



ORDINANCE O-15-2024

APPROPRIATION AMENDMENT ORDINANCE

AN ORDINANCE TO AMEND APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES DURING THE FISCAL YEAR ENDING DECEMBER 31, 2024

WHEREAS, in December 2023, the 2024 Annual Budget Program and the related permanent appropriations were adopted by council; and

WHEREAS, it is necessary to adjust the 2024 appropriations to ensure compliance with budgetary requirements and reflect proposed and actual spending.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. City Council hereby authorizes an appropriation of the unappropriated balance of the following funds:

Fund	Department	Category	Increase/ (Decrease)
101 - General	Police	Personal Services	\$ 220,000
101 - General	Community Development	Personal Services	339,000
101 - General	Community Development	Operating and Contractual Services	20,000
101 - General	Administrative Services	Personal Services	63,000
101 - General	Administrative Services	Operating and Contractual Services	168,000
101 - General	Land & Building Maintenance	Operating and Contractual Services	251,800
101 - General	General Administration	Personal Services	40,000
101 - General	General Administration	Operating and Contractual Services	75,000
201 - Street Construction Maintenance & Repair	N/A	Capital	250,000
250 - Blacklick TIF	N/A	Capital	800,000
258 - Windsor TIF	N/A	Capital	4,250,000
417 - Oak Grove II Infrastructure Fund	N/A	Capital	600,000
Total Appropriation Amendments			\$ 7,076,800

Section 2. City Council hereby authorizes Budget Transfers as follows:

Fund	Department	Category	Increase/ (Decrease)
101 - General	Public Service	Personal Services	\$ (100,000)
101 - General	Public Service	Operating and Contractual Services	100,000
Net Change related to Transfers			-

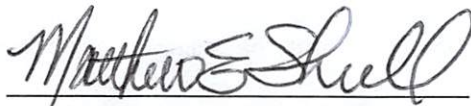
Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and

that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, this ordinance shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this 21 day of May, 2024.

Attest:



Matthew E. Shull
President Pro Tem



Jennifer H. Mason
Clerk of Council

Approved as to form:



Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared:	04/29/2024
Introduced:	05/07/2024
Revised:	05/13/2024 (2)
Adopted:	05/21/2024
Effective:	05/21/2024



RESOLUTION R-21-2024

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE FRANKLIN COUNTY ENGINEER AND PLAIN TOWNSHIP RELATED TO THE PROPOSED WALNUT STREET AND SR605 INTERSECTION IMPROVEMENT PROJECT

WHEREAS, Council desires to make infrastructure improvements that enhance vehicular and pedestrian safety throughout the city; and

WHEREAS, the intersection of Walnut Street and SR605 is not currently located within New Albany's corporate boundary but serves as a prominent northern gateway; and

WHEREAS, the intersection of Walnut Street and SR605 is currently misaligned and presents a variety of safety concerns related to vehicular and pedestrian traffic; and

WHEREAS, the parties recognize the mutual benefits of collaboration to support the design, construction and funding of the proposed intersection improvement project and desire to establish a formal framework to memorialize their collective commitments through an Intergovernmental Agreement.

NOW, THEREFORE, BE IT RESOLVED by the Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

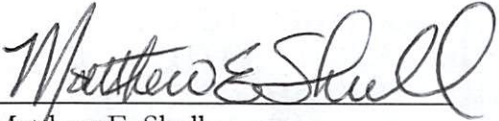
Section 1. The city manager is hereby authorized and directed to enter into an Intergovernmental Agreement with the Franklin County Engineer and Plain Township, the same or substantially similar to Exhibit A.


Section 2. It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

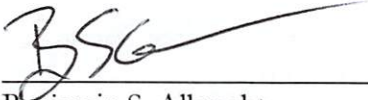
CERTIFIED AS ADOPTED this 21 day of May, 2024.

