

ORDINANCE NO. 7020

AN ORDINANCE TO AMEND ORDINANCE 6915 TO MODIFY THE PREVIOUSLY ESTABLISHED RULES AND REQUIREMENTS NEEDED TO ENSURE THE HEALTH, SAFETY, AND WELFARE WITHIN AN APPROVED DESIGNATED OUTDOOR REFRESHMENT AREA WITHIN THE CITY OF MIAMISBURG AND DECLARING AN EMERGENCY.

WHEREAS, Section 4301.82 of the Ohio Revised Code permits a municipality with a population of less than thirty-five thousand to create a Designated Outdoor Refreshment Area within its corporate limits; and

WHEREAS, on April 20, 2021 City Council approved Ordinance No. 6914 approving an application and establishing a Designated Outdoor Refreshment Area within the city; and

WHEREAS, Council exercised their authority under ORC 4301.82(F) and adopted Ordinance 6915 to establish rules and requirements that it deems necessary to ensure the health, safety and welfare of the area; and

WHEREAS, Council created and appointed members to a DORA Oversight Board to review the operation of the DORA; and

WHEREAS, The Miamisburg Merchants Association has requested, and the DORA Oversight Board has recommended, changes to the hours of operation of the DORA in order to alleviate confusion and make the daily management and operation of the program easier for everyone involved; and

WHEREAS, City Council hereby wishes to amend the rules and requirements for the approved designated outdoor refreshment area to reflect the DORA Oversight Board's recommendation.

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

Section 1.

***Section 1 (C) of Ordinance 6915 which reads as follows:***

- (c) The DORA hours of operation shall be Thursdays (4pm-9pm), Fridays (4pm-11pm), Saturdays (12pm-11pm), and Sundays (4pm-9pm). Special hours of DORA operation shall be allowed as designated in advance by the City Manager with the consent of City Council.

***Is hereby amended to read as follows:***

- (c) The DORA hours of operation shall be from 11:00am to 11:00pm Monday through Sunday. Special hours of DORA operation shall be allowed as designated in advance by the City Manager with the consent of City Council.

Section 2.

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 is needed as soon as possible to set hours for the DORA to accommodate the 2023 downtown event season, therefore, this measure shall be in force from and after its passage.

Passed: April 4, 2023

Attested: \_\_\_\_\_

*Kim Combs*

Kim Combs, Clerk of Council

Approved: \_\_\_\_\_

*Mayor Michelle Collins*

Michelle L. Collins, Mayor

ORDINANCE NO. 7021

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP TO REZONE THE PROPERTY LOCATED AT 341 NORTH MAIN STREET (CITY LOT #139), FROM GENERAL BUSINESS (GB-1) TO RESIDENTIAL (R-3).

WHEREAS, an Owner of the property located at 341 N. Main Street (City Lots #139), as illustrated in Exhibit A, filed an application with the City of Miamisburg Development Department to rezone the property from General Business (GB-1) to Residential (R-3); and

WHEREAS, the property includes a single-family residence for which General Business (GB-1) zoning does not permit single-family residential uses; and

WHEREAS, the Owner currently utilizes the property as a single-family residence and desires a zoning designation which allows such a use by right; and

WHEREAS, the City of Miamisburg Planning Commission reviewed the requested rezoning in accordance with the provisions set forth in the City Charter and the Planning and Zoning Code; and

WHEREAS, the City of Miamisburg Planning Commission found the proposed Official Zoning Map amendment to be consistent with the requirements and standards of the Planning and Zoning Code; and

WHEREAS, the City of Miamisburg Planning Commission found the proposed Official Zoning Map amendment is in conformance with and meets the intent of the City of Miamisburg Comprehensive Plan; and

WHEREAS, City Council has reviewed the Planning Commission's recommendation on this matter and concurs with its recommendation.

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 Official Zoning Map is hereby amended to reflect the foregoing rezoning classification contained herein and the City Manager is authorized and directed to cause said rezoning to be reflected on the Official Zoning Map as illustrated in Exhibit B.

Section 2.

This measure shall take effect and be in full force from and after the earliest period allowed by law.

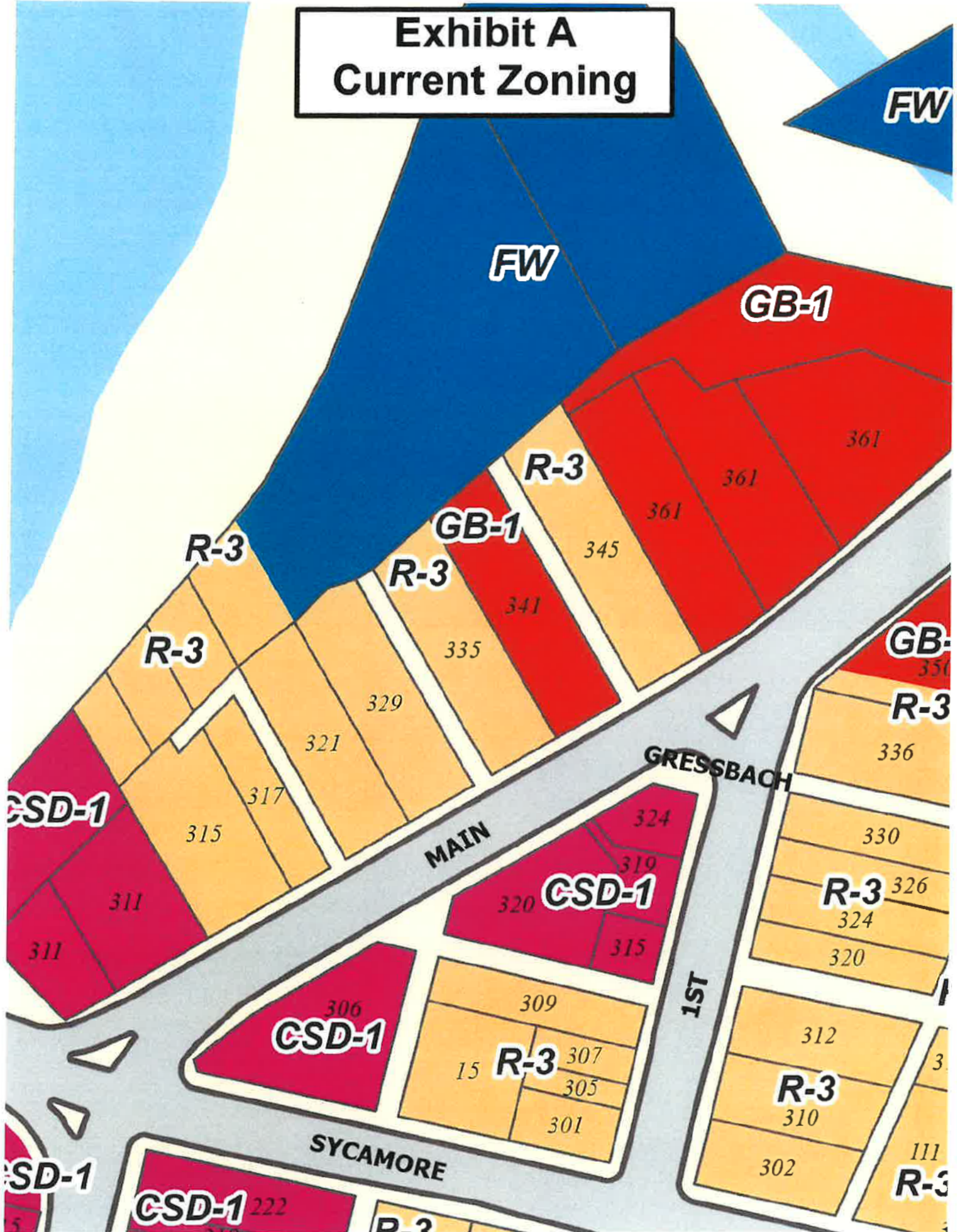
Passed: May 16, 2023

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle Collins  
Michelle L. Collins, Mayor



