

# CITY OF CLAYTON, OHIO

## RESOLUTION NO. R - 12 - 23 - 68

### A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH CLAY TOWNSHIP, THE MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, AND QUICKTRIP CORPORATION REGARDING A PROPOSED PUBLIC WATER LINE EXTENSION

WHEREAS, QuickTrip Corporation has proposed development of a site located in Clay Township between Interstate 70, State Route 49, and Brookville-Salem Road which will require access improvements to local and state roadways and the extension of related utilities to the proposed site ("State Route 49 Project"); and

WHEREAS, City Council has determined the State Route 49 Project would provide economic benefits to the residents and businesses of the City; and

WHEREAS, City Council desires to authorize the City Manager to enter into a Memorandum of Understanding with Clay Township, the Montgomery County Transportation Improvement District, and QuickTrip Corporation in substantially similar form as *Exhibit A*, appended hereto and incorporated herein.

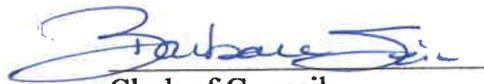
### NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF CLAYTON, STATE OF OHIO:

1. That the City Manager is authorized to enter into a Memorandum of Understanding with Clay Township, the Montgomery County Transportation Improvement District, and QuickTrip Corporation in substantially similar form as *Exhibit A*, appended hereto and incorporated herein.
2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Council, and that all deliberations of this Council and any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

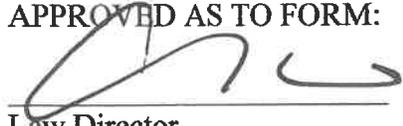
ADOPTED BY COUNCIL ON DECEMBER 7, 2023.

AUTHENTICATION:

  
Mayor (Presiding Officer of Council)

  
Clerk of Council

APPROVED AS TO FORM:



Law Director

CERTIFICATION OF PUBLICATION

This shall certify that that the text of the above referenced enactment or a summary thereof was published once in the following newspaper and a summary posted in three places of public access as designated by Council.

Name of newspaper

Register Herald

Date of publication

December 13, 2023



CLERK

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding sets forth the mutual understanding and intent as of \_\_\_\_\_, 2023 between Clay Township (“the Township”), and The City of Clayton, OH, (“the City”) (the City and the Township collectively referred to as the “Local Governments”), the Montgomery County Transportation Improvement District (the “TID”), and QuikTrip Corporation (“QuikTrip”) regarding the installation of a proposed public water line extension from the existing public water line located at the intersection of US-40 and SR-49 in Clay Township OH running parallel with SR-49 for approximately 5400 linear feet with two perpendicular borings under SR-49 terminating outside of the SR-49 right-of-way (“Extension”), along with certain matters related to the Clayton Project (as defined in Section 2 below), for the purposes of economic development in The Township and to accommodate QuikTrip's proposed commercial development at the Southwest Quadrant of SR-49 and Brookville Salem Rd in Clay Township, OH (the “QuikTrip Development”).

1. Development Agreement. This Memorandum of Understanding is solely for the purpose of reflecting the parties’ intentions with respect to the Extension and to form the basis of a definitive agreement to be negotiated by the parties (the “Development Agreement”), with the initial drafts prepared by the TID as part of its services engagement with the Local Governments (the “Project Management Agreements”). The parties anticipate that the Development Agreement will address, among other things, the following:

- (a) Rights and responsibilities related to the design, engineering, bidding and contractor selection processes for the Extension;
- (b) Cost sharing and reimbursement/contribution process;
- (c) Project termination rights;
- (d) The procedure for modifications to the scope of the Extension (it being acknowledged by the parties that the water lines will be owned by and subject to the control of Montgomery County and its permit procedures and requirements, including without limitation oversize requirements); and
- (e) Operation and maintenance of the Extension following construction completion.

2. Clayton Project. The parties acknowledge that the Extension will support the installation of a supplemental public water line that will tap into the Extension and extend approximately 3,350 linear feet along and in the right-of-way of Brookville-Salem Road in the City of Clayton (the “Clayton Project”). The parties intend that the Development Agreement will address the commitments of the parties to share in the costs related to the Extension. The Clayton Project will be subject to a separate agreement, if any, among the relevant parties, as contemplated by the Project Management Agreements.