Attest:


Matthew E. Shull
President Pro Tem


Jennifer H. Mason
Clerk of Council

Approved as to form:


Benjamin S. Albrecht
Law Director

Legislation dates:	
Prepared:	04/26/2024
Revised:	05/01/2024
Introduced:	05/07/2024
Adopted:	05/21/2024
Effective:	05/21/2024

Exhibit A – R-21-2024

**INTERGOVERNMENTAL AGREEMENT FOR THE
WALNUT STREET AT STATE ROUTE 605 (NEW ALBANY-CONDIT ROAD)
IMPROVEMENT PROJECT**

This Intergovernmental Agreement for the Walnut Street at State Route 605 (New Albany-Condit Road) Improvement Project ("Agreement") is entered into by and between the City of New Albany ("New Albany"), Plain Township Board of Trustees ("Plain Township") and the Franklin County Engineer ("Franklin County"), collectively the Parties, this _____ day of _____, 2024.

WHEREAS, Section 9.482 of the Ohio Revised Code permits a political subdivision to enter into agreements with other political subdivisions under which a contracting political subdivision agrees to exercise any power, perform any function or render any service for another contracting recipient subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform or render, subject to the approval of their respective legislative authorities; and

WHEREAS, the Parties acknowledge that in the spirit of intergovernmental cooperation, a regional approach to the provision of certain services will be considered when the means for such cooperative effort are available and result in a cost savings and/or enhanced delivery of public services; and

WHEREAS, the Parties have identified that the Walnut Street at State Route 605 (New Albany-Condit Road) intersection is in need of reconfiguration and upgrades as shown in the attached Exhibit A; and

WHEREAS, Franklin County, New Albany, through its City Manager, and Plain Township, through its Administrator, do hereby mutually agree to cooperate in the planning, design and construction of the Walnut Street at State Route 605 (New Albany-Condit Road) Improvement Project (the "Project"); and

WHEREAS, the Franklin County Transportation Improvement District ("FCTID") has received a grant from the State of Ohio in the amount of \$5,000,000 for the Project ("Grant"), and the Parties desire to share in the costs of the Project that may exceed the grant received from the State of Ohio, as set forth herein; and

WHEREAS, the Parties are ready, willing and able to contract with Franklin County on the terms and conditions hereinafter set forth, to provide payment for a portion of the Project as identified in the attached Exhibit A; and

WHEREAS, the execution of this Intergovernmental Agreement was authorized by the following legislation: by Resolution 0115-22 adopted by the Franklin County Board of Commissioners on February 22, 2022; by Resolution/Ordinance _____ adopted by New Albany on _____, 2024; by Resolution _____ adopted by Plain Township on _____, 2024 and

NOW, THEREFORE, in consideration of the above, the Parties have agreed as follows:

- 1. The State of Ohio has provided \$5,000,000 of funding for this project ("Grant") to the FCTID. This funding will be utilized to fund as much of the project as possible, including the elements of the project that are the responsibility of the Ohio Department of Transportation.**
- 2. Franklin County will manage the engineering design services for the Project. Franklin County will develop the construction and right-of-way drawings and provide them to the Parties for review. The Parties will review the plans within a reasonable amount of time (no more than 30 days) and return comments to Franklin County. Franklin County will coordinate with the Parties on any necessary permitting for the project. Any design cost incurred by the Project will be included in the total Project Costs as included in Paragraph 8 and Exhibit B.**
- 3. New Albany shall be responsible for 100% of the Project costs associated with any non-reimbursable enhanced design features requested by New Albany, including but not limited to, enhanced hardscapes and landscapes, that are not consistent with Franklin County standard design features, to the extent that such increased costs exceed the proceeds of the Grant.**
- 4. Franklin County will perform right-of-way acquisition services and purchase the necessary road right-of-way to construct the Project. The right-of-way will be acquired in the name of the Franklin County Commissioners. Any right-of-way acquisition costs incurred by the Project will be included in the total Project Costs as included in Paragraph 8 and Exhibit B.**
- 5. Franklin County will administer and coordinate any necessary private and public utility relocations for the Project. Any utility relocation costs incurred by the Project will be included the total Project Costs as included in Paragraph 8 and Exhibit B.**
- 6. Franklin County will develop the bidding package, bid the project, award the contract, manage the construction contract, and perform the construction inspection. Any construction and construction administration costs incurred by the Project will be included in the total Project Costs as included in Paragraph 8 and Exhibit B.**
- 7. Franklin County may make application(s) for additional funding for the Project. The Parties agree to cooperate and provide support for these applications. If the Project is awarded funding from outside the Parties, this Agreement may be amended to reflect the award and adjust contributions from the Parties.**
- 8. The Parties agree that the total cost for the Project is estimated to be \$6,587,530 as shown in Exhibit B (as of the drafting of this Agreement). The Parties agree, in the**

event the total Project costs exceed, or are determined to be non-reimbursable from, the Grant, to contribute to Franklin County for the Project as follows:

