

ORDINANCE NO. 7081

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A PROJECT MANAGEMENT AND FINANCING AGREEMENT REGARDING THE DEER VALLEY SANITARY SEWER PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, Oberer Development is developing a residential subdivision in Miamsiburg called Deer Valley; and

WHEREAS, the City wishes to work with Oberer to eliminate an existing pump station in an adjacent development and utilize one, new pumpstation to be constructed by Oberer; and

WHEREAS, the City and Oberer Development have agreed to utilize the Transportation Improvement District (TID) to manage the joint project on behalf of each entity; and

WHEREAS, the City has utilized the TID for several other projects, similar in scope to the Deer Valley project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The Deer Valley Development Project Management and Financing Agreement is hereby determined to be necessary for the construction of the project as outlined in the agreement.

Section 2.

The City Manager is hereby authorized to sign the Deer Valley Development Project Management and Financing Agreement which is attached hereto as Exhibit A.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this amendment and addendum is needed at the earliest possible date to ensure timely scheduled construction activities, therefore, this measure shall be in force from and after its passage.

Passed: May 21, 2024

Attested: 
Keysha Alexander, Clerk of Council

Approved: 
Michelle L. Collins, Mayor

Exhibit A

Deer Valley Development
Project Management and Financing Agreement

DEER VALLEY DEVELOPMENT
Project Management and Financing Agreement

This DEER VALLEY DEVELOPMENT Project Management and Financing Agreement (this “Agreement”) is made and entered into as of the ___ day of _____, 2024 (the “Effective Date”), by and between the CITY OF MIAMISBURG, OHIO, an Ohio municipal corporation (the “City”), BENNER ROAD DEVELOPERS LTD. (“Developer”), and the Montgomery County Transportation Improvement District, a transportation district and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the “TID”) (the City, Developer, and the TID are sometimes referred to herein individually as “Party” and collectively as “Parties”), under the following circumstances:

- A. The City and Developer desire to engage the TID to assist with the removal of the existing Terrington subdivision pump station, the installation of a gravity line and force main to the Deer Valley pump station, and construction inspection services for the installation of the Deer Valley Lift Station (collectively, the “Project”);
- B. The City and/or Developer has engaged a consultant to perform the design and engineering services for the Project; and
- C. The Parties desire to support the Project by entering into this Agreement to set forth in more detail each of their respective obligations with respect to the Project, and, therefore, the City Council of the City, and the TID, acting pursuant to Resolution No. _____ adopted by its Board of Trustees on _____, 2024, have each authorized the execution of this Agreement.

Now Therefore, in consideration of the above, and based upon the mutual promises contained below, the Parties agree as follows:

1. **The Project Generally.** The Parties hereby agree to cooperate to develop and implement the Project as set forth in this Agreement. A visual depiction of the total scope of the Project is attached hereto as Exhibit A. For purposes of clarity, the TID’s services related to the construction of the Deer Valley Lift Station will only include construction inspection services, and the construction of such facilities will not be the TID’s responsibility.

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

3. **Project Budget.** The budget for the Project is set forth in Exhibit C (the “Budget”). Notwithstanding anything in this Agreement to the contrary, the TID will not be obligated to provide for any products or services related to the Project in excess of the funds actually received by the TID from the City and Developer, less the TID Management Fee (as defined in Section 4.B. below).

4. Funding for the Project.

A. As a general matter, the City and Developer are obligated to fund the entire cost of the Project, including without limitation the amounts designated as their respective responsibilities in the Budget, whether via borrowing or an alternative source of funds. In the event the costs and expenses related to the Project exceed the amounts set forth in the Budget, the TID's obligation to proceed is subject to the agreement of the Parties to an appropriate amendment to the Budget.

B. The City and Developer hereby agree that the Budget includes a fee to the TID in the amount of \$27,400 (the "TID Management Fee") as compensation to the TID for its services related to the Project. The TID Management Fee will be deemed earned upon receipt.

