



**City Council
Legislative Session**

Agenda

**September 26, 2022
7:30 PM**

COMMITTEE MEETINGS

Mount Vernon City Council
Committee Meeting Schedule
September 26, 2022

5:10-5:20 p.m.	Human Resources Director	Employee & Community Relations Francis
5:20-5:35 p.m.	Lime storage silo	Utilities Woods
5:35-5:50 p.m.	Cooper Progress Park site plan	Planning & Zoning Hillier
5:50-6:05 p.m.	PACE loan program	Finance & Budget Seavolt
6:05-6:20 .m.	Water, WW, Pub. Works, Eng. staff	Employee & Community Relations Francis
6:20-6:30 p.m.	Workforce development program	Employee & Community Relations Francis
6:30-6:45 p.m.	Stump/Northview improvements	Utilities Woods
6:45-7:15 p.m.	Mansfield Avenue waterline	Utilities Woods
7:30 p.m.	City Council Legislative Meeting	Ref: Agenda

- 9-26-22 Committee Meeting Schedule

MEETING WILL RECESS UNTIL 7:30 P.M.

CALL TO ORDER

INVOCATION

Kevin Girardi, Seminarian, St. Vincent de Paul Catholic Church

PLEDGE OF ALLEGIANCE

ACCEPTANCE OF MINUTES

- City Council - Legislative Session - Sep 12, 2022 7:30 PM
- City Council - Special Meeting - Sep 19, 2022 7:00 PM

RECEIVE PETITIONS AND COMMUNICATIONS

None.

RECEIVE COMMITTEE REPORTS

- 08-22-22A Employee & Community Relations Committee Meeting Minutes
- 08-22-22B Employee & Community Relations Committee Meeting Minutes
- 08-22-22A Planning & Zoning Committee Meeting Minutes
- 08-22-22B Planning & Zoning Committee Meeting Minutes
- 08-22-22 Streets & Public Buildings Committee Meeting Minutes
- 09-12-22 Employee & Community Relations Committee Meeting Minutes
- 09-12-22A Utilities Committee Meeting Minutes
- 09-12-22B Utilities Committee Meeting Minutes
- 09-12-22 Planning and Zoning Committee Meeting Minutes

LIQUOR CONTROL LICENSE

From Bakers Management Inc., dba Bakers IGA, 524 S. Main St., Mount Vernon, to 524 K D Brothers Inc., dba Bakers IGA, 524 S. Main St., Mount Vernon.

- 09-26-12 Liquor License Transfer

PROCLAMATION

None.

PERSONS SPEAKING ON MATTERS OF CITY CONCERN**RESOLUTIONS FOR THIRD READING****RESOLUTION NO. 2022-68**

A RESOLUTION AUTHORIZING THE SAFETY-SERVICE DIRECTOR TO ADVERTISE FOR BIDS AND ENTER INTO CONTRACT FOR THE MANSFIELD AVENUE WATERLINE AND DRAINAGE PROJECT; AND DECLARING AN EMERGENCY.

Utilities: Woods, Keener

RESOLUTION NO. 2022-81

A RESOLUTION AUTHORIZING THE SAFETY-SERVICE DIRECTOR TO RELEASE A REQUEST FOR PROPOSALS FOR IDENTIFYING AND SELECTING A QUALIFIED FIRM OR FIRMS TO OVERSEE OPERATIONS OF THE CITY'S HIAWATHA WATER PARK FOR THE 2023 SEASON; AND DECLARING AN EMERGENCY.

Parks and Lands: Keener, Woods

RESOLUTION NO. 2022-88

A RESOLUTION AUTHORIZING AND DIRECTING THE SAFETY-SERVICE DIRECTOR TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION CAPITAL IMPROVEMENT PROGRAM FOR FUNDING FOR THE STUMP/NORTHVIEW RESIDENTIAL PUBLIC IMPROVEMENT PROJECT; AND DECLARING AN EMERGENCY.

Utilities: Woods, Keener

RESOLUTION NO. 2022-90

A RESOLUTION AUTHORIZING AND DIRECTING THE SAFETY SERVICE DIRECTOR OF THE CITY OF MOUNT VERNON, OHIO, TO ACQUIRE INTEGRITY MUNICIPAL SYSTEMS' QUICKLIME STORAGE SILO AND SLAKER SYSTEM FOR THE MOUNT VERNON WATER AND WASTE WATER DEPARTMENT, AND DECLARING AN EMERGENCY.

Utilities: Woods, Keener

RESOLUTION NO. 2022-91

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO MAKE SUPPLEMENTAL APPROPRIATIONS.

Finance and Budget: Seavolt, Kirby

RESOLUTION NO. 2022-93

A RESOLUTION APPROVING THE PETITION FOR CREATION OF AN ENERGY SPECIAL IMPROVEMENT DISTRICT AND FOR SPECIAL ENERGY IMPROVEMENT PROJECTS, AND DECLARING AN EMERGENCY.

Finance and Budget: Seavolt, Kirby

RESOLUTION NO. 2022-94

A RESOLUTION AUTHORIZING AND DIRECTING THE SAFETY-SERVICE DIRECTOR TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO DEPARTMENT OF NATURAL RESOURCES DIVISION OF URBAN FORESTRY URBAN CANOPY RESTORATION GRANT PROGRAM FOR FUNDING FOR TREE PLANTING; AND DECLARING AN EMERGENCY.

Streets and Public Buildings: Severns, Francis

RESOLUTIONS FOR SECOND READING

RESOLUTION NO. 2022-83

A RESOLUTION CONFIRMING THE MAYOR'S RE-APPOINTMENT OF MYRA WILSON TO THE CIVIL SERVICE COMMISSION FOR A SIX (6) YEAR TERM; AND DECLARING AN EMERGENCY.

Employee and Community Rel.: Francis, Hillier

RESOLUTION NO. 2022-85

A RESOLUTION CONFIRMING THE MAYOR'S RE-APPOINTMENT OF TODD HAWKINS TO THE LIBRARY BOARD OF TRUSTEES; AND DECLARING AN EMERGENCY.

Employee and Community Rel.: Francis, Hillier

RESOLUTION NO. 2022-86

A RESOLUTION CONFIRMING THE COUNCIL'S RE-APPOINTMENT OF TODD HAWKINS TO THE LOCAL BOARD OF TAX REVIEW, AND DECLARING AN EMERGENCY.

Employee and Community Rel.: Francis, Hillier

RESOLUTION NO. 2022-87

A RESOLUTION AUTHORIZING THE SAFETY SERVICE DIRECTOR TO JOIN SOURCEWELL, A COOPERATIVE PURCHASING PROGRAM; AND DECLARING AN EMERGENCY.

Finance and Budget: Seavolt, Kirby

RESOLUTION NO. 2022-89

A RESOLUTION TO AUTHORIZE THE SAFETY-SERVICE DIRECTOR TO ENTER INTO A CONTRACT WITH THE DIRECTOR OF TRANSPORTATION FOR BRIDGE INSPECTION PROGRAM SERVICES (PID NO. 117554); AND DECLARING AN EMERGENCY.

Streets and Public Buildings: Severns, Francis

RESOLUTIONS FOR FIRST READINGRESOLUTION NO. 2022-95

A RESOLUTION AUTHORIZING AND DIRECTING THE SAFETY SERVICE DIRECTOR TO ENTER INTO CONTRACT WITH THE OHIO DEPARTMENT OF TRANSPORTATION AND/OR ODOT PREQUALIFIED CONSULTANTS FOR THE REHABILITATION OF SR 13 DIRECTIONAL ROUTE AND LOCAL ROADWAYS (CR 506, MR 307, AND MR 273) WITHIN THE CITY OF MOUNT VERNON; AND DECLARING AN EMERGENCY.

Streets and Public Buildings: Severns, Francis

- 09-26-22 REVISED ODOT Let Agreement

RESOLUTION NO. 2022-96

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO MAKE SUPPLEMENTAL APPROPRIATIONS.

Finance and Budget: Seavolt, Kirby

RESOLUTION NO. 2022-97

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO PAY BILLS PURSUANT TO SECTION 5705.41 (D), THEN AND NOW CERTIFICATION.

Finance and Budget: Seavolt, Kirby

RESOLUTION NO. 2022-98

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO PAY BILLS FROM 2021; AND DECLARING AN EMERGENCY.

Finance and Budget: Seavolt, Kirby

RESOLUTION NO. 2022-99

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO TRANSFER CERTAIN FUNDS.

Finance and Budget: Seavolt, Kirby

RESOLUTION NO. 2022-100

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO TRANSFER CERTAIN FUNDS.

Finance and Budget: Seavolt, Kirby

ORDINANCES FOR THIRD READING**ORDINANCES FOR SECOND READING**ORDINANCE NO. 2022-31

AN ORDINANCE TO APPROVE, ADOPT AND ENACT THE AUGUST 2022 REPLACEMENT PAGES TO THE CODIFIED ORDINANCES; TO REPEAL ORDINANCES IN CONFLICT THEREWITH; TO PUBLISH THE ENACTMENT OF NEW MATTER; AND DECLARING AN EMERGENCY.

Planning and Zoning: Hillier, Severns

ORDINANCE NO. 2022-32

AN ORDINANCE FIXING THE NUMBER OF HOURLY EMPLOYEES OF THE CITY OF MOUNT VERNON IN THE WATER, WASTEWATER,

PUBLIC WORKS AND ENGINEER'S DEPARTMENTS, AND DECLARING AN EMERGENCY.

Employee and Community Rel.: Francis, Hillier

ORDINANCE NO. 2022-33

AN ORDINANCE ESTABLISHING COMPENSATION FOR THE DIRECTOR OF HUMAN RESOURCES, AND DECLARING AN EMERGENCY.

Employee and Community Rel.: Francis, Hillier

ORDINANCE NO. 2022-34

AN ORDINANCE APPROVING THE COMPREHENSIVE DEVELOPMENT PLAN FOR COOPER PROGRESS PARK (PARCEL NUMBERS 66-01284.000; 66-01266.000; 66-01294.001; 66-01294.000; 66-01281.000; 66-01284.000; 66-01282.000; 66-01280.000; 66-01259.000; 66-01264.000; 66-09971.000; 66-09972.000); AND DECLARING AN EMERGENCY.

Planning and Zoning: Hillier, Severns

ORDINANCES FOR FIRST READING

ORDINANCE NO. 2022-35

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF A PORTION OF PARCEL #66-00501.000 LOCATED ON NEWARK ROAD FROM THE PRESENT ZONING OF NC - NEIGHBORHOOD COMMERCIAL DISTRICT, TO PND - PLANNED NEIGHBORHOOD DISTRICT; AND DECLARING AN EMERGENCY.

Planning and Zoning: Hillier, Severns

- 09-26-22 Zoning Amendment

REMARKS FROM THE ADMINISTRATION

REMARKS FROM COUNCIL

ADJOURN AT THE CALL OF THE PRESIDENT



PRESS RELEASE

City Hall
40 Public Square
Mount Vernon, OH 43050

FOR MORE INFORMATION, CONTACT:
Todd Hill, Clerk of Council
740-393-9517 Fax: 740-397-6595

FOR IMMEDIATE RELEASE

September 21, 2022

Mount Vernon City Council Committee Meeting Schedule September 26, 2022

5:10-5:20 p.m.	Human Resources Director	Employee & Community Relations Francis
5:20-5:35 p.m.	Lime storage silo	Utilities Woods
5:35-5:50 p.m.	Cooper Progress Park site development plan	Planning & Zoning Hillier
5:50-6:05 p.m.	PACE loan program	Finance & Budget Seavolt
6:05-6:20 .m.	Water, Wastewater, Public Works, Engineering hourly employees	Employee & Community Relations Francis
6:20-6:30 p.m.	Workforce development program	Employee & Community Relations Francis
6:30-6:45 p.m.	Stump/Northview improvements	Utilities Woods
6:45-7:15 p.m.	Mansfield Avenue waterline	Utilities Woods
7:30 p.m.	City Council Legislative Meeting	Ref: Agenda

The above listed meeting will be held to discuss the above items; but will not be limited to those listed.
Mount Vernon News - WMVO - WNZR – City Hall Bulletin Board

Communication: 9-26-22 Committee Meeting Schedule (Committee Meetings)



Employee and Community Relations Committee Meeting Minutes
Committee Meeting
August 22, 2022 – 5:50 p.m. to 6:09 p.m.

COUNCIL PRESENT:

Bruce Hawkins, Council President
 John Francis, Second Ward
 Tammy Woods, Third Ward
 Mike Hillier, Fourth Ward
 Janis Seavolt, At-Large (arrived at 5:55 p.m.)
 Amber Keener, At-Large
 Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward

OTHERS IN ATTENDANCE:

Matthew Starr, Mayor
 Rick Dzik, Safety-Service Director
 Terry Scott, Auditor
 Rob Broeren, Law Director
 Tony Deluliis, Civil Service Administrator

Francis made a motion to enter executive session to discuss union negotiations, with a second by Woods. Motion passed by a voice vote of 5-0. Francis made a motion to adjourn executive session and resume regular session, with a second by Keener. Motion passed by a voice of 6-0 at 6:09 p.m.

Respectfully submitted,

John Francis, Chair
 Employee and Community Relations Committee
 Mount Vernon City Council

JF/th



Employee and Community Relations Committee Meeting Minutes
Committee Meeting
August 22, 2022 – 6:10 p.m. to 6:23 p.m.

COUNCIL PRESENT:

Bruce Hawkins, Council President
 John Francis, Second Ward
 Tammy Woods, Third Ward
 Mike Hillier, Fourth Ward
 Janis Seavolt, At-Large
 Amber Keener, At-Large
 Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward

OTHERS IN ATTENDANCE:

Matthew Starr, Mayor
 Rick Dzik, Safety-Service Director
 Terry Scott, Auditor
 Rob Broeren, Law Director
 Tony Deluliis, Civil Service Administrator
 David Stuller, Treasurer
 Brian Ball, Engineer
 Emily Platt, Engineering
 Todd Hill, Council Clerk
 Cheryl Splain, Knox Pages
 Jeff Gottke, Area Development Foundation

Mayor Matt Starr detailed a proposed employee and volunteer recognition and workforce development program. Francis and Keener voiced their support for the proposal following an analysis by the state Auditor. Hillier asked what the cost of the program would be for the remainder of 2022. The committee requested legislation for the Sept. 12, 2022 Council meeting, as well as a 15-minute committee meeting on the subject.

Respectfully submitted,

John Francis, Chair
 Employee and Community Relations Committee
 Mount Vernon City Council

JF/th



**Planning and Zoning Committee Meeting Minutes
August 22, 2022 – 6:42 p.m. to 6:53 p.m.**

COUNCIL PRESENT:

Bruce Hawkins, First Ward
John Francis, Second Ward
Tammy Woods, Third Ward
Mike Hillier, Fourth Ward
Janis Seavolt, At-Large
Amber Keener, At-Large
Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward

OTHERS IN ATTENDANCE:

Matthew T. Starr, Mayor
Rick Dzik, Safety-Service Director
Terry Scott, Auditor
Rob Broeren, Law Director
Tony DeFulius, Civil Service Administrator
David Stuller, Treasurer
Brian Ball, Engineer
Emily Platt, Engineering
Todd Hill, Council Clerk
Jeff Gottke, ADF
Cheryl Splain, Knox Pages

The committee discussed Ordinance No. 2022-29, consenting to the annexation of 0.562 acres, parcel number 9-02288.000, from Pleasant Township into the City of Mount Vernon; providing for certain City services to the annexed parcel and providing protections against incompatible uses under existing township zoning. Law Director Rob Broeren noted that an approved annexation could allow the property owner to potentially seek to have the City annex an adjoining, much larger parcel, but that under the ordinance the City would not provide water and sewer services. The committee asked Broeren to look into whether the City would have to provide such services if the ordinance were voted down, given that Council failed to act within 20 days of the annexation petition filing. Ordinance No. 2022-29 was up for a second reading at Council's Legislative Meeting later in the evening. The chair requested a 15-minute committee meeting on the subject for Sept. 12, 2022.

Respectfully submitted,

Mike Hillier, Chair
Planning and Zoning Committee
Mount Vernon City Council

MH/th

Communication: 08-22-22A Planning & Zoning Committee Meeting Minutes (Receive Committee Reports)



**Planning and Zoning Committee Meeting Minutes
August 22, 2022 – 6:54 p.m. to 7:00 p.m.**

COUNCIL PRESENT:

Bruce Hawkins, First Ward
John Francis, Second Ward
Tammy Woods, Third Ward
Mike Hillier, Fourth Ward
Janis Seavolt, At-Large
Amber Keener, At-Large
Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward

OTHERS IN ATTENDANCE:

Matthew T. Starr, Mayor
Rick Dzik, Safety-Service Director
Terry Scott, Auditor
Rob Broeren, Law Director
Tony DeFulius, Civil Service Administrator
David Stuller, Treasurer
Brian Ball, Engineer
Emily Platt, Engineering
Todd Hill, Council Clerk
Jeff Gottke, ADF
Cheryl Splain, Knox Pages

The committee discussed Ordinance No. 2022-26, authorizing the Historic Review Commission to declare property located within the City to be historic and eligible for extended Community Reinvestment Area tax exemptions, which was up for a third reading at Council's Legislative Meeting later that evening. The chair and Law Director Rob Broeren discussed a proposed amendment to the ordinance. The amendment would add a fourth "whereas" clause stating that, "the City desires to specify that dwellings that are taxed as commercial property pursuant to Ohio Revised Code Section 5713.041 are not eligible for additional exemption years." It would also add to Section 1 that, "No dwellings that are taxed as commercial property pursuant to Ohio Revised Code Section 5713.041 shall be eligible for additional years of exemption."

Respectfully submitted,

Mike Hillier, Chair
Planning and Zoning Committee
Mount Vernon City Council

MH/th



2022-2023

**Streets and Public Buildings Committee Meeting Minutes
August 22, 2022 – 6:23 p.m. to 6:42 p.m.**

COUNCIL PRESENT:

Bruce Hawkins, Council President
John Francis, Second Ward
Tammy Woods, Third Ward
Mike Hillier, Fourth Ward
Janis Seavolt, At-Large
Amber Keener, At-Large
Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward

OTHERS IN ATTENDANCE:

Matthew Starr, Mayor
Rick Dzik, Safety-Service Director
Terry Scott, Auditor
Rob Broeren, Law Director
Tony Delluliis, Civil Service Administrator
David Stuller, Treasurer
Brian Ball, Engineer
Emily Platt, Engineering
Todd Hill, Council Clerk
Cheryl Splain, Knox Pages
Jeff Gottke, Area Development Foundation

The committee discussed the maintenance and rebuilding of the City's brick streets. It was estimated that it would cost \$25 million to rebuild all the brick streets. Engineer Brian Ball said the next rebuild will be on North Catherine Street, while design work for Burgess and Hamtramck streets is slated for next year. The committee discussed moving parking to the other side of the street on Burgess and Hamtramck to facilitate work there. Engineering will prepare a survey postcard and letter to go out to residents on the proposal, which will first be shown to the committee chair and Council. Law Director Rob Broeren noted that legislation would be needed to change the parking on Burgess and Hamtramck streets. Street resurfacing plans in the City for next year were also discussed.

Respectfully submitted,

Mel Severns, Chair
Streets and Public Buildings Committee
Mount Vernon City Council

MS/th/11/24/21

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Employee and Community Relations Committee Meeting Minutes
Committee Meeting
September 12, 2022 – 6:10 p.m. to 6:21 p.m.

COUNCIL PRESENT:

Bruce Hawkins, Council President
 John Francis, Second Ward
 Tammy Woods, Third Ward
 Mike Hillier, Fourth Ward
 Janis Seavolt, At-Large
 Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward
 Amber Keener, At-Large

OTHERS IN ATTENDANCE:

Matthew Starr, Mayor
 Terry Scott, Auditor
 Rob Broeren, Law Director
 Emily Platt, Engineering
 Todd Hill, Council Clerk
 Cheryl Splain, Knox Pages
 Jeff Gottke, Area Development Foundation
 Sam Filkins, Area Development Foundation

Mayor Matt Starr detailed a proposed employee and volunteer recognition and workforce development program, focusing on the awards structure and overall cost of the effort, which would total \$3,000 for the remainder of this year. He added that legislation will be presented to Council at its next regular meeting. Auditor Terry Scott explained that the costs of the program would be shared across several funds. The chair requested a 10-minute meeting on the matter for the Council meeting of Sept. 26, 2022.