- a. Franklin County will contribute 45% of the excess or non-reimbursable Project costs.
- b. New Albany will contribute 45% of the excess or non-reimbursable Project costs.
 - i. New Albany will contribute 100% of the non-reimbursable enhanced design features in accordance with Paragraph 3.
- c. Plain Township will contribute 10% of the excess or non-reimbursable Project costs, up to an amount not to exceed \$200,000.

In the event the actual costs for the Project exceed, or are determined to be non-reimbursable from, the Grant proceeds, the Parties agree to execute an appropriate modification of this Agreement. Franklin County will provide invoices for the appropriate Project contribution amounts within 15 days of the preconstruction meeting to each of the other Parties, unless otherwise requested by the jurisdiction. When the final construction costs have been determined, Franklin County will provide invoice(s) for the balance of the costs due.

9. New Albany will initiate annexation proceedings of the acquired right-of-way within 90 days of completion of the acquisitions. New Albany will also process the annexation of the existing present-road-occupied (PRO) right-of-way that is associated with the Project limits.
10. Following the completion of construction of the Project, New Albany will accept, as City-owned infrastructure and for perpetual maintenance and repair/replacement, all of the project improvements elements constructed in the Project's right-of-way. The other jurisdictions will no longer have any maintenance responsibilities for the infrastructure within the Project limits once construction is complete.
11. All Work provided under this Agreement shall be completed on or before May 28, 2027.
12. The Parties are political subdivisions and are entitled to all the immunities and defenses provided by law. To the extent that Chapter 2744 of the Revised Code applies to the operation of a political subdivision, it applies to each Party that is subject to this Agreement and to its employees when they are rendering a service outside the boundaries of their respective Party under the Agreement.
13. This Agreement does not in any way limit any power or function of the Parties with respect to any such functions being performed under this Agreement by the other political subdivisions.
14. For employment relationship purposes, any provider of services shall be an employee of the political subdivision for which that employee is ordinarily employed and by whom

such employee is paid. Such employee shall not be entitled to any additional compensation or employment benefits from the other political subdivision and no claim of joint employer status or liability shall be made on account of or arising from any incident in which a provider's employee may be involved.

15. The Parties agree that records pertaining to this Agreement are subject to Section 149.43 of the Ohio Revised Code (the "Public Records Law"), to the extent permitted or required by law. The Parties agree to cooperate with respect to any public record request and any request for an authorized representative of the Auditor of the State of Ohio in connection with audits and inspections of financial reports or conduct audits.

16. The effective date of this Agreement shall be the latest date signed below and terminate upon New Albany's and Plain Township's final payment to Franklin County; provided, however, that any party may terminate this Agreement upon 30 days' advance written notice to the other party. Termination of this Agreement shall not relieve the non-providing party from paying for any and all services provided. Termination of this Agreement shall not affect the maintenance responsibilities of the Parties as outlined in Paragraph 8 above.

17. This Agreement may only be amended in writing signed by an authorized representative of each participating Party, and as authorized by their respective legislative authorities, if required.

18. Whenever notice is required in this Agreement, such notice shall be in writing and shall be deemed served when either delivered in person to the following designated agents for that purpose, or deposited in the United States Mail, by certified or registered mail, postage prepaid, return receipt requested, addressed to the other Party as follows:

If to Franklin County Engineer's Office:

**Franklin County Engineer's Office
Attn: Highway Design Engineer
970 Dublin Road
Columbus, Ohio 43215**

If to the City of New Albany:

**City of New Albany
Attn: Public Service Director
99 West Main Street, PO Box 188
New Albany, Ohio 43054**

If to Plain Township:

**Plain Township, Franklin County
Attn: Township Administrator
45 Second Street, PO Box 273
New Albany, Ohio 43054**

or such other address as may be designated in writing by the Parties.