C. The City and Developer will fulfill their payment obligations hereunder and as set forth in the Budget by timely depositing the amounts of such obligations with the TID (the "Deposit"). The TID will deposit the Deposit in a segregated fund for the benefit of the Project (the "Deposit Fund") and the TID will use the Deposit Fund solely to accomplish the Project. Within forty-five (45) days after Construction Completion, the TID will deliver the balance of the Deposit Fund, if any, to the City and Developer on a pro rata basis.

5. Specific Project Provisions.

A. Contracting. The TID will enter into contracts or otherwise arrange for the provision of all products and services necessary to complete the Project in accordance with the TID's policies with regards to procurement (collectively, the "Contracts"). The Contract(s) for the installation of the site work shall include a one year warranty. The costs and expenses related to such Contracts, including without limitation the cost of the insurance required pursuant to Section 5.H. below, will be referred to as the "Project Costs". The TID will provide a copy of each written Contract to the City and Developer upon request.

B. Work under the Contracts. During construction, the TID and the City will inspect and determine, in its sole discretion, whether the work done under the Contracts is sufficient and completed in accordance with the Contracts.

C. Contractor Insurance Requirements. The TID will require that the selected contractor have and maintain a commercial and general liability insurance policy with minimum coverage amounts of at least \$2,000,000 per occurrence with a deductible of not more than \$10,000. The TID will also require that each selected contractor and each subcontractor maintain during the life of its contract and subcontract, workers compensation insurance pursuant to Ohio law, public liability insurance with minimum coverage amounts of \$2,000,000 per occurrence, and property damage insurance with minimum coverage amounts of \$2,000,000 per occurrence. The TID may impose additional insurance obligations upon the contractor in the TID's discretion. All such policies will name the Parties as additional insureds via broad form endorsement on a primary and non-contributory basis, and will be issued by carriers with a Best's Insurance Reports policyholder's rating, to the extent commercially reasonable, of "A" (but in any

event, not less than “A-”) and a financial size category of “X” or better. All policies will contain provisions for thirty (30) days’ written notice to the TID prior to expiration or cancellation.

D. Project Supervision. All activities related to the Project will be performed under the general supervision and direction of the TID. The TID will provide or provide for inspection and monitoring activities sufficient to ensure compliance with the Project scope and any Contracts.

E. Contract Administration. The TID will administer all Contracts including monitoring the performance of all parties under the Contracts. The TID will work to resolve any disputes, complaints or claims related to the Contracts. The TID shall administer all change orders under any of the Contracts. The TID must obtain the consent of the City and Developer for any change order that causes the contingency line item in the budget to be exceeded. Notwithstanding the foregoing, if the Developer is willing to pay the cost in excess of the contingency line item of a change order(s) that cause the contingency line item to be exceeded, then only the approval of the Developer shall be required. The TID will maintain all required documentation for the Contracts including all change orders.

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

G. Construction Completion. The TID will, with the City, conduct a final inspection of the construction of the Project when the contractor indicates that the construction has been substantially completed. The TID and the City will determine the need for any corrective or additional work and create the punch list detailing the additional work. The TID will provide the punch list to the contractor (and any applicable subcontractors) in writing along with a specified time frame or specified date for completion of the prescribed work. Upon final completion of construction of the Project, the TID will arrange for obtaining all necessary approvals/consents from any regulatory bodies (the “Consents”). Upon completion of the punch list and obtaining the Consents, the construction of the Project will be completed (“Construction Completion”). Within thirty (30) days after Construction Completion, the TID will sign any documents necessary to assign to the other Parties and/or their designees all transferable warranties (if any) relating to services, materials or equipment incorporated into the Project, including without limitation any warranties under the Contracts.

H. Insurance. The TID will obtain and maintain comprehensive general accident and public liability insurance with coverage limits in the minimum amounts as to death or bodily injury and as to property damage with respect to the Project and its construction in amounts the TID determines from time to time. The TID will provide to

the City and Developer, upon request, certificates of insurance. The cost of such insurance related to the Project will be a Project Cost.

6. TID Payment Obligations. Notwithstanding any provision of this Agreement, it is understood and agreed that the TID will have no pecuniary obligations under this Agreement or any related agreement and no obligation of the TID hereunder or thereunder will constitute a general debt or a pledge of the general credit of the TID.