Respectfully submitted,

John Francis, Chair
 Employee and Community Relations Committee
 Mount Vernon City Council

JF/th



Utilities Committee Meeting Minutes

September 12, 2022 – 6:21 p.m. to 6:45 p.m.

COUNCIL PRESENT:

Bruce Hawkins, President
John Francis, Second Ward
Tammy Woods, Third Ward
Mike Hillier, Fourth Ward
Janis Seavolt, At-Large
Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward
Amber Keener, At-Large

OTHERS IN ATTENDANCE:

Matthew Starr, Mayor
Terry Scott, Auditor
Robert Broeren, Law Director
Emily Platt, Engineering
Todd Hill, Clerk
Cheryl Splain, Knox Pages
Jeff Gottke, Area Development Foundation
Sam Filkins, Area Development Foundation

The committee discussed Resolution No. 2022-88, to authorize and direct the Safety-Service Director to prepare and submit an application to participate in the Ohio Public Works Commission capital improvement program for funding for the Stump/Northview residential public improvement project. Emily Platt of Engineering explained that Knox Public Health has directed that sanitary sewer lines be installed in the area, which is in Clinton Township, because of problems with sewage in the streets. The proposed project also calls for replacing an existing two-inch water line. The project would be funded with \$604,000 in CDBG funds, a \$75,000 OPWC grant if awarded, a \$500,000 no-interest loan, and \$37,000 in City water funds. Auditor Terry Scott noted that the loan would be paid off in 20 years at \$25,000 per year. It was noted that the sewer hook-ups would be required per the Knox Public Health order, while water hook-ups would be optional for residents. The committee discussed asking Clinton Township to assist in the loan payback. Resolution No. 2022-88 was up for a first reading at the Legislative Meeting later in the evening. The chair requested a 15-minute meeting on the matter for Sept. 26, 2022.

Respectfully submitted,

Tammy Woods, Chair
Utilities Committee
Mount Vernon City Council

TW/th



Utilities Committee Meeting Minutes

September 12, 2022 – 6:45 p.m. to 7:01 p.m.

COUNCIL PRESENT:

Bruce Hawkins, President
John Francis, Second Ward
Tammy Woods, Third Ward
Mike Hillier, Fourth Ward
Janis Seavolt, At-Large
Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward
Amber Keener, At-Large

OTHERS IN ATTENDANCE:

Matthew Starr, Mayor
Terry Scott, Auditor
Robert Broeren, Law Director
Emily Platt, Engineering
Todd Hill, Clerk
Cheryl Splain, Knox Pages
Jeff Gottke, Area Development Foundation
Sam Filkins, Area Development Foundation

The committee discussed Resolution No. 2022-68, to authorize the Safety-Service Director to advertise for bids and enter into contract for the Mansfield Avenue water line and drainage project. Emily Platt of the Engineering Department explained that this water line often fails, and that the cost of the project would be \$1.3 million. With wait times for supplies currently extending from 72 to 100 weeks, passage of the resolution would allow the City to go to bid now, then budget the project for 2023 or 2024. Auditor Terry Scott noted that the City does not presently have the funds to pay for all the utility projects recently proposed under the current rate structure. Resolution No. 2022-68 was up for a second reading at the Legislative Meeting later in the evening. The chair requested a 30-minute meeting on the matter for Sept. 26, 2022.

Respectfully submitted,

Tammy Woods, Chair
Utilities Committee
Mount Vernon City Council

TW/th



**Planning and Zoning Committee Meeting Minutes
September 12, 2022 – 7:01 p.m. to 7:21 p.m.**

COUNCIL PRESENT:

Bruce Hawkins, First Ward
John Francis, Second Ward
Tammy Woods, Third Ward
Mike Hillier, Fourth Ward
Janis Seavolt, At-Large
Mel Severns, At-Large

ABSENT:

Josh Kirby, First Ward
Amber Keener, At-Large

OTHERS IN ATTENDANCE:

Matthew T. Starr, Mayor
Terry Scott, Auditor
Rob Broeren, Law Director
Emily Platt, Engineering
Todd Hill, Council Clerk
Jeff Gottke, ADF
Sam Filkins, ADF
Jim Hughes, Pleasant Township Trustee
Zack DiMarco, Critchfield, Critchfield & Johnston
Cheryl Splain, Knox Pages

The committee discussed Ordinance No. 2022-29, consenting to the annexation of 0.562 acres, parcel number 9-02288.000, from Pleasant Township into the City of Mount Vernon; providing for certain City services to the annexed parcel and providing protections against incompatible uses under existing township zoning. It was noted that under the ordinance the City would not provide water and sewer services. Pleasant Township Trustee Jim Hughes expressed concern about traffic should adjoining parcels also become annexed and a proposed housing development be built there. Zack DiMarco of Critchfield, Critchfield & Johnston suggested that the ordinance, if approved, would not expand on the services currently provided by the City. The chair discussed amending the ordinance to remove police and fire protection and emergency medical and stormwater utility services. Law Director Rob Broeren recommended passage of the ordinance, which was up for a third reading at Council's Legislative Meeting later in the evening.

Respectfully submitted,

Mike Hillier, Chair
Planning and Zoning Committee
Mount Vernon City Council

MH/th

NOTICE TO LEGISLATIVE
AUTHORITYOHIO DIVISION OF LIQUOR CONTROL
6606 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-9005
(614)644-2360 FAX(614)644-3166

TO

18789610005		TRFO		524 K D BROTHERS INC	
PERMIT NUMBER		TYPE		DBA BAKERS IGA	
02	01	2022		524 S MAIN ST	
ISSUE DATE		MT VERNON OHIO 43050			
09	12	2022			
FILING DATE					
C2 C2X		PERMIT CLASSES			
42	077	B	F28377		
TAX DISTRICT		RECEIPT NO.			

FROM 09/14/2022

03962550035				BAKERS MANAGEMENT INC	
PERMIT NUMBER		TYPE		DBA BAKERS IGA	
02	01	2022		524 S MAIN ST	
ISSUE DATE		MT VERNON OHIO 43050			
09	12	2022			
FILING DATE					
C2 C2X		PERMIT CLASSES			
42	077				
TAX DISTRICT		RECEIPT NO.			



MAILED 09/14/2022

RESPONSES MUST BE POSTMARKED NO LATER THAN. 10/17/2022

IMPORTANT NOTICEPLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL
WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES

B TRFO 1878961-0005

(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT
THE HEARING BE HELD ☐ IN OUR COUNTY SEAT. ☐ IN COLUMBUS.WE DO NOT REQUEST A HEARING. ☐

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature)

(Title)- ☐ Clerk of County Commissioner

(Date)

☐ Clerk of City Council☐ Township Fiscal OfficerCLERK OF MT VERNON CITY COUNCIL
CITY HALL
40 PUBLIC SQ
MT VERNON OHIO 43050



Department of Commerce

Rev 2/10/2021

Mike DeWine, Governor
Jon Husted, Lt. Governor

Division of Liquor Control
Sheryl Maxfield, Director

Dear Local Legislative Authority Official:

Please find enclosed the legislative notice that is being sent to you regarding the applied for liquor permit as captioned on the notice. You must, within 30 days from the "mailed" date listed on the notice under the bar code:

- Notify the Division whether you object and want a hearing; or
- Ask for your one-time only, 30-day extension:
 - o Any requests for a one-time, 30-day extension will be reviewed by the Division upon timely receipt. If granted, your additional 30-days runs from the expiration of the original 30-day period.

To be considered timely, your above response must be faxed, emailed, or mailed to the Division no later than the postmark deadline date given on the form. To speed up processing times and reduce paper, the Division respectfully asks that you either fax or email your response. Please send your response to:

FAX: (614) 644 - 3136

EMAIL: LiquorLicensingMailUnit@com.state.oh.us

MAIL: Ohio Division of Liquor Control
Attn: Licensing Unit
6606 Tussing Road
PO Box 4005
Reynoldsburg, Ohio 43068-9005

Please note that the Division is no longer sending ownership information with this legislative notice. If you want to know who owns the applied for permit you can find that information in two ways:

- Go to https://www.comapps.ohio.gov/llqr/llqr_apps/PermitLookup/PermitHolderOwnership.aspx and enter the permit number listed on the legislative notice; or
- Contact your police department or your county sheriff if you are a township fiscal officer or county clerk. The Division sends the applicable law enforcement agency the pertinent ownership information when it notifies them of the permit application.

Thank you in advance for your cooperation,

Division Licensing Section

Licensing Section
6606 Tussing Road
Reynoldsburg OH 43068-9009

Fax 614-728-1281
TTY/TDD 800-750-0750

Packet Pg. 18

Communication: 09-26-12 Liquor License Transfer (Liquor Control License)



**City Council
City of Mount Vernon
Mount Vernon, OH 43050**

SCHEDULED

RESOLUTION 2022-68

Meeting: 09/26/22 7:30 PM

Dept: Utilities

Woods, Keener

Category: Bid/Contract

Prepared By: Todd Hill

Initiator: Todd Hill

DOC ID: 3597

A RESOLUTION AUTHORIZING THE SAFETY-SERVICE DIRECTOR TO ADVERTISE FOR BIDS AND ENTER INTO CONTRACT FOR THE MANSFIELD AVENUE WATERLINE AND DRAINAGE PROJECT; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the Safety-Service Director for the City of Mount Vernon is hereby authorized and directed to advertise for bids and to enter into a contract for the Mansfield Avenue waterline and drainage project.

SECTION 2: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason that an emergency exists in the usual daily operation of the various departments of the municipal government, and said Resolution shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

08/22/22 City Council **FIRST READING**

Resolution No. 2022-68 was given a first reading.

09/12/22 City Council **SECOND READING**

Resolution No. 2022-68 was given a second reading. The chair of the Utilities Committee requested a 30-minute meeting on the legislation for Sept. 26, 2022.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-81

Meeting: 09/26/22 7:30 PM
Dept: Parks and Lands
Keener, Woods
 Category: Parks
 Prepared By: Rob Broeren
 Initiator: Todd Hill
DOC ID: 3625

A RESOLUTION AUTHORIZING THE SAFETY-SERVICE DIRECTOR TO RELEASE A REQUEST FOR PROPOSALS FOR IDENTIFYING AND SELECTING A QUALIFIED FIRM OR FIRMS TO OVERSEE OPERATIONS OF THE CITY'S HIAWATHA WATER PARK FOR THE 2023 SEASON; AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio Supreme Court determined that municipalities need not follow the bidding process laid out in the Ohio Revised Code where the contract involves specialized services, requiring particular skills and aptitudes; and

WHEREAS, Council determines that the operation of a municipal water park, including hiring and supervising staff with the appropriate certifications, skills and experience and the maintenance of the pool and other facilities as required by local and state regulations, involves specialized services.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the Safety-Service Director for the City of Mount Vernon is hereby authorized and directed to release a Request for Proposals for identifying and selecting a qualified firm or firms to oversee operations of the City's Hiawatha Water Park for the 2023 season.

SECTION 2: That the Safety-Service Director is hereby further authorized, upon identifying and selecting a qualified firm or firms, to negotiate and enter into contract to oversee operations of the City's Hiawatha Water Park for the 2023 season.

SECTION 3: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason that to allow sufficient time to advertise and select a firm or firms to operate the City's water park for the 2023 season, and said Resolution shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

08/22/22 City Council FIRST READING

Resolution No. 2022-81 was given a first reading.

09/12/22 City Council SECOND READING

Resolution No. 2022-81 was given a second reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-88

Meeting: 09/26/22 7:30 PM

Dept: Utilities

Woods, Keener

Category: Grant

Prepared By: Todd Hill

Initiator: Todd Hill

DOC ID: 3637

A RESOLUTION AUTHORIZING AND DIRECTING THE SAFETY-SERVICE DIRECTOR TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION CAPITAL IMPROVEMENT PROGRAM FOR FUNDING FOR THE STUMP/NORTHVIEW RESIDENTIAL PUBLIC IMPROVEMENT PROJECT; AND DECLARING AN EMERGENCY.

BE IT RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the Safety-Service Director for the City of Mount Vernon is authorized and directed to apply to the Ohio Public Works Commission (Issue 1) Capital Improvement Program for funding assistance for the Stump/Northview Residential Public Improvement Project.

SECTION 2: The Safety-Service Director is further authorized and directed to enter into any agreements as may be necessary for obtaining financial assistance.

SECTION 3: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason that applications for funds must be submitted by November 4, 2022, and said Resolution shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22 City Council FIRST READING

Resolution No. 2022-88 was given a first reading. The chair of the Utilities Committee requested a 15-minute meeting on the legislation for Sept. 26, 2022.

09/19/22 City Council SECOND READING

Resolution No. 2022-88 was given a second reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-90

Meeting: 09/26/22 7:30 PM
Dept: Utilities
Woods, Keener
Category: Utilities
Prepared By: Rob Broeren
Initiator: Todd Hill
DOC ID: 3641

A RESOLUTION AUTHORIZING AND DIRECTING THE SAFETY SERVICE DIRECTOR OF THE CITY OF MOUNT VERNON, OHIO, TO ACQUIRE INTEGRITY MUNICIPAL SYSTEMS' QUICKLIME STORAGE SILO AND SLAKER SYSTEM FOR THE MOUNT VERNON WATER AND WASTE WATER DEPARTMENT, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Mount Vernon, Ohio operates a lime-softening water treatment facility to provide water for its citizens and surrounding areas; and

WHEREAS, the facility contains two (2) silos to store lime and prepare the lime prior to use in the water treatment facility; and

WHEREAS, the lime silos are integral to the operation of the City's lime-softening water treatment facility; and

WHEREAS, the existing silos are beyond their useful life and one silo has already failed while the second silo remains operational but in need of constant repair; and

WHEREAS, there are only two manufacturers of lime silo and slaker systems in the United States: Integrity Municipal Services and Chemco Systems; and

WHEREAS, the City requested cost proposals from both companies; and

WHEREAS, the cost proposal from Integrity Municipal Services (\$1,488,000.00) is significantly less than the proposal from Chemco Systems (\$3,498,000.00); and

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MOUNT VERNON, STATE OF OHIO:

SECTION 1: That the Safety Service Director for the City of Mount Vernon is authorized and directed to acquire two (2) of Integrity Municipal Services' Quicklime Silos and Slaker Systems for the Mount Vernon Water and Waste Water Department.

SECTION 2: This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and for the further reason to prevent the shutdown of the City's water plant, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22 City Council FIRST READING

Resolution No. 2022-90 was given a first reading.

09/19/22 City Council SECOND READING

Resolution No. 2022-90 was given a second reading. The chair of the Utilities Committee requested a 15-minute committee meeting on the legislation for Sept. 26, 2022.



**City Council
City of Mount Vernon
Mount Vernon, OH 43050**

SCHEDULED

RESOLUTION 2022-91

Meeting: 09/26/22 7:30 PM
Dept: Finance and Budget
Seavolt, Kirby
Category: Finance
Prepared By: Terry Scott
Initiator: Todd Hill
DOC ID: 3642

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO MAKE SUPPLEMENTAL APPROPRIATIONS.

NOW, THEREFORE, BE IT RESOLVED by the City of Mount Vernon, State of Ohio:

SECTION 1: That the Auditor for the City of Mount Vernon be, and he herewith is, authorized and directed to make supplemental appropriations as follows:

1. To Account 101.2600.53312, Parks-Maintenance & Repairs, in the amount of \$13,715.36.
(Public Entity Risk Services of Ohio Inc. - Insurance Reimbursement Due to Storm Damage of Dugout at Memorial Park)
2. To Account 101.250.53314, Rental-Security Deposits, in the amount of \$4,095.00.
(Rental Security Deposits-Transferred From Previous Owners)
3. To Account 101.3600.55515, Zoning Code-Grant, in the amount of \$25,000.00.
(Grant from Knox Foundation-Update City Zoning Code)
4. To Account 405.2900.55514, Roads-Asphalt, in the amount of \$25,000.00
(Grant from Ariel Foundation - Resurfacing Station Break Parking Lot)
5. To Account 101.1900.54115, PAK Program, in the amount of \$500.00.
(Donation from Mount Vernon Nazarene University)

SECTION 2: This Resolution provides for appropriations for the current expenses of the City, and therefore, pursuant to Revised Code Section 731.20, it shall become effective upon its date of passage and approval by the Mayor.

HISTORY:

09/12/22 City Council FIRST READING

Resolution No. 2022-91 was given a first reading.

09/19/22 City Council SECOND READING

Resolution No. 2022-91 was given a second reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-93

Meeting: 09/26/22 7:30 PM
Dept: Finance and Budget
Seavolt, Kirby
Category: Finance
Prepared By: Rob Broeren
Initiator: Todd Hill
DOC ID: 3644

A RESOLUTION APPROVING THE PETITION FOR CREATION OF AN ENERGY SPECIAL IMPROVEMENT DISTRICT AND FOR SPECIAL ENERGY IMPROVEMENT PROJECTS, AND DECLARING AN EMERGENCY.

WHEREAS, Ohio Revised Code Section 1710.06(C) provides that a political subdivision which has approved a petition for special assessments for public improvements in an energy special improvement district and a plan pursuant to Ohio Revised Code Sections 1710.02(F) or 1710.06 shall levy the requested special assessments pursuant to Ohio Revised Code Chapter 727; and

WHEREAS, Pursuant to the *Petition for Creation of Energy Special Improvement District and for Special Energy Improvement Projects and Affidavit* (the “Petition”), including an initial plan entitled *Knox County Energy Special Improvement District Program Plan* (the “Program Plan”) and *Articles of Incorporation*, as validly amended from time to time (the “Articles”), Knox County Land Reutilization Corporation (the “Owner”), as the owner of 100% of the real property subject to the Petition (as further described in Exhibit A to the Petition, the “Property”) has requested the formation of the Mount Vernon Energy Special Improvement District, Inc., to be authorized to do business under the registered trade name “Knox County Energy Special Improvement District, Inc.,” an energy special improvement district and nonprofit corporation under the laws of the State of Ohio, (the “District”), and its Board of Directors (the “Board”) in accordance with Ohio Revised Code Chapters 1702 and 1710; and

WHEREAS, Under the Petition the owner petitioned to add property owned by it to the District pursuant to Ohio Revised Code Chapter 1710 in part in order to finance the costs of a special energy improvement projects to be acquired, constructed, equipped, improved, and installed on the property, which special energy improvement project consists of acquiring, constructing, equipping, improving, and installing energy efficiency improvements on its real property, including, without limitation, exterior building envelope improvements, external thermal insulation, single ply TPO with two layers of insulation, caulking and sealants, exterior doors, aluminum storefront, windows and related improvements, plumbing fixtures leading to energy savings, water heaters, washer box, HVAC improvements, electrical improvements, and other related improvements (the “Project”); and

WHEREAS, The Petition, which is on file with this Council and the Mayor, has been signed by the Owner, as the owner of 100% of the Property, and proposes the necessity of acquiring, constructing, equipping, improving, and installing the Project and financing the Project through the cooperation of the District; and

WHEREAS, The Petition is for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 20 of Article

VIII of the Ohio Constitution, including, without limitation, the Project, and further, the Petition identifies the amount and length of the special assessments to be imposed with respect to the Project; and

WHEREAS, In furtherance of the future addition of any real property in any municipal corporation or township in which a portion of the territory of the District may be located, it is necessary, and this Council has determined, to approve the addition of such real property to the territory of the District, all in accordance with Ohio Revised Code Chapter 1710; and

WHEREAS, This Council, as mandated by Ohio Revised Code Chapter 1710, must approve or disapprove the Petition within 60 days of the submission of the Petition;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

Section 1. That each capitalized term not otherwise defined in this Resolution or by reference to another document shall have the meaning assigned to it in the Petition.

Section 2. That this Council hereby approves the Petition, the Program Plan, and the Articles of Incorporation now on file with the City. This Council approves and consents to (i) any addition of real property to the territory of the District within the boundaries of any municipal corporation or any township in which a portion of the District is located or which may become a participating political subdivision of the District under Ohio Revised Code Chapter 1710; (ii) the addition of any municipal corporation or township in which such real property is located as a participating political subdivision of the District; and (iii) any amendment to the Articles of Incorporation necessary to recognize and effect such addition.

Section 3. This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and for the further reason to speed the redevelopment of land within the City, and shall become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22 City Council FIRST READING

Resolution No. 2022-93 was given a first reading. The chair of the Finance & Budget Committee requested a 15-minute meeting on the legislation for Sept. 26, 2022.

