

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("MOA") is effective _____, 2022, by and between the Gahanna-Jefferson Public School District Board of Education ("Board"), and the City of Gahanna ("City") collectively referred to as "the Parties."

RECITALS

- A. The voters living in the Gahanna-Jefferson Public School District passed a levy approving the construction of a new high school (hereafter "New High School") among other improvements.

- B. The Board is in the process of designing its New High School and appurtenances (hereafter the "Project") at the existing Lincoln High School site (hereafter the "Site") and has been working with the City to obtain the City's approval of the design.
 - 1. If the initial work on the Project does not proceed immediately, Project costs will increase significantly due to winter weather conditions, inflation, material supply chain issues, and labor shortages.

 - 2. Additionally, if the Project is not able to commence immediately, it will disrupt the Board's spending forecast for Phase 2 of the Master Facilities Project, which will have negative ramifications under IRS guidelines related to the tax-exempt status of the bonds sold for Phase 2 of the Master Facilities Project. If the Board loses tax exempt status of the bonds, the result will be a significant increase in cost to the Board projected to be multiple millions of dollars.

 - 3. Because of the abbreviated timeline being presented, the City must adjust its normal procedures in effort to accommodate this schedule.

- C. The Board needs City approval to commence as soon as possible the following work: temporary fencing, erosion and sediment control measures, stripping topsoil, grubbing, removing trees in the proposed stadium area, demolition of the existing stadium, demolition of selective existing structures, pavement, underground utilities, and hard scape on the East side of the Site, and starting the building pads for the New High School, visitor amenity building, and bleachers. Additionally, the Board needs to begin on the Site underground utility work for the visitor amenity building as soon as practicable. The work identified in this paragraph is referred to as "Site Work."

- D. The City and the Board have been working cooperatively together to accommodate the Board's expedited construction and building approval process, that requires an abnormally short approval period. The Board's construction timing, bond financing and raising costs necessitate that the Board start construction as soon as possible. It has become apparent that the timing of the normal process required to take the project plans through the City's

Planning Commission for review of the Board's proposed use of the Site will not meet the objectives of the Board. The City seeks to assist the Board in avoiding increases in construction and financing costs of the Project, and therefore seeks an expedited approval process. Further, Ohio courts have established that a city cannot prohibit another political subdivision from its use of land. *See: Brownfield v. State of Ohio*, 63 Ohio St.2d 282 (1980) and its progeny of cases (*Laketran Board of Trustees v. City of Mentor* (1999), 135 Ohio App.3d 187 (a public entity is required to make reasonable efforts to the extent feasible to comply with existing zoning requirements)). *Brownfield* requires political subdivisions to cooperate with each other and to jointly seek resolution of land use questions. Pursuant to the requirements of *Brownfield*, the City and the Board agree as follows:

1. The Site is currently zoned by the City appropriately for the Board's use as a high school with appurtenant facilities.
2. The City will diligently process necessary requests for building permits and conduct necessary engineering review of submitted plans.
3. The Board will submit the Site Work for review and approval by the City's engineering department in the following segments:
 - i. Segment 1 – early demolition plan sheet; early grading plan sheet; and storm water pollution prevention plan sheet (SWPPP) (NOI for NPDES Construction Storm Water permit application shall be submitted by the Board to the EPA directly);
 - ii. Segment 2 – plan sheets for balance of the Site Work;
4. The Board will be permitted to proceed with each segment of the Site Work upon independent approval by the City.
5. If the Board requires a variance from any applicable building code standards of the City, it shall comply with the City's normal variance procedures.
6. The City's normal review process would require the Board to complete approval of all phases of the Project, at one time. The Parties acknowledge that complete Project approval is the preferred method for review and authorization of a Project and minimizes the possibility of the need to change plans at a later date during subsequent plan review and approval. However, as noted above, due to severe financial concerns of the Board, this Project will be reviewed as building permits and engineering approvals are sought, and the Board recognizes and acknowledges that there is a potential risk that later approvals may necessitate changes to work already completed and that the Board may incur additional expense because of these changes. However, the Board agrees that it is willing to accept this risk of additional expense due to its financial concerns of not starting the Project immediately.

