Special Council Meeting
Wednesday, October 6, 2021 - 6:00 PM
AGENDA

1. Call to Order
2. Roll Call
3. Public Hearings of Legislation
    a. **RESOLUTION 2021-41** A RESOLUTION AUTHORIZING THE VILLAGE OF JOHNSTOWN TO ENTER INTO A COMMUNITY REINVESTMENT AREA AGREEMENT WITH NEW RIVER ELECTRICAL CORPORATION, PURSUANT TO SECTION 3735.671 OF THE OHIO REVISED CODE
4. Other Business
5. Adjourn

**Next Council Meeting October 19, 2021**

*Vision Statement: The Village of Johnstown is dedicated to providing a secure community environment that fosters cultural, recreational, educational and economic opportunities while preserving our unique historical character*

**Village of Johnstown**
Administrative Offices
www.villageofjohnstown.org

# VILLAGE OF JOHNSTOWN

599 S. Main Street
Johnstown, Ohio 43031
Telephone: 740-967-3177

## RESOLUTION 2021-41

**A RESOLUTION AUTHORIZING THE VILLAGE OF JOHNSTOWN TO ENTER INTO A COMMUNITY REINVESTMENT AREA AGREEMENT WITH NEW RIVER ELECTRICAL CORPORATION, PURSUANT TO SECTION 3735.671 OF THE OHIO REVISED CODE**

**WHEREAS**, the Village of Johnstown, Ohio ("Village") desires to pursue all reasonable and legitimate incentive measures to assist, encourage and stimulate development in specific areas of the Village that have not enjoyed sufficient reinvestment from remodeling or new construction; and

**WHEREAS**, the Village, by Ordinance 28-2018 adopted by the Council on September 4, 2018 (the "Ordinance"), designated the area specified in the Ordinance as the Johnstown Community Reinvestment Area #4 (the "CRA") pursuant to Ohio Revised Code ("R.C.") Sections 3735.65 through 3735.70 (the "CRA Act"), and authorized a real property tax exemption for the construction of new structures and the remodeling of existing structures in the CRA in accordance with the CRA Act; and

**WHEREAS**, New River Electrical Corporation (the "Developer") is in contract to purchase the real property contained within the Village and the CRA, described in Exhibit A attached hereto (the "Project Site"); and

**WHEREAS,** the Developer wishes to enter into a community reinvestment area agreement ("CRA Agreement"), pursuant to Ordinance 28-2018, to receive an exemption from taxation for an office building project consisting of an estimated $12,000,000.00 investment in the construction of new buildings, estimated to create approximately 55 full-time jobs and a $7,900,000.00 payroll (the "Project"); and

**WHEREAS,** the Village and Developer have negotiated terms for the CRA Agreement, the proposed draft of which is attached hereto and labeled Exhibit B, subject to Council providing the Village Manager authority to execute the CRA Agreement; and

**WHEREAS**, the Project Site is located in the Johnstown-Monroe Local School District (the "School District") and the Board of Education of the School District has been notified of the proposed approval of this Agreement in accordance with R.C. Section 5709.83 and has been given a copy of the draft CRA Agreement; and

**WHEREAS**, approval of this CRA Agreement by the School District is not required because for each tax year the real property is exempted from taxation, the School District will receive compensation equal to or exceeding fifty per cent of the amount of taxes that would have been charged and payable that year upon the real property had that property not been exempted from taxation.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF JOHNSTOWN, OHIO, LICKING COUNTY, STATE OF OHIO, THAT:**

Section 1. The Village hereby determines that construction of the Project shall be classified as commercial improvement for purposes of the Johnstown Community Reinvestment Area #4.

Section 2. The Village Manager is hereby authorized to enter into a CRA Agreement with the Developer, in substantially the form of the draft CRA Agreement attached and identified as Exhibit B, which is incorporated herein. The approval of changes to the form and the character of those changes as not being substantial shall be evidenced conclusively by the execution of the CRA Agreement by the Village Manager.

Section 2. The Village Manager, or his designees, the Finance Director, or her designees, and the Clerk of Council, or her designees, are hereby authorized and directed to take such actions as are necessary and are consistent with this Resolution and the terms of the CRA Agreement and/or Compensation Agreement to prepare, execute, and file such additional documents or instruments as are necessary to effectuate the agreements and the exemption from real property taxation authorized thereby.

Section 3. It is found and determined that all formal actions of Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council and that meetings of any of its committees that resulted in such formal action were meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code and the Charter for the Village of Johnstown.