09/19/22 City Council SECOND READING

Resolution No. 2022-93 was given a second reading. The chair of the Finance & Budget Committee requested a 15-minute committee meeting on the legislation for Sept. 26, 2022.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-94

Meeting: 09/26/22 7:30 PM
Dept: Streets and Public Buildings
Severns, Francis
Category: Grant
Prepared By: Todd Hill
Initiator: Todd Hill
DOC ID: 3645

A RESOLUTION AUTHORIZING AND DIRECTING THE SAFETY-SERVICE DIRECTOR TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO DEPARTMENT OF NATURAL RESOURCES DIVISION OF URBAN FORESTRY URBAN CANOPY RESTORATION GRANT PROGRAM FOR FUNDING FOR TREE PLANTING; AND DECLARING AN EMERGENCY.

BE IT RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the Safety-Service Director for the City of Mount Vernon is authorized and directed to apply to the Ohio Department of Natural Resources Division of Urban Forestry Urban Canopy Restoration Grant Program for funding assistance for tree planting.

SECTION 2: The Safety-Service Director is further authorized and directed to enter into any agreements as may be necessary for obtaining financial assistance.

SECTION 3: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason that applications for funds must be submitted by October 14, 2022, and said Resolution shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22 City Council FIRST READING

Resolution No. 2022-94 was given a first reading.

09/19/22 City Council SECOND READING

Resolution No. 2022-94 was given a second reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-83

Meeting: 09/26/22 7:30 PM
Dept: Employee and Community Rel.
Francis, Hillier
Category: Appointment
Prepared By: Todd Hill
Initiator: Todd Hill
DOC ID: 3633

A RESOLUTION CONFIRMING THE MAYOR'S RE-APPOINTMENT OF MYRA WILSON TO THE CIVIL SERVICE COMMISSION FOR A SIX (6) YEAR TERM; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the Council for the City of Mount Vernon confirms the Mayor's re-appointment of Myra Wilson, 1442 Laurel Valley Drive, Mount Vernon, to the Civil Service Commission, for a six (6) year term, commencing immediately, and ending September 12, 2028.

SECTION 2: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason that an emergency exists in the usual daily operation of the various departments of the municipal government and said Resolution shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22 City Council FIRST READING

Resolution No. 2022-83 was given a first reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-85

Meeting: 09/26/22 7:30 PM
Dept: Employee and Community Rel.
Francis, Hillier
Category: Appointment
Prepared By: Todd Hill
Initiator: Todd Hill
DOC ID: 3635

A RESOLUTION CONFIRMING THE MAYOR'S RE-APPOINTMENT OF TODD HAWKINS TO THE LIBRARY BOARD OF TRUSTEES; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Mount Vernon, Knox County, Ohio:

SECTION 1: That the Council for the City of Mount Vernon confirm the Mayor's re-appointment to the Library Board of Trustees, for a four (4) year term to expire on September 12, 2026 as follows:

Todd Hawkins, 41 Kester Drive, Mount Vernon, Ohio

SECTION 2: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason that an emergency exists in the usual daily operation of the various departments of the municipal government and said Resolution shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22 City Council FIRST READING

Resolution No. 2022-85 was given a first reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

Meeting: 09/26/22 7:30 PM
Dept: Employee and Community Rel.

Francis, Hillier

Category: Appointment

Prepared By: Todd Hill

Initiator: Todd Hill

SCHEDULED

RESOLUTION 2022-86

DOC ID: 3636

A RESOLUTION CONFIRMING THE COUNCIL'S RE-APPOINTMENT OF TODD HAWKINS TO THE LOCAL BOARD OF TAX REVIEW, AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Mount Vernon, Knox County, Ohio:

SECTION 1: Confirming Council's re-appointment of Todd Hawkins, 41 Kester Drive, Mount Vernon, Ohio, to the Local Board of Tax Review for a two-year term, pursuant to Section 183.18(A) of the Codified Ordinances of the City of Mount Vernon. The term will commence on September 28, 2002 and expire on September 28, 2024.

SECTION 2: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason of ensuring a full membership on the Local Board of Tax Review, and said Resolution shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22

City Council

FIRST READING

Resolution No. 2022-86 was given a first reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-87

Meeting: 09/26/22 7:30 PM
Dept: Finance and Budget
Seavolt, Kirby
Category: Finance and Budget
Prepared By: Rob Broeren
Initiator: Todd Hill
DOC ID: 3639

A RESOLUTION AUTHORIZING THE SAFETY SERVICE DIRECTOR TO JOIN SOURCEWELL, A COOPERATIVE PURCHASING PROGRAM; AND DECLARING AN EMERGENCY.

WHEREAS, State law requires governmental entities when purchasing goods or services in excess of \$50,000 to award such purchases by competitive bidding, which at times can add unnecessary delays and unnecessary costs to such routine contract procedures; and

WHEREAS, additional exemptions are recognized under the State law including exemptions available under Ohio Revised Code Section 9.48 for joint purchasing programs operated by or through national or state association of political subdivisions in which the local municipal entity is a member; and

WHEREAS, Sourcewell (formerly National Joint Powers Alliance (NJPA)) is a service cooperative created by the Minnesota legislature as a local unit of government that provides a nationwide procurement service which has been operating for the benefit of municipal entities nationally for more than forty (40) years; and

WHEREAS, the City of Mount Vernon has determined that the membership in Sourcewell will benefit the City by expanding the array of goods and services which are available to the City, but not necessarily available through the State of Ohio's Cooperative Purchasing Program at a lower price; and

WHEREAS, the City of Mount Vernon has determined that Sourcewell meets the requirements for an exemption under Ohio law, as Sourcewell provides the benefit of collective purchasing passing those benefits through to its member organizations.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MOUNT VERNON, STATE OF OHIO, THAT:

SECTION 1: That the Safety Service Director for the City of Mount Vernon is authorized and directed to join Sourcewell, a national government cooperative purchasing program, and from time-to-time as may be beneficial to the City to obtain appropriate goods or services through their procurement service which meet the exceptions recognized under Ohio Revised Code Section 9.48 for a Joint Purchasing Program.

SECTION 2: This Resolution is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and for the further

reason to allow the City to benefit from lower prices on certain items purchased through Sourcewell, and shall therefore become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22

City Council

FIRST READING

Resolution No. 2022-87 was given a first reading. The chair of the Finance and Budget Committee requested a 15-minute meeting on the legislation for Sept. 26, 2022.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-89

Meeting: 09/26/22 7:30 PM
Dept: Streets and Public Buildings
Severns, Francis
Category: Streets
Prepared By: Todd Hill
Initiator: Todd Hill
DOC ID: 3638

A RESOLUTION TO AUTHORIZE THE SAFETY-SERVICE DIRECTOR TO ENTER INTO A CONTRACT WITH THE DIRECTOR OF TRANSPORTATION FOR BRIDGE INSPECTION PROGRAM SERVICES (PID NO. 117554); AND DECLARING AN EMERGENCY.

WHEREAS, the City of Mount Vernon desires to act as the Local Public Agency (LPA) in the matter of the above-mentioned project (PID No. 117554), which is more specifically described below:

NOW, THERFORE, BE IT RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: Project Description. The LPA has determined the need for the described project: Bridge Inspection Program Services, including, but not limited to: routine inspections, element level inspections, critical-findings reports, fracture critical member inspections, load rating calculations and reports, weight limits posting sign recommendations, scour assessments, scour plan of actions, development of fracture critical plans, and underwater dive inspection reports if needed.

SECTION 2: Consent Statement. Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above-described project.

SECTION 3: Cooperation Statement. The LPA shall cooperate with the Director of Transportation in the above-described project as follows: The State shall assume and bear 100% of all of the cost for Bridge Inspection Program Services requested by the City and agreed to by the State. Eligible Bridge Inspection Services are described in the Consultant's Scope of Services Task Order Contract (Exhibit A). The LPA agrees to pay 100% of the cost of those features which are not in Exhibit A. Those features may include but are not limited to the purchasing and erecting of the recommended weight limits postings signs, the implementation of critical findings reports such as partial or total bridge closures, the implementation of the scour plan of actions. When recommendations affect public safety, ODOT expects full implementation by the LPA. As of October 2019, FHWA requires installing weight limits posting signs within 30 days from the official date of the approved recommendations. Timely implementation is essential to the success of the program.

SECTION 4: Utilities and Right-of-Way Statement. The LPA agrees that all right-of-way required (if applicable) for the described project will be made available in accordance with current State and Federal regulations.

SECTION 5: Project Duration and Consent Applicability. The Project is based on the available funds provided by ODOT aimed at assisting the LPA in reaching compliance with State

and Federal laws and policies for bridge inspection. The Project specifics (program duration, PID number and consultant scope of services (Exhibit A)) shall be provided to the designated LPA Contractual Agent via email sent by ODOT Office of Structural Engineering (OSE). ODOT will seek additional funds to renew the project in future years. If such funds are allocated, ODOT will send an email with the Project specifics to the designated LPA Contractual Agent seeking approval for the new Project. ODOT will not proceed with any Project that does not have written authorization via email from the designated LPA Contractual Agent.

SECTION 6: Authority to Sign. The Safety-Service Director of the City of Mount Vernon is hereby authorized and directed to enter into contracts with the Director of Transportation as necessary to complete the above-described project.

SECTION 7: Emergency Clause. The Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason of promoting highway safety within the City, and said Resolution shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22 City Council FIRST READING

Resolution No. 2022-89 was given a first reading.

**General Engineering Services Scope of Services
Central Office, Office of Structural Engineering
PID No. 117554**

Scope of Services Meeting Date: **/**/**
Approved Final Scope of Services Minutes Date: **/**/**

**GENERAL ENGINEERING SERVICES
Central Office, Office of Structural Engineering
Scope of Services**

The CONSULTANT may be required to perform the following services on a task order type basis for bridges designated by regulation or by agreement as City or Village inspection responsibility. Consultants must be prequalified for Level 1 Bridge Inspection services, which may include but are not limited to the following:

Task 1 - Scour Tasks

- Task 1A - Scour Critical Assessment
- Task 1B - Scour Plan-of-Action

Task 2 - Load Rating Tasks

- Task 2A - Field Measurements for Load Rating
- Task 2B - Load Rating Calculations

Task 3 – AssetWise Structure Inventory and Review, Including New SNBI Fields

Task 4 – Inspection Procedures

- Task 4A - Fracture Critical Plan
- Task 4B – Underwater Inspection Procedures

Task 5 - Bridge Inspection

- Task 5A – Routine Bridge Inspection
- Task 5B – Fracture Critical Inspection
- Task 5C – Underwater Dive Inspection

Services shall be conducted in accordance with the following:

- ODOT Manual of Bridge Inspection, Latest Version
- ODOT Bridge and Inventory Coding Guide, Latest Version
- ODOT Bridge Design Manual, Section 900), Latest Version
- Hydraulic Engineering Circulars 18, 20 and 23
- The Manual for Bridge Evaluation, Third Edition 2019 interim with revisions, AASHTO

**General Engineering Services Scope of Services
Central Office, Office of Structural Engineering
PID No. 117554**

Publication

- Bridge Inspector's Reference Manual, FHWA NHI Publication Number: 12-049,
Publication Year: 2012
- Underwater Bridge Inspection, FHWA Publication Number: FHWA NHI-10-027,
Publication Year: 2010

The CONSULTANT shall maintain a project cost accounting system that will segregate costs for individual task orders. The invoicing progress reports shall be detailed enough to show the breakdown of each assigned structure indicating the status of all subtasks. Completion of the individual subtasks is necessary for reimbursement credits.

The duration of the agreement will be twelve (12) months from the authorization date of the agreement.

The Department will be performing an annual Quality Assurance Review (QAR) for each selected consultant in accordance with Manual of Bridge Inspection to ensure accuracy and consistency of the inspection and documentation in AssetWise. This typically includes an office and field review.

The project will be divided into four (4) sub-projects (SP). A CONSULTANT will be selected for each sub-project. Municipalities opted into the previous inspection program will have the option to renew their legislation. Municipalities with population greater than 50,000 people are excluded from the program. The sub-projects have the following general geographic areas, category characteristics, and maximum contract values for the municipalities with municipal inspection responsibility obtained from AssetWise data as of July 2022.

Project: SP01 - District (1, 2, &3), Total Structures = 485*

Type	L ≤ 20'	20' < L ≤ 60'	60' < L ≤ 200'	L > 200'	Total
Single Span	192	178	26	0	396
Multi-Span	24	20	31	14	89
Culvert	119	29	1	0	149
Truss	0	1	3	0	4
Fracture Critical Inspection	0	0	2	0	2
Underwater Inspection	0	0	0	0	0
Load Rating**	108	99	29	7	243

* Level 1 Bridge Inspection structures

** Tasked as budget allows w/priority for NBI bridges with many BrR updates

**General Engineering Services Scope of Services
Central Office, Office of Structural Engineering
PID No. 117554**

Project: SP02 - District (4, 11, &12), Total Structures = 392*

Type	L ≤ 20'	20' < L ≤ 60'	60' < L ≤ 200'	L > 200'	Total
Single Span	127	126	35	0	288
Multi-Span	22	25	37	20	104
Culvert	84	40	1	0	125
Truss	1	2	6	0	9
Fracture Critical Inspection	0	0	3	0	3
Underwater Inspection	0	0	0	0	0
Load Rating**	75	76	36	10	197

* Level 1 Bridge Inspection structures

** Tasked as budget allows w/priority for NBI bridges with many BrR updates

Project: SP03 - District (5, 6, &10), Total Structures = 515*

Type	L ≤ 20'	20' < L ≤ 60'	60' < L ≤ 200'	L > 200'	Total
Single Span	189	206	40	0	435
Multi-Span	11	11	37	21	80
Culvert	111	87	4	0	202
Truss	0	0	7	0	7
Fracture Critical Inspection	0	0	7	1	8
Underwater Inspection	0	0	0	0	0
Load Rating**	80	87	31	8	259

* Level 1 bridge inspection structures

** Tasked as budget allows w/priority for NBI bridges with many BrR updates

Project: SP04 - District (7, 8 &9), Total Structures = 508*

Type	L ≤ 20'	20' < L ≤ 60'	60' < L ≤ 200'	L > 200'	Total
Single Span	177	157	36	1	371
Multi-Span	29	45	49	14	137
Culvert	126	85	3	0	214
Truss	0	0	7	1	8
Fracture Critical Inspection	0	1	4	1	6
Underwater Inspection	0	0	0	0	0
Load Rating	103	101	43	8	255

* Level 1 bridge inspection structures

** Tasked as budget allows w/priority for NBI bridges with many BrR updates

**General Engineering Services Scope of Services
Central Office, Office of Structural Engineering
PID No. 117554**

Please note that the total number of structure types is estimated based on current AssetWise data queries, and it may be adjusted when tasks are assigned in the future which may include newly found orphan bridges. The estimated annual contract price value for each sub-project is as follows:

SP01 \$560,000
SP02 \$530,000
SP03 \$570,000
SP04 \$590,000

DBE Participation:

Project	Goal
SP01	10%
SP02	0%
SP03	0%
SP04	0%

CONSULTANT shall clearly designate in the letter of intent the SP(s) they wish to be considered for.

Three (3) copies of the letter of intent shall be submitted. The letter of intent shall demonstrate that the CONSULTANT has a clear understanding of the scope of services.

**General Engineering Services Scope of Services
Central Office, Office of Structural Engineering
PID No. 117554**

Price Proposal Due Date: **//****

UNDERSTANDING

1. Inspections shall be completed by firm's full-time staff prequalified with ODOT for Level 1 bridge inspection according to the Manual of Bridge Inspection.
2. Task order are intended for maintaining compliance with the FHWA 23-Mertics, Ohio Revised Code, and ODOT policy manuals. Deadlines set by the task orders shall be respected.
3. All reports and records compiled under this agreement shall become the property of the City or Village and shall be housed in the City or Village. ODOT shall receive an electronic copy of plans, analysis files, reports and other items mentioned below.
 - a) CONSULTANT shall perform all applicable updates to ASSETWISE with new or revised information for structure inventory and appraisal data, inspections, scour, fracture critical members, and load ratings.
 - b) CONSULTANT shall submit copies of all reports and calculations electronically, or in hard copies when requested, to the City or Village for inclusion in their bridge records.
 - c) This includes, as applicable, a printed copy of the inspection report, Scour Plan-of-Action, Fracture Critical Plan, load rating report, gusset plate analysis, inspection procedures, and field measurement notes, digital pictures as well as a reproducible digital data file (.pdf, .doc, .xml, and .xls formats).
4. Copies of all transmittal letters and emails related to this Task Order shall be submitted to Central Office, Office of Structural Engineering.
 - a) When required, CONSULTANTS shall locate the original construction plans, as-built, and shop drawings from archive locations specified by the municipality and upload them onto ASSETWISE.

Services to be furnished by CONSULTANT may include:

TASK 1 - SCOUR TASKS

Task 1A – Scour Critical Susceptibility NBIS Item 113) - The CONSULTANT shall refer to the most recent ODOT Manual of Bridge Inspection. Deliverables include field notes, a completed Scour Critical Assessment Checklist as per Appendix I of the 2014 Manual of Bridge Inspection, and any other reference material needed for the bridge owner to properly maintain their bridge files. Channel photos or cross sections maybe tasked under this item if assigned. Please use the latest scour assessment form.

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Task 1B - Scour Plan-of-Action - The CONSULTANT shall refer to the most recent ODOT Manual of Bridge Inspection Appendix H for the scope of this task. Deliverables include a completed Scour Plan-of-Action, field notes, calculations, and any other reference material needed by bridge owner to maintain bridge files.

TASK 2 – LOAD RATING TASKS

Task 2A - Field Measurements for Load Rating - Should no plans exist or if additional information is required, each main member shall be field measured for load rating. The condition of the member should be noted on the field documentation. All measurements shall be included in the load rating report.

Task 2B - Load Rating Calculations – A bridge carrying vehicular traffic shall be rated to determine the safe load carrying capacity. The CONSULTANT shall review existing bridge plans and inspection reports and other inspection information such as photographs and estimates of section loss for bridge members and connections. The analysis for existing structures shall be performed for AASHTO HS20-44 [MS 18] (truck, lane, & military) loading for both inventory and operating levels, and for the four Ohio Legal Loads including the special hauling vehicles (2F1, 3F1, 4F1, and 5C1, SU4, SU5, SU6, SU7, Type 3, Type 3S2, Type 3-3, NRL, EV2, and EV3) at operating level. The CONSULTANT shall try to complete the load rating analysis utilizing BrR (Virtis) at first. Hand-calculations or Spreadsheets if BrR is not applicable. The BrR analysis file, other load rating files, and the latest BR100 shall be included with the submittal to OSE.

The inventory and operating ratings shall be coded as per the most recent version of the ODOT Bridge Inventory Coding Guide. Update ASSETWISE Inventory with the load rating results and upload BR100 pdf file.

The electronic deliverable shall include if applicable an Excel spreadsheet or other files used for analysis for each bridge which shall include the member areas, member capacities both with and without section loss, influence lines (can be the ordinates or graph of the lines), dead loads and dead load stresses in members, live loads and live load stresses in members for all truck loadings and the load ratings of the members. Truck loadings to be used for the ratings are specified in BDM Section 900.

The Load Rating Report shall be prepared by a registered or non-registered engineer, and it shall be checked, signed, sealed and dated by an Ohio Registered Professional Engineer.

The Load Rating Report shall explain the method used to calculate the load rating of each bridge.

AASHTO Load Factor Rating (LFR) shall be utilized for all bridges not designed by Load and Resistance Factor Design. AASHTO Load and Resistance Factor Rating (LRFR) shall be utilized for all structures designed for HL93 loading starting October 2010.

Load Rating Report Submittal to the City or Village shall include:

- a. Two (2) printed copies and one electronic pdf copy of the Load Rating Report for each bridge.
- b. Final summary of inventory and operating ratings for each member and the overall ratings of the structure shall be presented for each live load truck. An acceptable format is ODOT form BR-100.
- c. Analysis program input files. Both input and output files shall be submitted when programs other than BrR or spreadsheets are used.
- d. All calculations related to the load rating.
- e. If applicable, the weight limits posting recommendations including a copy of the standard posting sign; such as R12-1 (24" x 30"), R12-H5 (30" x 48"), and R12-H7 (30" x 30").