# Exhibit A Current Zoning



FW

FW

GB-1

R-3

R-3

GB-1

R-3

R-3

CSD-1

GB-1

R-3

GRESSBACH

MAIN

CSD-1

R-3

CSD-1

R-3

1ST

SYCAMORE

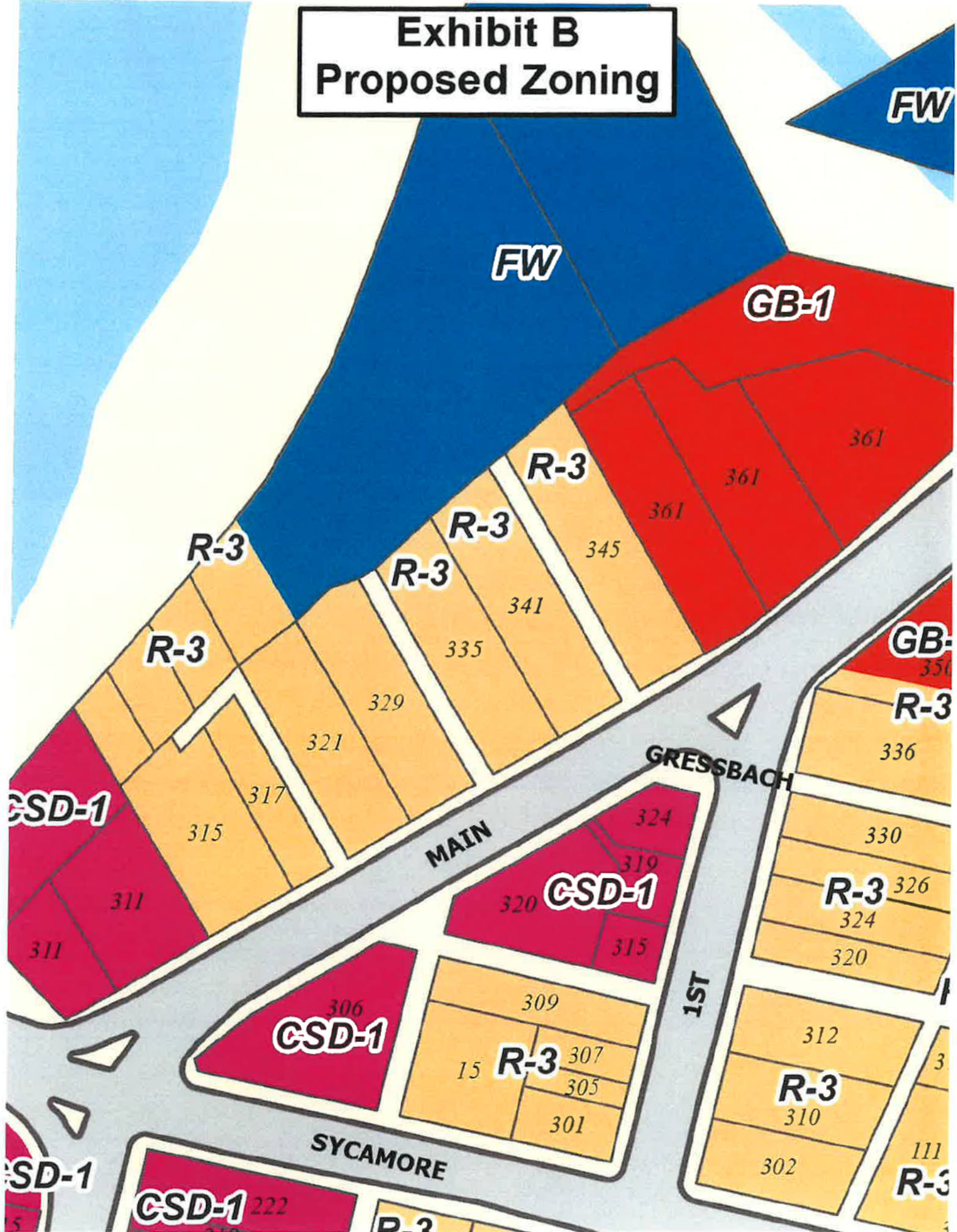
CSD-1

CSD-1

R-3



# Exhibit B Proposed Zoning



ORDINANCE NO. 7022

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 2023 PAVEMENT MARKING PROGRAM AND DECLARING AN EMERGENCY.

WHEREAS, the Miami Valley Cable Council has advertised and received bids for the 2023 Pavement Marking Program in accordance with law.

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 bid submitted by First Star Safety, LLC, in the amount not to exceed Eighty Thousand, Three Hundred Ninety-Eight Thousand Dollars, Ninety-One Cents (\$80,398.91) for the 2023 Pavement Marking Program pursuant to the bid forms submitted April 3, 2023, is hereby determined to be the lowest and best bid after bidding conducted according to law and is hereby accepted.

Section 2.

The City Manager is hereby authorized to enter into a contract with First Star Safety, LLC in accordance with the terms contained in the bid specifications dated April 3, 2023.

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 contract is needed at the earliest possible date to remain on schedule for the summer road maintenance season, therefore, this measure shall be in force from and after its passage.

Passed: April 18, 2023

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor

ORDINANCE NO. 7023

AN ORDINANCE AMENDING THE 2023 BUDGET AND ANNUAL APPROPRIATION ORDINANCE AND DECLARING AN EMERGENCY.

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.

To provide for current expenses of the City of Miamisburg for the fiscal year 2023, the annual appropriation ordinance is amended to add the following sum and it is hereby set aside and appropriated as follows:

<u>FUND</u>	<u>AMOUNT</u>
Court Modernization Fund	\$115,250.00

Section 2.

This ordinance is declared to be an emergency measure necessary for the public peace, health, safety, and welfare and for the further reason that these appropriations are needed at the earliest possible date to meet current obligations of the City for fiscal year 2023; therefore, this measure shall take effect and be in force from and after its passage.

Passed: April 18, 2023

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor



ORDINANCE NO. 7024

AN ORDINANCE TO AMEND ORDINANCE NO. 3421 WHICH CREATED AN ACCESS MANAGEMENT PLAN FOR OHIO STATE ROUTE 741 AND INCORPORATING THE SAME INTO THE MASTER THOROUGHFARE PLAN ORIGINALLY ADOPTED BY ORDINANCE NO. 4692 AND AS SUBSEQUENTLY AMENDED AND DECLARING AN EMERGENCY.

WHEREAS, in 1983 City Council adopted an Access Management Plan for State Route 741, and said plan has been subsequently amended as needed.

WHEREAS, the 1993 Miamisburg Thoroughfare Plan was adopted by City Council on September 7, 1993 and subsequently amended in 1997, 2005, 2010 and 2016; and

WHEREAS, the approval of the Chamberlin Crossing Planned Development Plan in 2021 necessitates an amendment to both plans in order to preserve and protect adequate traffic flows along SR 741 while at the same time, providing manageable access to adjacent undeveloped parcels; and

WHEREAS, it is necessary to remove portions of the access management plan that are consider obsolete and establish new methods of access; and

WHEREAS, it is necessary to further amend the thoroughfare plan to include roadway improvements that will provide access to properties that will have limited access without such improvements; and

WHEREAS, the Planning Commission, has recommended that Council amend the Access Management Plan and Thoroughfare Plan as set forth herein; and

WHEREAS, Council, after reviewing the Planning Commission's recommendation, deem it in the best interest of the City to adopt certain amendments as recommended by the Planning Commission.