This Agreement may be executed electronically and in multiple counterparts, each of which shall be recognized as an original signature.

IN WITNESS WHEREOF, the Parties, each by an authorized agent, have entered into this Intergovernmental Agreement on the date indicated above.

FRANKLIN COUNTY

Witness: _____

Date: _____

By: _____
Brad Foster, P.E., P.S.
Franklin County Engineer

CITY OF NEW ALBANY

Witness: _____

Date: _____

By: _____
Joe Stefanov
City Manager

APPROVED AS TO FORM

Law Director
City of New Albany

PLAIN TOWNSHIP, FRANKLIN COUNTY

Witness: _____

Date: _____

By: _____
Ben Collins
Township Administrator

Exhibit A – Title Sheet

EXHIBIT B – Cost Estimate

Item	Cost Estimate
Feasibility Study	\$34,679
Peer Review	\$23,083
Detail Design	\$385,260
Right-of-way Acquisition (4.75 Ac +/- @ \$200k/ac)	\$950,000
Utility Relocation	\$356,100
Construction Administration/Inspection	\$440,000
Construction (Stage 2 estimate)	\$4,398,408
Total	\$6,587,530



RESOLUTION R-20-2024

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING AGREEMENT AND RELATED MAINTENANCE AGREEMENTS WITH THE NEW ALBANY COMPANY FOR THE PURPOSE OF MEMORIALIZING CERTAIN COMMITMENTS RELATED TO THE MARKET STREET EXTENSION PROJECT

WHEREAS, Council desires to make infrastructure improvements that enhance the movement of traffic and reduce congestion throughout the city; and

WHEREAS, the Market Street Extension project was thoroughly evaluated and modeled in conjunction with the 2020 strategic plan update and is included as a recommended roadway improvement project to help mitigate traffic congestion in the Village Center; and

WHEREAS, as the owner of substantial improved and unimproved real property within the Village Center, The New Albany Company shares the city's vision to mitigate traffic congestion to maintain and enhance the continued vibrancy and success of the Village Center; and

WHEREAS, the city and The New Albany Company recognize the mutual benefits of collaboration to support the construction and maintenance of the proposed Market Street Extension project and desire to establish a formal framework to memorialize the parties' collective commitments by way of a Memorandum of Understanding agreement.

NOW, THEREFORE, be it resolved by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio, that;

Section 1. The city manager is hereby authorized and directed to enter into a Memorandum of Understanding agreement, the same or substantially similar to Exhibit A, with The New Albany Company.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(a) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this 21 day of May, 2024.

Attest:

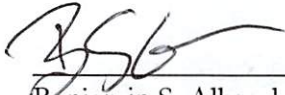


Matthew E. Shull
President Pro Tem



Jennifer H. Mason
Clerk of Council

Approved as to form:



Benjamin S. Albrecht
Law Director

Legislation dates:

Prepared:	05/10/2024
Introduced:	05/21/2024
Revised:	
Adopted:	05/21/2024
Effective:	05/21/2024

Exhibit A – R-20-2024

MEMORANDUM OF UNDERSTANDING – MARKET STREET EXTENSION

THIS MEMORANDUM OF UNDERSTANDING – MARKET STREET EXTENSION (this “MOU”) is made and entered into so as to be effective on the last date of signature below (the “Effective Date”), by and between THE NEW ALBANY COMPANY LLC, a Delaware limited liability company with its address at 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054 (“NACO”), and the CITY OF NEW ALBANY, an Ohio charter municipality having its address at 99 W. Main Street, New Albany, Ohio 43054 (“City”, and together with NACO, the “Parties”).