Section 4. This Resolution shall take effect at the earliest date provided by law.

**Introduction/Public Hearing/Vote: October 6, 2021**

By:___________________________ __________________________
Mayor Chip Dutcher

ATTEST TO: APPROVED AS TO FORM:

______________________________ ________________________________
Teresa Monroe, Clerk of Council Yazan S. Ashrawi, Law Director

**COMMUNITY REINVESTMENT AREA AGREEMENT**

This Community Reinvestment Area Agreement (this "Agreement") made and entered into by and between the VILLAGE OF JOHNSTOWN (the "Village"), a municipal corporation in the State of Ohio (the "State"), through the Johnstown Village Council (the "Council") and NEW RIVER ELECTRICAL CORPORATION, with offices located at 6005 Westerville Road, Westerville, Ohio 43081 (the "Developer"). Together, the Village and the Developer may be referred to herein as the "Parties."

**WITNESSETH:**

**WHEREAS**, the Village desires to pursue all reasonable and legitimate incentive measures to assist, encourage and stimulate development in specific areas of the Village that have not enjoyed sufficient reinvestment from remodeling or new construction; and

**WHEREAS**, the Village, by Ordinance 28-2018 adopted by the Council on September 4, 2018 (the "Ordinance"), designated the area specified in the Ordinance as the Johnstown Community Reinvestment Area #4 (the "CRA") pursuant to Ohio Revised Code ("R.C.") Sections 3735.65 through 3735.70 (the "CRA Act"), and authorized a real property tax exemption for the construction of new structures and the remodeling of existing structures in the CRA in accordance with the CRA Act; and

**WHEREAS**, the Developer is in contract to purchase the real property contained within the Village and the CRA, described in Exhibit A attached hereto (the "Project Site") and is expected to develop the Project Site; and

**WHEREAS**, the Developer has submitted to the Village an application for a community reinvestment area agreement (the "Application"), a copy of which is attached hereto as Exhibit B; and

**WHEREAS**, the Developer proposes for the Project Site improvements to real property, to include new construction of a 51,000 square foot office building and 32,000 square foot fleet maintenance and construction support building (the "Project") (the buildings within the Project, with its related site improvements, may be referred to hereinafter from time to time as a "Building" or the "Buildings"), provided that the appropriate development incentives are available to support the economic viability of the Project; and

**WHEREAS**, the Developer has remitted or shall remit the required State of Ohio application fee of $750.00, made payable to the Ohio Development Services Agency, to be forwarded with this Agreement, and has paid any applicable local fees; and

**WHEREAS**, pursuant to R.C. Section 3735.67(A) and in conformance with the format required under R.C. Section 3735.671(B), the Village and the Developer desire to formalize their agreement with respect to matters hereinafter contained; and

**WHEREAS**, the Project Site is located in the Johnstown-Monroe Local City School District (the "School District") and the board of education of the School District has been notified of the proposed approval of this Agreement in accordance with R.C. Section 5709.83, or has waived such notice, and has been given a copy of the Application and a draft of this Agreement; and

**WHEREAS**, pursuant to R.C. Section 5709.83, the Village has provided the necessary notice to the School District not less than fourteen (14) days prior to any formal action being taken by the Village to approve this Agreement; and

**WHEREAS**, approval of this Agreement by the School District is not required because for each tax year the real property is exempted from taxation, the School District will receive compensation equal to or exceeding fifty per cent of the amount of taxes that would have been charged and payable that year upon the real property had that property not been exempted from taxation; and

**WHEREAS**, the Developer has agreed to make a payment in lieu of taxes ("PILOT") to be paid as a lump sum to the Village annually as following: $85,000 per year for years one (1) through ten (10); and $120,000 per year for years eleven (11) through fifteen (15) to the Village of Johnstown General Fund; and

**WHEREAS**, the Developer has also agreed to make a one-time payment to the Village of $50,000.00 upon execution of the Agreement to be placed in the Village's General Fund; and

**WHEREAS**, from the annual PILOT made to the Village, the Village will make payments to the School District, in an amount necessary to ensure that the sum of the quantities identified in R.C. 3735.671(A)(2)(a) through (c) equal or exceed fifty per cent of the amount of taxes that would have been charged and payable that year upon the real property had that property not been exempted from taxation; and

**WHEREAS**, the Council, by Resolution No. 2021-41, adopted on October 6, 2021, has approved the terms of this Agreement and authorized its execution on behalf of the Village.

