

AGREEMENT REGARDING

NEWARK TRANSPORTATION IMPROVEMENT DISTRICT

BETWEEN

**STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION**

AND

CITY OF NEWARK

PROJECT MANAGER: SARAH COAKLEY, AICP, PRINCIPAL PLANNER, DELDOT

THIS AGREEMENT, made and entered into this 21st day of March 2020, by and between the State of Delaware, Department of Transportation, as First Party, hereinafter referred to as the **DEPARTMENT**, and the City of Newark, as Second Party, hereinafter referred to as the **CITY**.

WITNESSETH:

WHEREAS, the **DEPARTMENT** and the **CITY** seek to establish a Transportation Improvement District, hereinafter referred to as the **TID**, for the purpose of securing required improvements to transportation facilities in the TID,

NOW, THEREFORE, for and in consideration of the mutual covenants, hereinafter stipulated to be kept and performed, it is agreed between the parties as follows:

SECTION 1. GEOGRAPHIC BOUNDARIES

- A. The initial boundaries of the **TID**, to be refined in the development of the Land Use and Transportation Plan, are shown on Exhibit A, attached hereto, and are described as follows:
1. Participant Boundary. Beginning in the northwest, where Nottingham Road crosses the Christina River, the boundary follows the Christina River north until the point where it is closest to Delrem Drive, crosses Delrem Drive and follows the parcel line between lots 32 and 33 in Fairfield, continues east along the northern parcel line of the Newark Country Club, then east along the parcel line between the AMC and Smith Subdivisions, crosses New London Rd, runs east and north along the northern parcel line of University of Delaware to the Pomeroy Trail Connector, runs east along the Pomeroy Trail Connector to North College Avenue, follows North College Avenue south to an intermittent stream, follows the intermittent stream east to White Clay Creek, follows White Clay Creek south, east, north, and east to the City of Newark Municipal Boundary, runs along the City of Newark Municipal Boundary

south, west, south, west, south to the rail line, runs along the rail line west and south to the City of Newark Municipal Boundary closest to East Chestnut Hill Rd, then follows the Municipal Boundary west to the Christina River, runs west and north along the Christina River to the Amtrak/CSX/Norfolk Southern rail line, then follows the southern and western boundaries of Planning Section E in the Land Development Chapter of the City's Comprehensive Plan V, then follows the northern boundary of this Planning Section E to the Christina River, then runs north along the Christina River to the point of beginning.

2. Facilities Boundary. Beginning in the northwest, at the intersection of Casho Mill Road and Nottingham Road, the boundary follows Nottingham Road west to the Maryland/Delaware state line, Nottingham Road back east to Hillside Road, Hillside Road north to New London Road, New London Road northwest to the Maryland/Delaware state line, New London Road back southeast to W. Cleveland Avenue, W. Cleveland Avenue east to North College Avenue, North College Avenue north to Bogy Run, North College Avenue back south to W. Cleveland Avenue, E. Cleveland Avenue east to Paper Mill Road, Paper Mill Road north to Possum Park Road, Paper Mill Road back south to Old Paper Mill Road, Old Paper Mill Road east to Creek Bend Drive, Old Paper Mill Road back west to Paper Mill Road, Paper Mill Road back south to E. Cleveland Avenue, E. Cleveland Avenue east to Capitol Trail, Capitol Trail northeast to Possum Park Road, Capitol Trail back southwest to E. Main St., Ogletown Road east to City of Newark Municipal Boundary, Ogletown Road back west to Marrows Road, Marrows Road south to E. Chestnut Hill Road, E. Chestnut Hill Road west to South College Avenue, South College Avenue south to Newark Municipal Boundary, South College Avenue back north to E. Chestnut Hill Road, and Christina Parkway west to Elkton Road, Elkton Road southwest to the Maryland/Delaware state line, Elkton Road back northeast to Casho Mill Road, Casho Mill Road north to Barksdale Road, Barksdale Road west to the Maryland/Delaware state line, Valley Road from the Maryland/Delaware state line north to Church Road, Valley Road back south to the Maryland/Delaware state line, Barksdale Road back east to Casho Mill Road, then Casho Mill Road north to the point of beginning.