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

8. Progress Meetings. During the course of the Project, the Parties agree to meet at least once per month to discuss the progress of the Project (the "Progress Meetings"). In addition to the foregoing, the TID may periodically submit information updates to the City detailing progress achieved. The Parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements.

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

If to the City:

City of Miamisburg
10 N. First Street
Miamisburg, Ohio 45342
Attention: City Manager

If to the TID:

Montgomery County Transportation
Improvement District
451 W. Third St., 10th Floor
Dayton, Ohio 45422
Attention: Executive Director

If to Developer:

Benner Road Developers LTD.
3445 Newmark Drive _____
Miamisburg, Ohio
45342 _____
Attention: George R. Oberer,
Jr. _____

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent.

10. Delegation of City Powers. The Parties hereby agree that this Agreement constitutes an agreement for the joint construction of a public work, utility, or improvement as set forth in Section 715.02 of the Revised Code. The City hereby grants the TID the right to exercise the City's powers in connection with the TID's activities in support of the Project pursuant to Section 715.02 of the Revised Code; provided that the TID will only exercise such powers as are necessary to accomplish the specific objectives of the Project. The City agrees to perform all acts and execute all supplementary instruments or documents which may be reasonably necessary to effectuate the foregoing delegation of authority.

11. Disclaimer of Warranties/Limitation of Liability. THE CITY AND DEVELOPER AGREE THAT THE TID DOES NOT GUARANTEE OR WARRANT THE SERVICES PROVIDED BY THE TID HEREUNDER OR THE COMPLETION OF THE PROJECT. ALL TID SERVICES ARE PROVIDED ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE TID DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IN NO EVENT WILL THE TID BE LIABLE OR RESPONSIBLE TO THE CITY OR DEVELOPER FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE AND LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER ANY THEORY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. EXCEPT TO THE EXTENT OF INSURANCE PROCEEDS ACTUALLY RECEIVED, IN NO EVENT WILL THE TID'S TOTAL LIABILITY HEREUNDER EXCEED THE TID MANAGEMENT FEE.

12. Assignment and Binding Nature. This Agreement may not be assigned without the prior written consent of the non-assigning Parties. The provisions of this Agreement will be binding upon the successors and permitted assigns of the Parties.

13. Remedies. Any disputes, controversies or claims arising under or relating to this Agreement or the breach, termination or invalidation thereof or the Services provided pursuant to this Agreement will, upon written notice, be referred to the City Manager, the Executive Director of the TID, and a Developer executive with management authority who will confer in good faith for a period of at least thirty (30) days to attempt to resolve the matter. If the foregoing are unable to resolve the matter within this thirty-day period, each Party may take such actions permitted by law or this Agreement in order to resolve such dispute.

14. 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 will not affect any other provision, covenant, obligation or agreement, each of which will be construed and enforced as if the invalid or unenforceable portion were not contained herein.

That invalidity or unenforceability will not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement will be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

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

16. Fiscal Officer Certification. The Fiscal Officer of the City hereby certifies that the monies required to meet the obligations of the City during the current fiscal year under this Agreement have been appropriated lawfully for that purpose, and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Pursuant to Section 5705.44 of the Ohio Revised Code, the Fiscal Officer of the City covenants that any requirement herein of an expenditure of City monies in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. The certifications in this Section 16 are given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

17. Miscellaneous. This Agreement and any Exhibit attached hereto may only be amended by written instrument executed by the Parties. All covenants, obligations and agreements of the Parties contained in this Agreement will be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement will be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, agent or employee of any of the Parties other than in their official capacity. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein. The waiver, by any Party hereof of any breach of any provision of this Agreement will not be construed as, or constitute, a continuing waiver or a waiver of any other breach of any provision of this Agreement. The headings contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

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

In Witness Whereof, the Parties have executed this Agreement effective as of the Effective Date.

CITY OF MIAMISBURG, Ohio

CITY OF MIAMISBURG, OHIO Fiscal
Officer (Section 16 only)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Montgomery County Transportation
Improvement District

By: _____
Vanessa A. Glotfelter, Executive Director

BENNER ROAD DEVELOPERS LTD.