RECITALS:

WHEREAS, City plans to undertake a public infrastructure construction project to extend the public street known as Market Street from its existing terminus at Reynoldsburg-New Albany Road (“RNA Road”) eastward and northward to the intersection of U.S Route 62 and 3rd Street (the “Market Street Extension”), as more particularly depicted in a plat which was approved by New Albany City Council as Ordinance O-58-2023 (the “Plat”); and

WHEREAS, City and NACO desire that NACO will complete the construction of a limited portion of the Market Street Extension that is located generally between East Dublin-Granville Road on the north, and on the southwest by a traffic circle that is to be constructed by City at the intersection of Market Street and RNA Road, as well as a regional stormwater management basin that will serve the Market Street Extension and private development in the area, as more particularly provided below; and

WHEREAS, City will complete the construction of the remainder of the Market Street Extension; and

WHEREAS, this construction project requires coordination between City and NACO on a number of related matters, and this MOU is intended to memorialize the Parties’ mutual agreements and understanding in these regards.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT:

1. **Land Dedications.** NACO and/or its affiliated persons and business entities shall dedicate rights-of-way to the City for the Market Street Extension at no charge from land under their respective ownerships. These dedications shall occur by and through the execution of the Plat. In addition, NACO shall dedicate the real property identified in the attached Exhibit A to the City at no charge following the demolition of an existing building on property located near the new intersection between the Market Street extension and U.S. 62, such real property being known on the Effective Date as Franklin County Auditor Parcel Number 222-000066 (the “Driving School Parcel”). This dedication shall be completed by and through the delivery of a quitclaim deed by NACO following the completion of the demolition of said building.

2. **Project Components.** For purposes of this MOU, the Market Street Extension will be described as three components:

(A) **Phase 1.** A single lane traffic circle at the intersection of Market Street and RNA Road, which shall include (but not necessarily be limited to) installation of pavement, vehicular and pedestrian signage, street trees, streetlights, landscaping, and other customary improvements related to public street construction, and shall include related street tapers and returns for connection to the Phase 2 Improvements (collectively, the "Phase 1 Improvements").

(B) **Phase 2.** That portion of the Market Street Extension located between the Phase 1 Improvements and East Dublin-Granville Road as detailed in the Plat, which shall include (but not necessarily be limited to) installation of pavement, vehicular and pedestrian signage, street trees, streetlights, landscaping, and other customary improvements related to public street construction, and also shall include the Regional Basin (such term being defined in Section 5), the Baseline Landscaping, and the Supplemental Landscaping (such terms being defined in Section 6), as well as any Enhancements (such term also being defined in Section 6) collectively, the "Phase 2 Improvements").

(C) **Phase 3.** That portion of the Market Street Extension located between East Dublin-Granville Road and extending to U.S. Route 62 as detailed in the Plat, which shall include (but not necessarily be limited to) installation of pavement, vehicular and pedestrian signage, street trees, streetlights, landscaping, and other customary improvements related to public street construction as well as street tapers and returns on the south side of East Dublin-Granville Road connecting to the Phase 2 Improvements (the "Phase 3 Improvements").

3. **Construction Obligations.** City and NACO shall regularly communicate and meet before and during their respective construction activities to coordinate construction efforts on the components of the Market Street Extension. City shall be responsible for constructing the Phase 1 Improvements and the Phase 3 Improvements at its initial cost and expense, subject to adjustments as detailed in Section 11 of this MOU. NACO shall be responsible for constructing the Phase 2 Improvements at its initial cost and expense, subject to partial reimbursement from City as detailed in Section 11 of this MOU. City shall deliver written notice to NACO at least 60 days prior to commencement of construction of the Phase 1 Improvements, which such notice shall identify the projected start date for such construction and the projected date by which the Phase 1 Improvements and Phase 2 Improvements are targeted to be open for vehicular and pedestrian use by the general public, which in no event shall be less than nine (9) calendar months from the date of delivery of the notice to NACO (the "Opening Deadline"). NACO shall then diligently pursue the construction of the Phase 2 Improvements to completion by on or before the Opening Deadline. Should NACO fail to achieve substantial completion of the Phase 2 Improvements on or before the Opening Deadline such that the public street portion of the Market Street Extension that is part of the Phase 2 Improvements is not able to be opened for vehicular and pedestrian use by the general public, then City may elect to enforce a penalty of \$1,500.00 for each day beyond the Opening Deadline that said portion of the public street is unable to be opened. Should substantial completion fail to timely occur then City shall issue a written notice to NACO confirming the delay and indicating its intent to charge the per-day penalty, which shall then accrue from and including the day after the Opening Deadline through the day before the first date when the Phase

2 Improvements are first open for vehicular and pedestrian use by the general public. Within 30 days following the latter date, City shall deliver a subsequent notice to NACO detailing the total of such penalties, and NACO shall remit payment for the same to City within 30 days thereafter.

