications prepared in connection with the Work (collectively, the "*Drawings and Specifications*") and that comprise the Construction Documents are instruments of service through which the Work to be executed is described. The Developer may retain one record set. All copies of the Drawings and Specifications, except the record set of the Developer, shall be returned or suitably accounted for to the City, on request, upon final completion of the Public Infrastructure Improvements, and the copy thereof furnished to the Developer is for use solely with respect to the Public Infrastructure Improvements. They are not to be used by the Developer on other projects without the specific written consent of the City. The Developer is authorized to use and reproduce applicable portions of the Drawings and Specifications appropriate to the execution of obligations with respect to the Public Infrastructure Improvements; provided, however, that any reproduction and distribution of copies of the Drawings and Specifications by the Developer to the extent necessary to comply with official regulatory requirements or obligations of law shall not be construed as an infringement of the copyrights or other reserved rights of the City with respect to the Drawings and Specifications. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings and Specifications.

Section 5.2. Prevailing Wage. The City designates its Construction Services Administrator as the prevailing wage coordinator for the Public Infrastructure Improvements (the "*Prevailing Wage Coordinator*"). The Developer acknowledges and agrees that the Public Infrastructure Improvements are subject to the prevailing wage requirements of Chapter 4115 of the Ohio Revised Code and all wages paid to laborers and mechanics employed on the Public Infrastructure Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Infrastructure Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. The Developer shall comply, and the Developer shall require compliance by all contractors and shall require all contractors to require compliance by all subcontractors working on the Public Infrastructure Improvements, with all applicable requirements of that Chapter 4115, including any necessary posting requirements. The Developer (and all contractors and subcontractors thereof) shall cooperate with the Prevailing Wage Coordinator and respond to all reasonable requests by the Prevailing Wage Coordinator when the Prevailing Wage Coordinator is determining compliance by the Developer (and all contractors and subcontractors thereof) with the applicable requirements of that Chapter 4115.

The Prevailing Wage Coordinator shall notify the Developer of the prevailing wage rates for the Public Infrastructure Improvements. The Prevailing Wage Coordinator shall notify the Developer of any change in prevailing wage rates within seven (7) calendar days of receiving notice of such change from the Director of the Ohio Department of Commerce. The Developer shall immediately upon such notification: (a) insure that all contractors and subcontractors receive notification of any change in prevailing wage rates as required by that Chapter 4115; (b) make the necessary adjustment in the prevailing wage rates and pay any wage increase as required by that Chapter 4115; and (c) insure that all contractors and subcontractors make the same necessary adjustments.

The Developer shall, upon beginning performance of this Agreement, notify the Prevailing Wage Coordinator of the commencement of Work, supply to the Prevailing Wage Coordinator the schedule of the dates during the life of this Agreement on which the Developer (or any contractors or subcontractor thereof) is required to pay wages to employees. The Developer (and each contractor or subcontractor thereof) shall also deliver to the Prevailing Wage Coordinator a certified copy of its payroll within two weeks after the initial pay date, and supplemental reports for each month thereafter and in connection with any Written Requisition which shall exhibit for each employee paid any wages, the employee's name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments and deductions from the employee's wages. The certification of each payroll shall be executed by the Developer (or contractor, subcontractor, or duly appointed agent thereof, if applicable) and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by this Agreement and Chapter 4115 of the Ohio Revised Code.

The Developer shall provide to the Prevailing Wage Coordinator a list of names, addresses and telephone numbers for any contractors or subcontractors performing any Work on the Public Infrastructure Improvements as soon as they are available, and the name and address of the bonding/surety company and the statutory agent (if applicable) for those contractors or subcontractors. The Developer shall not contract with any contractor or subcontractor listed with the Ohio Secretary of State for violations of Chapter 4115 of the Ohio Revised Code pursuant to Section 4115.133 of the Ohio Revised Code.

