

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE
A PROJECT COSTS DEPOSIT AGREEMENT WITH
SNOWVILLE LAND CORP., LLC; AND DECLARING AN
EMERGENCY.

WHEREAS, Snowville Land Corp., LLC (the “Property Owner”) owns certain real property on Snowville Road in the City (the “Property”); and

WHEREAS, in connection with the proposed development of the Property for residential purposes (the “Development”), the Property Owner desires that certain public improvements to the adjacent roadways and surrounding area (the “Public Improvements”) be made to support the Development; and

WHEREAS, the Property Owner has expressed that it intends to petition the City for construction of the Public Improvements and for a related special assessment to be levied on the Property, pursuant to Chapter 727 of the Ohio Revised Code, to provide funding for the Public Improvements; and

WHEREAS, in order to facilitate the Property Owner’s petition for the Public Improvements and the related special assessment proceedings for the Property, certain plans, specifications, and estimates in respect of the Public Improvements must be prepared and, subject to the terms and condition of the Project Costs Deposit Agreement (attached hereto as Exhibit A), the City would undertake the preparation of the foregoing and the Property Owner would provide funds to the City for the costs of such preparation;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Brecksville, Cuyahoga County, Ohio, that:

SECTION 1. The Mayor be, and hereby is, authorized to enter into a Project Costs Deposit Agreement with Snowville Land Corp., LLC, in substantially the form as attached hereto as Exhibit A.

SECTION 2. This Council further hereby authorizes the Mayor, the Director of Law, the Director of Finance and other appropriate officers of the City, to sign such documents and take such actions as are necessary carry out the purposes of this ordinance.

SECTION 3. This Council determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were passed 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 including Section 121.22 of the Revised Code.

SECTION 4. This Council declares this Ordinance 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 Ordinance is required to be immediately effective in order to allow the Public Improvements supporting new residential development in the City to be constructed at the earliest possible time; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and approval by the Mayor.

PASSED: _____, 2024

APPROVED: _____, 2024

MAYOR

CLERK OF COUNCIL

EXHIBIT A

Form Project Costs Deposit Agreement

[attached]

PROJECT COSTS DEPOSIT AGREEMENT

THIS PROJECT COSTS DEPOSIT AGREEMENT (the “**Agreement**”) is made and entered into as of September 17, 2024 by and between **Snowville Land Corp., LLC** (the “**Property Owner**”) and the **City of Brecksville, Ohio** (the “**City**”). The Property Owner and the City are each referred to herein as a “**Party**” and collectively, the “**Parties**”.

RECITALS

A. Property Owner owns the real property identified as Cuyahoga County Permanent Parcel No. 605-18-001, generally located on Snowville Road opposite Dewey Road in Brecksville, Ohio (the “**Property**”);

B. In connection with the proposed development of the Property for residential purposes (the “**Development**”), the Property Owner desires that certain public improvements to the adjacent roadways and surrounding area (the “**Improvements**”) be made, as further detailed herein, to support the Development;

C. The Property Owner intends to petition the City for construction of the Improvements and for a related special assessment to be levied on the Property in order to provide funding for the Improvements, pursuant to Chapter 727 of the Ohio Revised Code (the “**Special Assessment Proceedings**”); and

D. In order to facilitate the Property Owner’s petition for the Improvements and the Special Assessment Proceedings for the Property, certain plans, specifications, and estimates in respect of the Improvements must be prepared, and the City and the Property Owner have agreed that the City will undertake the preparation of the foregoing and the Property Owner will provide funds to the City for the costs of such preparation, pursuant to the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of premises and the mutual agreements herein contained, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals above are incorporated herein and made a part of this Agreement.

2. Scope of Work. The City will undertake the preparation of plans, specifications and estimates as required for the design and construction of the Improvements and the related Special Assessment Proceedings in accordance with Chapter 727 of the Ohio Revised Code, as more specifically identified in Exhibit A attached hereto (collectively, the “**Engineering Work**”).