4. **Building Demolition.** Prior to the Effective Date, NACO has prepared and applied for a permit from the City to demolish the existing building located on the Driving School Property (the "**Building**"). An application for demolition of the Building was approved by the City's Architectural Review Board ("**ARB**") at its meeting on April 8, 2024. NACO shall complete the demolition of the Building no later than June 1, 2024. Upon completion of the Building demolition, NACO shall provide detailed invoices for all costs incurred related thereto and City shall reimburse NACO for those costs within 30 days after receipt thereof.

5. **Regional Stormwater Basins.** In conjunction with the construction of the Market Street Extension, the Parties desire to provide for the construction and use of a regional stormwater management basin (the "**Regional Basin**") to accept, retain, clean, and release storm water runoff from the Market Street Extension and from private development sites within the area that is generally depicted in **Exhibit B**, which is attached hereto and incorporated herein by reference (the "**Drainage Area**"). NACO shall install and construct the Regional Basin as part of the Phase 2 Improvements.

6. **Landscaping.** City and NACO shall negotiate cooperatively to agree upon the form of a final landscaping plan for areas near and around the Regional Basin prior to the commencement of installation of landscaping by NACO in those areas. NACO shall cause a professional landscape architecture firm to provide a proposed landscaping plan to City for its review and approval, and shall be responsible for installing landscaping in accordance with the approved plan (the "**Landscaping**"). Additional landscaped improvements may be constructed by NACO near the Regional Basin such as (but not limited to) a retaining wall, overlook area for pedestrians, paved leisure trail, and related aesthetic amenities (collectively, the "**Enhancements**"), subject to obtaining all permits and approvals required under the City's Codified Ordinances.

7. **Maintenance of Phase 2 Improvements.** Following the installation of the Regional Basin, the Landscaping, and any Enhancements, City will be responsible for maintaining the functional stormwater management elements of the Regional Basin and the public storm sewer system leading to and from the Regional Basin at its sole cost and expense, and NACO or its designee shall be responsible for maintaining all other aspects of the Regional Basin and all of the Landscaping at its sole cost and expense. City and NACO agree that if any of the Enhancements are to be used and enjoyed by the general public (such as but not necessarily limited to a so-called "overlook" area adjacent to the Regional Basin), City and NACO will negotiate and execute a separate agreement to address their respective maintenance responsibilities pertaining thereto. The rights and obligations of City and NACO with respect to the installation, construction, and maintenance of the Regional Basin, the Landscaping, and any Enhancements shall be set forth in one or more written easement and/or maintenance agreements between the Parties upon terms which are mutually acceptable to them, and which shall be recorded with the Office of the Recorder of Franklin County, Ohio prior to commencement of construction of the Regional Basin.

8. **Tree Clearing.** Prior to the Effective Date, NACO completed the removal of trees located to the south of East Dublin-Granville Road and to the east of RNA Road to the extent necessary to accommodate the construction of the Phase 2 Improvements. Costs of this tree removal shall be reimbursed by City to NACO within 30 days following New Albany City Council's first action to appropriate funds for the construction of any portion of the Market Street Extension.

9. **Floodplain Development Permit.** NACO has caused the civil engineering firm of EM&T to create a grading plan for the Regional Basin and has provided a copy of the same to City, which is reviewing the same. Within 7 days after the Parties mutually agree upon the final grading plan, NACO shall file an application with the City for relevant permits as necessary to construct the Market Street Extension and/or Regional Basin using compensatory cuts and fills of soils within floodplain areas.