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.

Council does hereby amend the SR 741 Access Management Plan and incorporate those amendments into the City's Master Thoroughfare Plan as recommended by the Planning Commission as follows:

- 1) Remove a proposed "frontage road" parallel to SR741 and add a new roadway access that connects Chamberlin Drive to an existing traffic signal located at the intersection of SR741 and Habitat Blvd. as graphically depicted in Exhibit A attached hereto.

Section 2.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason that development has begun on Chamberlin Crossing and the improvements identified in this amendment will be needed to accommodate that development, therefore, this measure shall take effect and be in force from and after its passage.

Passed: May 2, 2023 Attested:   
Kim Combs, Clerk of Council


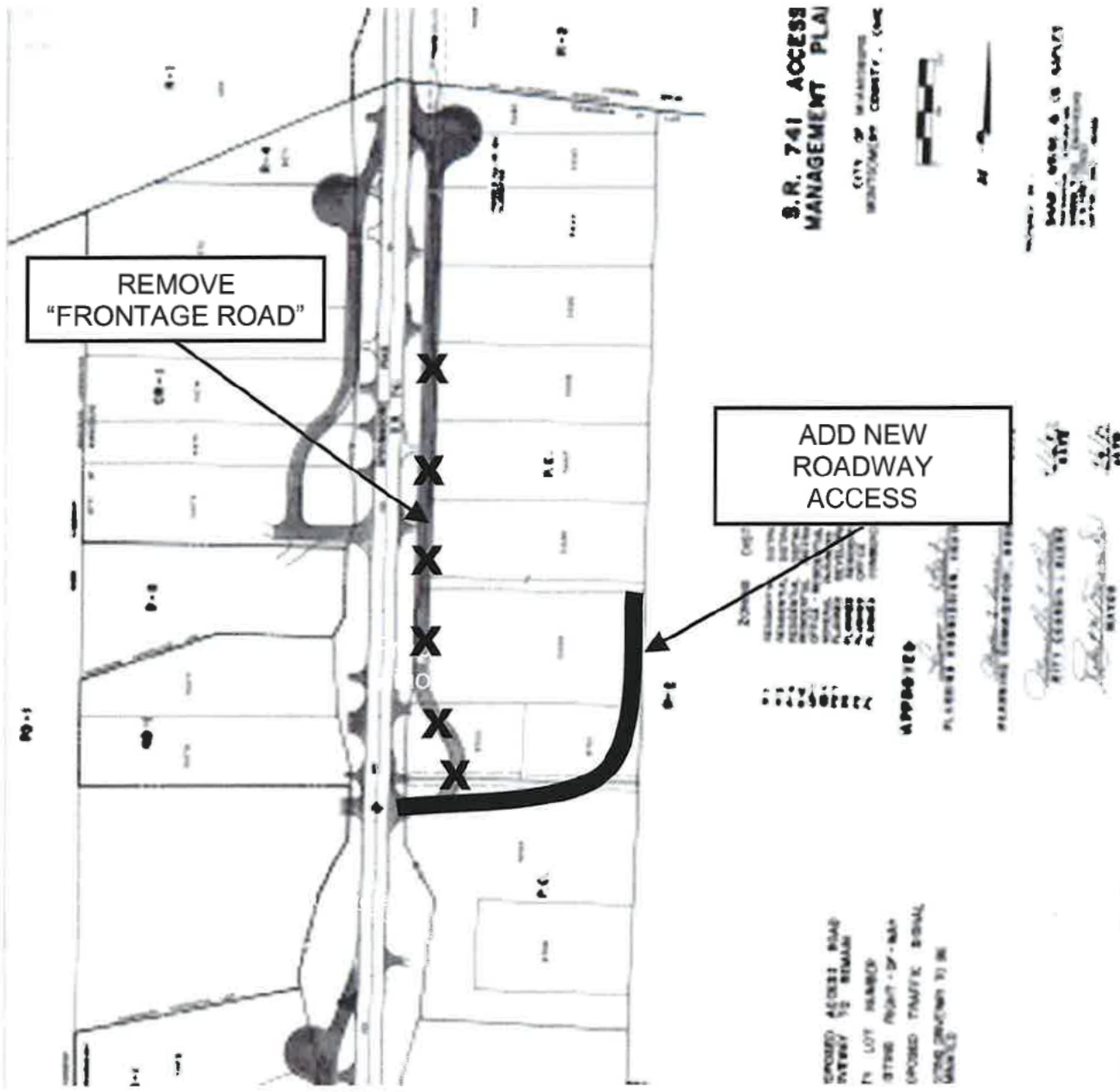
Approved:   
Michelle L. Collins, Mayor

Exhibit "A" – Proposed Plan Amendments



ORDINANCE NO. 7025

AN ORDINANCE TO APPROVE THE EDITING AND INCLUSION OF CERTAIN ORDINANCES AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CODIFIED ORDINANCES; TO PROVIDE FOR THE ADOPTION OF NEW MATTER IN THE UPDATED AND REVISED CODIFIED ORDINANCES; TO PROVIDE FOR THE PUBLICATION OF SUCH NEW MATTER; TO REPEAL ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, American Legal Publishing has completed its annual updating and revision of the Codified Ordinances of the City; and

WHEREAS, various ordinances and a resolution of a general and permanent nature that have been passed by Council since the date of the last updating and revision of the Codified Ordinances (December 31, 2021), have now been made a part of the Codified Ordinances; and

WHEREAS, certain changes were made in the Codified Ordinances to bring City law into conformity with State law.

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 editing, arrangement and numbering or renumbering of the following ordinances and parts of ordinances are hereby approved as parts of the various component codes of the Codified Ordinances of the City, so as to conform to the classification and numbering system of the Codified Ordinances.

<u>Ord. No.</u>	<u>Date</u>	<u>C.O. Section</u>
6965	6-21-22	1222.08
6998	12-6-22	1060.13

Section 2.

The following sections of the Codified Ordinances are or contain new matter in the Codified Ordinances and are hereby approved, adopted and enacted:

434.11, 438.10, 438.16, 624.01, 678.02, 678.04, 678.13, 678.14



Section 3.

All ordinances and resolutions or parts thereof which are in conflict or inconsistent with any provision of the new matter adopted in Section 2 of this ordinance are hereby repealed as of the effective date of this ordinance except as follows:

- (a) The enactment of such sections shall not be construed to affect a right or liability accrued or incurred under any legislative provision prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any such legislative provision, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provision shall continue in full notwithstanding its repeal for the purpose of revision and recodification.
- (b) The repeal provided above shall not affect any legislation enacted subsequent to February 21, 2023.

Section 4.

Pursuant to Section 4.15 of the City Charter, the Clerk of Council shall cause a notice of this ordinance to be published one time in a newspaper determined by the Council to be of circulation within the Municipality at least seven days prior to the final approval of this ordinance by Council, and no further publication shall be necessary.

Section 5.

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 it is immediately necessary to have an up-to-date codification of the legislation of the City; therefore, this measure shall take effect and be in full force from and after its passage.