3. Payment of Costs for the Engineering Work. Property Owner shall pay for the costs of the Engineering Work and any other related costs incurred by the City due to its undertaking of the Engineering Work, acquiring necessary easements for the Improvements

(including the purchase price), and obligations under this Agreement, including but not limited to legal fees incurred in connection with this Agreement (collectively, "Project Costs"). Project Costs may include the aggregate costs to the City for work performed by employees of the City. Project Costs are currently estimated to be \$100,000.00 which amount the Property Owner shall place on deposit with the City, pursuant to Section 4 hereof ("Project Costs Deposit"). If Project Costs exceed the amount of the Project Costs Deposit, the Property Owner shall, within fifteen (15) days of receipt of written notice from the City of the amount of the excess Project Costs, remit payment to the City for the amount of those excess Project Costs. Such notice shall be sent electronically to the Property Owner at the following email address DOSKOE AOL.COM. For the avoidance of doubt, Property Owner shall pay the Project Costs whether or not the Special Assessment Proceedings move forward and, under such circumstances, shall not receive reimbursement therefor.

4. Remittance of Project Costs Deposit. Upon execution of this Agreement, and as a condition precedent to the City's performance of its obligations under this Agreement, the Property Owner shall remit the Project Costs Deposit to the City in immediately available funds. The City shall hold the Project Costs Deposit as if in escrow in a separate account on the books and records of the City and shall use the Project Costs Deposit only for the purpose of the payment of Project Costs. The City shall not be required to invest the Project Costs Deposit and shall not be required to hold the funds in an interest-bearing account. Any interest accrued on the Project Costs Deposit shall be the funds of the City. The City shall maintain, and provide to the Property Owner upon request, an accounting of the receipt of and the disbursements from the Project Costs Deposit. Any amounts of the Project Costs Deposit in excess of the Project Costs shall be returned to the Property Owner promptly after completion of the Engineering Work.

5. Commencement and Completion of Engineering Work. Upon the Property Owner's remittance of the Project Costs Deposit, the City shall promptly commence and diligently pursue completion of the Engineering Work. The City shall manage, oversee and administer the process, including but not limited to selecting and negotiating contracts with the contractors, consultants and advisors related to the Engineering Work and determining the schedule for completion of such, which shall be completed as soon as practicable. The products of the Engineering Work shall be the property of the City; however, the City shall provide to the Property Owner a duplicate of the products of the Engineering Work, inclusive of surveys, specifications, and estimates, upon the Property Owner's request, provided that any additional costs incurred by the City from providing such duplicates to the Property Owner shall be paid by the Property Owner in addition to the Project Costs Deposit.

6. Reimbursement of Project Costs Through Special Assessment. The Parties acknowledge that the Property Owner desires to have the Project Costs included in the amount of special assessments levied against the Property for the Improvements so that the Property Owner may recoup its payment of Project Costs from the Development of the Property. Upon proper petition by the Property Owner and related Special Assessment Proceedings, pursuant to Chapter 727 of the Ohio Revised Code, the City and the Property Owner agree to include the Project Costs in the special assessments levied against the Property for the Improvements to the extent permitted by law. For the avoidance of doubt, Property Owner shall pay the Project Costs whether or not the Special Assessment Proceedings move forward and, under such circumstances, shall not receive reimbursement therefor.

7. Agreement for Benefit of Parties; No Assignment. It is the intention of the Parties hereto that this Agreement is made for the sole benefit of the Property Owner and the City. Nothing herein shall be deemed to create, either expressly or by implication, any lien, claim, or right on behalf of laborers, mechanics, suppliers, servicemen, materialmen, lien holders, or any other third party, whatsoever, which could be construed as creating any third party rights of any kind or nature, in or to the Project Cost Deposits or any other amounts paid by the Property Owner pursuant to this Agreement, or any part thereof. Neither Property Owner nor the City shall have any right to assign its respective rights and/or obligations under this Agreement or to pledge or otherwise encumber its interest in the Project Costs Deposit or any other amounts paid by the Property Owner pursuant to this Agreement, or any part thereof, except as otherwise contemplated by this Agreement, and any such attempted assignment, pledge, or encumbrance shall be null and void.