- B. The TID shall have both a Participant (inner) Boundary and a Facilities (outer) Boundary. The purpose of having two boundaries is to better provide for adequate infrastructure on all sides of developments inside the Participant Boundary. All land developments requiring a subdivision or land development plan or requiring entrance plan approval by DelDOT within the Participant Boundary and all State-maintained capital transportation facilities (roads, bridges, sidewalks, bus stops, etc.) within the Facilities Boundary shall be subject to the terms of this agreement. Additionally, the following City-maintained roadways shall be subject to the terms of this agreement:

1. Hillside Road from Apple Road to W. Main St.
 2. West Park Place from Elkton Road to S. College Avenue
 3. East Park Place from S. College Avenue to S. Chapel St.
- C. The boundaries of the **TID** may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**.
- D. When updating their Comprehensive Plan, the **CITY** shall evaluate the need to amend the boundaries of the **TID**.

SECTION 2. TARGET HORIZON YEAR

- A. The Target Horizon Year for which land use, or population and employment, is to be forecast in creating the TID is 2045.
- B. The Target Horizon Year may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**, but shall ordinarily be at least 10 years after the most recent US Census.
- C. When updating their Comprehensive Plan, the **CITY** shall evaluate the need to amend the Target Horizon Year of the **TID**.

SECTION 3. SERVICE STANDARDS

- A. The parties hereby agree to work together to develop a set of standards (Service Standards) for conditions in the TID in the Target Horizon Year, which the parties hereto shall, upon review and approval, adopt as Exhibit B to this Agreement.
- B. Prior to incorporating Service Standards into this **AGREEMENT**, the parties agree to solicit public comment on proposed standards and consider the comments received.
- C. The Service Standards may be amended at any time by mutual agreement of the parties in the form of a supplement to this **AGREEMENT**, provided that the public is first afforded an opportunity to review and comment on the proposed amendment.
- D. When updating their Comprehensive Plan, the **CITY** shall evaluate the need to amend the Service Standards of the **TID**.

SECTION 4. LAND USE AND TRANSPORTATION PLAN

- A. The parties agree to work together to create a Land Use and Transportation Plan, hereinafter referred to as an **LUTP** for the **TID**.
- B. The **CITY** shall supply to the **DEPARTMENT** a parcel-level land use forecast for the **TID** area, composed of the following components:
 - 1. Existing land use as of 2019.
 - 2. Development approved and/or recorded but not yet built as of that date, including any “sunset” provisions.
 - 3. Development expected or in the land development process but not approved as of that date.
 - 4. Development not yet proposed but projected by the Target Horizon Year, based on population and employment forecasts, and the current Comprehensive Plan and zoning map.
- C. The **DEPARTMENT** shall inventory the existing transportation network and programmed improvements thereto within the **TID** area, which inventory shall include the following information:
 - 1. Functional Class and Traffic Pattern Group;
 - 2. Numbers, assignments and widths of lanes at each intersection;
 - 3. Type of control at each intersection;
 - 4. Typical section and type of pavement on each road segment;
 - 5. Roadway geometry deficiencies in sufficient detail to determine whether the agreed upon Service Standards are met;
 - 6. Roadway capacity and Level of Service conditions (to the extent known) in sufficient detail to determine whether the agreed upon Service Standards are met;
 - 7. Presence, and frequency of transit service;
 - 8. Any bicycle and pedestrian facilities not covered under Item 4 above.
- D. The **DEPARTMENT** shall forecast traffic on the study area road network for the Target Horizon Year, shall determine what locations would need improvement to meet the Service Standards, in that year, and shall identify conceptually what improvements are needed in those locations.
- E. The **DEPARTMENT** shall assemble the information identified in Paragraphs B, C and D above as the **LUTP**, which the parties hereto shall, upon review and approval, adopt as an Appendix to this Agreement.
- F. When updating their Comprehensive Plan, the **CITY** shall consider the need to update the **LUTP** and shall initiate that effort if the land use forecast for the **TID** area has changed

significantly. The parties hereto shall, upon review and approval, readopt the revised **LUTP** as an Appendix to this Agreement.