Passed: May 2, 2023

Attest: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor

## EXHIBIT A

### SUMMARY OF NEW MATTER CONTAINED IN THE 2023 REPLACEMENT PAGES FOR THE CODIFIED ORDINANCES OF MIAMISBURG, OHIO

New matter in the Codified Ordinances of Miamisburg, Ohio, as contained in the 2023 Replacement Pages therefor, includes legislation regarding:

<u>Section</u>	<u>New or amended matter regarding:</u>
434.11	Operation restricted for mini-trucks and low-speed, under-speed, or utility vehicles.
438.10	Lights, emblems, and reflectors on slow-moving vehicles, farm machinery, agricultural tractors, and animal-drawn vehicles.
438.16	Number of lights permitted; red and flashing lights.
624.01	Definitions relating to drug offenses.
678.02	Carrying concealed weapons.
678.04	Improperly handling firearms in a motor vehicle.
678.13	Possession of an object indistinguishable from a firearm in a school safety zone.
678.14	Concealed handgun licenses: possession of a revoked or suspended license; additional restrictions; posting of signs prohibiting possession.

ORDINANCE NO. 7026

AN ORDINANCE TO AMEND THE NON-UNION HOLIDAY POLICY TO PROVIDE FOR THE OBSERVANCE OF AN ADDITIONAL HOLIDAY – JUNETEENTH DAY AND DECLARING AN EMERGENCY

WHEREAS, the Council of the City of Miamisburg, upon the recommendation of the City Manager, desires to adopt Juneteenth Day (June 19) as a paid holiday for the employees of the City of Miamisburg.

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 City's Holiday Policy is hereby amended to read as follows and to add the holiday of Juneteenth Day to be observed by the City:

**305      HOLIDAYS**

*The City will grant holiday time off to all non-union full-time employees on the holidays listed below.*

*New Years Day (January 1st)  
Martin Luther King Day  
Good Friday (Friday before Easter)  
Memorial Day (last Monday in May)  
**Juneteenth Day (June 19)**  
Independence Day (July 4th)  
Labor Day (first Monday in September)  
Thanksgiving (fourth Thursday in November)  
Day after Thanksgiving (fourth Friday in November)  
Christmas Eve (December 24)  
Christmas (December 25)*

*The City Manager will determine the exact date of the designated holidays on or before December 15 of each year. Holiday pay will be calculated based on the employee's straight-time rate (as of the date of the holiday) times the number of hours the employee would otherwise have worked on that day.*

*~~With the exception of the Fire Department, a~~ **A** recognized holiday that falls on a Saturday will be observed on the preceding Friday. **Typically, a** ~~A~~ recognized holiday that falls on a Sunday will be observed on the following Monday. If a recognized holiday falls during an eligible employee's paid absence (e.g., vacation, sick leave), holiday pay will be provided instead of the paid time off benefit that would otherwise have applied. If an eligible*

*employee works on a recognized holiday, he or she will receive holiday pay plus wages at one and one half a shift or 12 hours.*

Section 2.

The adoption of the Juneteenth Day as a paid holiday shall be subject to any collective bargaining agreement and any bargaining obligation the City may have.

Section 3.

The City Manager or his designee shall take any and all actions necessary to implement Juneteenth Day as a holiday consistent with this Ordinance.

Section 4.

Council, by a vote of at least two-thirds of its members, dispenses with the requirement that this Ordinance be read on two different days and authorizes the adoption of this Ordinance upon the first reading.

Section 5.

This Ordinance is declared to be an emergency measure necessary for the public peace, health, safety, and welfare and for the further reason that the Council desires that the first Juneteenth Day holiday be recognized on June 19, 2023 and that the City Manager is provided sufficient time to implement this holiday; therefore, this measure shall take effect and be in force from and after its passage.

Passed: May 16, 2023

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor

ORDINANCE NO. 7027

AN ORDINANCE AUTHORIZING THE TRANSFER OF A TRUCK TO THE HILLGROVE UNION CEMETERY AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to a request from the Hillgrove Union Cemetery (the "Cemetery"), the City of Miamisburg, Ohio (the "City") purchased on April 9, 2019, a 2018 GMC dump truck (the "truck") for use in maintaining the cemetery; and

WHEREAS, the cemetery has made payments to the City in the full amount of the cost of truck;

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 Council hereby approves and authorizes the transfer of the truck to the Cemetery.

Section 2. That the City Manager and the Finance Director are each hereby authorized and directed to take any action necessary including executing any required documents to effectuate such transfer.

Section 3. That the Parks and Recreation Director is hereby directed to deliver the truck to the Cemetery.

Section 4. 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 5. 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 transfer of equipment is needed at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage.

Passed: May 16, 2023 Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor

ORDINANCE NO. 7028

AN ORDINANCE AMENDING ORDINANCE NO. 6970 TO PROVIDE FOR THE COST OF GROUP HEALTH INSURANCE BENEFITS THROUGH THE OHIO BENEFITS COOPERATIVE, INC., AND DECLARING AN EMERGENCY.

WHEREAS, the City Council authorized the City's membership and participation in the Ohio Benefits Cooperative, Inc. in January, 1995 for the purchase of group insurance benefits for City employees, and

WHEREAS, the Cooperative has authorized a renewal through Anthem Blue Cross/Blue Shield, as its current provider, and

WHEREAS, the City has entered into an agreement with the Cooperative to purchase group health insurance benefits.

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.

Section 1 of Ordinance No. 6970, which reads as follows:

The City shall purchase through the Cooperative, health insurance benefits provided to City employees in accordance with the rules and regulations of the Cooperative, and shall pay through the Cooperative the appropriate premiums from September 1, 2022 not to exceed as follows:

<u>OBC PPO Option #1</u>		<u>OBC HSA Option #2</u>	
Single	\$927.88	Single	\$726.80
Family	\$2,501.65	Family	\$1,959.51

Is now hereby amended to read as follows:

The City shall purchase through the Cooperative, health insurance benefits provided to City employees in accordance with the rules and regulations of the Cooperative, and shall pay through the Cooperative the appropriate premiums from September 1, 2023 not to exceed as follows:

<u>OBC PPO Option #1</u>		<u>OBC HSA Option #2</u>	
Single	\$949.69	Single	\$755.77
Family	\$2,560.45	Family	\$2,037.60

Section 2.

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 premium payment authorization is needed immediately to ensure the timely enrollment of employees; therefore, this measure shall take effect and be in force from and after its passage.

Passed: June 6, 2023

Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor



ORDINANCE NO. 7029

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE OHIO ASSOCIATION OF PUBLIC TREASURERS (OAPT) WORKERS' COMPENSATION GROUP RETROSPECTIVE RATING PROGRAM FOR THE POLICY YEAR BEGINNING JANUARY 1, 2024, AND DECLARING AN EMERGENCY.

WHEREAS, under the authority of Section 4123.29 of the Ohio Revised Code, employers may group together to achieve a potentially lower premium rate than they might have as individual employers; and

WHEREAS, the OAPT has created a Workers' Compensation Group Retrospective Rating Program to allow members to collaborate for that purpose.

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 City Manager is authorized to sign the agreement applicable to membership in the Ohio Association of Public Treasurers (OAPT) Workers' Compensation 2024 Group Retrospective Rating Program on behalf of the City. Further, the City Manager is authorized to execute any other necessary or appropriate documents in connection with this program.

Section 2.

The City Manager is authorized to extend the agreement and all documents associated therewith for such periods as deemed appropriate and necessary.

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 the authorization is needed immediately to ensure the timely enrollment for participation in this cost savings program; therefore, this measure shall take effect and be in force from and after its passage.