10. **Excess Soil.** City anticipates that the amount of excavated soil from the construction of the Market Street Extension and the Regional Basin will be substantially in excess of the amount of soil needed to complete those projects. NACO shall allow the City to place up to 110,000 cubic yards of excess soil from these projects on the property that is identified in Exhibit C attached hereto (the "Ganton Property") in the general location that is identified in that same exhibit (the "Ganton Property Stockpile Location"). To the extent that the total amount of excess soil cannot be accommodated at the Ganton Property Stockpile Location, the parties shall work cooperatively to identify other real property located within a 10-minute driving radius of the Regional Basin (i.e., 20 minutes round trip) on which soil can be stockpiled. Final locations for stockpiling of soil shall be agreed upon by the parties in a timely manner so as to allow a final grading plan for the Regional Basin to be finalized by a date that allows the City and NACO to meet relevant construction timelines.

City shall pay the costs of transporting excess soil to the Ganton Property and of placing and shaping the soil in a "stockpile condition" at the Ganton Property Stockpile Location, except that should the amount of excess soil exceed 110,000 cubic yards, then at its election NACO shall either (a) transport the additional soil to another location at its sole cost and expense or have City complete this work and reimburse the City for the costs of transporting and placing this additional soil at its final location, with such reimbursement occurring within 30 days after the City delivers a detailed invoice for the same to NACO. NACO shall be permitted to reshape, enhance, relocate, and/or otherwise use the stockpiles at its sole cost and expense once they are placed on the Ganton Property or at any other location for stockpiling that is on real property owned by NACO or its affiliates. All soil that is delivered by City to the Ganton Property or any other real property that is owned by NACO or its affiliates shall become the property of NACO or the relevant affiliate.

11. **Reimbursements.** City shall reimburse NACO for the costs of the Phase 2 Improvements based on an estimate prepared by City which was dated January 24, 2024 and was

based on a prior design for the Market Street Extension which provided for a pair of regional stormwater basins rather than the single Regional Basin. However, the City's reimbursement to NACO under this Section 9 shall be reduced by the following amounts:

- A. Consulting fees of MKSK and E.P. Ferris incurred by the City after January 24, 2024, relating to the Market Street Extension and Regional Basin.
- B. Price increases for the Market Street Extension project (excluding the costs of the Regional Basin), measured from a baseline cost estimate of \$[_____].
- C. Costs of excavating and transporting soil from the Market Street Extension project and Regional Basin project exceeding those which would have been incurred based on previous the previous two-basin design.
- D. Costs resulting from any upsizing and expansion of stormwater management infrastructure relating to the Regional Basin design as compared to the costs associated with the previous two-basin design.
- E. The amount of any lost grant funding from the Ohio Public Works Commission (project must be completed by October 2025 in order to receive funds) for the Market Street Extension.
- F. Costs associated with any increased construction timelines resulting from the new specifications for the Regional Basin as compared to the timelines associated with the previous two-basin design.
- G. Costs of extending or modifying any 404 Nationwide Permits issued to City for the purpose of allowing filling within jurisdictional waters of the United States resulting from delays caused by the modification of the previous two-basin design to a single Regional Basin.

Once bids for each portion of the Market Street Extension are obtained, City staff and NACO promptly and regularly shall meet in an effort to reconcile anticipated versus actual expenses relating to the Market Street Extension in accordance with this Section 11. A final written reconciliation and detailing of these costs and expenses shall be executed by the City Manager and an authorized representative of NACO, once finalized.

12. General Provisions. This MOU may be executed in counterparts and each of such counterparts shall, for all purposes, be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement. Signatures to this MOU exchanged in PDF or other facsimile or electronic forms shall be deemed to be originals. This MOU supersedes and replaces any previous written agreements between the Parties relating to the subject matter hereof.

[Signature page and exhibits follow]

IN WITNESS WHEREOF, City and NACO have executed this Agreement as of the dates written below.

CITY:

**CITY OF NEW ALBANY,
an Ohio charter municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

NACO:

**THE NEW ALBANY COMPANY LLC,
a Delaware limited liability company**

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form:

Benjamin Albrecht, City Law Director