TASK 3 – ASSETWISE STRUCTURE INVENTORY AND REVIEW

The scope of this task includes a limited review of the structure inventory data in the ODOT ASSETWISE. In general, the CONSULTANT shall review specific existing ODOT bridge inventory records (as provided by the City and approved by ODOT) of the designated bridge. The CONSULTANT may download the inventory report, which contains inventory data for each bridge on file with ODOT from the ODOT website. The CONSULTANT shall verify this data and determine if the ODOT ASSETWISE structure file information needs to be updated on the system. If no changes are necessary, then no ASSETWISE inventory needs to be filled out. If changes are necessary, the scope of this task shall also include completing and filing inventory updates (and supplements, as needed) in ASSETWISE. The CONSULTANT shall refer to the ODOT Office of Structural Engineering Inventory and Coding Guide of ASSETWISE for inventory coding details. In 2023, ODOT will start the transition toward SNBI, the consultants shall fill out all empty fields for this purposes as communicated by OSE.

TASK 4 – INSPECTION PROCEDURES

Task 4A – Fracture Critical Plan – A Fracture Critical Member Plan and inspection procedure shall be developed and updated. For more details, refer to Chapter 4: Inspection Types in the Manual of Bridge Inspection. It shall include:

1. Sketches of the superstructure with locations of all fatigue and fracture prone details identified.
 - a. Use framing plan or schematic with detail locations labeled and a legend explaining each labeled item on the scheme.
 - b. Use an elevation view for trusses.

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- c. Classify similar fatigue/fracture prone details as types (e.g. end of partial cover plate).
2. A table or location of important structural details indicating:
 - a. Type of detail (e.g. end of partial cover plate, short web gap, etc.)
 - b. Location of each occurrence of detail
 - c. AASHTO Fatigue Category of detail
 - d. Identify retrofits previously installed
3. Risk Factors Influencing the inspector access.

Photos and sketches shall be properly referenced. The CONSULTANT shall refer to the most recent ODOT Manual of Bridge Inspection for additional details on the scope of this task.

Task 4B – Underwater Inspection Procedures – An underwater inspection procedure shall be developed. For more details, refer to Chapter 4: Underwater Inspections in the Manual of Bridge Inspection. Please note that ODOT has recently revised the format of the procedures file. The diving team shall fill out or update the latest form and upload it on ASSETWISE prior to performing the actual dives. Please contact OSE for a copy of a blank form if not uploaded on ASSETWISE at the time.

TASK 5 – BRIDGE INSPECTION

Task 5A – Routine Bridge Inspection (ASSETWISE Input) - Perform a routine field inspection of the structure to determine the general condition. The CONSULTANT shall refer to the most recent ODOT Manual of Bridge Inspection for additional details on the scope of this task. Section 1111 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) modified 23 U.S.C.144, requires Ohio to report bridge element level data for NBIS bridges on the National Highway System (NHS) to FHWA. A condition rating or element level inspection will be assigned. This task includes Condition Rating Inspection for non-NBI structures, Condition Rating Inspection for NBI structures, and Element Level Inspection for NBI classified as NHS. The consultant shall probe the channel around the footing in water to determine depth of scour and report the date in AssetWise.

Task 5B – Fracture Critical Inspection - Perform a fracture critical field inspection of fracture critical items. The CONSULTANT shall update the FCM inspection procedure with current photos and descriptions. The CONSULTANT shall refer to the most recent ODOT Manual of Bridge Inspection for additional details on the scope of this task.

Task 5C – Underwater Dive Inspection – Perform Underwater/ In-Water inspection of substructure units according to the cycle shown in ASSETWISE. Emergency underwater inspection may arise for specific structures over the duration of the contract period. Work shall be done in accordance with the reference manuals and inspection procedure. Scour risk shall be evaluated after field and data collection.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-95

Meeting: 09/26/22 7:30 PM
Dept: Streets and Public Buildings
Severns, Francis
Category: Streets
Prepared By: Rob Broeren
Initiator: Todd Hill
DOC ID: 3651

A RESOLUTION AUTHORIZING AND DIRECTING THE SAFETY SERVICE DIRECTOR TO ENTER INTO CONTRACT WITH THE OHIO DEPARTMENT OF TRANSPORTATION AND/OR ODOT PREQUALIFIED CONSULTANTS FOR THE REHABILITATION OF SR 13 DIRECTIONAL ROUTE AND LOCAL ROADWAYS (CR 506, MR 307, AND MR 273) WITHIN THE CITY OF MOUNT VERNON; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Mount Vernon (“LPA”) has determined the need for the described project: Rehabilitation of SR 13 Directional Route and local roadways (CR 506, MR 307, and MR 273) within City of Mount Vernon.

NOW THEREFORE, be it RESOLVED by the Council of the City of Mount Vernon, State of Ohio.

SECTION 1: Consent Statement

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project as detailed in the LPA-ODOT-Let Agreement entered into between the parties, if applicable.

SECTION 2: Cooperation Statement

The LPA shall cooperate with the Director of Transportation in the development and construction of the above described project and shall enter into an LPA Federal ODOT Let Project Agreement, if applicable, as well as any other agreements necessary to develop and construct the Project.

For a breakout of costs and funding sources by Phase, please refer to Agreement 38094, Attachment 1.

The LPA further agrees to pay 100% of the cost of those features requested by the LPA which are determined by the State and Federal Highway Administration to be unnecessary for the Project.

The LPA further agrees that change orders and extra work contracts required to fulfill the construction contracts shall be processed as needed. The State shall not approve a change order or extra work contract until it first gives notice, in writing, to the LPA. The LPA shall contribute its share of the cost of these items in accordance with other sections herein.

The LPA agrees that if Federal Funds are used to pay the cost of any consultant contract, the LPA shall comply with 23 CFR 172 in the selection of its consultant and administration of the consultant contract. Further the LPA agrees to incorporate ODOT’s “Specifications for Consulting Services” as a contract document in all of its consultant contracts. The LPA agrees to require, as a scope of services clause, that all plans prepared by the consultant must conform to ODOT’s current design standards and that the consultant shall be responsible for ongoing consultant involvement during the construction phase of the Project. The LPA agrees to include a

completion schedule acceptable to ODOT and to assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.

SECTION 3: Utilities and Right-of-Way Statement

The LPA agrees to acquire and/or make available to ODOT, in accordance with current State and Federal regulations, all necessary right-of-way required for the described Project. The LPA also understands that right-of-way includes eligible utility costs.

The LPA agrees to be responsible for all utility accommodation, relocation and reimbursement and agrees that such accommodation, relocations, and reimbursements shall comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

SECTION 4: Maintenance

Upon completion of the Project, and unless otherwise agreed, the LPA shall: (1) provide adequate maintenance for the Project in accordance with all applicable State and Federal law, including, but not limited to, Title 23, U.S.C., Section 116; (2) provide ample financial provisions, as necessary, for the maintenance of the Project; (3) maintain the right-of-way, keeping it free of obstructions; and (4) hold said right-of-way inviolate for public highway purposes.

SECTION 5: Authority to Sign

The LPA hereby authorizes, Safety Service Director of the City of Mount Vernon is hereby empowered on behalf of the City of Mount Vernon to enter into and execute contracts with the Director of Transportation which are necessary to develop plans for and to complete the above-described project; and to execute contracts with ODOT pre-qualified consultants for the preliminary engineering phase of the Project.

Upon request of ODOT, Safety Service Director to execute any appropriate documents to affect the assignment of all rights, title, and interests of the City of Mount Vernon to ODOT arising from any agreement with its consultant in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

SECTION 6: Emergency Measure

If required, Resolution is hereby declared to be an emergency measure to expedite the highway project and to promote highway safety. Following appropriate legislative action, as an emergency measure, it shall take effect and be in force immediately upon its passage and approval, otherwise it shall take effect and be in force from and after the earliest period allowed by law.

116840

PID NUMBER

38094

AGREEMENT NUMBER

DUNS NUMBER

CFDA 20.205

LPA FEDERAL ODOT-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the City of Mount Vernon, 40 Public Square, Mount Vernon, Ohio 43050 hereinafter referred to as the LPA acting by and through the Safety Service Director.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the **Ohio Revised Code** (hereinafter referred to as ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The rehabilitation of SR 13 Directional Route and local roadways (CR 506, MR 307, and MR 273) within City of Mount Vernon (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities of ODOT and the LPA for administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:

A. FEDERAL

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 23 CFR 172 "Administration of Engineering and Design Related Design Related Service Contracts"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 - Organizational Conflict of Interest Requirements for Design-Build Projects
- 23 CFR 645 - Utilities
- 48 CFR Part 31 – Federal Acquisition Regulations
- 49 CFR PART 26 - Participation by Disadvantaged Business Enterprises "DBE" in Department of Transportation Financial Assistance Programs
- 23 USC 112 "Letting of Contracts"
- 40 USC Subtitle I, Chapter 11, Sections 1101-1104, the "Brooks Act." – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 153.65 through 153.71
- ORC 5501.03(D)
- OAC 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- State of Ohio Department of Transportation Construction and Material Specifications Manual
- State of Ohio Department of Transportation Construction Administration Manual of Procedures

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING AND PAYMENT

3.1 The total cost for the PROJECT is estimated to be \$10,411,419.00 at set forth in Attachment 1. ODOT shall provide to the LPA one hundred percent (80%) of the eligible costs, up to a maximum of \$261,316.00 in Federal funds. These maximum amounts reflect the funding limits for the PROJECT set by the applicable Program Managers, and costs beyond the stated maximums will be the responsibility of the LPA. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual design or construction of the transportation project improvements and construction engineering/inspection activities.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally-funded work, and all cost overruns and contractor claims in excess of the maximum(s) indicated in 3.1 above.

3.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The LPA shall review and/or approve all contractor invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.

3.4 The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

3.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

3.6 The LPA shall certify in writing that the PROJECT was developed and delivered in compliance with the terms, conditions and requirements of the PROJECT Agreement with his/her Professional Engineer's seal and signature. The LPA shall then provide the final report to the ODOT District

within 6 months of the physical completion date of the PROJECT so that the report may be audited and approved for payment. If the deadline cannot be met, a written explanation must be provided to the District prior to the end of the 6 months documenting the reason and the new anticipated date of completion. If the extended deadline is not met, then this process must be repeated until the PROJECT is completed. Failure to follow this process may result in the immediate close-out of the PROJECT and loss of further funding.

- 3.7 Payment or reimbursement to the LPA shall be submitted to:

City of Mount Vernon
40 Public Square
Mount Vernon, Ohio 43050

4. PROJECT DEVELOPMENT

- 4.1 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.2 Project Development shall follow ODOT's Project Development Process and all ODOT standards for environmental evaluations, design, plan preparation, right of way acquisition, utility relocation and other processes as set out in the Department's Design Reference Resource Center, available on ODOT's website (www.dot.state.oh.us/drrc/Pages/default.aspx). Responsibilities for development of the PROJECT shall be as follows and further described herein:

LPA ODOT Let Project Responsibility Assignments

PDP Phase	Activity	Responsibility		Commentary
		LPA	ODOT	
Planning	All	X		ODOT to provide coordination as needed
Preliminary Engineering	All	X		ODOT to: 1) Provide coordination as needed 2) Review all plans and documents and provide comments
Environmental Engineering	Stage 1 Plans	X		ODOT to review all plans and documents and provide comments.
	Stage 2 Plans	X		ODOT to review all plans and documents and provide comments.
	Value Engineering		X	ODOT will coordinate Value Engineering if required. Refer to Section 4.7.
	Cost Estimates	X		LPA/Consultant shall prepare in Estimator format.
	NEPA	X		ODOT will coordinate NEPA approval. Refer to Section 4.7 for Environmental Responsibilities.
	Permits		X	ODOT will obtain permits needed to construct the PROJECT.
	R/W Plans	X		ODOT to review all plans and documents and provide comments.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.
Final Engineering & R/W	R/W Acquisition & Relocation	X		Refer to Section 6 for detailed requirements.
	Utility Relocation		X	Refer to Section 6.6 for additional details.
	Railroad Coordination and Agreements		X	Refer to Section 6.8 for additional details.
	Stage 3 Plans	X		ODOT to review all plans and documents and provide comments.

	Cost Estimates	X		LPA shall prepare in Estimator format.
	Final Plan Package	X		ODOT to review all plans and documents and provide comments.
	Mitigation		X	ODOT will coordinate any required mitigation efforts.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.
Construction	Advertise		X	LPA and consultants to assist in responding to bidder questions and preparation of any addenda.
	Award		X	ODOT Awards Committee
	Administer Construction Contract		X	ODOT will administer the construction contract. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues.
	Public/Stakeholder Involvement	X	X	ODOT to coordinate in cooperation with the LPA.
All Phases	Federal Authorizations		X	ODOT will coordinate and obtain all needed FHWA Authorizations and notify the LPA upon approval.
All Phases	Encumbrance of Funds		X	ODOT will encumber funds in accordance with this Agreement.

- 4.3 The LPA shall designate an LPA employee to act as the LPA Project Manager and act as the point of contact for all communications with ODOT.
- 4.4 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.5 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.
- 4.6 Environmental Responsibilities
- A. In the administration of this PROJECT, the Permittee shall be responsible for conducting any required public involvement activities, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act.
 - B. If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire a consultant in accordance with Section 5.
 - C. ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
 - D. Whichever party obtains the Project's environmental clearance or permits shall be responsible for assuring compliance with all commitments made as part of such clearance or permit requirements during the construction of the PROJECT.
 - E. The LPA shall require its consultant to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act.
 - F. The LPA shall require its consultant to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
 - G. The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.
- 4.7 Use of ODOT Consultant Agreements
- A. ODOT may provide services through ODOT held consultant agreements at its discretion subject to funding participation by the LPA. Agreements that may be available for use include the following:
 - 1. If the LPA chooses to utilize the CEO task order contract for environmental services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT

prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.

2. If the LPA chooses to utilize the CEAO task order contract for right-of-way acquisition services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.
3. Value Engineering. If Value Engineering is required, the Department may elect to use an ODOT held agreement to assist in administering the Value Engineering process. If Value Engineering is required, the LPA shall require its consultants to participate as needed.

5. CONSULTANT SELECTION AND ADMINISTRATION

5.1 General Requirements

- A. The LPA must select a consultant/ consultant team that is prequalified by ODOT for all services to be performed by the consultant and subconsultants.
- B. The LPA must incorporate ODOT's "Specifications for Consulting Services – 2016 Edition" as a contract document in all of its consultant contracts.
- C. The LPA must require, as a scope of services clause, that project development follow ODOT's Project Development Process, and that all documents and plans prepared by the consultant must conform to ODOT's current standards, including the electronic deliverable requirements of ODOT's CADD Engineering Standards Manual, and Location and Design Manual Volume 3, Section 1500.
- D. The LPA consultant agreement must provide for ongoing consultant involvement during the construction phase of the Project.
- E. The LPA consultant agreement must include a completion schedule acceptable to ODOT.
- F. The LPA must assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.
- G. The LPA must cooperate with ODOT in directing additional or corrective work, and to recover damages due to errors or omissions.
- H. If Federal Funds are used to pay the cost of any contract for professional services, the LPA must comply with 23 CFR 172, Sections 153.65 through 153.71 of the Ohio Revised Code and Section 5.2 below in the selection of consultants, and administer consultant agreements in accordance with ODOT's Manual for Administration of Contracts for Professional Services. Professional services, as defined in Sections 5526.01 and

153.65(C) of the Ohio Revised Code, include the practice of engineering (including inspection of construction), the practice of surveying, the practice of architecture including landscape architecture, evaluation of environmental impacts, right-of-way acquisition services and administration of construction contract claims.

5.2 Procedures for LPA Selection of Consultants for Agreements that Include Federal Funds in Preliminary Engineering

A. Policies in Selection of Consultants

1. Restrictions Concerning LPA Preferences

The LPA **shall not** offer direction to consultants concerning preferences (or informal sanctions) for certain subconsultants or team arrangements. These arrangements are business decisions that must be made by consultants without direction from the LPA. The LPA must make selection decisions on the basis of proposed teams without advance "steering" of teams.

2. Communications Restrictions

Please note the following policy concerning communication between Consultants and the LPA during the announcement and selection process:

During the time period between advertisement and the announcement of final consultant selections for the Programmatic Selection Process, communication with consultants (or their agents) shall be limited as follows:

a. Communications which are strictly prohibited:

- (1) Communication with the LPA: Any marketing or similar discussions of the specific project if the consultant has submitted or plans to submit a letter of interest, or is included as a subconsultant on a submittal by another firm.

b. Allowable communications include:

- (1) Project administration activities for authorized agreements, scope and negotiation activities for projects selected but not under contract.
- (2) Technical or scope of services questions specific to projects posted with a programmatic group.

c. When completed selections must be publicly announced.

3. Advertisement

For selection procedures that require public notification, Requests for Letters of Interest "RFLol" must be advertised on the Consultant Services page of ODOT's website.

4. Disclosure of Selection Information

All selection information including consultant letters of interest shall be available for public disclosure upon completion of the selection.

Information that is not subject to public disclosure at any time includes financial statements and other confidential financial information submitted by a consultant.

5. Supporting Documentation

Documentation supporting the solicitation, proposal, evaluation, and selection of the consultant shall be retained.

6. Prohibited Selection Factors

- a. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- b. In-State or local **preference** shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

Refer to Section 5.2.C.1.n. below for additional guidance concerning the use of local **presence** as a nominal evaluation factor where appropriate.

B. Consultant Selection Processes

The LPA may use any one of five consultant selection processes permitted by 23 CFR 172 and ORC 153.65 – 153.71, the use of which depends on the complexity of the project, estimated total fee, the number of available qualified consultants and whether an emergency exists. The Programmatic and Technical Proposal selection processes are competitive qualifications based selection processes governed by 23 CFR 172.7(a)(1) and ORC 153.65 – 153.71. These selection processes require solicitation, evaluation, ranking, selection, and negotiation in accordance with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101-1104, commonly referred to as the Brooks Act or Selection of Architects and Engineers.

The Small Purchase selection process is a non-competitive selection process governed by 23 CFR 172.7(a)(2) and ORC 153.71(A). Agreements with total fees less than \$50,000 are eligible for this selection process.

The Emergency and Special Expertise selection processes are non-competitive selection processes governed by 23 CFR 172.7(a)(3) and ORC 153.71.

1. Programmatic Selection Process

The Programmatic Selection Process is a one-step selection process intended to shorten the selection/authorization process for non-complex projects while reducing paperwork and administrative costs for both consultants and the State. In this process consultants are selected based on standard letter of interest content, and a standard Selection Rating Form.. The “Programmatic” selection process should be used for most projects that do not meet the criteria for the more elaborate Technical Proposal Selection Process.

2. Technical Proposal Selection Process

The technical proposal selection process is a two-step process intended for use on larger, more complex projects for which a more informed selection decision can be made based on additional information received through the submittal of a (more elaborate) Technical Proposal, and/or presentations/interviews. The Technical Proposal Selection Process is appropriate to use under the following circumstances:

- a. Complex projects involving multiple PDP steps and multiple disciplines including planning, environmental and design services.
- b. Projects that include complex project management challenges in which the role of the consultant project manager will be crucial to project success, and may require extensive public involvement activities.
- c. Specialized services for which the LPA has limited experience and performance records for past projects.
- d. Generally any project for which a single submittal does not provide sufficient information to make a well informed selection decision.

The technical proposal selection process includes the initial submittal of a letter of interest similar to the Programmatic Selection Process, and then “shortlisting” to at least three of the most highly qualified firms. The standard letter of interest content may be revised to include increased page limits and project specific content. The shortlisted firms are then required to submit additional written information (technical proposal) and/or participate in additional discussions or presentation/interview. The content of the technical proposal and the format of interviews can be tailored to fit the requirements of specific projects.

Discussions, if required by the RFLol, may be written, by telephone, video conference, or by oral presentation/interview and shall be with at least three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFLol.

The process for shortlisting at least three consultants is identical to that of the Programmatic Selection Process. The final selection of a single consultant also follows the same process but considers the written technical proposal and/or presentation/interview along with the initial letter of interest.

3. Emergency Selection Process

The LPA may directly select a consultant for a project determined by the Director of Transportation to be an emergency which will not permit the time necessary to conduct a competitive selection process. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT’s Consultant Contract Administration.

4. Small Purchase Selection Process

The LPA may directly select consultants without solicitation for projects with an estimated total fee of less than \$50,000. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of fee exempt procedures. The following requirements apply:

- a. The qualifications of a minimum of three consultants must be reviewed prior to selection. The consultants considered for selection and the reasons for selecting the most qualified consultant shall be documented.

