

CITY OF CLAYTON, OHIO

RESOLUTIONS AND ORDINANCES

April 7, 2022

OLD BUSINESS

RESOLUTIONS – SINGLE READING AND IMMEDIATE ENACTMENT

RESOLUTION NO. R – 03 – 22 – 26

A RESOLUTION APPOINTING KIM WILLIAMS TO THE PLANNING COMMISSION TO COMPLETE UN-EXPIRED TERM

WHEREAS, Charter Section 7.01 provides for the creation and appointment of members to the Clayton Planning Commission; and

WHEREAS, Seth Powless resigned from the Planning Commission resulting in a vacancy thereon; and

WHEREAS, the above referenced term of Seth Powless expires on January 15, 2025 and Council desires to appoint Kim Williams to the Clayton Planning Commission to complete said un-expired term.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That Kim Williams is hereby appointed as a member of the Clayton Planning Commission to complete the unexpired term of the seat vacated by the resignation of Seth Powless, said term expiring on January 15, 2025.

ADOPTED BY COUNCIL ON APRIL 7, 2022

NEW BUSINESS

ORDINANCES – SINGLE READING AND IMMEDIATE ENACTMENT VIA EMERGENCY

ORDINANCE NO. O – 04 – 22 – 08

AUTHORIZING THE CREATION OF TWO INCENTIVE DISTRICTS IN CONNECTION WITH THE HUNTER’S PATH DEVELOPMENT WITHIN THE CITY OF CLAYTON, OHIO; DECLARING IMPROVEMENTS TO CERTAIN REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICTS TO BE A PUBLIC PURPOSE; DESCRIBING THE PUBLIC INFRASTRUCTURE IMPROVEMENTS TO BE MADE TO BENEFIT OR SERVE THE REAL PROPERTY WITHIN SUCH INCENTIVE DISTRICTS; DECLARING SUCH PROPERTY TO BE EXEMPT FROM REAL PROPERTY TAXATION; REQUIRING ANNUAL SERVICE PAYMENTS IN LIEU OF TAXES; ESTABLISHING A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND; AND PROVIDING RELATED AUTHORIZATIONS PURSUANT TO OHIO REVISED CODE SECTIONS 5709.40(C), 5709.42, 5709.43, 5709.832 AND 5709.85, AND DECLARING AN EMERGENCY.

WHEREAS, Division (C) of Ohio Revised Code Section (“**R.C.**”) 5709.40 provides that this Council may, under certain circumstances, (i) create one or more incentive districts for parcels of real property located in the City of Clayton, Ohio (the “**City**”), (ii) declare as “improvements,” which term is defined in Division (A)(4) of R.C. 5709.40, to such parcels of real property located in such incentive districts to be a public purpose, thereby granting to those improvements an exemption from real property taxation, (iii) designate the public infrastructure improvements made, to be made, or in the process of being made that benefit or serve, or, once made, will benefit or serve parcels in such incentive districts, and (iv) require annual service payments in lieu of taxes to be used to finance the designated public infrastructure improvements within such incentive districts; and,

WHEREAS, pursuant to Division (D)(1) of R.C. 5709.40, such exemption may, with the approval of the board of education of the city, local, or exempted village school district within the territory, be for up to thirty (30) years and up to one hundred percent (100%) of the increase in the assessed value of any real property in such incentive districts that would first appear on the tax list and duplicate of real and public utility property with respect to such incentive district after the effective date of an ordinance adopted under R.C. 5709.40 were it not for the exemption granted by that ordinance (an “**Improvement**”); and,

WHEREAS, the real property described in **EXHIBIT A** attached hereto and incorporated herein by reference (the “**Property**”) is located in the City, with each parcel of the Property referred to herein as a “**Parcel**” (whether as presently appearing on Montgomery County tax duplicates or as subdivided or combined and appearing on future tax duplicates); and,