Prior to final payment under this Agreement, the Developer (and any contractor or subcontractor thereof) shall submit to the Prevailing Wage Coordinator the affidavit required by Section 4115.07 of the Ohio Revised Code.

Section 5.3. Traffic Control Requirements. The Developer shall be responsible for ensuring the provision, through contractors or otherwise, of all traffic control devices, flaggers and police officers required to properly and safely maintain traffic during the construction of the Public Infrastructure Improvements. All traffic control devices shall be furnished, erected, maintained and removed in accordance with the Ohio Department of Transportation's "Ohio Manual of Uniform Traffic Control Devices" related to construction operations.

Section 5.4. Equal Opportunity Clause. The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that the Developer is an equal opportunity employer. The Developer shall require all contractors and shall require all contractor's subcontractors to include in each contract a summary of this equal opportunity clause.

Section 5.5. City Income Tax Withholdings. The Developer shall withhold and pay, shall require all contractors to withhold and pay, and shall require all contractors to require all subcontractors to withhold and pay, all City income taxes due or payable with respect to wages, salaries, commissions and any other income subject to the provisions of Chapter 181 of the Canal Winchester Codified Ordinances.

Section 5.6. Compliance with Occupational Health and Safety Act of 1970. The Developer and all contractors and subcontractors shall be solely responsible for their respective compliance with the Occupational Safety and Health Act of 1970 under this Agreement.

Section 5.7. Provision of Security for Mechanic's Liens. To the extent any materialman, contractor, or subcontractor files and records a mechanic's lien against the Public Infrastructure Improvements, the Developer shall, or shall require the appropriate contractor to, provide any security required by Section 1311.11 of the Ohio Revised Code to cause that mechanic's lien to be released of record with respect to the Public Infrastructure Improvements.

Section 5.8. Security for Performance. The Developer shall furnish or require all contractors performing Work to furnish prior to commencement of construction of the Public Infrastructure Improvements a performance and payment bond that shall name the Developer and the City as obligees in the form provided by Section 153.57 of the Ohio Revised Code. The bond shall cover all Costs of the Work, including a guarantee period of one (1) year set forth in Section 5.10 hereof.

Any bond shall be executed by sureties that are licensed to conduct business in the State as evidenced by a Certificate of Compliance issued by the Ohio Department of Insurance. All bonds signed by an agent must be accompanied by a power of attorney of the agent signing for the surety. If the surety of any bond so furnished by a contractor declares bankruptcy, become insolvent or its right to do business is terminated in Ohio, the Developer, within five (5) business days thereafter, shall substitute another bond and surety or cause the contractor to substitute another bond and surety, both of which shall be acceptable to the City and the Developer. The Developer shall provide to the City prior to commencement of any Work by any contractor a copy the security for performance provided by the Developer or contractor pursuant to this Section.

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Section 5.9. Further Developer Guaranties Relating to the Public Infrastructure Improvements. The Developer guarantees that it will cause to be exercised in the performance of the Work the standard of care normally exercised by well-qualified engineering and construction organizations engaged in performing comparable services in Central Ohio. The Developer further warrants that the Work and any materials and equipment incorporated into the Work will be free from defects, including defects in the workmanship or materials (without regard to the standard of care exercised in its performance) for a period of one (1) year after final written acceptance of the Work by City. The performance and payment bond of the contractor(s) shall remain in effect until the expiration of the guarantee period. The guarantee provided in this Section shall be in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or the Construction Documents.

If defective Work becomes apparent within the warranty or guarantee period, the City shall promptly notify the Developer in writing and provide a copy of said notice to the Engineer. Within ten (10) business days of receipt of said notice, the Developer shall visit the project in the company of one or more representatives of the City to determine the extent of the defective work. The Developer shall, within a reasonable time frame, repair or replace (or cause to be repaired or replaced) the defective Work, including all adjacent Work damaged as a result of such defective Work or as a result of remedying the defective Work. If the defective Work is considered by the City to be an emergency, the City may require the Developer to visit the project within one (1) business day of receipt of said notice. The Developer shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work.