In instances where two or fewer consultants are considered qualified, the LPA may proceed with evaluation and selection if it is determined that the project requirements did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- b. The full amount of any contract modification that would cause the total contract amount to exceed \$50,000 is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if Federal funds are used in modifying an agreement above the \$50,000 simplified acquisition threshold.
- c. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

5. Special Expertise Selection Process

The LPA may directly select consultants for projects for which the service is available only from a single source. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

C. Selection Procedures – Programmatic Selection Process

1. Letter of Interest Content

Requests for Letters of Interest (RFLol) shall include the following:

- a. Project name from Ellis (County-Route-Section);
- b. A description of the project including the location.
- c. A description of the selection process to be used, including the number of steps (direct selection based on the information provided, or a two-step process with a short list and technical proposal and/or interviews, etc.), and the selection rating criteria to be used. The standard selection rating form included herein should be used for most projects.
- d. Any restrictions on communicating with government officials during the selection process.
- e. Any restrictions concerning suspended or debarred firms.

- f. Date that the letter of interest is due. The minimum response time shall be two weeks from the initial posting date.
- g. The approximate construction cost if available.
- h. Any special provisions or contract requirements associated with the services.
- i. The following notification:

The [LPA] in accordance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, all bidders including disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex (including pregnancy, gender identity and sexual orientation), age, disability, low-income status, or limited English proficiency in consideration for an award.

- j. The DBE Goal requirements and related selection procedures.
- k. Major work elements involved.
- l. A detailed scope of services for the agreement.
- m. The ODOT prequalification(s) required to provide the services;
- n. Subfactors - Any important aspects of a project, if any, that will play a large role in the consultant selection process.

In-State or local preference shall not be used as a selection factor or subfactor, however a local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

- o. The contract type and payment method(s) anticipated to contract for the solicited services. Refer to Chapter 4 of ODOT's Consultant Contract Administration for detailed explanations of contract types and payment methods.
- p. Estimated date of authorization.
- q. Time period in which the work must be completed.

- r. Instructions for submitting a letter of interest including content and required format. The information requested should be consistent with the rating criteria.
- s. Required content of the letter of interest (RFLol) including;
 - (1) The firm's general qualifications.
 - (2) Proposed key staff including key subconsultant staff and project approach.
 - (3) A listing of subconsultants including project responsibility.
 - (4) Whether resumes of key staff members must be submitted.
 - (5) Other information needed to make an informed selection decision.

2. Evaluation Process

- a. Initially evaluate all firms for compliance with the following requirements, advise Districts of the firms that must be eliminated from further consideration and the reason for elimination:
 - (1) Compliance with general Lol requirements, current negligence issues, and ongoing performance issues identified through CES, overall low CES rating, insufficient staff, excessive workload, or any other significant issues relative to a firm's performance.
 - (2) Inclusion on the list of firms suspended or debarred by the Federal Government.
 - (3) For projects noted as having DBE Goals, ODOT will determine whether the consultant made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26. The letter of interest must show that the consultant has made good faith efforts to meet the goal. Good faith efforts may include: (1) Documentation that the consultant has obtained enough DBE or EDGE (Encouraging Diversity, Growth and Equity) participation to meet the goal; or (2) Documentation that it made adequate good faith efforts, as defined in 49 CFR 26.53, to meet the goal, even though it did not succeed in obtaining enough DBE/EDGE participation to do so. Consultants that do not show good faith efforts to meet the Goal will not be eligible for selection.
- b. Compliance with prequalification requirements.
- c. Reduce the number of firms to 3-6 for each project through a process of elimination, based on the selection rating factors included in the Consultant Selection Rating Form. Firms may be eliminated due to fatal flaws, overall weakness of team relative to other firms, weak project approach, etc. Provide written documentation concerning the reasons for eliminating a firm from consideration.

In instances where two or fewer consultants respond to the RFLol, or two or fewer consultants are considered qualified to be shortlisted, the LPA may proceed with evaluation and selection if it is determined that the

solicitation did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- d. For each project, rate each shortlisted firm using the selection rating form.

Supplement the numerical ratings with written comments that explain the differential scoring. The highest rated firm shall be selected.

3. Selection Rating Procedures

- a. ODOT's standard consultant selection rating form is shown below. The LPA may use a modified selection rating form that meets the requirements of 23 CFR 172 and ORC 153.65 – 153.71.
- b. Selection evaluations should be based on collaborative discussions of the selection committee members concerning the overall strengths and weaknesses of the teams, including the relative importance of the various selection rating factors relative to the specific requirements of the project. Numerical weights are a guide as to what is important but the selection should not be a mathematical exercise consisting of the addition of scores determined by individual team members. The selection team members should work to reach consensus in determining a single selection rating including written comments that document the reasons for the numerical scores.
- c. For each selection rating factor, each short listed firm shall be ranked, with the highest ranked firm receiving the maximum number of points, and lower ranked firms receiving commensurately lower scores. If firms are considered to be equally qualified, the firms may receive the same score for that selection rating factor. The rankings and scores should be based on each firm's specific proposal and project approach, including the named project manager, staff and subconsultants. Experience on similar projects, past performance for the LPA and other agencies should be considered. The selection committee may contact other ODOT Districts and outside agencies if necessary. Any subfactors identified in the RFLol should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of a selection factor in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differential scores assigned to projects that require a larger role for the project manager. Similar consideration should be given to all selection factors

4. ODOT's Consultant Selection Rating Form and Selection Rating Notes

Category	Total Value	Scoring Criteria	Score
Management & Team			
Project Manager	10	See Note a. below	

Strength/Experience of Assigned Staff including Subconsultants	25	See Note b. below	
Firm's Current Workload/ Availability of Personnel	10	See Note c. below	
Consultant's Past Performance	30	See Note d. below	
Project Approach	25	See Note e. below	
Total	100		

The following discussion addresses each selection rating factor including scoring methodology, appropriate sources of information and factors that may not be considered.

a. Project Manager

The proposed project manager for each consultant shall be ranked, with the highest ranked project manager receiving the greatest number of points, and lower ranked project managers receiving commensurately lower scores. The rankings and scores should be based on each project manager's experience on similar projects and past performance for the LPA. The selection committee may contact ODOT and outside agencies if necessary. Any subfactors identified should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of the project manager's role in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differentials assigned to projects that require a larger role for the project manager.

b. Strength/Experience of Assigned Staff including Subconsultants

The experience and strength of the assigned staff, including subconsultant staff, should be ranked and scored as noted for Number 1 above, with higher differential scores assigned on more difficult projects. Any subfactors identified in the project notification should be weighed heavily in the differential scoring.

As above, ODOT and other agencies may be contacted.

c. Firm's Current Workload/ Availability of Personnel (Considered at statewide meeting)

In instances when consultant's current workload may impact their ability to complete the work as proposed, the firm's current workload and availability of qualified personnel shall be considered.

d. Consultant's Past Performance

The consultants' past performance on similar projects, including subconsultant performance, shall be ranked and scored on a relative, differential scoring type basis, with the highest ranked consultant receiving a commensurately greater number of points. The selection team should consider ODOT CES performance ratings if available, and consult other ODOT Districts, ODOT Central Offices, and other agencies as appropriate. The use of CES ratings shall place emphasis on the specific type of services requested.

The differential scoring should consider the complexity of the project and any subfactors identified in the project notification.

e. Project Approach

Evaluation of the firm's project approach shall consider:

- (1) The firm's technical approach and understanding of the project.
- (2) The firm's qualifications for the project including knowledge and experience concerning relevant ODOT standards, procedures and guidance documents.
- (3) Any innovative ideas.

When considering this factor in rating firms, the type of project and the relevance of this factor to the project must be considered. For task order and construction inspection projects, and small uncomplicated design projects, the possibility for innovation may be very limited. Larger more complex projects will generally offer more opportunities for innovation. Consultants that identify truly innovative ideas should receive credit in the selection rating, but this factor can be disregarded when projects offer little opportunity for innovation.

- (4) The firm's project specific plan for ensuring increased quality, reduced project delivery time and reduced project costs.

These factors will be relatively more important and relevant to a complex PDP project, and much less important for a construction inspection or task order contract. Please remember that Federal rules prohibit consideration of overhead rates, wage rates or any other cost data submitted voluntarily by the consultant.

D. Negotiation of Consultant Agreements

Agreements shall be negotiated in accordance with ODOT's Manual for Administration of Contracts for Professional Services, Volume 1 Consultant Contract Administration, Section 3.9.

E. Agreements

ODOT will prepare the LPA/Consultant Agreement between the Consultant and LPA. The agreement will be transmitted to the LPA by the ODOT District Office. A copy of the executed LPA/Consultant Agreement shall be returned to the District Office.

F. Documentation of Consultant Selections

The LPA shall maintain a consultant selection file that includes the following information, and provide copies of all documents to the District for their files.

1. A copy of the Request for Proposal and the date posted on ODOT's website;
2. A listing of firms that submitted Letters of Interest;
3. Letters of Interest from all firms that submitted;
4. Selection rating forms and any supporting notes and documentation, including membership of the selection committee;
5. A listing of firms selected to submit technical proposals (if applicable), copies of the technical proposals, and related correspondence;
6. Selected consultant's Price Proposal;
7. Negotiation records; and
8. A copy of the Agreement, Scope of Services, authorization letter, Invoice and Project Schedule, and any other documents relevant to the agreement.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. Refer to Sections 4.2 and 4.4 concerning Federal authorization.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds

disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.

- 6.6 ODOT will coordinate with utilities, complete RE-75 forms, establish encumbrances towards each utility if needed, prepare an invoice to the LPA for the local share, and pay the State share as needed. In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. In the event that a utility is delaying the relocation of its facilities, the LPA shall take any action necessary to order and cause the removal and relocation of such utility. No reimbursable costs shall be incurred prior to the receipt of Federal Authorization for Right of Way from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 ODOT shall be responsible for any necessary railroad coordination and agreements in accordance with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.

7. ADVERTISING, SALE AND AWARD

- 7.1 ODOT will prepare the State's estimate and manage the advertising, sale and award process. The LPA and its consultant shall assist in responding to bidder questions, preparation of any addenda and other coordination as needed. ODOT's Awards Committee shall determine award of the contract.

8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 ODOT will administer the construction contract in accordance with ODOT's Construction Administration Manual of Procedures. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues. The LPA shall review and approve all change orders. The LPA and LPA's consultant shall assist in defending ODOT against any contractor claims.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA

has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from contractor performance and payment bond(s) and consultant insurance shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.

10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. For a PROJECT upon which a DBE goal is assigned, the LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

Pursuant to 49 CFR 26.13(b), the LPA agrees not to discriminate on the basis of race, color, national origin, or sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, or limited English proficiency in the performance of this Agreement. The LPA agrees to carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. The LPA understands that failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ODOT deems appropriate.

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest") agrees as follows:

(a) Compliance with Regulations: The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

- (b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, or limited English proficiency, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
- (c) **Solicitations for Professional Services:** In all solicitations for professional services made by the LPA for work to be performed under a contract or subcontract, each potential consultant will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, or limited English proficiency.
- (d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
 - (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
 - (2) cancellation, termination or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) Above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and

contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

- 11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.
- 11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.
- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA

shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

- 12.5 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the ORC.
- 13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

- 14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Safety Service Director	District 5 Capital Programs Administrator
City of Mount Vernon	Ohio Department of Transportation
40 Public Square	9600 Jacksontown Road
Mount Vernon, Ohio 43050	Jacksontown, Ohio 43030

15. GENERAL PROVISIONS

15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: *[LPA official must initial the option selected.]*

☐

1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.

- (A) The LPA **does not** currently maintain an ODOT approved federally compliant time-tracking system¹, **and**
- (B) The LPA **does not** intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
- (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

☐

2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.²

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐

3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.³

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

1 A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. The definition of MTDC is provided in the regulation at 2 CFR §200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is

4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.⁴

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

- 15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.
- 15.3 *Financial Reporting and Audit Requirements:* If one or more phases of this AGREEMENT include a sub-award of federal funds to the LPA, the LPA shall comply with the financial reporting and audit requirements of 2 CFR Part 200. If not, the financial reporting and audit requirements remain with ODOT.

All non-federal entities, including ODOT's LPA subrecipients, that have aggregate federal awards expenditures from all sources of \$750,000 or more in the non-federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

LPAs that expend Federal and State funds in the Preliminary Engineering and/or Right of Way phases of the Project must track these payments throughout the life of the in order to ensure an accurate Schedule of Expenditures of Federal Award (hereinafter referred to as SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring funds related to this PROJECT are reported when the activity related to the Federal award occurs.⁵ Further, the LPA may make this

applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

- 4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

⁵ Per 2 CFR §200.502

determination consistent with 2 CFR §200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

- 15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

- 15.5 *Ohio Ethics Laws:* LPA agrees they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.7 *Trade:* Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

- 15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of

Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

- 15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.12 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: City of Mount Vernon	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title:	Jack Marchbanks Director
Date:	Date:

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

Uses/Sources	LPA Funds			FHWA Funds			State Funds			Total
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
Preliminary Engineering	\$ 65,329.00	20%	LNTP	\$ 261,316.00	80%	4TF7/CR06				\$ 326,645.00
	\$ 416,511.00	100%	LNTP							\$ 416,511.00
Final Design, Construction Plans & Specifications	\$ 115,933.00	100%	LNTP							\$ 115,933.00
Acquisition of Right of Way & Utility Relocation	\$ 2,075,752.00	100%	LNTP							\$ 2,075,752.00
Project Construction Costs	\$ 6,337,217.00	100%	LNTP							\$ 6,337,217.00
Inspection	\$ 1,139,361.00	100%	LNTP							\$ 1,139,361.00
Totals	\$ 10,150,103.00			\$ 261,316.00						\$ 10,411,419.00

COUNTY-ROUTE-SECTION

PID NUMBER

AGREEMENT NUMBER

DUNS NUMBER

Attachment 2**DIRECT PAYMENT OF CONSULTANT**

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's consultant shall be paid directly to the consultant in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this Agreement, and shall indicate that the payment is to be made to the consultant. In addition, the invoice must state the consultant's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the consultant and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the consultant, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (subrecipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We _____ request that all payments for the Federal/State share of the consultant costs of this Agreement performed by _____ be paid directly to _____.

VENDOR Name:	
Oaks Vendor ID:	
Mailing Address:	
LPA signature:	

LPA Name:	
Oaks Vendor ID:	
Mailing Address:	
ODOT signature:	

CFDA 20.205

LPA FEDERAL ODOT-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the City of Mount Vernon, 40 Public Square, Mount Vernon, Ohio 43050 hereinafter referred to as the LPA acting by and through the Safety Service Director.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the **Ohio Revised Code** (hereinafter referred to as ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The rehabilitation of SR 13 Directional Route and local roadways (CR 506, MR 307, and MR 273) within City of Mount Vernon (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities of ODOT and the LPA for administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:

A. FEDERAL

- 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 23 CFR 172 "Administration of Engineering and Design Related Design Related Service Contracts"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 - Organizational Conflict of Interest Requirements for Design-Build Projects
- 23 CFR 645 - Utilities
- 48 CFR Part 31 – Federal Acquisition Regulations
- 49 CFR PART 26 - Participation by Disadvantaged Business Enterprises "DBE" in Department of Transportation Financial Assistance Programs
- 23 USC 112 "Letting of Contracts"
- 40 USC Subtitle I, Chapter 11, Sections 1101-1104, the "Brooks Act." – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 153.65 through 153.71
- ORC 5501.03(D)
- OAC 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- State of Ohio Department of Transportation Construction and Material Specifications Manual
- State of Ohio Department of Transportation Construction Administration Manual of Procedures

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING AND PAYMENT

3.1 The total cost for the PROJECT is estimated to be \$10,411,419.00 at set forth in Attachment 1. ODOT shall provide to the LPA eighty percent (80%) of the eligible costs, up to a maximum of \$261,316.00 in Federal funds. These maximum amounts reflect the funding limits for the PROJECT set by the applicable Program Managers, and costs beyond the stated maximums will be the responsibility of the LPA. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual design or construction of the transportation project improvements and construction engineering/inspection activities.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally-funded work, and all cost overruns and contractor claims in excess of the maximum(s) indicated in 3.1 above.

3.3 All funding from ODOT under this Agreement operates on a reimbursement basis. The LPA shall review and/or approve all contractor invoices for materials, equipment and labor prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT.

3.4 The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for reimbursement of the state share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

3.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

3.6 The LPA shall certify in writing that the PROJECT was developed and delivered in compliance with the terms, conditions and requirements of the PROJECT Agreement with his/her Professional Engineer's seal and signature. The LPA shall then provide the final report to the ODOT District

within 6 months of the physical completion date of the PROJECT so that the report may be audited and approved for payment. If the deadline cannot be met, a written explanation must be provided to the District prior to the end of the 6 months documenting the reason and the new anticipated date of completion. If the extended deadline is not met, then this process must be repeated until the PROJECT is completed. Failure to follow this process may result in the immediate close-out of the PROJECT and loss of further funding.

- 3.7 Payment or reimbursement to the LPA shall be submitted to:

City of Mount Vernon
40 Public Square
Mount Vernon, Ohio 43050

4. PROJECT DEVELOPMENT

- 4.1 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.2 Project Development shall follow ODOT's Project Development Process and all ODOT standards for environmental evaluations, design, plan preparation, right of way acquisition, utility relocation and other processes as set out in the Department's Design Reference Resource Center, available on ODOT's website (www.dot.state.oh.us/drrc/Pages/default.aspx). Responsibilities for development of the PROJECT shall be as follows and further described herein:

LPA ODOT Let Project Responsibility Assignments

PDP Phase	Activity	Responsibility		Commentary
		LPA	ODOT	
Planning	All	X		ODOT to provide coordination as needed
Preliminary Engineering	All	X		ODOT to: 1) Provide coordination as needed 2) Review all plans and documents and provide comments
Environmental Engineering	Stage 1 Plans	X		ODOT to review all plans and documents and provide comments.
	Stage 2 Plans	X		ODOT to review all plans and documents and provide comments.
	Value Engineering		X	ODOT will coordinate Value Engineering if required. Refer to Section 4.7.
	Cost Estimates	X		LPA/Consultant shall prepare in Estimator format.
	NEPA	X		ODOT will coordinate NEPA approval. Refer to Section 4.7 for Environmental Responsibilities.
	Permits		X	ODOT will obtain permits needed to construct the PROJECT.
	R/W Plans	X		ODOT to review all plans and documents and provide comments.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.
Final Engineering & R/W	R/W Acquisition & Relocation	X		Refer to Section 6 for detailed requirements.
	Utility Relocation		X	Refer to Section 6.6 for additional details.
	Railroad Coordination and Agreements		X	Refer to Section 6.8 for additional details.
	Stage 3 Plans	X		ODOT to review all plans and documents and provide comments.

Communication: 09-26-22 REVISED ODOT Let Agreement (Resolutions for First Reading)

	Cost Estimates	X		LPA shall prepare in Estimator format.
	Final Plan Package	X		ODOT to review all plans and documents and provide comments.
	Mitigation		X	ODOT will coordinate any required mitigation efforts.
	Public/Stakeholder Involvement	X		ODOT to review all PI plans and materials and provide comments.
Construction	Advertise		X	LPA and consultants to assist in responding to bidder questions and preparation of any addenda.
	Award		X	ODOT Awards Committee
	Administer Construction Contract		X	ODOT will administer the construction contract. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues.
	Public/Stakeholder Involvement	X	X	ODOT to coordinate in cooperation with the LPA.
All Phases	Federal Authorizations		X	ODOT will coordinate and obtain all needed FHWA Authorizations and notify the LPA upon approval.
All Phases	Encumbrance of Funds		X	ODOT will encumber funds in accordance with this Agreement.

- 4.3 The LPA shall designate an LPA employee to act as the LPA Project Manager and act as the point of contact for all communications with ODOT.
- 4.4 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.5 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.
- 4.6 Environmental Responsibilities
- A. In the administration of this PROJECT, the Permittee shall be responsible for conducting any required public involvement activities, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act.
 - B. If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire a consultant in accordance with Section 5.
 - C. ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
 - D. Whichever party obtains the Project's environmental clearance or permits shall be responsible for assuring compliance with all commitments made as part of such clearance or permit requirements during the construction of the PROJECT.
 - E. The LPA shall require its consultant to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act.
 - F. The LPA shall require its consultant to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
 - G. The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.
- 4.7 Use of ODOT Consultant Agreements
- A. ODOT may provide services through ODOT held consultant agreements at its discretion subject to funding participation by the LPA. Agreements that may be available for use include the following:
 - 1. If the LPA chooses to utilize the CEO task order contract for environmental services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT

prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.