WHEREAS, pursuant to Division (C) of R.C. 5709.40, this Council desires to create two incentive districts comprised of the Property (the “**Hunter’s Path Incentive District No. 1**” and “**Hunter’s Path Incentive District No. 2**”); and,

WHEREAS, as required by Division (A)(5)(f) of R.C. 5709.40, the City Engineer has certified to this Council that (i) the acreage of each of the two incentive districts is less than 300 acres in size, (ii) each incentive district is enclosed by a continuous boundary, and (iii) the existing public infrastructure is inadequate to meet the residential, commercial or industrial development needs of the incentive districts, as evidenced by the City’s written economic development plan, which is on file with the Clerk of the Council; and,

WHEREAS, pursuant to Division (D)(1) of R.C. 5709.40, this Council has determined to grant the TIF Exemption (as defined herein) from real estate taxation for all Improvements to the Property within the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2 for one hundred percent (100%) of such Improvements for thirty (30) years; and,

WHEREAS, this Council (i) has determined that it is necessary and appropriate and in the best interests of the City to provide for annual service payments in lieu of real property taxes with respect to the Property pursuant to R.C. 5709.42 and (ii) desires to facilitate the construction of the public infrastructure improvements described in **EXHIBIT B** attached hereto and incorporated herein by reference (the "**Public Infrastructure Improvements**"), which said Public Infrastructure Improvements, once made, will benefit or serve the Parcels (the "**Project**"); and,

WHEREAS, Hunters Path Project I, LLC or its designee (the "**Developer**") proposes to develop the Property by constructing or causing to be constructed via a third-party home builder, within Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, aggregating approximately 125 single-family residential units (the "**Development**"), which Development places additional demand on the Public Infrastructure Improvements; and,

WHEREAS, in connection with the construction of the Project, the City and the Developer desire to execute a tax increment financing agreement substantially in the form attached hereto and incorporated herein as **EXHIBIT C** (the "**TIF Agreement**"), which TIF Agreement provides for the construction, and for the financing, of the Project, as defined herein and in the TIF Agreement; and,

WHEREAS, as authorized by R.C. 5709.91 and as provided in the TIF Agreement, the City intends to require the owner or owners of each Parcel to make minimum service payments on or before the final dates for payment of real property taxes, in accordance with the TIF Agreement; and,

WHEREAS, notice of this proposed ordinance has been delivered to the Boards of Education of the Northmont City School District ("**Northmont City Schools**") and the Miami Valley Career Technology Center ("**Miami Valley Career Tech**," and together with Northmont City Schools, the "**School Districts**") in accordance with and within the time periods prescribed in Division (D) of R.C. 5709.40 and R.C. 5709.83, respectively, and by resolution adopted by the board of education of the Northmont City Schools on February 14, 2022, Northmont City Schools has approved the TIF Exemption (as defined herein) on the condition that City and Northmont City Schools enter into the School District Compensation Agreement authorized herein; and,

WHEREAS, this Council has determined that annual service payments in lieu of taxes are to be paid to the School Districts pursuant to R.C. 5709.42 in amounts equal to, for years 1 through 10, twenty-five percent (25%) of the real property taxes that would have been payable to the School Districts if the Improvements had not been exempted from taxation, and, for years 11 through the end of the TIF Exemption period, one hundred percent (100%) of the real property taxes that would have been payable to the School Districts if the Improvements had not been exempted from taxation; and,

WHEREAS, this Council acknowledges that this ordinance is being adopted after prior notice, via first class mail, of public hearing provided not later than thirty (30) days to every real property owner whose property is located in the boundaries of the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, which notice included a map of the incentive districts, an overlay relating thereto, and information to property owners as to excluding their property from the incentive districts, as appropriate, all in accordance with Division (C)(2)(a) of R.C. 5709.40, and that the owner of the Property did affirmatively waive its right to a public hearing in accordance with such provisions; and,

WHEREAS, this Council acknowledges that it has received an affirmative statement from the owners of all the Parcels (i.e., 100% of the Property) located within the Hunter's Path Incentive District