Passed: June 6, 2023 Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor



ORDINANCE NO. 7030

AN ORDINANCE DELEGATING AUTHORITY TO MAKE DECLARATIONS OF OFFICIAL INTENT AND ALLOCATIONS WITH RESPECT TO REIMBURSEMENTS OF TEMPORARY ADVANCES DURING FISCAL YEAR 2023 AND 2024 MADE FOR CAPITAL IMPROVEMENTS AND ACQUISITIONS FOR MUNICIPAL PURPOSES TO BE MADE FROM SUBSEQUENT BORROWINGS AND DECLARING AN EMERGENCY.

WHEREAS, Treasury Regulation §1.150-2 (the “Reimbursement Regulations”), issued pursuant to Section 150 of the Internal Revenue Code of 1986, as amended, (the “Code”) prescribes certain requirements by which proceeds of tax-exempt bonds, notes, certificates or other obligations included in the meaning of “bonds” under Section 150 of the Code (“Obligations”) used to reimburse advances made for Capital Expenditures (as hereinafter defined) paid before the issuance of such Obligations may be deemed “spent” for purposes of Sections 103 and 141 to 150 of the Code and therefore, not further subject to any other requirements or restrictions under those sections of the Code; and

WHEREAS, such Reimbursement Regulations require that an Issuer (as hereinafter defined) make a Declaration of Official Intent (as hereinafter defined) to reimburse any Capital Expenditure paid prior to the issuance of the Obligations intended to fund such Capital Expenditure and require that such Declaration of Official Intent be made no later than sixty (60) days after payment of the Capital Expenditure and further require that any Reimbursement Allocation (as hereinafter defined) of the proceeds of such Obligations to reimburse such Capital Expenditures occur no later than eighteen (18) months after the later of the date the Capital Expenditure was paid or the date the property acquired with the Capital Expenditure was placed in service, except that any such Reimbursement Allocation must be made no later than three years after such Capital Expenditure was paid; and

WHEREAS, the Reimbursement Regulations provide that an Issuer may delegate the authority for making such Declarations of Official Intent and Allocations to one or more individuals; and

WHEREAS, this Council wishes to ensure compliance with the Reimbursement Regulations; and

WHEREAS, this Council intends to construct and acquire capital improvements in the City for municipal purposes, including the design, engineering, acquisition and construction of road improvements (the “Project”). The City intends that the design, engineering, construction, installation and acquisition costs will be paid from the proceeds of municipal securities issued by the City for the 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. Definitions. That the following definitions apply to the terms used herein:

“Allocation” means written evidence that proceeds of Obligations issued subsequent to the payment of a Capital Expenditure are to reimburse the City for such payments. “To allocate” means to make such an allocation.

“Authorized Officer” means City Manager or Finance Director of the City and any persons with authority at the time to exercise functions of those offices.

“Capital Expenditure” means any expense for an item that is properly depreciable or amortizable or is otherwise treated as a capital expenditure for purposes of the Code, as well as any costs of issuing Reimbursement Bonds.

“Declaration of Official Intent” means a written declaration that the City intends to fund Capital Expenditures with an issue of Reimbursement Bonds and reasonably expects to be reimbursed from the proceeds of such an issue.

“Issuer” means either a governmental unit that is reasonably expected to issue Obligations or any governmental entity or 501(c)(3) organization that is reasonably expected to borrow funds from the actual issuer of the Obligations.

“Reimbursement” means the restoration to the City of money temporarily advanced from other funds, including moneys borrowed from other sources, of the City to pay for Capital Expenditures before the issuance of Obligations intended to fund such Capital Expenditures.

“To reimburse” means to make such a restoration.

“Reimbursement Bonds” means Obligations that are issued to reimburse the City for Capital Expenditures, and for certain other expenses permitted by the Reimbursement Regulations, previously paid by or for the City.

“Reimbursement Regulations” means Treasury Regulation §150-2 and any amendments thereto or superseding regulations, whether in proposed, temporary or final form, as applicable, prescribing conditions under which the proceeds of Obligations may be allocated to reimburse the City for Capital Expenditures and certain other expenses paid prior to the issuance of the Obligations such that the proceeds of such Obligations will be treated as “spent” for purposes of Sections 103 and 141 to 150 of the Code.

Section 2. Declaration of Official Intent.

(a) The City declares that it reasonably expects that the Capital Expenditures described in Section (b), which were paid no earlier than sixty days prior to the date hereof, or which will be paid prior to the issuance of any Obligations intended to fund such Capital Expenditures, will be reimbursed with the proceeds of Obligations, representing a borrowing by the City or other governmental issuer in the maximum principal amount, for such Reimbursements, of \$2,750,000; and

(b) The Capital Expenditures made in fiscal year 2023 and 2024 to be reimbursed are to be used for the construction and acquisition of capital improvements in the City, including the design, engineering, acquisition and construction of road improvements and related costs.

Section 3. Reasonable Expectations.

The City does not expect any other funds (including the money advanced to make the Capital Expenditures that are to be reimbursed) to be reserved, allocated on a long-term basis, or otherwise set aside by the City or any other entity, with respect to the Capital Expenditures for the purposes described in Section 2(b).

Section 4. Open Meeting.

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 the law.

Section 5.

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 is needed; therefore, this measure shall take effect and be in force from and after its passage.

Passed: June 6, 2023 Attested: Kim Combs  
Kim Combs, Clerk of Council

Approved: Michelle L. Collins  
Michelle L. Collins, Mayor

**CERTIFICATE**

I, undersigned Clerk of Council of the City of Miamisburg, Ohio hereby certify that the above Ordinance is a true and correct copy as passed by the Council of the City of Miamisburg, this 7 day of June, 2023 and that at least a majority of the elected members voted in the affirmative on said motion.

\_\_\_\_\_  
Clerk of Council

**DECLARATION OF OFFICIAL INTENT TO REIMBURSE**

The undersigned has been authorized by Ordinance No. 7030 adopted by the City Council of the City of Miamisburg, Montgomery County, on June 6, 2023, to make this declaration.

The City is, or will be, proceeding with the design, engineering, construction and acquisition of capital improvements in the City and related costs (the "Project"). In connection with the Project, the City expects to make capital expenditures in the amount set forth below and expects to advance from its own funds money to pay for some or all of such capital expenditures.

The City reasonably expects to issue its notes or bonds to pay for such capital expenditures, and reasonably expects to reimburse itself from the proceeds of such issue for moneys advanced by it.

<u>Project</u>	<u>Estimated Capital Expenditures</u>
Chamberlin Crossing Road Improvements	\$

**CITY OF MIAMISBURG,  
MONTGOMERY COUNTY, OHIO**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 2023

ORDINANCE NO. 7031

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH YASKAWA AMERICA, INC PROVIDING A JOB CREATION REFUNDABLE TAX CREDIT, GRANTING THE TAX CREDIT, ACCEPTING GRANT FUNDS FROM THE MONTGOMERY COUNTY ED/GE PROGRAM, AND AUTHORIZING ASSOCIATED GRANT AGREEMENTS, AND DECLARING AN EMERGENCY.

WHEREAS, Section 718.15 of the Ohio Revised Code (the City Act) authorizes municipalities to grant refundable or non-refundable credits against their city income taxes in exchange for new jobs; and

WHEREAS, the granting of the tax credits by the City of Miamisburg, Ohio (the "City") to Yaskawa America, Inc. will (1) create jobs in the State of Ohio and this City, (2) the project is economically sound and will benefit the people of this State and the City by increasing opportunities for employment and strengthening the economy of the State and the City and (3) receiving the tax credits from the City is a major factor in the decision of Yaskawa America, Inc. to go forward with the project.