2. If the LPA chooses to utilize the CEAO task order contract for right-of-way acquisition services, the parties agree that the total cost shall be shared based on the following percentages: 80 percent federal/state funds and 20 percent local funds. The LPA agrees to pay its share of the estimated cost upon receipt of an invoice from ODOT prior to the issuance of any acquisition authorization. Once the Project is completed and the final costs determined, the LPA shall be refunded any excess amount paid if the total cost is below the estimated cost, or it shall be invoiced for its share of any increased cost above the estimated cost. The LPA agrees that it shall participate at the same funding percentage if the final costs exceed the estimated cost.
3. Value Engineering. If Value Engineering is required, the Department may elect to use an ODOT held agreement to assist in administering the Value Engineering process. If Value Engineering is required, the LPA shall require its consultants to participate as needed.

5. CONSULTANT SELECTION AND ADMINISTRATION

5.1 General Requirements

- A. The LPA must select a consultant/ consultant team that is prequalified by ODOT for all services to be performed by the consultant and subconsultants.
- B. The LPA must incorporate ODOT's "Specifications for Consulting Services – 2016 Edition" as a contract document in all of its consultant contracts.
- C. The LPA must require, as a scope of services clause, that project development follow ODOT's Project Development Process, and that all documents and plans prepared by the consultant must conform to ODOT's current standards, including the electronic deliverable requirements of ODOT's CADD Engineering Standards Manual, and Location and Design Manual Volume 3, Section 1500.
- D. The LPA consultant agreement must provide for ongoing consultant involvement during the construction phase of the Project.
- E. The LPA consultant agreement must include a completion schedule acceptable to ODOT.
- F. The LPA must assist ODOT in rating the consultant's performance through ODOT's Consultant Evaluation System.
- G. The LPA must cooperate with ODOT in directing additional or corrective work, and to recover damages due to errors or omissions.
- H. If Federal Funds are used to pay the cost of any contract for professional services, the LPA must comply with 23 CFR 172, Sections 153.65 through 153.71 of the Ohio Revised Code and Section 5.2 below in the selection of consultants, and administer consultant agreements in accordance with ODOT's Manual for Administration of Contracts for Professional Services. Professional services, as defined in Sections 5526.01 and

153.65(C) of the Ohio Revised Code, include the practice of engineering (including inspection of construction), the practice of surveying, the practice of architecture including landscape architecture, evaluation of environmental impacts, right-of-way acquisition services and administration of construction contract claims.

5.2 Procedures for LPA Selection of Consultants for Agreements that Include Federal Funds in Preliminary Engineering

A. Policies in Selection of Consultants

1. Restrictions Concerning LPA Preferences

The LPA **shall not** offer direction to consultants concerning preferences (or informal sanctions) for certain subconsultants or team arrangements. These arrangements are business decisions that must be made by consultants without direction from the LPA. The LPA must make selection decisions on the basis of proposed teams without advance "steering" of teams.

2. Communications Restrictions

Please note the following policy concerning communication between Consultants and the LPA during the announcement and selection process:

During the time period between advertisement and the announcement of final consultant selections for the Programmatic Selection Process, communication with consultants (or their agents) shall be limited as follows:

a. Communications which are strictly prohibited:

- (1) Communication with the LPA: Any marketing or similar discussions of the specific project if the consultant has submitted or plans to submit a letter of interest, or is included as a subconsultant on a submittal by another firm.

b. Allowable communications include:

- (1) Project administration activities for authorized agreements, scope and negotiation activities for projects selected but not under contract.
- (2) Technical or scope of services questions specific to projects posted with a programmatic group.

c. When completed selections must be publicly announced.

3. Advertisement

For selection procedures that require public notification, Requests for Letters of Interest "RFLol" must be advertised on the Consultant Services page of ODOT's website.

4. Disclosure of Selection Information

All selection information including consultant letters of interest shall be available for public disclosure upon completion of the selection.

Information that is not subject to public disclosure at any time includes financial statements and other confidential financial information submitted by a consultant.

5. Supporting Documentation

Documentation supporting the solicitation, proposal, evaluation, and selection of the consultant shall be retained.

6. Prohibited Selection Factors

- a. Price shall not be used as a factor in the evaluation, ranking, and selection phase. All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.
- b. In-State or local **preference** shall not be used as a factor in the evaluation, ranking, and selection phase. State licensing laws are not preempted by this provision and professional licensure within a jurisdiction may be established as a requirement for the minimum qualifications and competence of a consultant to perform the solicited services.

Refer to Section 5.2.C.1.n. below for additional guidance concerning the use of local **presence** as a nominal evaluation factor where appropriate.

B. Consultant Selection Processes

The LPA may use any one of five consultant selection processes permitted by 23 CFR 172 and ORC 153.65 – 153.71, the use of which depends on the complexity of the project, estimated total fee, the number of available qualified consultants and whether an emergency exists. The Programmatic and Technical Proposal selection processes are competitive qualifications based selection processes governed by 23 CFR 172.7(a)(1) and ORC 153.65 – 153.71. These selection processes require solicitation, evaluation, ranking, selection, and negotiation in accordance with the qualifications-based selection procurement procedures for architectural and engineering services codified under 40 U.S.C. 1101-1104, commonly referred to as the Brooks Act or Selection of Architects and Engineers.

The Small Purchase selection process is a non-competitive selection process governed by 23 CFR 172.7(a)(2) and ORC 153.71(A). Agreements with total fees less than \$50,000 are eligible for this selection process.

The Emergency and Special Expertise selection processes are non-competitive selection processes governed by 23 CFR 172.7(a)(3) and ORC 153.71.

1. Programmatic Selection Process

The Programmatic Selection Process is a one-step selection process intended to shorten the selection/authorization process for non-complex projects while reducing paperwork and administrative costs for both consultants and the State. In this process consultants are selected based on standard letter of interest content, and a standard Selection Rating Form.. The “Programmatic” selection process should be used for most projects that do not meet the criteria for the more elaborate Technical Proposal Selection Process.

2. Technical Proposal Selection Process

The technical proposal selection process is a two-step process intended for use on larger, more complex projects for which a more informed selection decision can be made based on additional information received through the submittal of a (more elaborate) Technical Proposal, and/or presentations/interviews. The Technical Proposal Selection Process is appropriate to use under the following circumstances:

- a. Complex projects involving multiple PDP steps and multiple disciplines including planning, environmental and design services.
- b. Projects that include complex project management challenges in which the role of the consultant project manager will be crucial to project success, and may require extensive public involvement activities.
- c. Specialized services for which the LPA has limited experience and performance records for past projects.
- d. Generally any project for which a single submittal does not provide sufficient information to make a well informed selection decision.

The technical proposal selection process includes the initial submittal of a letter of interest similar to the Programmatic Selection Process, and then "shortlisting" to at least three of the most highly qualified firms. The standard letter of interest content may be revised to include increased page limits and project specific content. The shortlisted firms are then required to submit additional written information (technical proposal) and/or participate in additional discussions or presentation/interview. The content of the technical proposal and the format of interviews can be tailored to fit the requirements of specific projects.

Discussions, if required by the RFLol, may be written, by telephone, video conference, or by oral presentation/interview and shall be with at least three of the most highly qualified consultants to clarify the technical approach, qualifications, and capabilities provided in response to the RFLol.

The process for shortlisting at least three consultants is identical to that of the Programmatic Selection Process. The final selection of a single consultant also follows the same process but considers the written technical proposal and/or presentation/interview along with the initial letter of interest.

3. Emergency Selection Process

The LPA may directly select a consultant for a project determined by the Director of Transportation to be an emergency which will not permit the time necessary to conduct a competitive selection process. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

4. Small Purchase Selection Process

The LPA may directly select consultants without solicitation for projects with an estimated total fee of less than \$50,000. The scope of work, project phases, and contract requirements shall not be broken down into smaller components merely to permit the use of fee exempt procedures. The following requirements apply:

- a. The qualifications of a minimum of three consultants must be reviewed prior to selection. The consultants considered for selection and the reasons for selecting the most qualified consultant shall be documented.

In instances where two or fewer consultants are considered qualified, the LPA may proceed with evaluation and selection if it is determined that the project requirements did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- b. The full amount of any contract modification that would cause the total contract amount to exceed \$50,000 is ineligible for Federal-aid funding. The FHWA may withdraw all Federal-aid from a contract if Federal funds are used in modifying an agreement above the \$50,000 simplified acquisition threshold.
- c. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

5. Special Expertise Selection Process

The LPA may directly select consultants for projects for which the service is available only from a single source. Contract costs shall be negotiated in accordance with Chapter 3, Section 3.9 of ODOT's Consultant Contract Administration.

C. Selection Procedures – Programmatic Selection Process

1. Letter of Interest Content

Requests for Letters of Interest (RFLol) shall include the following:

- a. Project name from Ellis (County-Route-Section);
- b. A description of the project including the location.
- c. A description of the selection process to be used, including the number of steps (direct selection based on the information provided, or a two-step process with a short list and technical proposal and/or interviews, etc.), and the selection rating criteria to be used. The standard selection rating form included herein should be used for most projects.
- d. Any restrictions on communicating with government officials during the selection process.
- e. Any restrictions concerning suspended or debarred firms.

- f. Date that the letter of interest is due. The minimum response time shall be two weeks from the initial posting date.
- g. The approximate construction cost if available.
- h. Any special provisions or contract requirements associated with the services.
- i. The following notification:

The [LPA] in accordance with Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, all bidders including disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex (including pregnancy, gender identity and sexual orientation), age, disability, low-income status, or limited English proficiency in consideration for an award.

- j. The DBE Goal requirements and related selection procedures.
- k. Major work elements involved.
- l. A detailed scope of services for the agreement.
- m. The ODOT prequalification(s) required to provide the services;
- n. Subfactors - Any important aspects of a project, if any, that will play a large role in the consultant selection process.

In-State or local preference shall not be used as a selection factor or subfactor, however a local presence may be used as a nominal evaluation factor where appropriate. This criteria shall not be based on political or jurisdictional boundaries and may be applied on a project-by-project basis for contracts where a need has been established for a consultant to provide a local presence, a local presence will add value to the quality and efficiency of the project, and application of this criteria leaves an appropriate number of qualified consultants, given the nature and size of the project. If a consultant from outside of the locality area indicates as part of a proposal that it will satisfy the criteria in some manner, such as establishing a local project office, that commitment shall be considered to have satisfied the local presence criteria.

- o. The contract type and payment method(s) anticipated to contract for the solicited services. Refer to Chapter 4 of ODOT's Consultant Contract Administration for detailed explanations of contract types and payment methods.
- p. Estimated date of authorization.
- q. Time period in which the work must be completed.

- r. Instructions for submitting a letter of interest including content and required format. The information requested should be consistent with the rating criteria.
- s. Required content of the letter of interest (RFLol) including;
 - (1) The firm's general qualifications.
 - (2) Proposed key staff including key subconsultant staff and project approach.
 - (3) A listing of subconsultants including project responsibility.
 - (4) Whether resumes of key staff members must be submitted.
 - (5) Other information needed to make an informed selection decision.

2. Evaluation Process

- a. Initially evaluate all firms for compliance with the following requirements, advise Districts of the firms that must be eliminated from further consideration and the reason for elimination:
 - (1) Compliance with general Lol requirements, current negligence issues, and ongoing performance issues identified through CES, overall low CES rating, insufficient staff, excessive workload, or any other significant issues relative to a firm's performance.
 - (2) Inclusion on the list of firms suspended or debarred by the Federal Government.
 - (3) For projects noted as having DBE Goals, ODOT will determine whether the consultant made a good faith effort to meet the goal in accordance with 49 CFR 26.53 and Appendix A to Part 26. The letter of interest must show that the consultant has made good faith efforts to meet the goal. Good faith efforts may include: (1) Documentation that the consultant has obtained enough DBE or EDGE (Encouraging Diversity, Growth and Equity) participation to meet the goal; or (2) Documentation that it made adequate good faith efforts, as defined in 49 CFR 26.53, to meet the goal, even though it did not succeed in obtaining enough DBE/EDGE participation to do so. Consultants that do not show good faith efforts to meet the Goal will not be eligible for selection.
- b. Compliance with prequalification requirements.
- c. Reduce the number of firms to 3-6 for each project through a process of elimination, based on the selection rating factors included in the Consultant Selection Rating Form. Firms may be eliminated due to fatal flaws, overall weakness of team relative to other firms, weak project approach, etc. Provide written documentation concerning the reasons for eliminating a firm from consideration.

In instances where two or fewer consultants respond to the RFLol, or two or fewer consultants are considered qualified to be shortlisted, the LPA may proceed with evaluation and selection if it is determined that the

solicitation did not contain conditions or requirements that arbitrarily limited competition. The reasons for proceeding with the selection shall be documented.

- d. For each project, rate each shortlisted firm using the selection rating form.

Supplement the numerical ratings with written comments that explain the differential scoring. The highest rated firm shall be selected.

3. Selection Rating Procedures

- a. ODOT's standard consultant selection rating form is shown below. The LPA may use a modified selection rating form that meets the requirements of 23 CFR 172 and ORC 153.65 – 153.71.
- b. Selection evaluations should be based on collaborative discussions of the selection committee members concerning the overall strengths and weaknesses of the teams, including the relative importance of the various selection rating factors relative to the specific requirements of the project. Numerical weights are a guide as to what is important but the selection should not be a mathematical exercise consisting of the addition of scores determined by individual team members. The selection team members should work to reach consensus in determining a single selection rating including written comments that document the reasons for the numerical scores.
- c. For each selection rating factor, each short listed firm shall be ranked, with the highest ranked firm receiving the maximum number of points, and lower ranked firms receiving commensurately lower scores. If firms are considered to be equally qualified, the firms may receive the same score for that selection rating factor. The rankings and scores should be based on each firm's specific proposal and project approach, including the named project manager, staff and subconsultants. Experience on similar projects, past performance for the LPA and other agencies should be considered. The selection committee may contact other ODOT Districts and outside agencies if necessary. Any subfactors identified in the RFLol should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of a selection factor in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differential scores assigned to projects that require a larger role for the project manager. Similar consideration should be given to all selection factors

4. ODOT's Consultant Selection Rating Form and Selection Rating Notes

Category	Total Value	Scoring Criteria	Score
Management & Team			
Project Manager	10	See Note a. below	

Strength/Experience of Assigned Staff including Subconsultants	25	See Note b. below	
Firm's Current Workload/ Availability of Personnel	10	See Note c. below	
Consultant's Past Performance	30	See Note d. below	
Project Approach	25	See Note e. below	
Total	100		

The following discussion addresses each selection rating factor including scoring methodology, appropriate sources of information and factors that may not be considered.

a. Project Manager

The proposed project manager for each consultant shall be ranked, with the highest ranked project manager receiving the greatest number of points, and lower ranked project managers receiving commensurately lower scores. The rankings and scores should be based on each project manager's experience on similar projects and past performance for the LPA. The selection committee may contact ODOT and outside agencies if necessary. Any subfactors identified should be weighed heavily in the differential scoring.

Differential scoring should consider the relative importance of the project manager's role in the success of a given project. The project manager's role in a simple project may be less important than for a complex project, and differential scoring should reflect this, with higher differentials assigned to projects that require a larger role for the project manager.

b. Strength/Experience of Assigned Staff including Subconsultants

The experience and strength of the assigned staff, including subconsultant staff, should be ranked and scored as noted for Number 1 above, with higher differential scores assigned on more difficult projects. Any subfactors identified in the project notification should be weighed heavily in the differential scoring.

As above, ODOT and other agencies may be contacted.

c. Firm's Current Workload/ Availability of Personnel (Considered at statewide meeting)

In instances when consultant's current workload may impact their ability to complete the work as proposed, the firm's current workload and availability of qualified personnel shall be considered.

d. Consultant's Past Performance

The consultants' past performance on similar projects, including subconsultant performance, shall be ranked and scored on a relative, differential scoring type basis, with the highest ranked consultant receiving a commensurately greater number of points. The selection team should consider ODOT CES performance ratings if available, and consult other ODOT Districts, ODOT Central Offices, and other agencies as appropriate. The use of CES ratings shall place emphasis on the specific type of services requested.

The differential scoring should consider the complexity of the project and any subfactors identified in the project notification.

e. Project Approach

Evaluation of the firm's project approach shall consider:

- (1) The firm's technical approach and understanding of the project.
- (2) The firm's qualifications for the project including knowledge and experience concerning relevant ODOT standards, procedures and guidance documents.
- (3) Any innovative ideas.

When considering this factor in rating firms, the type of project and the relevance of this factor to the project must be considered. For task order and construction inspection projects, and small uncomplicated design projects, the possibility for innovation may be very limited. Larger more complex projects will generally offer more opportunities for innovation. Consultants that identify truly innovative ideas should receive credit in the selection rating, but this factor can be disregarded when projects offer little opportunity for innovation.

- (4) The firm's project specific plan for ensuring increased quality, reduced project delivery time and reduced project costs.

These factors will be relatively more important and relevant to a complex PDP project, and much less important for a construction inspection or task order contract. Please remember that Federal rules prohibit consideration of overhead rates, wage rates or any other cost data submitted voluntarily by the consultant.

D. Negotiation of Consultant Agreements

Agreements shall be negotiated in accordance with ODOT's Manual for Administration of Contracts for Professional Services, Volume 1 Consultant Contract Administration, Section 3.9.

E. Agreements

ODOT will prepare the LPA/Consultant Agreement between the Consultant and LPA. The agreement will be transmitted to the LPA by the ODOT District Office. A copy of the executed LPA/Consultant Agreement shall be returned to the District Office.

F. Documentation of Consultant Selections

The LPA shall maintain a consultant selection file that includes the following information, and provide copies of all documents to the District for their files.

1. A copy of the Request for Proposal and the date posted on ODOT's website;
2. A listing of firms that submitted Letters of Interest;
3. Letters of Interest from all firms that submitted;
4. Selection rating forms and any supporting notes and documentation, including membership of the selection committee;
5. A listing of firms selected to submit technical proposals (if applicable), copies of the technical proposals, and related correspondence;
6. Selected consultant's Price Proposal;
7. Negotiation records; and
8. A copy of the Agreement, Scope of Services, authorization letter, Invoice and Project Schedule, and any other documents relevant to the agreement.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. Refer to Sections 4.2 and 4.4 concerning Federal authorization.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds

disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.

- 6.6 ODOT will coordinate with utilities, complete RE-75 forms, establish encumbrances towards each utility if needed, prepare an invoice to the LPA for the local share, and pay the State share as needed. In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. In the event that a utility is delaying the relocation of its facilities, the LPA shall take any action necessary to order and cause the removal and relocation of such utility. No reimbursable costs shall be incurred prior to the receipt of Federal Authorization for Right of Way from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 ODOT shall be responsible for any necessary railroad coordination and agreements in accordance with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.

7. ADVERTISING, SALE AND AWARD

- 7.1 ODOT will prepare the State's estimate and manage the advertising, sale and award process. The LPA and its consultant shall assist in responding to bidder questions, preparation of any addenda and other coordination as needed. ODOT's Awards Committee shall determine award of the contract.

8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 ODOT will administer the construction contract in accordance with ODOT's Construction Administration Manual of Procedures. The LPA and LPA's consultants shall respond promptly to requests for information or other construction issues. The LPA shall review and approve all change orders. The LPA and LPA's consultant shall assist in defending ODOT against any contractor claims.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA

has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from contractor performance and payment bond(s) and consultant insurance shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identification and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- 10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. For a PROJECT upon which a DBE goal is assigned, the LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

Pursuant to 49 CFR 26.13(b), the LPA agrees not to discriminate on the basis of race, color, national origin, or sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, or limited English proficiency in the performance of this Agreement. The LPA agrees to carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. The LPA understands that failure to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as ODOT deems appropriate.

- 10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest") agrees as follows:
- (a) Compliance with Regulations: The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as “ADA/504”).

- (b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, or limited English proficiency, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
- (c) **Solicitations for Professional Services:** In all solicitations for professional services made by the LPA for work to be performed under a contract or subcontract, each potential consultant will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status, or limited English proficiency.
- (d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
 - (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
 - (2) cancellation, termination or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) Above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and

contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

- 11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.
- 11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.
12. TERMINATION; DEFAULT AND BREACH OF CONTRACT
- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.
- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA

shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

- 12.5 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the ORC.
- 13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

- 14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Safety Service Director	District 5 Capital Programs Administrator
City of Mount Vernon	Ohio Department of Transportation
40 Public Square	9600 Jacksontown Road
Mount Vernon, Ohio 43050	Jacksontown, Ohio 43030

15. GENERAL PROVISIONS

15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: *[LPA official must initial the option selected.]*

☐

1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.