No. 1 and Hunter's Path Incentive District No. 2 (i) otherwise waiving the notice requirement set forth in Division (C)(2)(a) of R.C. 5709.40 with respect to all of the Property, (ii) affirming that the owners thereof have no intention of excluding any of the Property from the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, and (iii) requesting that this Council proceed with the enactment of this ordinance; and,

WHEREAS, on November 12, 2022, the City delivered notice of this proposed ordinance to the Board of Commissioners of the County of Montgomery (the "**Board**") in accordance with and within the time period prescribed in Division (E) of R.C. 5709.40; and,

WHEREAS, the Board did not object to the exemption contemplated by this ordinance within the time period specified in Division (E)(3) of R.C. 5709.40 and, notwithstanding the requirements for automatic compensation of renewal levies with an increase, replacement levies, or additional levies, as appropriate, under Division (F) of R.C. 5709.40, this Council has determined that no other compensation shall be provided to the Board related to the matter herein.

NOW, THEREFORE, be it ordained by the legislative authority of the Municipality of Clayton, Montgomery County, Ohio, that:

Section 1. Creation of Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2. Pursuant to Division (C) of R.C. 5709.40, this Council hereby creates the Hunter's Path Incentive District No. 1 and Hunter's Path Incentive District No. 2, which consists of the Parcels specifically identified and depicted in Exhibit A attached hereto, and further declares that the Improvements to the Property located in the incentive districts are a public purpose. The life of each incentive district commences with the first tax year that begins after the effective date of this ordinance and in which an Improvement attributable to a new structure would first appear on the tax list and duplicate of real and public utility property for any Parcel within the applicable incentive district were it not for the exemption granted in this ordinance and ends on the earlier of (a) 30 years after such commencement 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 R.C. 5709.40 (the "Incentive District Life").

Section 2. Authorization of TIF Exemption. Under Division (C) of R.C. 5709.40, this Council hereby exempts from taxation one hundred percent (100%) of the Improvement as a public purpose for a period of thirty (30) years (the "**TIF Exemption**"). The TIF Exemption with respect to all Property in the incentive districts shall commence on separate dates for each incentive district with the first day of the tax year following the effective date of this ordinance and for which an Improvement on any Parcel in the each respective incentive district would have first appeared on the tax list and duplicate of real and public utility property were it not for the exemption granted by this ordinance (the "**Commencement Date**"), and in all cases, the incentive districts and the TIF Exemption for the Property and Improvements located within each incentive district shall end with respect to all Property in such incentive district on the date that is the earlier of (a) thirty years after the Commencement Date for such incentive district or (b) the date on which the City can no longer require service payments in lieu of taxes, either by law, or because the costs of all Public Infrastructure Improvements are paid for, all in accordance with the requirements of R.C. 5709.40, R.C. 5709.42, and R.C. 5709.43.

Section 3. Service Payments and Property Tax Rollback Payments. As provided in R.C. 5709.42, this Council hereby directs and requires each owner of a Parcel within the respective incentive districts (each, an "**Owner**") to make annual service payments in lieu of taxes with respect to the Improvement allocable to each such Owner's Parcel to the County Treasurer of Montgomery County, Ohio (the "**County Treasurer**") on or before the final dates for payment of real property taxes. Each service payment in lieu of taxes, including any penalties and interest at the then-current rate established under R.C. 323.121 and R.C. 5703.47, will be charged and collected in the same manner and in the same amount as the real property taxes that would have

been charged and payable against the Improvement if it were not subject to the TIF Exemption. Such service payments in lieu of taxes, penalties and interest, and any other payments with respect to each Improvement that are received by the County Treasurer in connection with the reduction required by R.C. 319.302, R.C. 321.24, R.C. 323.152 and R.C. 323.156, as the same may be amended from time-to-time, or any successor provisions, as the same may be amended from time-to-time (the “**Property Tax Rollback Payments,**” and together with the annual service payments in lieu of taxes and penalties and interest described above, the “**Service Payments**”), will be allocated and distributed in accordance with Section 5 of this ordinance.