SECTION 5. TID CAPITAL TRANSPORTATION PROGRAM (TID-CTP)

- A. For the deficient locations identified in the adopted **LUTP**, the **DEPARTMENT** shall identify a set of projects needed to address those deficiencies and shall develop cost estimates for those projects. The **DEPARTMENT** shall update the cost estimates periodically as needed. Subject to review and approval by the **CITY**, this set of projects shall constitute the **TID** Capital Transportation Program (**TID-CTP**).
- B. The **CITY** shall annually recommend projects from the **TID-CTP** for inclusion in the **DEPARTMENT**'s 6-year Capital Transportation Program. Inclusion of recommended projects shall be subject to the **DEPARTMENT**'s normal process for development of the 6-year program. Projects included in the **DEPARTMENT**'s 6-year Capital Transportation Program shall be eligible to receive funding from the **CITY** consistent with Paragraph 7D below, in addition to applicable State and Federal funds.

SECTION 6. DEVELOPMENTS EXCLUDED FROM PARTICIPATION

- A. Where the **LUTP** has been agreed upon by the parties and a proposed development is determined by both the **DEPARTMENT** and the **CITY** to be both inconsistent with the land use element of the **LUTP**, and to generate sufficient traffic to warrant a Traffic Impact Study (TIS), the **DEPARTMENT** and the **CITY** shall require a TIS and, as necessary, off-site improvements in accordance with the **DEPARTMENT**'s Development Coordination Manual.
- B. Developments outside of the City of Newark shall be excluded from the requirements of this agreement.

SECTION 7. INFRASTRUCTURE FEE PROGRAM

- A. The **CITY** shall require that any activity requiring a subdivision or land development plan within the Participant Boundary of the TID participate in the improvement of transportation facilities within the Facilities Boundary of the TID in accordance with the current **LUTP** and this Agreement. The **DEPARTMENT** and the **CITY** shall require that the manner and extent of that participation be documented on the record subdivision or land development plan. The manner of participation shall be through the payment of a fee, right-of-way

dedication or the construction of physical improvements identified in the TID-CTP, or some combination thereof. The extent of participation shall be in accordance with Paragraph E below. The **CITY** shall collect any fees prior to issuance of building permits. The schedule for construction of physical improvements shall be specified on the record subdivision or land development plan and shall be subject to approval by both the **DEPARTMENT** and the **CITY**.

- B. Dedication of rights-of-way in lieu of some or all of the fee shall be by agreement between the developer, the **DEPARTMENT** and the **CITY**, with payment of the fee being required if any party is not amenable to the proposed dedication. The value of the rights-of-way to be dedicated shall be determined in accordance with **DEPARTMENT** policies and regulations. The creditable area shall be determined based on highway plans acceptable to the **DEPARTMENT** and shall exclude the standard dedications provided in **DEPARTMENT**'s Development Coordination Manual, rights-of-way for any proposed streets and any lands needed to accommodate the site entrance.
- C. Design and/or Construction of physical improvements in lieu of some or all of the fee shall be by agreement between the developer, the **DEPARTMENT** and the **CITY**, with payment of the fee being required if any party is not amenable to the proposed construction. Design and Construction of improvements required by the **DEPARTMENT** or the **CITY** as part of the development's entrance construction or on-site infrastructure, e.g. subdivision streets, shall not be creditable toward the fee. At their discretion, the **DEPARTMENT** or the **CITY** may require improvements beyond the site entrance to correct an unsafe condition that they find would be created or worsened by the proposed development. In that case, the cost of work shall be determined as above and shall be creditable toward the fee.
- D. The **CITY** shall create and administer a separate account or accounts expressly for the purpose of managing the funds needed to pay for design and construction costs of work identified in the **TID-CTP** under the terms of this Agreement. The account shall be funded by Infrastructure Fee payments from developers as called for by this Agreement. If a developer seeks to design and/or construct physical improvements in lieu of paying into the Fee, the developer shall be required to obtain a minimum of three bids for the work. The bids shall be subject to review and approval by the **DEPARTMENT**. Credit toward the fee shall be based on the developer's payments to the selected contractor, which payments shall be subject to audit by the **CITY**. To the extent that the **CITY** finds that the developer has paid the contractor more than the fee that the developer would have paid per Exhibit C below, the **CITY** may reimburse the developer, provided that the **CITY** shall maintain a positive balance in its account(s). The **CITY** may also pay the **DEPARTMENT** from the account(s) to design and build improvements identified in the **TID-CTP** sooner than the **DEPARTMENT** might otherwise construct them, again provided that the **CITY** shall maintain a positive balance in the account(s).