**NOW, THEREFORE**, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the receipt and sufficiency of which are hereby acknowledged, the parties herein agree as follows:

**1. Project.** The cost of the investments to be made in connection with the Project by the Developer is estimated to be approximately $12,000,000.00 and will include the construction of new Buildings (exclusive of any amounts for acquisition of furniture and fixtures) to contain approximately 51,000 square feet of finished office space and 32,000 square feet of fleet maintenance and construction support space. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit, reduce, or eliminate the amount or term of the tax exemptions provided in this Agreement or serve as a basis for the Village to terminate this Agreement. The Parties recognize that the costs associated with the Project may increase or decrease significantly. The Parties also recognize that costs do not equal taxable value.

**2. Values of Personal Property.** The value for Ohio personal property tax purposes of the non-inventory personal property of the Developer that is located at another location in Ohio prior to the execution of this Agreement and that is to be relocated from that location to the Project Site is ________. The value for Ohio personal property tax purposes of the non-inventory personal property of the Developer located at the Project Site prior to the execution of this Agreement is ___________. The average value for Ohio personal property tax purposes of the inventory of the Developer held at another location in Ohio prior to the execution of this Agreement and to be relocated from that location to the Project Site is _________. The average value for Ohio personal property tax purposes of the inventory of the Developer at the Project Site prior to the execution of this Agreement is ___________.

**3. Project Schedule.** The scheduled estimated starting month for the Project investments to be made in building, furniture, and fixtures is approximately March 1, 2022; and the scheduled estimated completion month for such investments is no later than approximately May, 2023. The estimates provided in this Section are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit, reduce, or eliminate the amount or term of the tax exemptions provided in this Agreement, other than as those tax exemptions are limited in Sections 6 of this Agreement, or serve as a basis for the Village to terminate this Agreement.

**4. Employee Positions.** The Developer agrees to create at the Project Site 55 full-time permanent employee positions with an aggregate annual payroll of at least $7,900,000.00 upon issuance of a certificate of occupancy by either hiring new employees or relocating current employees from Developer's existing location to the Project Site. Hiring or relocating of such employees is estimated to commence in 2022 and to be completed in 2036. Currently, the Developer has 0 employees at the Project Site. The Developer has __ employees in Ohio. The estimates provided in this Section 4 are good faith estimates provided pursuant to R.C. Section 3735.671(B) and shall not be construed in a manner that would limit, reduce or eliminate the amount or term of the tax exemptions provided in this Agreement or serve as a basis for the Village to terminate this Agreement. The parties recognize that the employment and payroll estimates associated with the Project may increase or decrease. The parties also recognize that it is anticipated that all employees at the Project Site will be hired or relocated from Developer's existing location by either the Developer or a Commercial Occupant, as defined in Section 8.B of this Agreement.

**5. Provision of Information.** Developer shall provide to the proper tax incentive review council (the "TIRC") any information reasonably required by the TIRC to evaluate the compliance of the Developer with the Agreement, including returns or annual reports of the Developer filed pursuant to R.C. Section 5711.02 (if any) if requested by the TIRC.

**6. Real Property Tax Exemption.** The Village hereby grants a fifteen (15) year, 100% real property tax exemption pursuant to R.C. Section 3735.67 for the assessed value of new structures at the Project Site. For each separately identifiable real property improvement, the exemption commences the first year such real property improvement would first be taxable were that property not hereby exempted from taxation. No exemption shall commence prior to tax year 2022 (*i.e.*, tax lien date January 1, 2022) nor extend beyond tax year 2036 (*i.e.*, tax lien date January 1, 2036). The exemptions set forth in this Section shall apply irrespective of whether the real property is owned by the Developer or any assignee or other successor in interest to the Developer, which the Village has approved.

**7. Clawback.** Should the Developer relocate from the Project Site to another location outside of the Village of Johnstown, Ohio jurisdiction prior to January 1, 2036, the Developer shall make a payment to the Village of $125,000.00, within thirty (30) days of its relocation from the Project Site. Should the Village be required to enforce this Paragraph by legal means, the Developer shall be required to pay the Village's costs and fees related to said legal action, including all attorneys' fees.

**8. Payments in Lieu of Taxes.** The Developer agrees to make a payment in lieu of taxes ("PILOT") to be paid as a lump sum to the Village annually on a date to be mutually agreed upon by the Village and the Developer as follows: $85,000 per year for years one (1) through ten (10); and $120,000 per year for years eleven (11) through fifteen (15) to the Village of Johnstown General Fund.