By: _____

Name: _____

Title: _____

EXHIBIT A

Scope

Deer Valley Development

Scope:

- Removal of existing Terrington pump station
- Installation of gravity line to Deer Valley
- Construction inspection of the installation of the Deer Valley Lift Station



See attached construction plan set.

EXHIBIT B

Schedule

February 2024	Pre-bid meeting
April 12, 2024	Bid opening
June-November 2024	Construction

EXHIBIT C

Budget

DEER VALLEY DEVELOPMENT

SOURCES & USES 4/26/2024

SOURCES AMOUNT

City of Miamisburg	\$ 435,505	City's contribution, \$374,841+ 55% costs
Oberer	\$ 359,782	Reimbursement due to upsizing of pipes, \$310,148 + 45% costs

TOTAL \$ 795,287

USES AMOUNT

Construction	\$ 684,989	Engineer's Estimate (\$310,148 Benner Land Dev, 45%) + (\$374,841 City of Miamisburg, 55%)
Contingency	\$ 68,499	10% of construction
TID Management Fee	\$ 27,400	4% of construction costs
Construction Inspection	\$ 4,400	Proposal for field review/inspectin of the lift station installation, William Schindler
Third Party & Legal	\$ 10,000	

TOTAL \$ 795,287

ORDINANCE NO. 7082

AN ORDINANCE PROVIDING FOR A \$3,073,290 SPECIAL OBLIGATION STATE INFRASTRUCTURE LOAN, BY THE CITY OF MIAMISBURG, OHIO FOR THE PURPOSE OF CONSTRUCTING ROAD IMPROVEMENTS AT SYCAMORE TRAILS PARK IN THE CITY, AUTHORIZING THE PLEDGE OF REVENUES TO SECURE THE LOAN, AUTHORIZING THE EXECUTION OF A LOAN AGREEMENT AND A PROMISSORY NOTE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg, Ohio (the "City") has determined to construct road improvements consisting of construction of a new roadway connecting the main focus elements within Sycamore Trails Park in the City; and,

WHEREAS, the fiscal officer (hereinafter called "Finance Director") of the City of has heretofore estimated that the life of the hereinafter Project is at least twenty (20) years;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

That it is hereby declared necessary to enter into a loan agreement with the Ohio Department of Transportation State Infrastructure Bank (the "SIB"), in the amount of \$3,073,290, (the "Loan Agreement") for the purpose of providing funds to construct road improvements in the City, consisting of the construction of a new road at Sycamore Trails Park and related improvements, under authority of the general laws of the State of Ohio, and all necessary costs in connection therewith, secured by the Revenues, as defined herein, in accordance with the terms of this Ordinance.

Section 2.

Said Loan Agreement shall be entered into under the provisions of the Ohio Revised Code, in the principal amount of \$3,073,290, plus capitalized interest in the amount of \$92,198.70. The Loan Agreement requires the financial obligations of the City under the Loan Agreement be evidenced by a promissory note in the amount of \$3,073,290 (the "Promissory Note"). Said Promissory Note shall be dated its date of execution and, be payable not later than one hundred twenty months from its dated date. Said promissory note shall bear interest at a rate of zero percent (0.00%) for the first twelve months and at a rate of three percent (3.00%) per annum thereafter.

Section 3.

That the Promissory Note shall be a special obligation of the City, and only revenue of the City received from Motor Vehicle Gasoline Tax Funds and the License Plate Fees, each as defined in the Loan Agreement (the "Revenues") are pledged for the payment of the same. The City's Motor Vehicle Gasoline Tax Funds are pledged on parity with the City's \$1,005,504 Loan Agreement among the City, the Ohio Department of Transportation and the Montgomery County Transportation Improvement District, dated February 22, 2019 (the "2019 SIB Loan").

In order to secure the payment of the principal of and interest on the Promissory Note as the same shall become due and payable, the City Manager and the Finance Director are each authorized and directed to take any and all actions and to execute such documents, financing statements, assignments, certificates and other instruments that may be necessary or appropriate in the opinion of Dinsmore & Shohl LLP, as Special Counsel, in order to perfect the pledge of and to secure the Revenues for the benefit of the SIB.