Section 4. Creation of TIF Fund. This Council hereby establishes, pursuant to and in accordance with the provisions of R.C. 5709.43, the Hunter’s Path Municipal Public Improvement Tax Increment Equivalent Fund (the “**TIF Fund**”), into which shall be deposited all of the Service Payments distributed to the City with respect to the Improvements to Parcels of the Property by or on behalf of the County Treasurer, as provided in R.C. 5709.42. The City may use amounts deposited into the TIF Fund to pay any costs associated with the Public Infrastructure Improvements approved by the City, including, but not limited to, the “**costs of permanent improvements**” described in Division (B) of R.C. 133.15. The TIF Fund will be maintained in the custody of the City and will exist so long as such Service Payments and minimum service payments are collected and used for the purposes described in this Section 5. Then the TIF Fund is to be dissolved and any surplus funds remaining in the TIF Fund will be transferred to the City’s general fund, all as set forth under Division (D) of R.C. Section 5709.43.

Section 5. Distribution of Funds. At the same time and in the same manner as real property tax distributions, the County Treasurer shall distribute the Service Payments to the City to be deposited in the TIF Fund, and the City shall then distribute the Service Payments as follows:

FIRST, to each of Northmont City Schools and Miami Valley Career Tech, amounts equal to, in years one (1) through ten (10) of the TIF Exemption period, twenty-five percent (25%), and in years eleven (11) through thirty (30) of the TIF Exemption period, one hundred percent (100%), of the additional amount of Service Payments actually received by the City in such year, multiplied by a fraction, the numerator of which is each respective School District’s effective real property tax rate for the classification of the Property and the denominator of which is the aggregate effective real property tax rate for the classification of the Property for all taxing districts within which the Property is located, as calculated and certified in the manner specified in Section 2 of the School District Compensation Agreement; and

SECOND, to be deposited into the TIF Fund and then distributed according to the terms and conditions of this Section 5 and the TIF Agreement.

The City shall then distribute Service Payments on deposit in the TIF Fund in accordance with the TIF Agreement to pay or reimburse the Developer or its designee for the costs of the Project constructed or caused by the Developer or its designee to be constructed-according to the terms and conditions of the TIF Agreement. The Service Payments are hereby directed one hundred percent (100%) to general public infrastructure improvements, as they comprise the Public Infrastructure Improvements set forth herein. The TIF Fund is to remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the TIF Fund is to be dissolved and any surplus funds remaining therein are to be transferred to the City’s General Fund, all in accordance with R.C. 5709.43.

Section 6. TIF Agreement and Further Authorizations. This Council hereby approves the TIF Agreement (which TIF Agreement shall provide for minimum service payments in accordance with R.C. 5709.91), with any changes that are not inconsistent with this ordinance and not substantially

adverse to the City and which shall be conclusively evidenced by the signing of the TIF Agreement by the City Manager, to which this Council further hereby authorizes execution on behalf of the City. This Council further authorizes and directs the City Manager or other appropriate officers of the City to provide such information and certifications and execute and deliver, or accept delivery of such instruments, as are necessary and appropriate to implement this ordinance and the TIF Agreement.

Section 7. Authorization of School Compensation Agreement. This Council further hereby approves the compensation agreement between the City and the Board of Education of Northmont City Schools in the form attached hereto as **EXHIBIT D** (the “**School District Compensation Agreement**”), with any changes that are not inconsistent with this ordinance and not substantially adverse to the City and that are approved by the City Manager on behalf of the City, all of which shall be conclusively evidenced by the signing of the School District Compensation Agreement, and hereby authorizes and directs the City Manager, other appropriate officers of the City, or any of them, to execute same.

Section 8. Application for Real Property Tax Exemption and Remission. This Council hereby authorizes the City Manager or other appropriate officers of the City to prepare and sign any applications for real property tax exemption pursuant to R.C. 5709.911, the provisions of which govern the priority status of the exemptions provided under this ordinance.