Additionally, the Developer agrees to make a one-time payment of $50,000.00 to the Village within thirty (30) days of the Agreement being executed to be placed in the Village's General Fund.

From this PILOT, the Village shall compensate the School District annually to ensure that the sum of the quantities outlined in R.C. 3735.671(A)(2)(a) through (c) equals or exceeds fifty per cent of the amount of taxes that would have been charged and payable that year upon the real property had that property not been exempted from taxation.

**9. Application for Exemption.** The Developer acknowledges that the tax exemption with respect to each real property improvement is subject to the filing of a real property tax exemption application with the Housing Officer designated by the Village for the CRA, following the completion of construction of that real property improvement. The Village agrees that upon receipt of the real property tax exemption application, the Housing Officer shall certify the tax exemption to the applicable county auditor.

**10. Payment of Non-Exempt Taxes.**

**A.** The Developer and any assignee or successor of Developer (hereinafter, "Owner(s)") shall pay such taxes and real property taxes as are not exempted under this Agreement or otherwise exempted and are charged against property at the Project Site and shall file all tax reports and returns as required by law in connection therewith. If the Developer or any Owner(s) fails to pay such taxes or file such returns and reports, and such failure is not corrected within thirty (30) days of written notice thereof, all exemptions from taxation granted under this Agreement with respect to property of such the Developer or Owner(s) are rescinded beginning with the year for which such unpaid taxes are charged or such unfiled reports or returns are required to be filed and thereafter. Any such rescission, as provided in this Section, shall have no effect on exemptions from taxation granted under this Agreement with respect to property of

Owners other than such defaulting Owner(s). For purposes of this Section 8, "taxes" means all real property taxes, payments in lieu of taxes identified in Paragraph 8 above, service payments in lieu of taxes, general and special assessments, and any other governmental charges validly levied or assessed against any parcel.

**B.** Each Commercial Occupant (defined below) shall pay such Village municipal income taxes as are levied against such Commercial Occupant and shall file all tax reports and returns as required by law in connection therewith. "Commercial Occupant" includes any person having a right to occupy or regularly use all or any portion of any Building, whether such right to occupy or regularly use all or any portion of any Building arises under any lease, license, or other agreement, and whether any such right is granted by an Owner or by any other Commercial Occupant, including but not limited to any property management company, restaurant, or retailer operating within any Building. If a Commercial Occupant fails to pay such taxes or file such returns and reports, and such a failure is not corrected by the Commercial Occupant or the Owner within ninety (90) days of written notice thereof to such Commercial Occupant and to the Owner of the Building (with such notice redacted to the extent necessary to protect confidential information of the Commercial Occupant), all exemptions from taxation granted under this Agreement with respect to the Building occupied by such Commercial Occupant may be rescinded beginning with the year for which such unpaid taxes are charged or such unfiled reports or returns are required to be filed and thereafter, subject to reinstatement as set forth below. Any such rescission, as provided in this Section, shall have no effect on exemptions from taxation granted under this Agreement with respect to Buildings occupied by Commercial Occupants other than such defaulting Commercial Occupant. For Buildings occupied by more than one Commercial Occupant, any exemption rescinded pursuant to this Section shall only be rescinded for that portion of the Building occupied by the Commercial Occupant in violation of this Section ("Partial Rescission"). The remaining portion of the Building shall continue to receive any such exemptions granted pursuant to this Agreement. This Partial Rescission shall be effectuated pursuant to R.C. Section 5713.04, which permits parcels to be split-listed when only a portion is exempt from property tax. Upon the completion of the occupancy of a Building by a Commercial Occupant that defaulted under this Section, the Owner of the Building may apply for reinstatement of the exemption for the Building, which reinstatement shall not be unreasonably denied, delayed or conditioned by the Village. Payment of the Commercial Occupant's past-due City income taxes, penalties or interest, if any, shall not be a condition for reinstatement of the exemption.

In addition, the Developer agrees to cause each Commercial Occupant to provide such information, in such content, detail, and format as shall be reasonably determined by the Village, that may be required by the Village to enforce its municipal income tax laws, including its obligations to account for and share income tax revenue with any other entity. The Developer shall include in any lease, license, or any other agreement with any Commercial Occupant an acknowledgment of this obligation. The Developer acknowledges that failure by a Commercial Occupant to provide such information may be grounds for modification or termination of the exemptions granted under this Agreement with respect to the portion of any Building occupied by a defaulting Commercial Occupant, after the Village first provides ninety (90) days' written notice to the Commercial Occupant and the Developer in the manner set forth above.