The Promissory Note is not a general obligation of the City; the SIB shall have no right to have any ad valorem property taxes levied or collected for the repayment of the Promissory Note.

Anything in this legislation or the notes notwithstanding, neither this legislation the Loan Agreement nor the Promissory Note constitutes a debt, or a pledge of the faith or credit, or taxing power of the City, the State or any political subdivision thereof, and the holders or owners of the Promissory Note shall have no right to have ad valorem property taxes levied by the City, the General Assembly of the State, or the taxing authority of any political subdivision of the State for the payment of the principal of and interest on the Promissory Note. Nothing herein shall be deemed to prohibit the City from lawfully using, of its own volition, any of its general resources for the fulfillment of any of the terms and conditions of this legislation, the Loan Agreement or the Promissory Note.

Section 4.

The Loan Agreement and Promissory Note are hereby approved and authorized in substantial form as are currently on file with the Finance Director and the City Manager is hereby authorized and directed to execute the Loan Agreement, the Promissory Note and any other documents required to effectuate the Loan Agreement. The signature of the City Manager on such documents will evidence acceptance of the final form and terms of such documents.

Section 5.

The proceeds of the Promissory Note, plus other lawfully available funds of the City, shall be used as set forth in the Loan Agreement.

Section 6.

From and after the date of execution of the Promissory Note, the annual Revenues shall first be used to pay Annual Debt Service on the Promissory Note and the 2019 SIB Loan Promissory Note and then shall be used for any legal purpose of the Revenues.

Annual Debt Service shall be the annual principal and interest due on the Promissory Note, as set forth in the Promissory Note.

Section 7.

No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Note Legislation, or in the Promissory Note, or under any judgment obtained against the City or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the City, either directly or through the City, or otherwise, for the payment for or to the City or any receiver thereof, or for or to any holder of Promissory Note or otherwise, of any sum that may be due and unpaid by the City upon the Promissory Note. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the City or any receiver thereof, or for or to the owner or any holder of Promissory Note, or otherwise, of any sum that may remain due and unpaid upon Promissory Note, shall be deemed to be expressly waived and released as a condition of and consideration for the execution of the Promissory Note.

Section 8.

So long as Promissory Note is outstanding, the City shall have the right to issue, on a parity with the Promissory Note, any additional notes, bonds or other obligations payable from the Revenues so long as such Revenues are at least 1.30 times the Annual Debt Service on the Promissory Note and any additional obligations, including the 2019 SIB Loan. The City shall also have the unrestricted right to issue additional notes, bonds or other obligations subordinate to the Promissory Note, or payable from other taxes or other revenues of the City, other than the Revenues pledged herein.

Section 9.

The City hereby covenants and agrees with the holder of the Promissory Note from time to time, so long as the Promissory Note is outstanding, as follows:

- (a) The City will, at any and all times, cause to be done all such further acts and things and cause to be executed and delivered all such further instruments as may be necessary to carry out the purpose of the Loan Agreement and the Promissory Note and this legislation.
- (b) All of the obligations set forth and covenants made under this legislation are hereby established as duties specifically enjoined by law and resulting from an office, trust or station upon the City within the meaning of Section 2731.01 of the Ohio Revised Code.
- (c) The City will observe and will satisfactorily and punctually perform all its agreements and obligations provided for by the Loan Agreement and the Promissory Note and this legislation.

Section 10.

All appropriate officers of the City are further authorized to make, execute, acknowledge and deliver such closing certificates, financing statements and other instruments or agreements as are, in the opinion of bond counsel, necessary or appropriate, in order to effect the execution of the Loan Agreement and the Promissory Note and to carry out the purposes of this Ordinance.

Section 11.

If any section, paragraph or provision of this Ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Ordinance.

Section 12.

That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

Section 13.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare for the reason that the immediate execution of said Loan Agreement and Promissory Note is required to provide for the timely financing of the project including obtaining a favorable interest rate, and it shall take effect immediately upon its adoption.