WHEREAS, the Board of Commissioner's for Montgomery County Ohio created the Economic Development/Government Equity (ED/GE) grant program to foster economic development within Montgomery County; and

WHEREAS, The City has been awarded \$350,000 in ED/GE grant funding for the Yaskawa project; and

WHEREAS, Council is required to take official action to accept such grant funding; and

WHEREAS, the ED/GE program requirements require an agreement between the City of Miamisburg and the recipient business and/or building owner for the use of the grant funds.

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

Section 1.

The City Manager is hereby authorized to enter into a Job Creation Tax Credit Agreement with Yaskawa America, Inc (the "Agreement") in substantially the form attached hereto as Exhibit "A" with only such changes as are approved by the City Manager. The agreement with the City will provide for the creation of 70 jobs to the city, and in consideration of those new jobs, will provide a job creation tax credit as more specifically set forth in the Agreement.

Section 2.

The City Council hereby approves and grants a job creation tax credit as set forth in the Agreement authorized in Section 1 above.

Section 3.

That the City Manager, the Finance Director and the Clerk are hereby authorized to execute and deliver any other documents, agreements and certificates deemed necessary to effectuate the incentives set forth in the Agreement.

Section 4.

That the obligations of the City under this ordinance do not and shall not represent or constitute a debt or pledge of the full faith and credit or the taxing power of the City and no member of council, officer, official, employee, agent, or legal representative of the City shall be liable personally for any obligations under this Ordinance or the Agreement.

Section 5.

The Council of the City of Miamisburg hereby accepts grant funds from Montgomery County in the amount of \$350,000 from the spring 2023 ED/GE program for the project. The City Manager is hereby authorized to execute the ED/GE Project Agreements required to facilitate the receipt of said grant funds. Including the Agreement Regarding ED/GE Funds attached hereto as "Exhibit B."

Section 6.

The Council of the City of Miamisburg, Ohio hereby appropriates, and the Finance Director is hereby authorized to pay, from Account No. 110.125.57401, Three Hundred and Fifty Thousand Dollars (\$350,000), for costs related to this Economic Development/ Government Equity grant project. The Finance Director shall make such payment only upon receipt of appropriate documentation.

Section 7.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason to execute this agreement at the earliest possible date, therefore, this measure shall take effect and be in force from and after its passage.

Passed: June 6, 2023

Attested:



Kim Combs, Clerk of Council

Approved:

  
Michelle Collins, Mayor

**Exhibit “A”**

Job Creation Tax Credit Agreement

## JOB CREATION TAX CREDIT AGREEMENT

THIS TAX CREDIT AGREEMENT (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, even though the parties may sign at a later date, by and between the City of Miamisburg, Ohio, an Ohio municipal corporation (hereafter "City") and Yaskawa America, Inc., (acting through its Motoman Robotics Division) (hereafter "Company"), an Illinois corporation.

### RECITALS

Company has a facility located at 100 Automation Way, Miamisburg, OH. Company plans to make significant capital investments into their building, site and machinery and equipment.

Company is currently one of the City's largest employers with over 330 employees and a corresponding annual payroll of \$30.4M

Company is seeking to create at least 70 new jobs and at least \$5,700,000 in annual payroll in Miamisburg as part of the project. Company owns the property at 100 Automation Way and will invest nearly \$22,000,000 into building, site, machinery and equipment (the "Project"). The Project will create additional tax revenues for the City.

Company agreed to undertake this Project in the City, if various governmental entities provided the incentives for the development of the Project. The City has agreed to provide the hereinafter described incentive, if Company agrees to and does undertake the Project, create the jobs and provide the other economic opportunities created by the Project.

The City desires to encourage investment at the site and to encourage job creation in the City.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties, intending to be legally bound, agree as follows:



A. **Findings and Conclusions of the City.**

1. The City hereby finds that:
  - a. Company has the requisite financial responsibility and business experience to create employment opportunities in the City and to improve the economic climate of the City, County, State, District and surrounding areas.
  - b. The Project (i) will create jobs in the State, City, County and District; (ii) is economically sound and will benefit the people of the State, City, County and District by increasing opportunities for employment and strengthening the economy of these areas; and (iii) receiving the tax credits provided in section 718.15 of the Ohio Revised Code ("The Legislation") are major factors in Company's decision to locate the Project in the State, City and County.
  - c. It is in the best interest of the City to provide an income tax credit to Company in order to create additional job opportunities in the City.
2. The City has reviewed the project, and the project has been approved by the City.
3. The City Council ("Council") authorized the City Manager to enter into an agreement with Company providing for a Job Creation Refundable Tax Credit.

B. **Development of the Project.**

Subject to the conditions contained in this Agreement, Company shall undertake the Project at 100 Automation Way. The Project shall consist of building, site, machinery and equipment investments of nearly \$22,000,000 to be completed by June 1, 2024. As part of the Project, Company shall retain three hundred and thirty three (333) Existing Employees in the City with an annualized payroll of not less than \$30,400,000.

C. **Creation of New Jobs.**

Company shall create, or cause to be created, by December 31, 2025, 70 new full-time permanent jobs ("New Employees") with an annualized payroll of not less than \$5,700,000.

D. **New Job Tax Credits.**

1. Pursuant to section 718.15 of the Ohio Revised Code ("ORC 718.15"), the City is authorized to grant a refundable credit against the municipal income tax and to execute agreements with employers who are taxpayers of the City for the purpose of granting those employers new job creation tax credits against the employer's municipal income tax, those tax credits being provided to create new jobs in the City. To stimulate this job creation and to enhance the economic growth and stability of the City, State, County, and surrounding areas, the City finds that (i) the Project will create new jobs in the City and State; (ii) the Project is economically sound and will benefit the people of Ohio and the City by increasing opportunities for employment and strengthen the economy of the State and the City; and (iii) receiving the

municipal income tax credits provided herein is a major factor in the Company's decision to undertake the Project in the City and the State.

2. The Company has submitted an application to the City. This application has been reviewed by the City and the City has determined to grant the Company a new job creation tax credit (the "Tax Credit") of fifty percent (50%) of the new income tax revenue received by the City from New Employees hired by the Company in the City as a result of the development of the Project and its operations in the City for three (3) years. The Tax Credit shall relate to all New Employees hired in the City as a result of the development of the Project, with the credit commencing January 1, 2024, and for five (5) consecutive fiscal years of the Company thereafter (the "Tax Credit Period"). City acknowledges that the Company may commence employing New Employees at the Project prior to January 1, 2024, as a result of the development of the Project.

3. Company hereby agrees to use its best commercially reasonable efforts to maintain operations in the City for at least twice the number of years as the term of the Tax Credit. A calculation of the City Tax Credit pursuant to paragraph 3, below, for the application tax year shall be determined as follows:

A = Company existing payroll as indicated in this agreement.  
B = Company total payroll each year during the Tax Credit Period  
C = Miamisburg Tax Rate  
D = The applicable Tax Credit percentage.

$(B-A) \times C \times D$  = The Tax Credit for the applicable tax year.

The City and all its departments acknowledges that all this information is confidential and agree that it shall be used only for the computation, verification and collection of the City Tax Credit. The City agrees that it shall not disclose this information to any person(s) not needing this information for such computation, verification or collection. The City further agrees not to disclose any of the information obtained by Company relating to the activities of the Company, including but not limited to those areas and market sectors where the Company is investing or making new hires.