3. Project Cost Estimate. The current estimate for the costs associated with the Extension is attached hereto as Exhibit A. The parties acknowledge that the estimate is subject to change and the final estimate will be memorialized in the Development Agreement.

4. Project Timeline. The parties acknowledge that QuikTrip is currently engaged in obtaining easements for the Extension from private property owners, and that the parties will not have any obligations under the Development Agreement unless and until QuikTrip has successfully acquired all necessary easements. The Development Agreement will address the establishment of a commercially reasonable timeline for the parties’ respective obligations upon the obtainment of such easements.

5. Responsibilities of the Parties. It is understood that QuikTrip shall design, bid, and construct the Extension as a part of the QuikTrip Development at its sole cost and expense, except as specifically set

forth in the Development Agreement. The parties agree that QuikTrip will obtain all easements necessary for construction of the Extension and shall be responsible for all costs thereof. It is further understood that the Local Governments shall reimburse QuikTrip for costs associated with the Extension up to the amount and subject to the schedule to be set forth in the Development Agreement. The reimbursement or other contribution to QuikTrip shall be at an actual cost figure, including all costs and expenses related to engineering services for the Extension including geo-technical services, surveying, design, contract documents, regulatory approvals, legal services, easements, bidding, and construction administration.

6. Statement of the Work. QuikTrip shall provide all engineering and design services and obtain any and all necessary permits through Montgomery County and other permitting authorities having jurisdiction (the "AHJs"), licenses, construction, and all other services necessary to complete the Extension of an 8", or larger as may be agreed to in the Development Agreement, water main infrastructure to serve the proposed QuikTrip Development. The foregoing work is hereinafter referred to as the "Extension Project."

7. Availability of Cost Documentation. QuikTrip shall make available for inspection by the Local Governments, from time to time, upon request, documentation of all third party costs associated with the Extension.

8. Timely Completion of the Extension Project. The Local Governments and QuikTrip declare their mutual intention that the Extension shall be completed prior to the opening of the QuikTrip Development.

9. Binding Effect. Notwithstanding anything to the contrary, except as otherwise provided in Sections 9, 10, and 11, this Memorandum of Understanding is not a binding agreement between the parties, nor does it create any obligations on the part of, or any rights in favor of, any party, but is only intended to be an expression of the parties' mutual intent and understanding as of the date of this Memorandum of Understanding. It is further agreed that no party will have any legal obligation or commitment whatsoever to enter into the Development Agreement by virtue of this Memorandum of Understanding or any other written or oral expression with respect to such a transaction. This Memorandum of Understanding may not be assigned by any party without the written consent of all other parties. Any party may terminate this Memorandum of Understanding upon written notice to the other parties at any time and for any reason or for no reason; provided, however, that Sections 9, 10, and 11 will survive such termination.

10. Transaction Expenses. Each party agrees to bear its own legal costs and other costs of related to the transactions contemplated by this Memorandum of Understanding, if any.

11. Choice of Law. This Memorandum of Understanding and any matters relating to it will be subject to and interpreted in accordance with the laws of the State of Ohio, without giving effect to the principles of conflict of laws thereof.

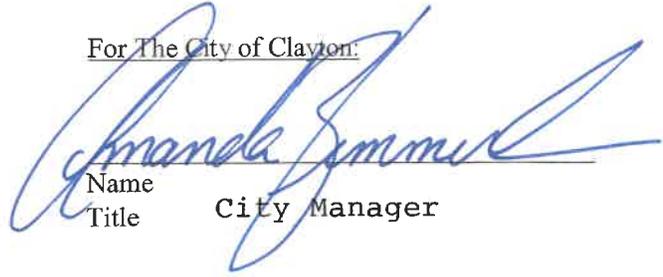
*[Signatures on Following Pages]*

For QuikTrip:

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Truitt J. Priddy  
Division Real Estate Manager  
QuikTrip Corporation

For The City of Clayton:



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Name  
Title City Manager

For the TID:

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Crystal Corbin, Executive Director

For Clay Township:

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Name  
Title

Exhibit A

Preliminary Cost Estimate