Section 9. Tax Incentive Review Council. This Council hereby designates the Montgomery County Tax Incentive Review Council (the “**TIRC**”) as the tax incentive review council that shall review annually all exemptions from taxation resulting from this ordinance and any other matters as may properly come before the TIRC, in accordance with R.C. 5709.85.

Section 10. Nondiscriminatory Hiring Practices. In accordance with R.C. 5709.832, this Council hereby determines that no employer located within the incentive districts is to deny any individual employment based on considerations of race, religion, sex, disability, color, national origin, or ancestry.

Section 11. Ohio Department of Development. Pursuant to Division (I) of R.C. 5709.40, the City Manager is hereby directed to deliver a copy of this ordinance to the Director of the Ohio Department of Development (“**ODOD**”) within fifteen (15) days after its passage. On or before March 31 of each year that the TIF Exemption remains in effect, the City Manager or other authorized officer of this City shall prepare and submit, or cause to be prepared and submitted, to the Director of ODOD the status report required under Division (I) of R.C. 5709.40.

Section 12. Open Meetings. It is hereby found and determined 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 decision-making bodies of the City that resulted in such formal actions were in meetings open to the public and in compliance with Ohio’s Sunshine Laws, including R.C. 121.22.

Section 13. Effective Date. This ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health and safety of the City and its inhabitants for the reason that this ordinance must be immediately effective so that the work on the Development can begin as quickly as possible, thus providing economic benefit to the City and its residents; wherefore this ordinance shall take effect and be in force from and immediately after its adoption.

RESOLUTIONS – SINGLE READING AND IMMEDIATE ENACTMENT

RESOLUTION NO. R – 04 – 22 – 28

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE BID SUBMITTED BY AND ENTER INTO A CONTRACT WITH WAGNER PAVING, INC. FOR CHIP AND SEAL PROJECT WITH ¾ INCH ASPHALT LEVELING ON RINEHART AND OLD MILL ROADS AT A COST NOT TO EXCEED \$171,232.95

WHEREAS, bids have been solicited pursuant to a request for bids and received for the chip and seal with ¾ inch asphalt leveling course on Rinehart and Old Mill Roads for 2022 (the “Project”); and

WHEREAS, after reviewing the bids, the City Manager determined that the bid received from Wagner Paving, Inc., was the lowest and best bid submitted by a responsible bidder and therefore recommended accepting said bid in accordance with the terms of the request for bids.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the City Manager is authorized, in accordance with the terms of the request for bids, to accept the bid submitted by and enter into a contract with Wagner Paving, Inc. for the above identified Project and for a total cost not to exceed \$171,232.95.

ADOPTED BY COUNCIL ON APRIL 7, 2022

RESOLUTION NO. R – 04 – 22 – 29

A RESOLUTION AUTHORIZING PARTICIPATION IN THE ODOT ROAD SALT CONTRACTS AWARDED IN 2022

WHEREAS, the City of Clayton, Ohio, located in Montgomery County, (hereinafter referred to as the “Political Subdivision”) hereby submits this written agreement to participate in the Ohio Department of Transportation’s (ODOT) annual road salt bid in accordance with Ohio Revised Code 5513.01(B) and hereby agrees to all of the following terms and conditions in its participation of the ODOT road salt contract:

- a. The Political Subdivision hereby agrees to be bound by all terms and conditions established by ODOT in the road salt contract and acknowledges that upon award of the contract by the Director of ODOT it shall be bound by all such terms and conditions included in the contract; and
- b. The Political Subdivision hereby acknowledges that upon the Director of ODOT’s signing of the road salt contract, it shall effectively form a contract between the awarded salt supplier and the Political Subdivision; and
- c. The Political Subdivision agrees to be solely responsible for resolving all claims or disputes arising out of its participation in the ODOT road salt contract and agrees to hold the Department of Transportation harmless for any claims, actions, expenses, or other damages arising out of the Political Subdivision’s participation in the road salt contract; and