**11. Cooperation of the Village.** The Village shall perform such acts as are reasonably necessary or appropriate to approve, effect, claim, reserve, preserve and maintain the exemptions from taxation granted under this Agreement including, without limitation, joining in the execution of all documentation and providing any necessary certificates required in connection with such exemptions. The Village shall give its fullest cooperation in the development of the Project, including, but not limited to: (i) the timely review, processing and approval of all building, zoning or other permits, and (ii) all other activities related to the Project. This Paragraph, however, does not waive or otherwise exempt the Developer or any Owner from any federal, state, or local rules, laws, or regulations.

Notwithstanding anything to the contrary in this Agreement, if the School District or any other person or entity challenges the validity or enforceability of this Agreement, or attempts to limit, reduce or eliminate the amount or term of the tax exemptions provided in this Agreement, the Village shall fully and diligently defend at its sole cost and expense any such claims, actions, losses, fees, expenses, demands, judgments, fines, penalties, or other related costs (including the Developer's attorney's fees) brought for, against, or on behalf of the Village and/or the Developer arising from or related to this Agreement. If, for any reason, any provision of this Agreement or the application of any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, or if the amount or term of the tax exemptions provided in this Agreement are limited, reduced, or eliminated through no fault of Developer, or if the Village fails to fulfill its obligations under Section 8 of this Agreement within thirty (30) days of written notice thereof, the Village shall, upon Developer's written request, refund to the Developer the total amount of any and all payments made by the Developer to the Village under Section 8 of this Agreement and also pay to the Developer the value of the tax savings intended by the tax exemptions offered under this Agreement which shall be calculated as the difference between the total real property taxes assessed to Developer with respect to the value of new structures at the Project Site which should have been 100% exempted but for the foregoing circumstances, and the total amount of any and all payments required to be made by Developer under Section 8 of this Agreement; and the Developer may, in its sole discretion, terminate this Agreement and be released of any and all obligations under this Agreement.

**12. Revocation of CRA.** If for any reason the Village revokes or purports to revoke the designation of the CRA, entitlements granted under this Agreement shall continue for the number of years specified in this Agreement, unless the Developer or an Owner materially fails to fulfill its payment obligations under this Agreement and such failure is not corrected within thirty (30) days of written notice thereof to the Developer or such Owner, and consequently, the Village terminates or modifies the exemptions from taxation granted in this Agreement with respect to property of the Developer or such Owner from the date of the material failure. Any such termination or modification, as provided in this Section, shall have no effect on exemptions from taxation granted in this Agreement with respect to property of Owners other than such defaulting Owner(s), or property of the Developer if the Developer is in default. Except for any amendment, revocation, modification, suspension or termination otherwise permitted under this Agreement, the Village agrees that it will not amend or revoke the CRA designation as to the Project Site, or modify the incentives available under that designation for the Project Site, prior to January 1, 2036. If the Village terminates or modifies the exemptions from taxation granted under this Agreement pursuant to this Section 12, the Developer shall not be obligated to make the PILOT payments as required under this Agreement and shall be released from any and all liability under this Agreement unless otherwise mutually agreed upon by the Village and the Developer.

**13. Certification as to No Delinquent Taxes.** The Developer hereby certifies for itself that at the time this Agreement is executed, (i) it does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State and does not owe delinquent taxes for which it is liable under Chapter 5733, 5735, 5739, 5741, 5743, 5747, or 5753 of the Revised Code, or, if such delinquent taxes are owed, they are currently paying the delinquent taxes pursuant to an undertaking enforceable by the State or an agent or instrumentality thereof, (ii) they have not filed a petition in bankruptcy under 11 U.S.C.A. § 101, *et seq.*, and (iii) no such petition has been filed against them. For the purposes of this certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Ohio Revised Code governing payment of those taxes. Each Owner shall make the same certification as that made by the Developer in this Section 13 in any Assignment and Assumption Agreement.