If the Developer does not repair or replace defective Work within a reasonable time frame, the City shall repair or replace such defective Work and charge the cost thereof to the Developer or the Developer's surety. Work which is repaired or replaced by the Developer shall be inspected and accepted by the Engineer and City and shall be guaranteed by the Developer for one (1) year from the date of acceptance of the corrective work by the City.

ARTICLE VI

PAYMENT OF COST OF THE WORK

Section 6.1. Deposit of Monies in the TIF Fund. Pursuant to the TIF Ordinance, the City has established the TIF Fund for, inter alia, the payment of the Cost of the Work. Upon the execution of this Agreement, the City covenants and agrees to deposit monies into the TIF Fund as such funds are received from the Franklin County Auditor from service payments paid by the owners of the Developer Property on which the Private Improvements have or shall be constructed, and thereafter to deposit into the TIF Fund all monies required to be deposited therein pursuant to the TIF Ordinance.

City understands and agrees all of the Developer Property is exempt from real estate taxation and will remain exempt from any TIF service payments until any portion(s) of the Developer Property, including but not limited to Outparcel "A" or Outparcel "B," or both, is privately owned and no longer exempt from real estate taxation.

Section 6.2. Disbursements from the TIF Fund. The City agrees to pay the Developer TIF Reimbursement Amount as such funds are deposited into the TIF Fund from service payments paid by the owners of the Developer Property. Such payments shall be made within thirty (30) calendar days after the City's receipt of the funds from the Franklin County Auditor until satisfaction of the Developer TIF Reimbursement Amount or the expiration of the Gender Road TIF.

Developer understands and agrees it will not receive any deposits from the TIF Fund until a future time when any owners of portion(s) of the Developer Property commences TIF service payments pursuant to Section 6.1 and all conditions required for final acceptance by the City have been satisfied.

Section 6.3. Lien Waivers. Upon final completion of the Work and acceptance by the City, Developer shall deliver to City copies of unconditional final lien waivers executed by all subcontractors, suppliers or lien claimants.

Section 6.4. Tax Covenants. The obligation of the City to make payments to the Developer pursuant to this Agreement is not an obligation or pledge of any moneys raised by taxation and does not represent or constitute a debt or pledge of the faith and credit of the City. Except for the payments from the TIF Fund and in the aggregate amount described in this Agreement, the Developer shall receive no other monies from the City in connection with the construction of the Public Infrastructure Improvements.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

Section 7.1. General. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto, such Party shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach, and, in any event, within thirty (30) calendar days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) calendar day period, then in such event the Party shall upon written notice from the other commence its actions to cure or remedy said breach within said thirty (30) calendar day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the following remedies may be pursued: (i) the aggrieved party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations; and (ii) in addition, if the default or breach is a failure of the Developer to achieve completion of the Work by the date set forth in Section 4.2 herein, as adjusted by Change Order, then City may proceed to perform the Developer's obligations under this Agreement, and pay the costs thereof from the TIF Fund up to the amount designated for the Cost of the Work. The Developer and its surety shall be responsible for any deficiency in paying for curing the breach that cannot be covered out of the TIF Fund.

Section 7.2. Other Rights and Remedies; No Waiver by Delay. The Parties shall each have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; provided, that any delay by either party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that neither party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by either party with respect to any specific default by the other party under this Agreement be considered or treated as a waiver of the rights of such party with respect to any other defaults by the other party to this Agreement or with respect to the particular default except to the extent specifically waived in writing.

Section 7.3. Force Majeure. Notwithstanding anything contained in Sections 7.1 and 7.2 to the contrary and except as otherwise provided herein, no Party shall be considered in default in its obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, acts of God or of the public enemy, acts or delays of the other party, fires, floods, unusually severe weather, epidemics, freight embargoes, unavailability of materials, strikes or delays of contractors, subcontractors or materialmen but not including lack of financing capacity; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the Party seeking the benefit of the provisions of this Section 7.3 shall within fourteen (14) calendar days after the beginning of such enforced delay, notify the other Party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within thirty (30) calendar days after the end of the delay, notify the other Party in writing of the duration of the delay.