4. Pursuant to approval by City Council (Ordinance No. \_\_\_\_\_, passed \_\_\_\_\_, 2023) and in compliance with the ORC 718.15, the City hereby grants a refundable new job creation credit equal to the Tax Credit Percentage of the City's income tax revenue derived from the wages of the Company's New Employees employed at the Project for the period from January 1, 2024, through December 31, 2028.
5. Commencing June 1, 2025, and then annually on or before June 1<sup>st</sup>, the City shall remit to the Company the Tax Credit amount for the prior fiscal year's income taxes with the last remittance under this agreement being made in 2029.
6. The City Tax Credit provided by subsection D2 hereof shall be received annually by Company. Should Company fail to create 70 new jobs with a corresponding minimum annualized payroll of \$5,700,000 by December 31,

2025, the City may reduce the amount of the Tax Credit and/or reduce the Tax Credit Period.

If Company ceases operation within the City anytime during the Tax Credit Period, and the cessation in operation was due in part a general down turn in the economy, imposition of legislation, tariffs other regulatory burdens not contemplated at the time of the application, the inability of the Company to be able to hire or retain a workforce needed for the Project due to conditions in the City or surrounding area, or a sale or transfer of the business in Miamisburg to another entity, Company shall have the obligation to repay, to the City, an amount of the total Tax Credits received by Company on a pro-rata basis based on the portion of the job creation that did not occur.

7. Company understands that they are expected to remain in business within the City of Miamisburg for at least twice as long as the term of the tax credit. If Company ceases to operate in the City or fails to maintain at least \$30,500,000 in annual payroll any time between January 1, 2029 and December 31, 2033 the Company shall be responsible to repay, to City, as follows, except as otherwise provided herein:
  - a. If Company ceases to operate in the City or fails to maintain at least \$36,100,000 in annual payroll anytime in 2029, Company shall repay, to City, the lesser of an amount equal to 50% of the total Tax Credits

received by Company or the pro-rata amount based on the portion of the job creation that did not occur.

- b. If Company ceases to operate in the City or fails to maintain at least \$30,500,000 in annual payroll anytime in 2030, Company shall repay, to City, the lesser of an amount equal to 40% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- c. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 in annual payroll anytime in 2031, Company shall repay, to City, the lesser of an amount equal to 30% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- d. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 in annual payroll anytime in 2032, Company shall repay, to City, the lesser of an amount equal to 20% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- e. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 in annual payroll anytime in 2033, Company shall repay, to City, the lesser of an amount equal to 10% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.

8. The City and the Company agree to take any and all action necessary or appropriate to effect, claim, preserve and maintain the tax credits described in this Agreement, including without limitation, joining in the execution of all applications, agreements and other documents and providing any necessary certifications or designations required in connection with the Tax Credit.

E. **Conditions Precedent.**

Company's commitment to develop the Project is conditioned upon all the agreements contained in this Agreement being accomplished by all the parties hereto. If all the agreements contained in this Agreement are not accomplished, Company shall have no responsibility to develop the Project in the City and is free to develop the Project in any other location. Similarly, the City's commitments under this Agreement are conditional upon Company performing its obligations as described herein.

F. **Miscellaneous.**

1. **Covenants and Representations.** The City covenants and represents to the Company as follows:
  - a. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the City of any contract, agreement, understanding or instrument to which the City is a party or by which the City is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon

- them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;
- b. There is no pending litigation, investigation or claim which affects or which might affect the City's performance of this Agreement and to the best of the City's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect the City's performance of this Agreement;
  - c. Except for actions contemplated by this Agreement, as of the date of the execution of this Agreement, the City has no information or knowledge of any change contemplated in the applicable laws, ordinances or restrictions or any judicial or administrative action that would prevent, limit, impede or render more costly the Company's undertaking of the project; and
  - d. The representations and agreements of the City made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing representations and agreements and such representations made by the City are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the Company (except as expressly stated in this Agreement), the Company is placing complete reliance thereon and that such representations are to be treated as material to the Company in entering into this Agreement and the City further represents that no



representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

2. Company covenants and represents to the City as follows:

- a. Company intends make significant investments in their property located at 100 Automation Way.
- b. Company shall retain Three Hundred Thirty Three (333) Existing Employees in the City with an annualized payroll of not less than \$30,400,000.
- b. Company intends to create at least seventy (70) jobs at the Site with a minimum annualized payroll of \$5,700,000 by December 31, 2025;
- c. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by Company of any contract, agreement, understanding or instrument to which Company is a party or by which Company is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;

- d. There is no material pending litigation, investigation or claim which affects or which might affect Company's performance of this Agreement and to the best of Company's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect Company's performance of this Agreement; and
- e. The representations and agreements of Company made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as containing representations and agreements and such representations made by Company are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the City (except as expressly stated in this Agreement), the City is placing complete reliance thereon and that such representations are to be treated as material to the City entering into this Agreement and Company further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

G. Inspection of Records. The City shall, in addition to any rights already existing, have the right to audit the books and records of Company pertaining to costs related to The Project and the associated jobs and/or payroll creation of The Project, during business hours and upon advance written notice of at least seven (7) business days.

Any such inspection or audit shall be conducted in accordance with any published or delivered terms and conditions in place at the site, including health, safety, environmental, confidentiality, treatment of employees and the like.

- H. Successors and Assigns. The terms and provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns (including successive as well as immediate successors and assigns).
- I. Governing Law. This Agreement shall be governed by and construed in accordance of the laws of the State of Ohio.
- J. Waiver. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or noncompliance with this Agreement shall be held to be a waiver of any other or subsequent breach or noncompliance.
- K. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.
- L. Provisions Severable. If any provision of this Agreement or the application or any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provisions of this Agreement or the application of such provisions to any other person or circumstance, all of which other provisions shall remain in full force and effect; and, if any provision of this Agreement is capable of two constructions, one

of which would render the provisions invalid, then such provision shall have the meaning which renders it valid.

- M. Captions. The captions 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.
- N. Assignment. Company shall have the right to assign this Agreement to any of its successors or assigns only after written approval of such assignment by City, unless Company is prohibited from notifying the City due to securities laws in which case Company shall notify the City as soon as reasonably practical.
- O. Notifications. Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any part of this Agreement shall be made in writing, addressed as follows, and sent by registered or certified mail, return receipt requested, and also by fax:

If to the City, to:      City Manager  
                                    10 North First Street  
                                    Miamisburg, OH 45342  
                                    Email: [manager@cityofmiamisburg.com](mailto:manager@cityofmiamisburg.com)

If to Company to:      Ryan Richey,  
                                    Senior Dir. Of Accounting and Finance  
                                    Yaskawa America  
                                    100 Automation Way  
                                    Miamsiburg, OH 45342

Email: [ryan.richey@motoman.com](mailto:ryan.richey@motoman.com)

Or at such address as may be specified by any party, from time to time, by prior written notification.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their duly authorized representatives to be effective as of the date first above written.

THE CITY OF MIAMISBURG, OHIO

By: \_\_\_\_\_  
Keith D. Johnson  
City Manager

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_, the \_\_\_\_\_ of the City of Miamisburg, Ohio, an Ohio municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[NOTARY SEAL]

YASKAWA AMERICA, ACTING THROUGH ITS  
MOTOMAN ROBOTICS DIVISION,

By: \_\_\_\_\_  
Steve Barhorst  
Chief Operating Officer

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2023, by \_\_\_\_\_, the \_\_\_\_\_ of  
Yaskawa America, Inc., an Illinois corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

[NOTARY SEAL]



**Exhibit “B”**

**Agreement Regarding ED/GE Funds**

## **AGREEMENT REGARDING ED/GE FUNDS**

**THIS AGREEMENT** is made and entered into by and between **the City of Miamisburg** (the "Member Jurisdiction"), Montgomery County, Ohio and the **Yaskawa America, Inc.** (the "Recipient/Business").