- E. As detailed in Exhibit C (to be attached), developers shall participate in the improvement of transportation facilities within the Facilities Boundary of the **TID** in accordance with the current **LUTP** as follows:
1. In the Target Horizon Year, the **LUTP** shows that a total number of trips will be generated within the Participant Boundary of the **TID** in an average weekday evening peak hour. The total estimated cost to construct the improvements identified in the **TID-CTP** can also be determined. Development within the Participant Boundary of the **TID** can be grouped into broad land use categories, each with an associated trip generation per square foot or per dwelling unit. Therefore, for each subdivision or land development plan, the **CITY** shall require participation proportional to the number of trips generated in an average weekday evening peak hour. Where there is a question as to how to characterize a specific development, the **CITY** shall refer to the **LUTP** and may consult the **DEPARTMENT** as necessary.
 2. Improvements by the **DEPARTMENT**'s Division of Maintenance and Operations are excluded from the **TID-CTP** and are not eligible for funding through the Infrastructure Fee Program.
- F. The **DEPARTMENT** shall provide an updated Exhibit C each time the **LUTP** is amended.

SECTION 8. MONITORING PROGRAM

- A. The **DEPARTMENT** shall monitor traffic volumes within the Facilities Boundary of the **TID** and shall provide the **CITY** with an annual report of their findings and their recommendations as to what improvements in the **TID-CTP** are needed at the time of the report and what improvements in the **TID-CTP** are likely to be needed in the next six years.
- B. The extent of the monitoring effort shall be at the **DEPARTMENT**'s discretion but the **DEPARTMENT** will accommodate reasonable requests from the **CITY** for the inclusion of specific information.

SECTION 9. SCOPE OF AGREEMENT

This **AGREEMENT** constitutes the sole understanding by and between the **DEPARTMENT** and the **CITY** and nothing outside of this **AGREEMENT** shall be construed as an alteration, modification and/or revision hereof. This **AGREEMENT** shall not be modified except in writing subscribed by all parties.

SECTION 10. SUCCESSOR AND ASSIGNMENTS

The **DEPARTMENT** and the **CITY** each binds itself, its successors, legal representatives, agents, employees, officers, and assigns, to each other to this Contract.

SECTION 11. LAWS OF DELAWARE

This **AGREEMENT** and the terms thereof shall be construed in accordance with the laws of the State of Delaware.

SECTION 12. PUBLIC INVOLVEMENT

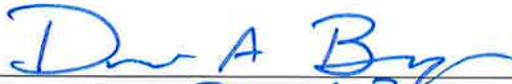
Absent a specific agreement to the contrary, to the extent that a public meeting, workshop or hearing is needed pertaining either to procedural matters relating to this agreement or to specific improvements to be made in the **TID**, said public meeting, workshop or hearing shall be publicized and hosted by the **CITY**. The **DEPARTMENT** shall send appropriate representatives to such events as necessary.

IN WITNESS WHEREOF, the parties hereunto have caused this **AGREEMENT** to be executed in quadruplicate, the date and year first above written.

FOR THE STATE OF DELAWARE DEPARTMENT OF TRANSPORTATION:

ATTEST:

Printed Name Charlanne Tremblay (SEAL)
Director of Finance


Printed Name Drew A. Byrnes
Director of Planning

DATE: 03/09/2020

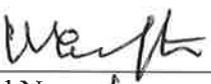
DATE: 3/6/20

APPROVED AS TO FORM:

Printed Name Ann Bardo (SEAL)
Deputy Attorney General

DATE: 3/5/2020

FOR THE CITY OF NEWARK:

ATTEST:

Printed Name Jerry Clifton (SEAL)
Mayor

DATE: 2/21/2020

APPROVED AS TO FORM:

Printed Name Paul E. Bilodeau (SEAL)
Solicitor, City of Newark

DATE: 2/21/20



Exhibit A to accompany Newark TID Agreement

TID Boundary Map