ARTICLE VIII

DISPUTE RESOLUTION PROVISIONS **AS TO AMENDMENTS AND CLAIMS**

Section 8.1. Notice and Filing of Requests. Any request by the City or the Developer for amendment of the terms of this Agreement, including without limitation, for additional funds or time for performance shall be made in writing and given prior to completion of the Public Infrastructure Improvements.

Section 8.2. Request Information. In every written request given pursuant to Section 8.1 hereof, the party giving notice shall provide the nature and amount of the request; identification of persons, entities and events responsible for or related to the request; and identification of the activities on the applicable schedule affected by the request.

Section 8.3. Meeting. Within ten (10) business days of receipt of the request given pursuant to Section 8.1 hereof, the parties shall schedule a meeting in an effort to resolve the request and shall reach a decision on the request promptly thereafter or reach a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting shall be attended by persons expressly and fully authorized to resolve the request on behalf of the City and the Developer. Any decision on the request shall be made to the mutual reasonable satisfaction of the parties.

Section 8.4. Mediation. If no decision is reached within thirty (30) calendar days of the date of the meeting held pursuant to Section 8.3 hereof, the parties may submit the matter to mediation, upon written agreement between them, or exercise any other remedy permitted to them at law or in equity.

Section 8.5. Performance. The City and the Developer shall proceed with their respective performance of this Agreement during any dispute resolution process, unless otherwise agreed by them in writing.

ARTICLE IX

MISCELLANEOUS

Section 9.1. Notice. Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Any process, pleadings, notice of other papers served upon the Parties shall be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one party to the other.

Section 9.2. Extent of Covenants; No Personal Liability. All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of any Party other than his or her official capacity, and neither the members of the legislative body of City nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

Section 9.3. Severability. If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

Section 9.4. Binding Effect Against Successors and Assigns. The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.

Section 9.5. Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the "Preamble" and "Recitals" sections hereto are an integral part of this Agreement and as such are incorporated herein by reference.

Section 9.6. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

Section 9.7. Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

Section 9.8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between any of the Parties and their respective agents and employees, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

Section 9.9. Assignment. This Agreement may not be assigned without the prior written consent of all non-assigning Parties.

Section 9.10. Survival of Representations and Warranties. All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

Section 9.11 Declaration Regarding Material Assistance/Nonassistance To a Terrorist Organization. Developer hereby warrants and represents that neither it nor any person, company, affiliated group or organization that holds, owns or otherwise has a controlling interest in Developer has provided material assistance to an organization listed on the U.S. Department of State Terrorist Exclusion List. Developer acknowledges receipt of a current version of the Terrorist Exclusion List, and Developer shall provide to Client a fully completed and executed Declaration Regarding Material Assistance/Nonassistance to a Terrorist Organization.

FISCAL OFFICER'S CERTIFICATE

The undersigned, Director of Finance of the City of Canal Winchester, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2018 under the foregoing 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. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2018

Printed: _____

Title: _____

City of Canal Winchester, Ohio

[REMAINDER OF PAGE INTENTIONALLY BLANK; EXHIBIT(S) BEGIN ON NEXT PAGE]

EXHIBIT A

DEVELOPER PROPERTY PARCELS

The Developer Property is comprised of the following parcel numbers located in Franklin County, Ohio: 184-000816, 184-000820, 184-000878, 184-000884 & 184-000919.