**14. Termination, Suspension or Modification Upon Default.** If the Developer or an Owner materially fails to fulfill its payment obligations under this Agreement and such failure is not corrected within thirty (30) days of written notice thereof to the Developer or such Owner (provided, however, that such opportunity to cure such default shall not, under any circumstance, and notwithstanding anything to the contrary in this agreement, toll or otherwise suspend any obligation of the Developer, an Owner, or Commercial Occupant to pay any non-exempt taxes, real property taxes, or municipal income taxes), or if the Village determines that the certification as to delinquent taxes required by this Agreement is fraudulent, the Village may terminate, suspend or modify the exemptions from taxation granted under this Agreement with respect to property of the Developer, or the Owner which is in such default or which has made such fraudulent certification, from the date of the material failure. Any such termination, suspension or modification, as provided in this Section, shall have no effect on exemptions from taxation granted under this Agreement with respect to property of Owners other than such defaulting Owner(s), or Developer if Developer is not in default. If the Village terminates, suspends, or modifies the exemptions from taxation granted under this Agreement pursuant to this Section 14, the Developer shall not be obligated to make the PILOT payments as required under this Agreement and shall be released from any and all liability under this Agreement unless otherwise mutually agreed upon by the Village and the Developer.

**15. Approval by the Village.** The Parties and any Owners acknowledge that this Agreement must be approved by formal actions of the legislative authority of the Village as a condition for this Agreement to take effect. This Agreement takes effect upon such approval. Because this Agreement was approved by Resolution No. 2021-41 of the Council on October 6, 2021, this Agreement shall be effective immediately upon its execution.

**16. Non-Discrimination.** By executing this Agreement, the Developer, and all Owners commit to following non-discriminatory hiring practices and non-discriminatory housing practices, acknowledging that no individual may be denied employment or housing solely on the basis of race, religion, sex, sexual orientation, disability, color, national origin, ancestry, or familial status.

**17. Revocation of Exemptions.** The Developer represents that it is not ineligible to enter this Agreement under division (E) of Section 3735.671 of the Ohio Revised Code. Exemptions from taxation granted under this Agreement shall be revoked with respect to the Developer, or to an Owner if it is determined that such violating Owner, any successor enterprise to such violating

Owner, or any related member of such violating Owner (as those terms are defined in division (E) of Section 3735.671 of the Ohio Revised Code) has violated the prohibition against entering into the Agreement under Division (E) of Section 3735.671 or Section 5709.62 or 5709.63 of the Ohio Revised Code prior to the time prescribed by that division or either of those sections. Any such revocation, as provided in this Section, shall have no effect on exemptions from taxation granted under this Agreement with respect to property of Owners other than such violating Owner(s).

**18. Transfer and/or Assignment; Release from Liability.** Except as provided below, this Agreement and the benefits and obligations thereof are not transferable or assignable without the express, written approval of the Village, which approval shall not be unreasonably withheld, conditioned or delayed. The Village hereby approves the transfer and/or assignment of this Agreement and the benefits and obligations hereof to any entity affiliated with the Developer (including but not limited to subsidiaries, affiliates, joint ventures and/or other arrangements used by Developer to carry out the terms of this Agreement) (an "Affiliate Transferee").

The Village shall retain the right to consider the approval of the transfer and/or assignment of this Agreement and the benefits and obligations hereof, which approval shall not be unreasonably withheld, conditioned or delayed, to any person or entity other than the Developer or an Affiliate Transferee, which is a transferee by lease, sale and/or other means of transfer of all or any part of a Building or the Project Site (a "Third-Party Transferee") (such transferred property may be referred to hereinafter as the "Transferred Property"). As a condition to the right to receive tax exemptions as set forth in this Agreement, each Affiliate Transferee or Third-Party Transferee shall execute and deliver to the Village an Assignment and Assumption Agreement in a form that is acceptable to the Village in its sole discretion, wherein such Affiliate Transferee or Third-Party Transferee (i) assumes all obligations of the Developer under this Agreement with respect to the Transferred Property, and (ii) certifies to the validity, as to the Affiliate Transferee or Third-Party Transferee, of the representations, warranties and covenants contained herein and in the Assignment and Assumption Agreement. Upon the receipt by the Village of such Assignment and Assumption Agreement, as to the Transferred Property the Affiliate Transferee or Third-Party Transferee shall have all entitlements and rights to tax exemptions and obligations as an "Owner" under this Agreement, in the same manner and with like effect as if the Affiliate Transferee or Third-Party Transferee had been the original Developer and a signatory to this Agreement. The Village agrees to execute each such Assignment and Assumption Agreement and to deliver an original thereof to the Affiliate Transferee or Third-Party Transferee.