- d. *The Political Subdivision's electronic order for Sodium Chloride (Road Salt) will be the amount the Political Subdivision agrees to purchase from its awarded salt supplier at the delivered bid price per ton awarded by the Director of ODOT; and*
- e. The Political Subdivision hereby agrees to purchase a minimum of 90% of its electronically **submitted** salt quantities from its awarded salt supplier during the contract's effective period; and
- f. The Political Subdivision hereby agrees to place orders with and directly pay the awarded salt supplier on a net 30 basis for all road salt it receives pursuant to ODOT salt contract; and
- g. The Political Subdivision acknowledges that should it wish to rescind this participation agreement it will do so by written, emailed request by no later than **Friday, April 29 by 5:00 p.m.** The written, emailed request to rescind this participation agreement must be received by the ODOT Office of Contract Sales, Purchasing Section email: Contracts.Purchasing@dot.ohio.gov by the deadline. The Department, upon receipt, will respond that it has received the request and that it has effectively removed the Political Subdivision's participation request. Furthermore, it is the sole responsibility of the Political Subdivision to ensure ODOT has received this participation agreement as well as the receipt of any request to rescind this participation agreement. The Department shall not be held responsible or liable for failure to receive a Political Subdivision's participation agreement and/or a Political Subdivision's request to rescind its participation agreement.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That this participation agreement for the ODOT road salt contract is hereby approved, funding has been authorized, and the Political Subdivision agrees to the above terms and conditions regarding participation on the ODOT sale contract.

ADOPTED BY COUNCIL ON APRIL 7, 2022

RESOLUTION NO. R – 04 – 22 – 30

A RESOLUTION AUTHORIZING THE CLAYTON CITY MANAGER TO EXECUTE AND FILE APPLICATIONS ON BEHALF OF THE CITY OF CLAYTON FOR AID IN FINANCING THE COST OF IMPROVEMENT PROJECT(S) PURSUANT TO THE ECONOMIC DEVELOPMENT/GOVERNMENT EQUITY (ED/GE) PROGRAM; TO EXECUTE AGREEMENTS AUTHORIZING THE CITY TO PERFORM ALL ACTS AND THROUGH THE CITY MANAGER AND FINANCE DIRECTOR TO EXECUTE ALL DOCUMENTS NECESSARY TO FULFILL THE CITY OF CLAYTON'S OBLIGATIONS UNDER SAID GRANT APPLICATION AND CORRESPONDING AGREEMENTS AND TO COMPLY WITH ALL RELEVANT LOCAL, STATE OR FEDERAL LEGAL REQUIREMENTS AND TO PROVIDE ASSURANCES AND ADDITIONAL INFORMATION AS REQUIRED

WHEREAS, the City of Clayton, Ohio, desires to apply jointly with the City of Vandalia for aid to assist with financing the cost of a project known as "Project Whiteboard"; and

WHEREAS, ED/GE Grant funding may be available for the financing of said Project; and

WHEREAS, Council desires to ratify the submission of a joint application for ED/GE Grant funding with the City of Vandalia for said Project.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. The authority of the City Manager of the City of Clayton, Ohio to execute and file application(s) in the amount of \$375,000.00 for ED/GE Grant funding to finance the cost of Project Whiteboard pursuant to the Economic Development/Government Equity Program is hereby ratified.
2. The City Manager of the City of Clayton is authorized to apply to and execute agreements to effect such ED/GE Grant funding.
3. The City Manager of the City of Clayton, as its Project Manager, and the Finance Director as Chief Fiscal Officer are authorized to perform all acts and execute all documents deemed necessary to fulfill the City of Clayton's obligations under said grant applications and corresponding agreements and to comply with all relevant local, state or federal legal requirements and to provide assurances and additional information as required by said ED/GE Grant Program.

ADOPTED BY COUNCIL ON APRIL 7, 2022