- (A) The LPA **does not** currently maintain an ODOT approved federally compliant time-tracking system¹, **and**
 (B) The LPA **does not** intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
 (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

☐

2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.²

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
 (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐

3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.³

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
 (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

1 A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. The definition of MTDC is provided in the regulation at 2 CFR §200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is

4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.⁴

- (A)** The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, **and**
- (B)** The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C)** Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

- 15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.
- 15.3 *Financial Reporting and Audit Requirements:* If one or more phases of this AGREEMENT include a sub-award of federal funds to the LPA, the LPA shall comply with the financial reporting and audit requirements of 2 CFR Part 200. If not, the financial reporting and audit requirements remain with ODOT.

All non-federal entities, including ODOT's LPA subrecipients, that have aggregate federal awards expenditures from all sources of \$750,000 or more in the non-federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

LPAs that expend Federal and State funds in the Preliminary Engineering and/or Right of Way phases of the Project must track these payments throughout the life of the in order to ensure an accurate Schedule of Expenditures of Federal Award (hereinafter referred to as SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring funds related to this PROJECT are reported when the activity related to the Federal award occurs.⁵ Further, the LPA may make this

applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

- 4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

⁵ Per 2 CFR §200.502

determination consistent with 2 CFR §200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

- 15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of PROJECT expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

- 15.5 *Ohio Ethics Laws:* LPA agrees they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.7 *Trade:* Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

- 15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of

Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

- 15.9 *Debarment*: LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 *Governing Law*: This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.11 *Assignment*: Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.12 *Merger and Modification*: This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.13 *Severability*: If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.14 *Signatures*: Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 15.15 *Facsimile Signatures*: Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: City of Mount Vernon	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title:	Jack Marchbanks Director
Date:	Date:

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

Uses/Sources	LPA Funds			FHWA Funds			State Funds			Total
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
Preliminary Engineering	\$ 65,329.00	20%	LNTP	\$ 261,316.00	80%	4TF7/CR06				\$ 326,645.00
	\$ 416,511.00	100%	LNTP							\$ 416,511.00
Final Design, Construction Plans & Specifications	\$ 115,933.00	100%	LNTP							\$ 115,933.00
Acquisition of Right of Way & Utility Relocation	\$ 2,075,752.00	100%	LNTP							\$ 2,075,752.00
Project Construction Costs	\$ 6,337,217.00	100%	LNTP							\$ 6,337,217.00
Inspection	\$ 1,139,361.00	100%	LNTP							\$ 1,139,361.00
Totals	\$ 10,150,103.00			\$ 261,316.00						\$ 10,411,419.00

COUNTY-ROUTE-SECTION

PID NUMBER

AGREEMENT NUMBER

DUNS NUMBER

Attachment 2**DIRECT PAYMENT OF CONSULTANT**

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's consultant shall be paid directly to the consultant in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this Agreement, and shall indicate that the payment is to be made to the consultant. In addition, the invoice must state the consultant's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the consultant and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the consultant, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (subrecipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We _____ request that all payments for the Federal/State share of the consultant costs of this Agreement performed by _____ be paid directly to _____.

VENDOR Name:	
Oaks Vendor ID:	
Mailing Address:	
LPA signature:	

LPA Name:	
Oaks Vendor ID:	
Mailing Address:	
ODOT signature:	



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-96

Meeting: 09/26/22 7:30 PM
Dept: Finance and Budget
Seavolt, Kirby
Category: Finance
Prepared By: Terry Scott
Initiator: Todd Hill
DOC ID: 3652

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO MAKE SUPPLEMENTAL APPROPRIATIONS.

NOW, THEREFORE, BE IT RESOLVED by the City of Mount Vernon, State of Ohio:

SECTION 1: That the Auditor for the City of Mount Vernon be, and he herewith is, authorized and directed to make supplemental appropriations as follows:

1. To Account 405.2900.55514, Roads-Asphalt, in the amount of \$23,410.98.
(Station Break - Resources for Parking Lot Pavement Project)
2. To Account 603.2400.56612, Bonds & Inspection Fees, in the amount of \$10,000.00.
(City has exceeded its Estimated Resources for 2022)
3. To Account 101.1700.54112, MERIT Drug Court Program, in the amount of \$3,016.00.
(Grant from Mental Health & Recovery for Licking/Knox Counties)
4. To Account 101.2500.56613, Arbor Trust, in the amount of \$3,000.00.
(Grant award from Available Petition Fund - Shade Tree USA Program)

SECTION 2: This Resolution provides for appropriations for the current expenses of the city, and therefore, pursuant to Revised Code Section 731.20, it shall become effective upon its date of passage and approval by the Mayor.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-97

Meeting: 09/26/22 7:30 PM
Dept: Finance and Budget
Seavolt, Kirby
Category: Finance
Prepared By: Terry Scott
Initiator: Todd Hill
DOC ID: 3653

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO PAY BILLS PURSUANT TO SECTION 5705.41 (D), THEN AND NOW CERTIFICATION.

WHEREAS, the Safety-Service Director for the City of Mount Vernon did make the necessary inquiries that these billed amounts as indicated are legitimate and proper and did approve payment in the amounts shown; and

WHEREAS, at the time of the making of such contract or order and at the time of the execution of such certificate a sufficient sum appropriated for the purpose of such contract or order was in the treasury or in the process of collection to the credit of an appropriate fund free from any previous encumbrances.

NOW, THEREFORE, BE IT RESOLVED by the City of Mount Vernon, State of Ohio:

SECTION 1: That the Auditor for the City of Mount Vernon be, and he herewith is, authorized and directed to pay bills as follows:

1. To Ohio Alcohol Monitoring System, in the amount of \$6,582.00, to be taken from Account 220.1700.53216, Drivers Interlock & Alcohol Monitoring.

SECTION 2: This Resolution provides for appropriations for the current expenses of the City, and therefore, pursuant to Revised Code Section 731.30, it shall become effective upon its date of passage and approval by the Mayor.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-98

Meeting: 09/26/22 7:30 PM
Dept: Finance and Budget
Seavolt, Kirby
Category: Finance
Prepared By: Terry Scott
Initiator: Todd Hill
DOC ID: 3654

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO PAY BILLS FROM 2021; AND DECLARING AN EMERGENCY.

WHEREAS, the Safety-Service Director for the City of Mount Vernon did make the necessary inquiries that these billed amounts as indicated are legitimate and proper and did approve payment in the amounts shown; and

WHEREAS, these bills are now due and payable,

NOW, THEREFORE, BE IT RESOLVED by the City of Mount Vernon, State of Ohio:

SECTION 1: That the Auditor for the City of Mount Vernon be, and he herewith is, authorized and directed to pay the following:

1. Ohio Alcohol Monitoring System, in the amount of \$690.50, to be taken from Account 220.1700.53216, Drivers Interlock & Alcohol Monitoring.

SECTION 2: This Resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public, peace, health and safety, and for the preservation of the good credit of the City of Mount Vernon, therefore, it become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

RESOLUTION 2022-99

Meeting: 09/26/22 7:30 PM
Dept: Finance and Budget
Seavolt, Kirby
Category: Finance
Prepared By: Terry Scott
Initiator: Todd Hill
DOC ID: 3655

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO TRANSFER CERTAIN FUNDS.

NOW, THEREFORE, BE IT RESOLVED by the City of Mount Vernon, State of Ohio:

SECTION 1: That the Auditor for the City of Mount Vernon be, and he herewith is, authorized and directed to transfer funds as follows:

1. Transfer from Account 720.2820.53211, Water Plant-Plant Chemicals, to Account 720.2840.53214, W/W-Collection-Maintenance-Vehicle-Equipment, in the amount of \$1,000.00.
2. Transfer from Account 101.1785.54112, Drug Testing, to Account 101.1785.54118, Counseling, in the amount of \$10,000.00.
3. Transfer from Account 701.2700.54311, Training/Travel, to Account 701.2700.53214, Maintenance-Vehicle, in the amount of \$800.00.
4. Transfer from Account 720.2700.54311, Training/Travel, to Account 720.2700.53214, Maintenance-Vehicle, in the amount of \$800.00.

SECTION 2: This Resolution provides for appropriations for the current expenses of the city, and therefore, pursuant to Revised Code Section 731.30, it shall become effective upon its date of passage and approval by the Mayor.



**City Council
City of Mount Vernon
Mount Vernon, OH 43050**

SCHEDULED

RESOLUTION 2022-100

Meeting: 09/26/22 7:30 PM
Dept: Finance and Budget
Seavolt, Kirby
Category: Personnel
Prepared By: Rob Broeren
Initiator: Todd Hill
DOC ID: 3656

A RESOLUTION AUTHORIZING AND DIRECTING THE AUDITOR OF THE CITY OF MOUNT VERNON TO TRANSFER CERTAIN FUNDS.

WHEREAS, the Administration of the City of Mount Vernon adopted a written policy for the expenditure of funds to recognize the service of City employees; and

WHEREAS, Council wishes to allocate funds specifically to be spent in accordance with that policy.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the Auditor for the City of Mount Vernon be, and he herewith is, authorized and directed to transfer funds as follows:

1. From Account 101.2620.51111, Recreation Personnel, to Account 101.2320.54312, Workforce Development, in the amount of \$2,000.00.

SECTION 2: This Resolution provides for appropriations for the current expenses of the city, and therefore, pursuant to Revised Code Section 731.30, it shall become effective upon its date of passage and approval by the Mayor.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

ORDINANCE 2022-31

Meeting: 09/26/22 7:30 PM
Dept: Planning and Zoning
Hillier, Severns
Category: Agreement
Prepared By: Todd Hill
Initiator: Todd Hill
DOC ID: 3627

AN ORDINANCE TO APPROVE, ADOPT AND ENACT THE AUGUST 2022 REPLACEMENT PAGES TO THE CODIFIED ORDINANCES; TO REPEAL ORDINANCES IN CONFLICT THEREWITH; TO PUBLISH THE ENACTMENT OF NEW MATTER; AND DECLARING AN EMERGENCY.

WHEREAS, certain provisions within the Codified Ordinances should be amended to conform with current State law as required by the Ohio Constitution; and

WHEREAS, various ordinances of a general and permanent nature have been passed by Council which should be included in the Codified Ordinances; and

WHEREAS, Council has heretofore entered into a contract with the Walter H. Drane Company to prepare and publish an annual revision; and

WHEREAS, the codification of such ordinances, together with the new matter to be adopted, the matters to be amended and those to be repealed are before the Council:

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the editing, arrangement and numbering or renumbering of the following ordinances and parts of ordinances are hereby approved as parts of the various component codes of the Codified Ordinances of Mount Vernon, Ohio, so as to conform to the classification and numbering system of the Codified Ordinances, to-wit:

<u>Ord. No.</u>	<u>Date</u>	<u>C.O. Section</u>
2022-22	6-13-22	902.02
2022-25	7-25-22	Pt. 11 Appx. II

SECTION 2: That, the following sections and chapters are hereby added, amended or repealed as respectively indicated in order to comply with current State law.

General Offenses Code

513.01 Drug Abuse Control Definitions. (Amended)
513.16 Sale of Dextromethorphan. (Added)
529.01 Liquor Control Definitions. (Amended)
529.07 Open Container Prohibited. (Amended)
537.19 Hazing Prohibited. (Added)
549.02 Carrying Concealed Weapons. (Amended)

- 549.04 Improperly Handling Firearms in a Motor Vehicle. (Amended)
- 549.10 Possessing Replica Firearm in School. (Amended)
- 549.12 Concealed Handgun Licenses; Possession of Revoked or Suspended License; Additional Restrictions; Posting Signs Prohibiting Possession. (Added)

Fire Prevention Code

- 1519.01 Fireworks Definitions. (Amended)
- 1519.04 Possession, Sale or Discharge Prohibited; Exceptions. (Amended)
- 1519.05 Application. (Amended)
- 1519.06 Safety Requirements for Fireworks Showroom Structures. (Added)
- 1519.07 Manufacturing or Wholesale Sale Without a License; Prohibitions. (Added)
- 1519.08 Purchase to Comply with Law; Unauthorized Purchases. (Added)

SECTION 3: That the complete text of the sections listed above are set forth in full in the current replacement pages to the Codified Ordinances which are hereby attached to this ordinance as Exhibit A. The listing above of each new section by reference to its title shall constitute sufficient publication of new matter contained therein.

SECTION 4: This Ordinance is hereby declared to be an emergency measure and necessary for the immediate preservation of the public peace, health and safety, and for the further reason that an emergency exists in the usual daily operation of the various departments of the municipal government, and said Ordinance shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22 City Council FIRST READING

Ordinance No. 2022-31 was given a first reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

Meeting: 09/26/22 7:30 PM
Dept: Employee and Community Rel.

Francis, Hillier

Category: Personnel

Prepared By: Rob Broeren

Initiator: Todd Hill

SCHEDULED

ORDINANCE 2022-32

DOC ID: 3640

AN ORDINANCE FIXING THE NUMBER OF HOURLY EMPLOYEES OF THE CITY OF MOUNT VERNON IN THE WATER, WASTEWATER, PUBLIC WORKS AND ENGINEER'S DEPARTMENTS, AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the following positions are hereby authorized as indicated:

WASTEWATER WORKS DEPT:

~~1/2 Utility Operations Crew Chief~~
~~Four Plant Operators (4 O&M Techs)~~
~~1/2 Assistant Laboratory Technician (full-time) (1/2 O&M Tech)~~
~~1/2 Clerk Typist IV (1/2 Support Specialist II)~~
~~Assistant Laboratory Technician (part-time) (1/2 O&M Tech)~~
~~1/2 Two Utility Clerk Typist III (1 Support Specialist I)~~
~~Sludge Operator (1 O&M Tech)~~
~~1/2 One Utility Clerk Typist I (1/2 Support Specialist I)~~
~~1/2 Two Mechanic Plant Maintenance (1 O&M Tech)~~
~~1/2 One Meter Reader and Repairer and Foreman (1/2 Utility Tech)~~
~~Not more than 2 Equipment Operators (2 Utility Techs)~~
~~1/2 Two Meter Readers and Repairers (1 Utility Tech)~~
~~Not more than 4 Maintenance Workers (3 Utility Techs, 1 O&M Tech)~~
~~1/2 Laboratory Technician/Pretreatment Coordinator~~
~~1/4 One Utility Clerk Typist II (1/4 Support Specialist I)~~
 One Chief Wastewater Operator
~~One Camera Operator (1 Utility Tech)~~
8 Operations and Maintenance Technicians
Not more than 7 1/2 Public Utility Technicians
1 3/4 Customer Support Specialists I
1/2 Customer Support Specialist II

Use of all above mentioned said personnel is authorized as required to meet the work demands of the Wastewater Works Department as appropriated.

WATER WORKS DEPARTMENT:

~~1/2 Utility Operations Crew Chief~~
~~1/2 Laboratory Technician/Pretreatment Coordinator~~
~~1/2 Asst. Laboratory Technician (Full Time) (1/2 O&M Tech)~~
~~1/2 One Clerk Typist IV (1/2 Support Specialist II)~~
~~Four Plant Operators (4 O&M Tech)~~
~~1/2 Two Clerk Typists III (1 Support Specialist I)~~
~~Not more than 2 Pipefitters (2 Utility Techs)~~

~~½ One Utility Clerk Typist II (½ Support Specialist I)~~
~~Not more than 2 Equipment Operators (2 Utility Techs)~~
~~½ One Meter Reader and Repairer Foreman (½ Utility Tech)~~
~~Not more than 3 Maintenance Workers (2 Utility Techs, 1 O&M Tech)~~
~~½ Two Meter Reader and Repairers (1 Utility Tech)~~
 One Chief Water Operator
~~½ Two Mechanic Plant Maintenance (1 O&M Tech)~~
~~¼ One Utility Clerk Typist II (¼ Support Specialist I)~~
6 ½ Operations and Maintenance Technicians
Not more than 7 ½ Public Utility Technicians
1 ¾ Customer Support Specialists I
½ Customer Support Specialist II

Use of all above mentioned said personnel is authorized as required to meet the work demands of the Water Works Department as appropriated.

DEPARTMENT OF PUBLIC WORKS

2 3 Public Works Crew Leaders
 1 Traffic Signal Technician/Equipment Operator
~~Not more than 4 Equipment Operators (4 Public Works Techs)~~
~~Not more than 9 Maintenance Workers (8 Public Works Techs, 1 Public Works Crew Leader)~~
~~2 Clerk Typists IV (2 Support Specialists II)~~
 Seasonal Personnel
Not more than 12 Public Works Technicians
2 Customer Support Specialists II

Use of the above mentioned said personnel is authorized as required to meet the work demands of the Public Works Department as appropriated.

ENGINEER'S DEPARTMENT:

~~3 Technicians~~ _____ ~~Clerk Typist IV~~
~~1 Aide~~ _____
4 Engineering Technicians
1 Customer Support Specialist II

Use of all above mentioned said personnel is authorized as required to meet the work demands of the Engineer's Department as appropriated.

SECTION 2: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and to allow the speedy implementation of the most recent contract for unionized employees in the City's Service Departments and said Ordinance shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/12/22

City Council

FIRST READING

Ordinance 2022-32

Meeting of September 26, 2022

Ordinance No. 2022-32 was given a first reading.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

Meeting: 09/26/22 7:30 PM
Dept: Employee and Community Rel.

Francis, Hillier
Category: Personnel

Prepared By: Rob Broeren

Initiator: Todd Hill

SCHEDULED

ORDINANCE 2022-33

DOC ID: 3646

AN ORDINANCE ESTABLISHING COMPENSATION FOR THE DIRECTOR OF HUMAN RESOURCES, AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the following supervisory position is hereby authorized at the salary listed and upon the appropriation times listed below:

Director of Human Resources.....\$77,868.00

The salary authorized by this Ordinance shall be payable bi-weekly.

SECTION 2: The salary listed is the base salary for the position. The position is eligible for annual longevity increments:

For the first five (5) years, \$400.00.

Annual Longevity Increments after five (5) years:

<u>Year 6</u>	<u>Year 7</u>	<u>Year 8</u>	<u>Year 9</u>	<u>Year 10</u>
\$500.00	\$550.00	\$600.00	\$650.00	\$700.00

The effective date of eligibility for an annual longevity increment shall be the anniversary date of employment in that position.

SECTION 3: The normal work week for this position shall be forty (40) hours in pay status work on five (5) consecutive eight (8) hour days, Monday through Friday, exclusive of the time allotted for meals, during the period starting at 12:01 A. M. Sunday to 12:00 P. M. Midnight, Saturday. Supervisory positions shall be subject to call whenever the need exists, and he or she shall not be entitled to overtime pay, compensatory time off, or flex time.

SECTION 4: This position shall be entitled to the benefits outlined in Section E of the Mount Vernon Employee Handbook effective August 2021, as amended, except that this position shall immediately be credited with 128 hours of vacation leave, which may be taken in the first year of employment, and shall earn vacation leave as if the employee had completed six (6) years of service with the City.

SECTION 5: This Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety and for the further reason to

provide needed human resources service and advice to the City, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

HISTORY:

09/19/22

City Council

FIRST READING

Ordinance No. 2022-33 was given a first reading. The chair of the Employee & Community Relations Committee requested a 10-minute committee meeting on the legislation for Sept. 26, 2022.



City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

ORDINANCE 2022-34

Meeting: 09/26/22 7:30 PM
Dept: Planning and Zoning
Hillier, Severns
 Category: Planning and Zoning
 Prepared By: Rob Broeren
 Initiator: Todd Hill
DOC ID: 3647

AN ORDINANCE APPROVING THE COMPREHENSIVE DEVELOPMENT PLAN FOR COOPER PROGRESS PARK (PARCEL NUMBERS 66-01284.000; 66-01266.000; 66-01294.001; 66-01294.000; 66-01281.000; 66-01284.000; 66-01282.000; 66-01280.000; 66-01259.000; 66-01264.000; 66-09971.000; 66-09972.000); AND DECLARING AN EMERGENCY.

WHEREAS, the Council for the City of Mount Vernon has received an application to approve the Comprehensive Development Plan for Cooper Progress Park;

WHEREAS, the Municipal Planning Commission for the City of Mount Vernon met on September 8, 2022, and voted unanimously to recommend that this Council approve the Comprehensive Development Plan for Cooper Progress Park.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the Comprehensive Development Plan for Cooper Progress Park, attached as "Exhibit A", is approved.