**19. Counterparts.** This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

**20. Severability; Construction; Headings.** If any provision of this Agreement or the application of 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 provision of this Agreement or the application of such provision to any other person or circumstance, all of which other provisions shall remain in full force and effect. If any provision of this Agreement is capable of two constructions one of which would render the provision valid, then such provision shall have the meaning which renders it valid. The captions and headings in this Agreement are for convenience only and in no way define, limit, prescribe or modify the meaning, scope or intent of any provisions hereof.

**21. Validity.** The Developer, on behalf of any potential assignees and successors, covenants and agree that they are prohibited from challenging the validity of this Agreement or the CRA. In that regard, the Developer waives any defects in any proceedings related to the CRA or this Agreement. Subject to, and except as expressly set forth in, Section 11 this Agreement, if the validity of the CRA or this Agreement is challenged by any entity or individual, whether private or public, the Developer shall advocate diligently and in good faith in support of the validity of the CRA and this Agreement.

**22. Modifications.** If, notwithstanding Section 18 of this Agreement, it becomes necessary to modify the terms of this Agreement to reflect the exact legal and financing structure used by the Developer in developing, equipping and operating the Project, the Developer shall request an amendment to this Agreement.

**23. Notices.** Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any party to this Agreement shall be made in writing addressed as follows and sent by (i) registered or certified mail, return receipt requested, and shall be deemed delivered when the return receipt is signed, refused or unclaimed, (ii) by nationally recognized overnight delivery courier service and shall be deemed delivered the next business day after acceptance by the courier service with instructions for next-business-day delivery, or (iii) by facsimile transmission and shall be deemed delivered upon receipt of confirmation of transmission:

If to the Village, to:

Village of Johnstown, Ohio
599 South Main Street
Johnstown, Ohio 43031
c/o Village Manager

With a copy to:

Frost Brown Todd LLC
10 W Broad Street, Suite 2300
Columbus, Ohio 43215
c/o Yazan S. Ashrawi, Esq.

If to the Developer, to:

New River Electrical Corporation
6005 Westerville Road
Westerville, Ohio 43081
c/o Matthew I. Poe

With a copy to:

Volpini Law LLC
15300 Pearl Road, Suite 201
Strongsville, Ohio 44136
c/o Laura L. Volpini, Esq.

or to any such other addresses as may be specified by any party, from time to time, by prior written notification.

**24. R.C. Section 9.66 Covenants.** The Developer affirmatively covenants that it has made no false statements to the State or any local political subdivision in the process of obtaining approval of the CRA tax exemptions; and that they do not owe: (i) any delinquent taxes to the State or a political subdivision of the State; (ii) any moneys to the State or a State agency for the administration or enforcement of any environmental laws of the State; and (3) any other moneys to the State, a State agency or a political subdivision of the State that are past due, whether the amounts owed are being contested in a court of law or not. If any representative of the Developer has knowingly made a false statement to the State or any local political subdivision to obtain the CRA tax exemptions, the Developer shall be required to immediately return all benefits received by them under this Agreement pursuant to R.C. Section 9.66(C)(2) and the Developer shall be ineligible for any future economic development assistance from the State, any State agency or a political subdivision pursuant to R.C. Section 9.66(C)(1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to R.C. Section 2921.13(D)(1), which is punishable by a fine of not more than $1,000 and/or a term of imprisonment of not more than six (6) months.

**25. Annual Fee.** The Developer shall pay PILOT consistent with Paragraph 8 above.

**26. Estoppel Certificate.** Upon request of the Developer, the Village shall execute and deliver to the Developer, or any proposed purchaser, mortgagee or lessee a certificate stating: (a) that the Agreement is in full force and effect, if the same is true; (b) that the Developer is not in default under any of the terms, covenants or conditions of the Agreement, or if the Developer is in default, specifying same; and (c) such other matters as the Developer reasonably request.

**27. Entire Agreement**. This Agreement and the Resolution constitute the entire agreement between the Developer and the Village pertaining to the subject matter contained herein and therein and supersede all other prior or contemporaneous agreements or understandings between the Developer and the Village in connection with such subject matter.

[Remainder of this Page Intentionally Left Blank.]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of _____________.