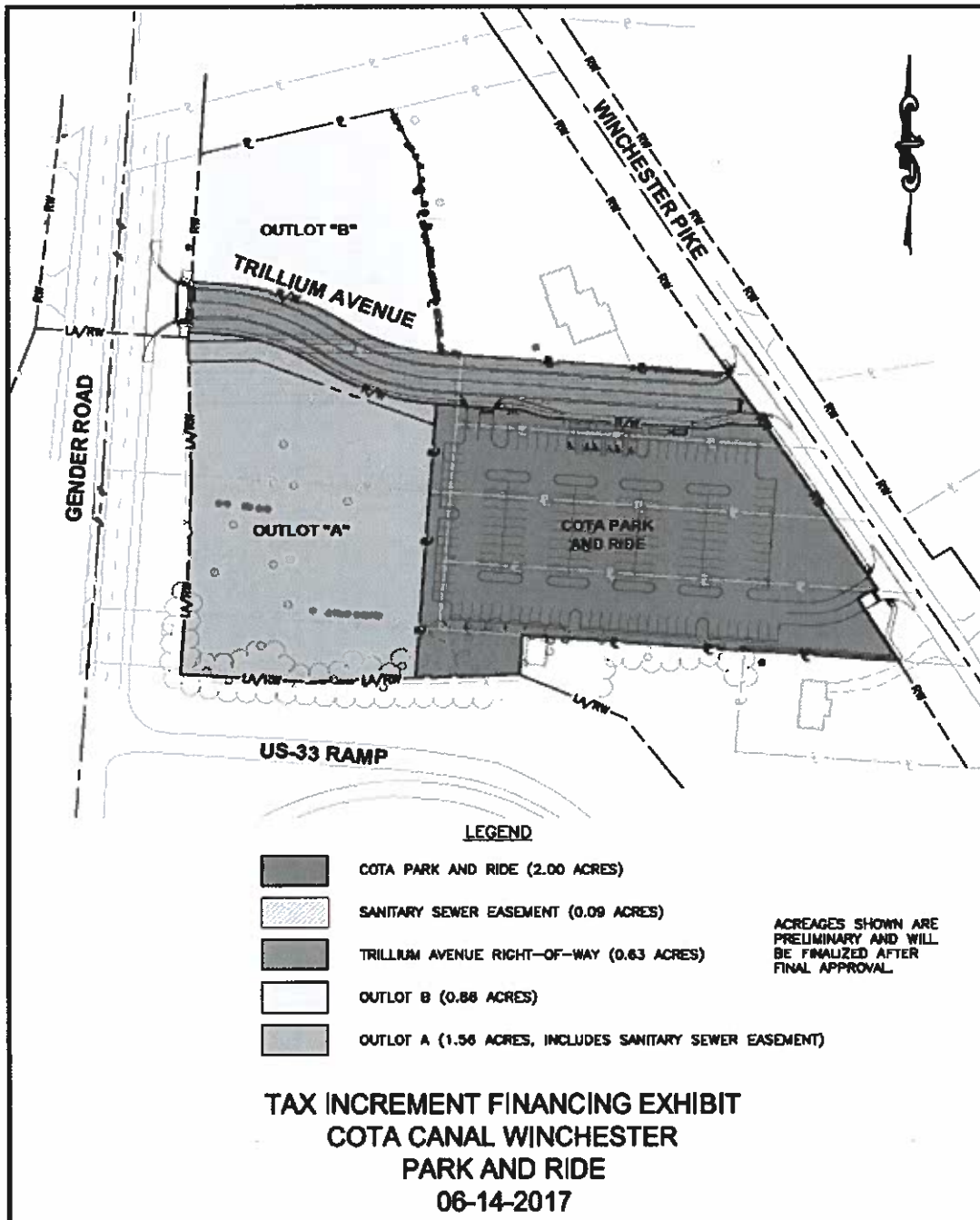


EXHIBIT B

The Public Infrastructure Improvements include:

- The design, equipping, project management, and construction of a public road to be known as Trillium Avenue, along with associated infrastructure improvements and appurtenances.
- The design, equipping, project management, and construction of a public sanitary sewer and associated infrastructure improvements and appurtenances.
- The components of the improvements are identified in the Preliminary Cost Estimate (Exhibit C) and depicted on the Site Plan (Exhibit D).