**WHEREAS** on \_\_\_\_\_, by **Resolution No.** \_\_\_\_\_, the Montgomery County Board of County Commissioners (the "County") awarded the Member Jurisdiction, an amount not to exceed \$ \$350,000, or 1.6% of total project costs, from the Primary Economic Development Fund, to provide funding support for a project known as the **Yaskawa Expansion Project** (the "ED/GE grant"); and

**WHEREAS** under Agreement between the County and the Member Jurisdiction, the Member Jurisdiction is responsible for administering the ED/GE grant; and

**WHEREAS** the Recipient/Business hereby acknowledges that all Member Jurisdictions awarded ED/GE grants are required to enter into a written development agreement with the Recipient/Business receiving the grant funds. The Recipient/Business should understand the project cost reimbursements (fifty percent (50%) reimbursed for eligible project costs, twenty-five percent (25%) when the company meets 50% of total pledged jobs and the remaining twenty-five percent (25%) when the company meets 100% of its total pledge jobs amount. In addition, sets forth the grant monitoring and reporting obligations of the Recipient/Business and Member Jurisdiction; and

**WHEREAS** as part of the Yaskawa Expansion Project, the Recipient/Business is guaranteeing the creation of 70 new jobs during a three-year period, along with a capital investment of \$22M.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. **PROJECT** \_ The project calls for the construction of a 190,000 sq. ft. building addition to there existing facility. ED/GE funds will be used to offset the cost of the above. The foregoing is referred to herein as the "Project". Over the next 3 years, the Recipient/Business expects to retain its current employees and add 70 new employees, bringing its total employment to 403 by the end of 2025.

2. **GRANT AMOUNT** The Member Jurisdiction agrees to provide the ED/GE grant funds made available to the Member Jurisdiction by the County for this Project pursuant to both the terms and conditions of the ED/GE contract between the Member Jurisdiction and the County and this Agreement.

The amount of the ED/GE Grant is \$ 350,000 or 1.6% of the total project cost, whichever is less. The parties acknowledge that this Agreement is made pursuant to the Montgomery County ED/GE program and that the distribution of funds provided for herein is made pursuant to that program. The parties further acknowledge that they have been informed and fully understand that ED/GE grants are given to Member Jurisdictions as follows:

Following execution of this Agreement, (1) fifty percent (50%) of the grant amount will be reimbursed to the Member Jurisdiction on an invoice basis for eligible expenses; (2) twenty-five percent (25%) of the grant amount will be reimbursed to the Member Jurisdiction, on an invoice basis when the Recipient/Business attains 50% of total pledged jobs; and 3) twenty-five percent (25%) of the grant amount will be reimbursed to the Member Jurisdiction, on an invoice basis when the Recipient/Business attains 100% of total pledged jobs. Job creation will happen over a three-year period commencing with the Recipient/Business' provision of adequate proof to the Member Jurisdiction that the jobs have been created and actually hired and/or filled.

3. **GRANT PAYMENT** The Member Jurisdiction shall distribute the Grant, if at all, only after the following conditions are met and verified by the Member Jurisdiction in advance of Grant distribution: The Recipient/Business shall supply the Member Jurisdiction with written evidence of the amount of monies expended by the Recipient/Business in the furtherance of the Project, containing a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided warranting the payment. The Recipient/Business shall also provide a copy of any fully executed lease between it and another party for the subject property that is part of the Project. The County, through its Office of Economic Development, has the authority to meet with any contractor, person or business entity employed by the Recipient/Business to determine that the ED/GE funds are being expended for Project purposes.

4. **ED/GE FUNDS ACKNOWLEDGEMENT** The Recipient/Business agrees that the ED/GE grant is expended by the County in its sole discretion, and that the County's financial assistance is voluntarily and that the Recipient/Business has no legal or equitable claim to any of the ED/GE funds.

5. **PAYROLL CREATION** The Recipient/Business agrees to creation of 70 jobs during a three year period.

6. **LOCATION IDENTIFICATION** The Recipient/Business agrees to make a good-faith effort in all its business communications to identify that the Company's facility is located in the Member Jurisdiction, Montgomery County, Ohio. Communication may include signage, promotional literature, stationery, and licensed vehicles.

7. **TAXES CURRENT** The Recipient/Business agrees to pay all respective applicable real and tangible personal property taxes and all municipal earnings tax amounts, including payroll withholding owed, in a timely manner.

8. **COMPLIANCE WITH ED/GE PROGRAM AND INDEMNIFICATION.** The Recipient/Business agrees to use any grant money received from the ED/GE program only for the purpose(s) provided in this Agreement, which have been determined to serve valid public purpose under the ED/GE Program. The Recipient/Business agree(s) to indemnify, defend and save harmless the Member Jurisdiction, its officials, agents and employees, from and against all suits, claims demands or actions, damages, liabilities, judgments, losses, costs and reasonable attorney fees arising out of or flowing from its failure to use the funds for the stated purpose. Further if any of the ED/GE funds are used for any purpose other than that of the Project, the Recipient/Business agrees that it will repay the County the amount improperly expended and will do so within seven (7) calendar days of written notice delivered to it by the Member Jurisdiction that such an improper expenditure has occurred. Said notice shall state the amount which the Member Jurisdiction believes to have been improperly expended.

9. **INFORMATION WARRANTED** The Recipient/Business affirmatively covenant(s) that it/they has/have made no false statements to the Member Jurisdiction in the process of obtaining approval of the ED/GE funds. If any representative of the Recipient/Business knowingly made false statements to the Member Jurisdiction to obtain or maintain the incentive provided by this Agreement, it is mutually agreed that such false statements shall be legally attributed to the representative's principal for purposes of this Agreement.

10. **AUDIT** The Recipient/Business acknowledge(s) that if they are receiving public funds, and that documentation of the use of such funds may be subject to audit by the County Auditor or the State Auditor or their representatives. The Recipient/Business agree(s) to allow either the County or its representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours and to supply the books/financial records concerning the receipt and expenditure of the economic development funding received pursuant to the Agreement. The Recipient/Business also agree(s) to notify persons or business entities with which (it/they) (does/do) business in the prosecution of the work called for in the "Project" of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

11. **RECORD RETENTION** The Recipient/Business agree(s) that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Recipient/Business, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or termination of the Project. After this three (3) year retention period, the Recipient/Business must notify the Member Jurisdiction, in writing, of its intent to destroy said records. The Member Jurisdiction reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Recipient/Business in writing, otherwise, the Member Jurisdiction will issue to the Recipient/Business a written Certificate of Records Disposal. It is mutually understood and agreed that no records in the Recipient/Business' possession will be destroyed until the Recipient/Business has received a Certificate of Records Disposal.

12. **NO DISCRIMINATION** The Recipient/Business agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The Recipient/Business will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient/Business agree(s) not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything related to this Agreement, or in reference to any contractors or subcontractors.

13. **TRANSFER** This Agreement is not transferable or assignable without the express, written approval of the Member Jurisdiction.

14. **AMENDMENT** This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties. This Agreement shall not be modified in any manner

except by an instrument, in writing, executed by the parties hereto. This Agreement may only be voided or amended by written mutual consent.

15. **SEVERABILITY** If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. **GOVERNING LAW** This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of the State of Ohio.

17. **SIGNATURES** Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations, and responsibilities incurred by way of this Agreement.

**MEMBER JURISDICTION:**

**RECIPENT/BUSINESS:**

By: \_\_\_\_\_  
Keith Johnson  
Its: City Manager

By: \_\_\_\_\_  
Steve Barhorst  
Its: CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_