8. Termination. This Agreement shall terminate automatically upon the earlier occurrence of the following: (a) the special assessment for the Improvements has been placed on the tax list and duplicate for the Property, or (b) all obligations of both Parties hereto arising under this Agreement have been satisfied. This Agreement shall automatically terminate in the event that the Property Owner provides written notice to the City that the Property Owner no longer desires to petition the City for a special assessment on the Property for the Improvements or withdraws any filed petition for the same. The obligation of the Property Owner to remit to the City the amounts required to pay Project Costs, as set forth in Section 3 hereof, and the obligation of the City to return to the Property Owner the amount of the Project Costs Deposit not utilized or needed to pay Project Costs, as set forth in Section 4 hereof, shall survive termination of this Agreement.

9. Miscellaneous.

(a) To the fullest extent permitted by law, the Property Owner shall indemnify and hold harmless the City and the City's officers, employees, independent contractors and agents against any allegations (regardless of whether it is false, fraudulent or groundless) in any third party claim, demand, suit, investigation, proceeding or cause of action, whether actual or alleged, arising out of or related to the City's undertaking or performance of the Engineering Work under this Agreement.

(b) This Agreement contains the complete expression of the agreement between the Parties as to the subject matter of this Agreement and there are no promises, representations, inducements or understandings, oral or otherwise, except as are provided or referenced herein.

(c) This Agreement may not be amended or modified except by a writing signed by all of the Parties hereto.

(d) This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors and assigns, except as set forth to the contrary herein.

(e) This Agreement shall not be effected unless approved by formal action of the City Council of the City (the "**City Council**"). This Agreement may not be modified or

amended except in writing executed by the City and the Property Owner and approved by the City Council.

(f) If any provisions of this Agreement or the application thereof to any part or circumstances shall, to any extent, be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent of the law.

(g) The paragraph headings contained in this Agreement are for reference purposes only, and shall not affect in any way the meaning or interpretation of this Agreement.

(h) This Agreement shall be interpreted according to the laws of the State of Ohio. The Court of Common Pleas of Cuyahoga County, Ohio, shall have exclusive jurisdiction over matters pertaining to this Agreement.

(i) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. All signatures need not be on the same page. Facsimile signatures shall be valid as originals.

[Signature Page follows]

IN WITNESS WHEREOF, the Parties hereto have executed and delivered this Project Costs Deposit Agreement, by their respective officers, duly authorized so to do, as of the date and year first written above.

PROPERTY OWNER:

Snowville Land Corp., LLC

By: 

Kirk Doskocil, President

CITY:

City of Brecksville, Ohio

By: _____

Name: Daryl J. Kingston

Title: Mayor

Approved as to form:

By: _____

David J. Matty, Law Director

EXHIBIT A

ENGINEERING WORK

Engineering Work will include, but not be limited to, the following:

Initial Project Scope and ODOT Processing:

- Initial project review & investigation
- Ohio Utility Protection Service plan and field marking request
- Preliminary determination of project limits
- Preliminary estimates
- Coordination with consultants

Geotechnical Investigation:

- Subsurface soil investigation and provide geotechnical recommendations.

Centerline Research, Field Survey & Base Mapping:

- Research County and City records
- Defining centerline and right-of-way
- Field collection of all pavement, sidewalk, utilities, and topographic features for an approximate 1,000-foot section of Snowville Road, including 250' of Dewey Road and Deer Run
- Base mapping

Detailed Engineering:

- Title sheet
- Typical sections
- Notes and details
- Maintenance of traffic plans
- Improvement plans
- Limited cross-sections
- Pavement marking plans
- Schedule of quantities
- Submission and governmental review
- Contract documents

Coordination with Utility Companies:

- Submission to all utility companies impacted by the proposed work
- Coordination with respective lowering

Permanent and Temporary Easement Acquisition:

- Defining easement limits
- Coordination with parties to obtain easement valuations
- Preparation of easement documents
- Meetings and negotiations to obtain easements

Construction Bidding & Award:

- Preparation of advertisement
- Contractor questions and bid related assistance
- Contract bid review