**VILLAGE OF JOHNSTOWN, OHIO**

By:______________________________________
Jim Lenner, Village Manager

By Resolution No. 2021-41 dated October 6, 2021

Verified and Certified:

_____________________________________
Finance Director

**NEW RIVER ELECTRICAL CORPORATION**

By:__________________________________

Print Name: __________________________

Title: ________________________________

**APPROVED AS TO FORM:**

____________________________
Yazan S. Ashrawi, Law Director

STATE OF OHIO,

COUNTY OF LICKING, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of ________, 20__, by Jim Lenner, the Village Manager of the Village of Johnstown, Ohio, a municipal corporation of the State of Ohio, on behalf of the municipal corporation.

_____________________________________
Notary Public

STATE OF ________,

COUNTY OF ___________, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of ______________, 20__, by _____________________, the ___________________________ of ______________, a ______________, on behalf of the _________.

---

STATE OF OHIO,

COUNTY OF LICKING, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of ________, 20__, by ____________________, the _________of New River Electrical Corporation.

_____________________________________
Notary Public

STATE OF ________,

COUNTY OF ___________, SS:

The foregoing instrument was signed and acknowledged before me this ___ day of ______________, 20__, by _____________________, the ___________________________ of ______________, a ______________, on behalf of the _________.

***Note:*** ***A copy of this Agreement must be forwarded to the Ohio Development Services Agency by the Village within fifteen (15) days of execution.***

<u>**EXHIBIT A**</u>
<u>**TO COMMUNITY REINVESTMENT AREA AGREEMENT**</u>

**Legal Descriptions of Project Site**

**EXHIBIT B**
**TO COMMUNITY REINVESTMENT AREA AGREEMENT**

**Application for Community Reinvestment Area Agreement**

Village of Johnstown
Administrative Offices
www.johnstownohio.org

VILLAGE OF JOHNSTOWN, OHIO

599 S. Main Street
Johnstown, Ohio 43031
Telephone: 740-967-3177
Fax: 740-967-3519

## Community Reinvestment Area Tax Exemption Program
## Chapter 155 Community Reinvestment Areas

Application Number: ________________ Date received: ____________________

Applicant Name: New River Electrical Corporation Phone: 614.370.0043

Mailing Address 6005 Westerville Road City: Westerville, Ohio 43081

Email address: ipoe@nrec.net

Address of subject property: Enterprise Drive, Johnstown, Ohio 43031

Parcel number: 031500008000000103800
031500008000000103810 Project estimated cost: $12,000,000.00

Name of real property owner: Heath-Newark-Licking County Port Authority
Duncan Plains LTD

Phone number: 740.788.5500
740.404.4281 Email address: rplatt@hnlcpa.com
gmilling@alimy.com

Exemption for New Construction: X or Remodeling/addition: ________

*On an attached sheet, develop the scope of the project, list the following information:*

a) Square footage involved.
b) Nature of business, that is: offices, wholesale, retail, manufacturing, service warehousing or combinations.
c) Estimate in dollars the real property investment for which abatement is required.
d) Date of completion.

Does this project involve a structure of historical or architectural significance?
Yes: ____ No: X
If yes, attach written certification of such by the designating agency or agent.

*Applicant agrees to supply additional information upon request. The applicant also believes that information contained and submitted is complete and correct.*

Applicants name please print: Ike Poe - Senior Vice President - Operations

*Applicant's signature:* [signature] *Date:* 09 / 16 / 21

VILLAGE OF JOHNSTOWN OH COMMUNITY REINVESTMENT TAX

*For official use of Zoning Department*

1. I.D. number of community reinvestment area: ___#4___
2. Local Ordinance number: __28-2018__ and or ordinance Effective date: _September 4, 2018_
3. Verification of construction: new structure: _X_ remodeling : ____ Estimated cost: _$12,000,000.00_
4. Project meets requirements for an exemption under Ohio Revised Code 3735.67: a): ____ b): _X_ c): ____
5. Project involves structure of historical or architectural significance. Yes: ____ No: _X_ If yes, written certification of the appropriateness of the of the remodeling has been submitted by the designating agency of authorized agent: Yes: ____ No: ____
6. Period of exemption for the improvement shall be From: _Tax Year 2022_ To: _Tax Year 2036_

Address of project: _Enterprise Drive, Johnstown, Ohio 43031_

Parcel #: _031500008000000103800_
_031500008000000103810_

*Percentage of total approved for the* _15_ *year period:* _2022 - 2036_

I certify that the project described herein meets the necessary requirements for the Community Reinvestment Area Program in Licking County, Ohio.

Signature of Zoning Inspector: ____________________

Signature of Village Planner: ____________________

Signature of Housing Officer: ____________________

4828-4351-5387v6