- E. As part of the plan review process that has occurred to date, the City issued comments regarding the Traffic Impact Study (“TIS”) submitted by the Board. The City has also issued comments regarding the sanitary sewer capacity related to the New High School’s enrollment and its’ impact on the City’s public sewers.

On July 12, 2022, the City issued Final Development Plan comments (“Comments”), which are attached hereto as Exhibit A. Among the items contained in the Comments are remarks related to the TIS submitted by the Board (see paragraphs 12-33) (“TIS Comments”) and a Comment relating to the sanitary sewer capacity calculations (see paragraph 34)(“Sanitary Sewer Comments”). The TIS Comments and Sanitary Sewer Comments are summarized as follows:

1. TIS Comments – Among other issues, the TIS recommended several improvements including a new traffic signal, turn lanes, roadway widening. In addition to the recommendations of the TIS, the City strongly believes that aligning the Main Entry with Gary Lee Drive would be in the best interests of the overall traffic flow through the heavily traveled intersection.
2. Sanitary Sewer Comments – The capacity of the offsite sanitary sewer lines needs to be reviewed, which will require the Board to conduct a study of the same (“Sewer Study”). The Sewer Study must include a review of the sanitary sewer piping through the north side of the school site as well as offsite sanitary sewer to the west of the site. The purpose for the Sewer Study is to analyze the current sanitary flows tributary to the sanitary sewer piping in order to determine if the pipe has available capacity or is above capacity. The Sewer Study is currently underway.

The Parties hereby acknowledge that significant work and study is required to address the TIS Comments and the Sewer Study, which work and review will be undertaken with diligence by the Parties. The Parties further acknowledge that the TIS concerns and Sewer Study and any resulting issues must be resolved to approval of the responsible personnel at the City subject to applicable law, prior to the completion of the Project and occupancy of the Site. Further, the Board recognizes and accepts, that its occupancy of the Site may be limited to the number of people that previously occupied the Site due to limitations in sewer capacity until such time as the capacity concerns are resolved in accordance with applicable law.

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein, the Board and City enter into the following agreement regarding the Project:

- A. Pursuant to *Brownfield* and in acknowledgement of and cooperation with the Board and the circumstances that necessitate immediate commencement of construction activities in order to save the Board significant sums of taxpayer dollars, the City has, by resolution, waived the obligations of the Planning Commission review of the Project plans related to the Site Work as set forth in the resolution.

- B. The Board will cooperate with the City to complete the Sewer Study, and the Parties will act in good faith to resolve all of the Sanitary Sewer Comments, and any engineering relating issues that may develop.
- C. The Board will cooperate with the City to complete the TIS and will act in good faith to resolve all of the TIS Comments, and any relating issues that may develop.
- D. The Board acknowledges that it shall not occupy the structures of the Project until the Parties have achieved resolution of the Sanitary Sewer Comments and TIS Comments, and any Site issues relating to the Project that may develop.
- E. Acknowledging the circumstances necessitating immediate commencement of construction activities, the Board is permitted to proceed with each segment of the Site Work once approved in the manner noted above in paragraph D.3-D.4, while concurrently working with the City to resolve the Sanitary Sewer Comments, TIS Comments, building permits, and engineering approvals required by the City for the balance Project.

IN WITNESS WHEREOF, the undersigned Parties agree this MOA is effective as of day and year first written above.

**GAHANNA-JEFFERSON PUBLIC SCHOOL
DISTRICT BOARD OF EDUCATION**

CITY OF GAHANNA

Steve Barrett, Superintendent

Laurie Jadwin, Mayor

Approved as to Form

Raymond J. Mularski, City Attorney