Passed: May 21, 2024

Attested: 
Keysha Alexander, Clerk of Council

Approved: 
Michelle L. Collins, Mayor

CERTIFICATE

The undersigned, Clerk of Council, Miamisburg, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 7082 adopted May 21, 2024.

May 21, 2024


Keysha Alexander, Clerk of Council

CERTIFICATE OF MEMBERSHIP

The undersigned, Finance Director of the CITY OF MIAMISBURG, OHIO, hereby certifies that the following were the officers and members of Council during the period proceedings were taken authorizing the \$3,073,290 Special Obligation State Infrastructure Bank Loan (Sycamore Trails Trails Improvement Project), dated its date of issuance:

Mayor	<u>Michelle Collins</u>
City Manager	<u>Keith D. Johnson</u>
Finance Director	<u>Jennifer Johns</u>
Clerk of Council	<u>Keysha Alexander</u>
Member of Council	<u>Steve Beachler</u>
Member of Council	<u>Ryan Colvin</u>
Member of Council	<u>Sarah Clark Thacker</u>
Member of Council	<u>Mike McCabe</u>
Member of Council	<u>Tom Nicholas</u>
Member of Council	<u>Jeff Nestor</u>
Member of Council	<u>John Stalder</u>
Law Director	<u>Phil Callahan</u>


Finance Director

TRANSCRIPT CERTIFICATE

The undersigned, Clerk of Council of said City, hereby certifies that the following is a true and complete transcript of all proceedings relating to the authorization of the above identified obligations.


Clerk of Council

**CERTIFICATE AS TO MAXIMUM MATURITY OF
BONDS AND BOND ANTICIPATION NOTES**

Based upon information provided by and in reason to the request of the City Council of the City of Miamisburg, Ohio, the Finance Director of the City of Miamisburg, Ohio, being the fiscal officer of the City of Miamisburg, Ohio, within the meaning of Section 133.01 of the Uniform Public Securities Law of the Ohio Revised Code, hereby certifies that the estimated life of the improvements to be acquired with the proceeds of the \$3,073,290 Loan Agreement and Promissory Note, for the purpose of constructing road improvements at Sycamore Trails Park, and related costs, is at least five (5) years and that the maximum maturity of bonds, calculated in accordance with Section 133.20 of the Uniform Public Securities Law of the Ohio Revised Code, is twenty (20) years and notes issued in anticipation thereof is twenty (20) years.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of May, 2024.



Finance Director

ORDINANCE NO. 7083

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO EXPEND FUNDS FOR AN OHIO DEPARTMENT OF TRANSPORTATION (ODOT) PROJECT FURTHER DESCRIBED AS PID #108619 LOCATED AT THE I-75 EXIT 44 INTERCHANGE, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg (City) and the Miami Crossing Joint Economic Development District (JEDD) entered into an Agreement with the Montgomery County Transportation Improvement District (TID) to each pay 50% of the Local Match required by ODOT for the accepted project bid; and

WHEREAS, the parties accepted and paid their respective shares on or about April 4, 2024 as provided for by invoice from the TID; and

WHEREAS, the project costs have changed significantly since the original invoice payment, resulting in an increase in the Local Match; and

WHEREAS, the JEDD has elected not to allocate additional funds to the project beyond their initial payment to the TID; and

WHEREAS, the City has determined the project to be of such importance as to allocate funds in excess of the 50% requirement per the Agreement; and

WHEREAS, in order to keep the project on schedule, the City agrees to make a one-time contribution to the project equal to the JEDD's increased Local Match obligation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

City Council hereby authorizes the City Manager to make a one-time additional contribution of \$68,155.00 for PID #108619.

Section 2.

All other costs related to PID #108619 shall be subject to the cost sharing provisions of the TID Agreement between the City and JEDD.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and

welfare by allowing the project to be executed in a timely manner. Therefore, this ordinance shall take effect and be in force from and after its passage.

Passed: May 21, 2024

Attested: 
Keysha Alexander, Clerk of Council

Approved: 
Michelle L. Collins, Mayor