The City will reimburse the developer based on the actual cost of the Public Infrastructure Improvements in accordance with Section 6.2 of the TIF Agreement.

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EXHIBIT C

ACTUAL COSTS

1. Trillium Ave, drainage facilities & appurtenances construction costs:	\$670,560
2. Trillium Ave, drainage facilities & appurtenance design costs:	\$67,056
3. Project Mgmt Costs (8%):	\$41,061
4. Trillium Ave. Inspections & Fees:	\$64,949
5. Contingency (12.55%):	\$105,887
	<hr/>
	Total: \$949,513

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EXHIBIT D

Construction and site plans found in separate documents possessed by Canal Winchester and fully incorporated in to this Agreement for reference.

[REMAINDER OF PAGE INTENTIONALLY BLANK; "EXHIBIT-E" ON NEXT PAGE]

EXHIBIT E

WRITTEN REQUISITION

No. _____

City of Canal Winchester, Ohio
36 S. High St.
Canal Winchester, Ohio 43110
Attention: Finance Director

Subject: Certificate and Request for Disbursement of Funds

You are hereby requested to disburse from the TIF Fund, which was created by Ordinance No. _____, and in accordance with the provisions of Section 6.2 of the Tax Increment Financing Agreement, dated _____, 2018 (the "Agreement") by and between the City and _____ (the "Developer"), the amount of \$ _____ as more fully set forth on Schedule A attached hereto to be paid pursuant to this Written Requisition No. _____ to the Developer at _____. All capitalized terms not otherwise defined in this Written Requisition have the meanings assigned to them in the Agreement.

The undersigned Authorized Developer Representative does hereby certify in compliance with Section 6.2 of the Agreement that:

(i) I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents of Developer relating to the matters covered by this Written Requisition;

(ii) The amount and nature of the portion of the Cost of the Work requested to be paid are shown on Schedule A attached hereto;

(iii) The disbursement herein requested is for an obligation properly incurred, is a proper charge against the TIF Fund as a Cost of the Work, has not been the basis of any previous withdrawal from the TIF Fund and was made in accordance with the Construction Documents;

(iv) The Public Infrastructure Improvements have not been materially injured or damaged by fire or other casualty in a manner which, if not repaired or replaced, would materially impair the ability of the Developer to meet its obligations under the Agreement;

(v) The Developer is in material compliance with all provisions and requirements of the Agreement, including, but not limited to, all prevailing wage requirements;

(vi) No Event of Default set forth in Article VII of the Agreement, and no event which but for the lapse of time or the giving of notice or both would be such an Event of Default, has occurred and is continuing;

(vii) Attached hereto as Schedule B are conditional lien waivers from any materialmen, contractors and subcontractors who have provided services or materials to the Public Infrastructure Improvements as required by Section 6.2 of the Agreement, and the Developer further acknowledges its obligation to require, or require provision of, certain security pursuant to Section 5.8 of the Agreement in the event any mechanic's liens are filed in connection with the Public Infrastructure Improvements;

(viii) The Public Infrastructure Improvements are being and have been constructed and installed substantially in accordance with the Construction Documents for the Public Infrastructure Improvements and all materials for which payment is requested have been delivered to and remain on the Public Infrastructure Improvements Site;

(ix) The payment requested hereby does not include any amount which is not entitled to be retained under any holdbacks or retainages provided for in any agreement;

(x) The Developer has asserted its entitlement to all available manufacturer's warranties to date upon acquisition of possession of or title to such improvements or any part thereof which warranties have vested in Developer and shall be wholly transferable to the City; and

(xi) All proceeds of the TIF Fund heretofore disbursed have been spent in accordance with the Written Requisition applicable thereto.

EXECUTED this ____ day of _____, 20__.

By: _____
Authorized Developer Representative