SECTION 2: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason to allow speedy approval of the final plat for Cooper Progress Park and said Ordinance shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

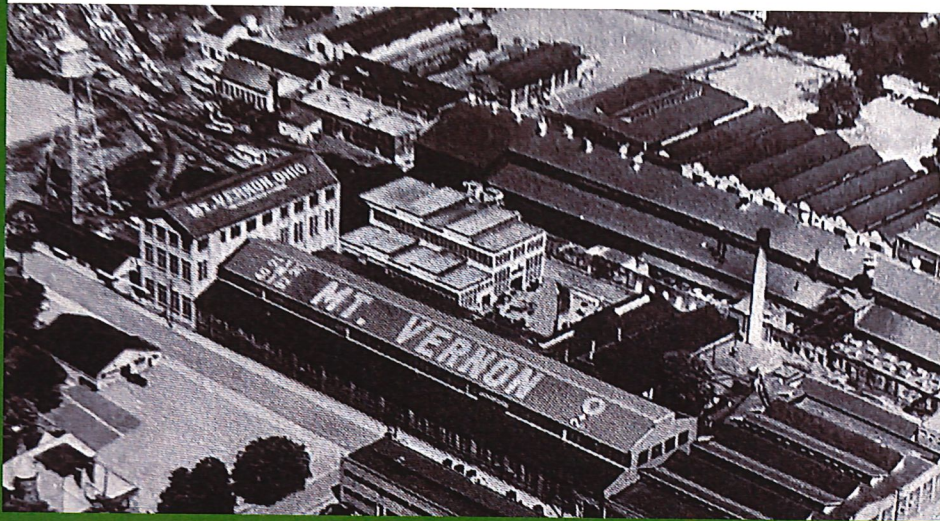
HISTORY:

09/19/22 City Council FIRST READING
 Ordinance No. 2022-34 was given a first reading.

COOPER

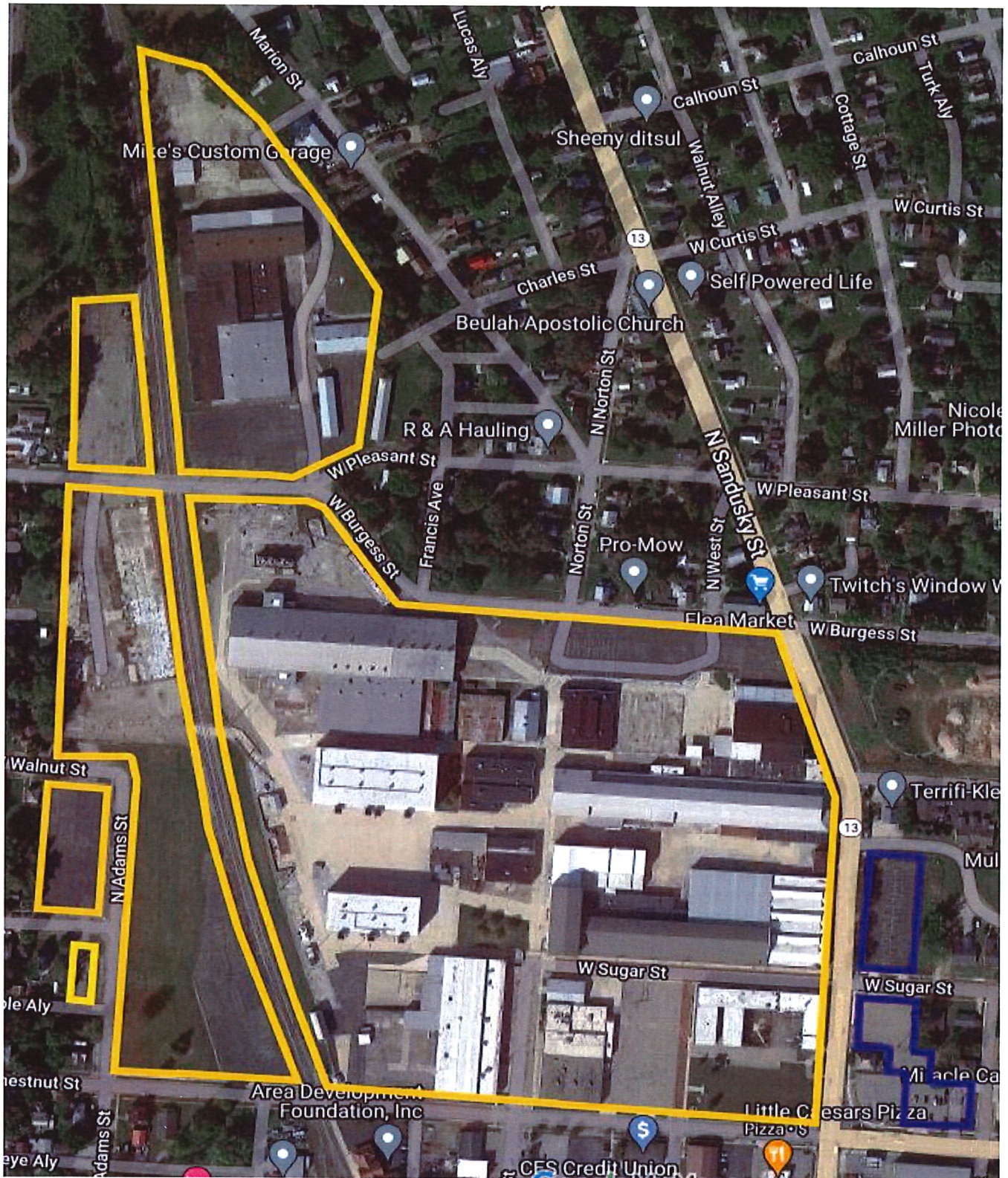
—Progress Park—

Mount Vernon, Ohio



Comprehensive Development Plan

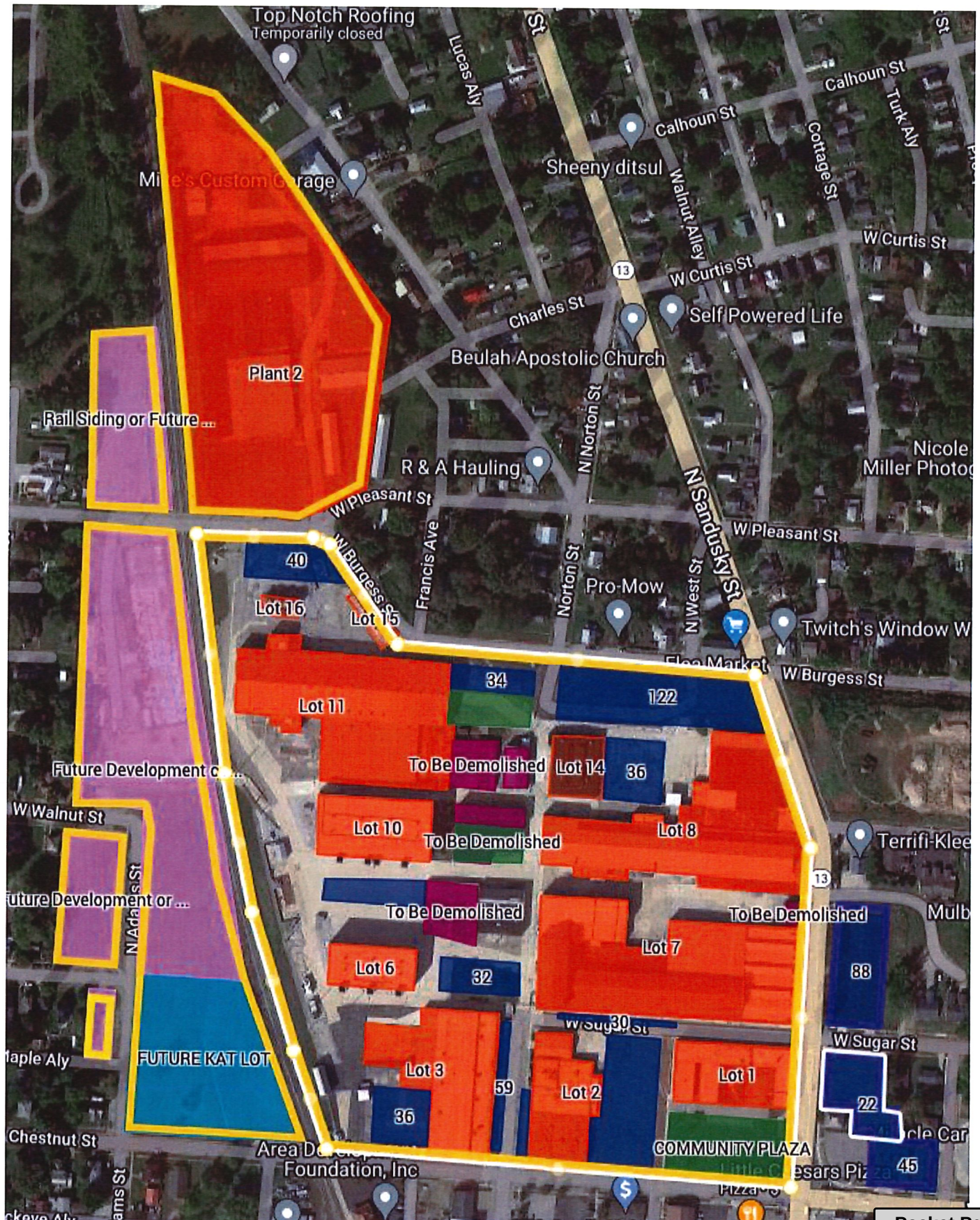
Parcel Boundaries by Phase



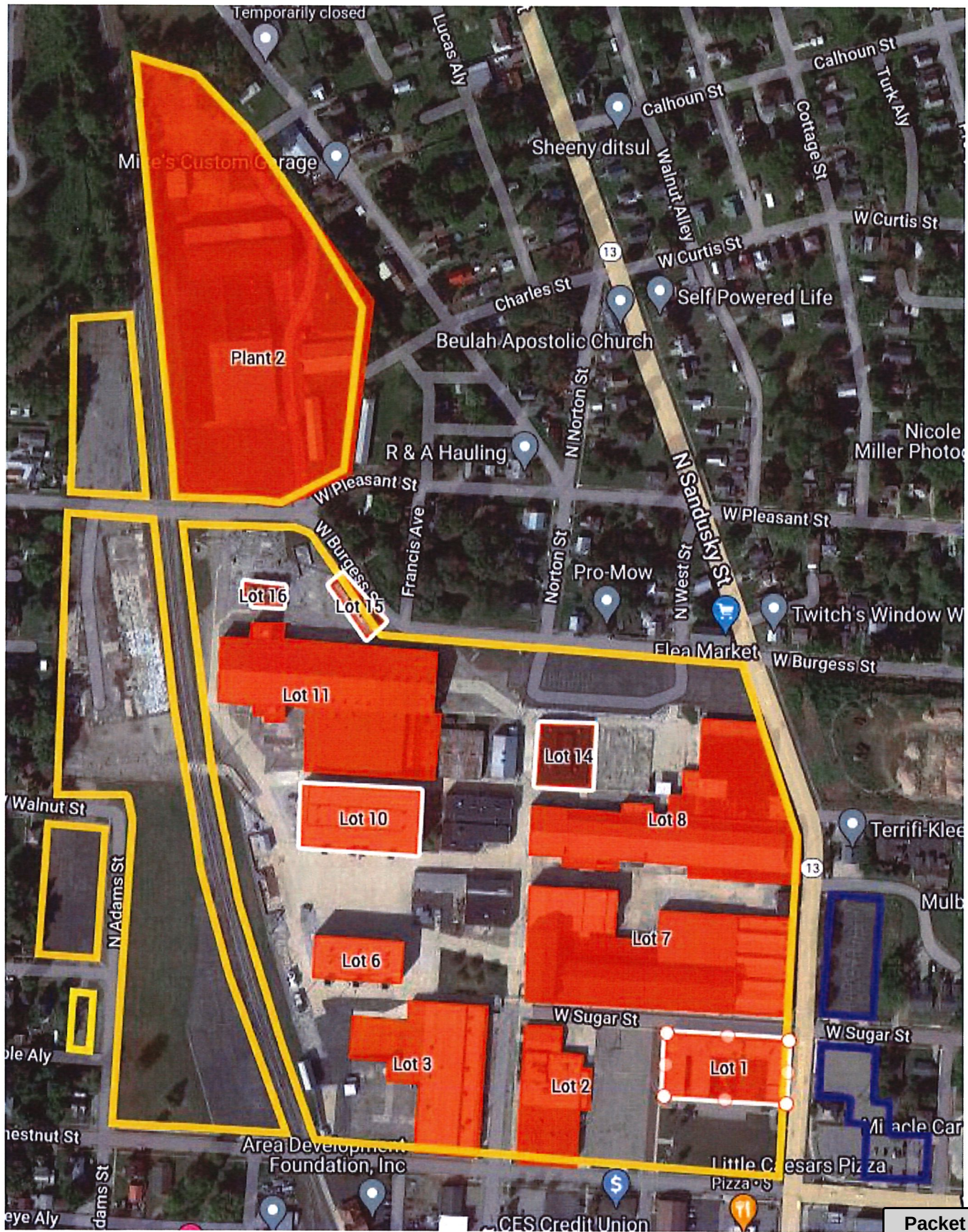
Yellow - Phase 1

Purple - Phase 2

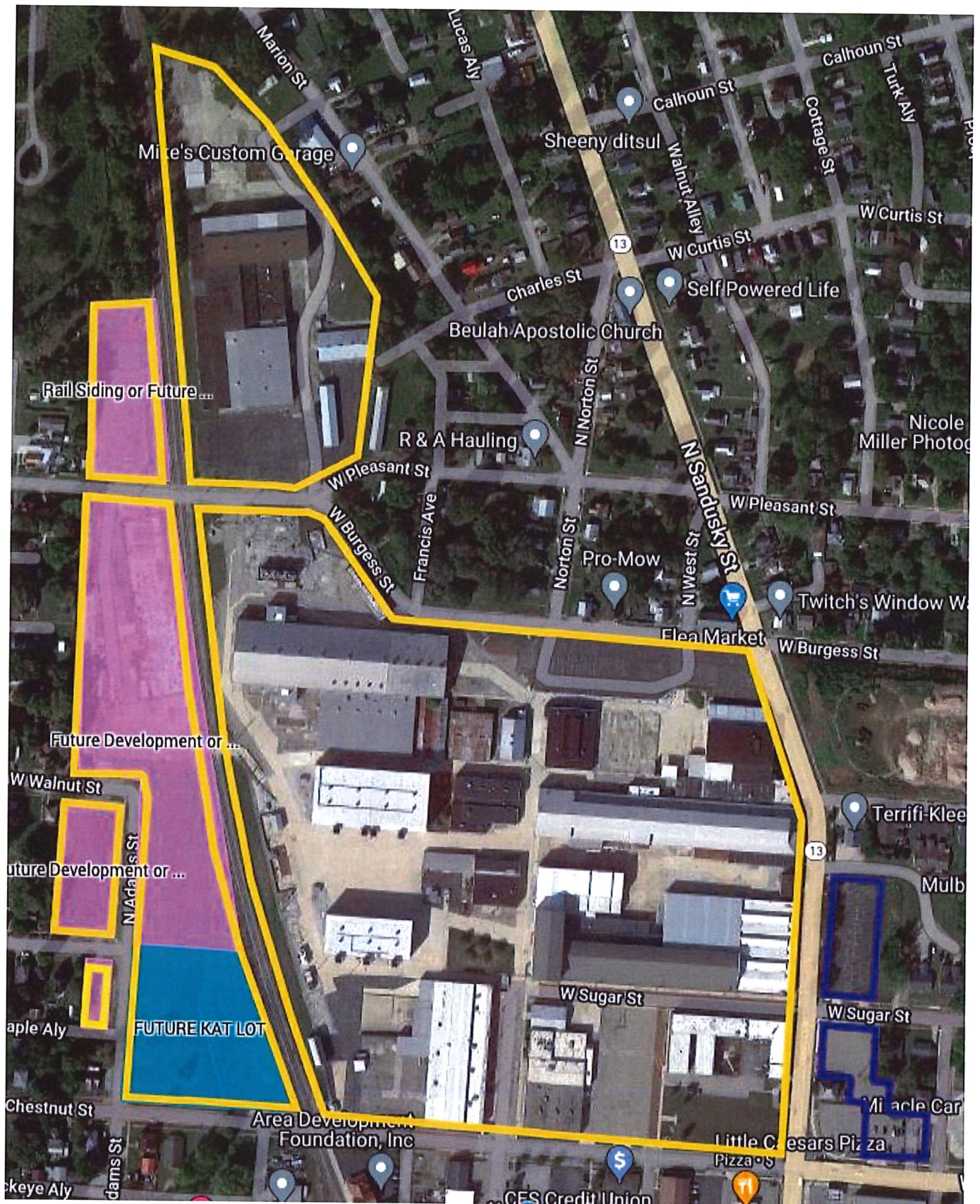
Intended Property Usage



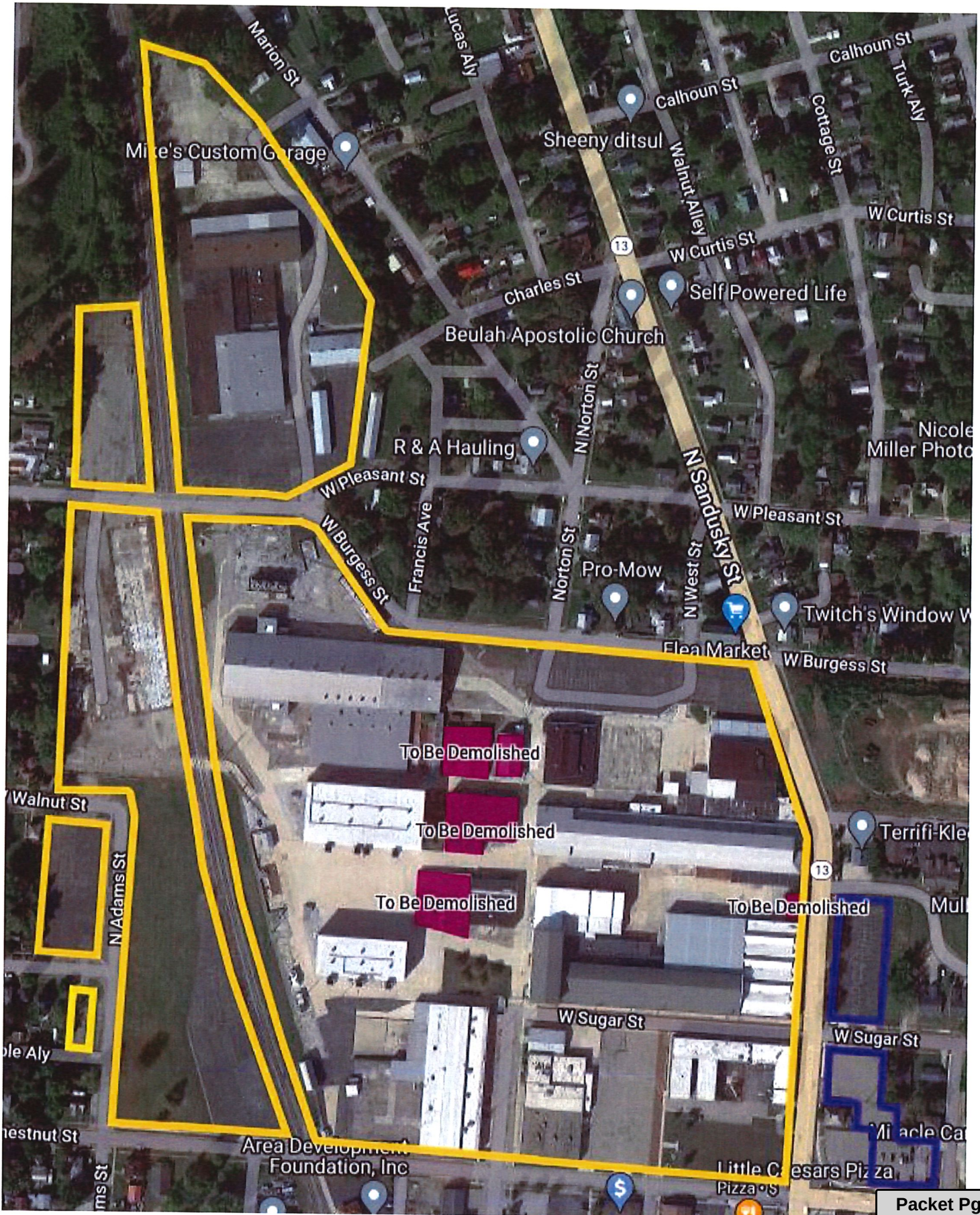
Buildings For Sale/ Lease



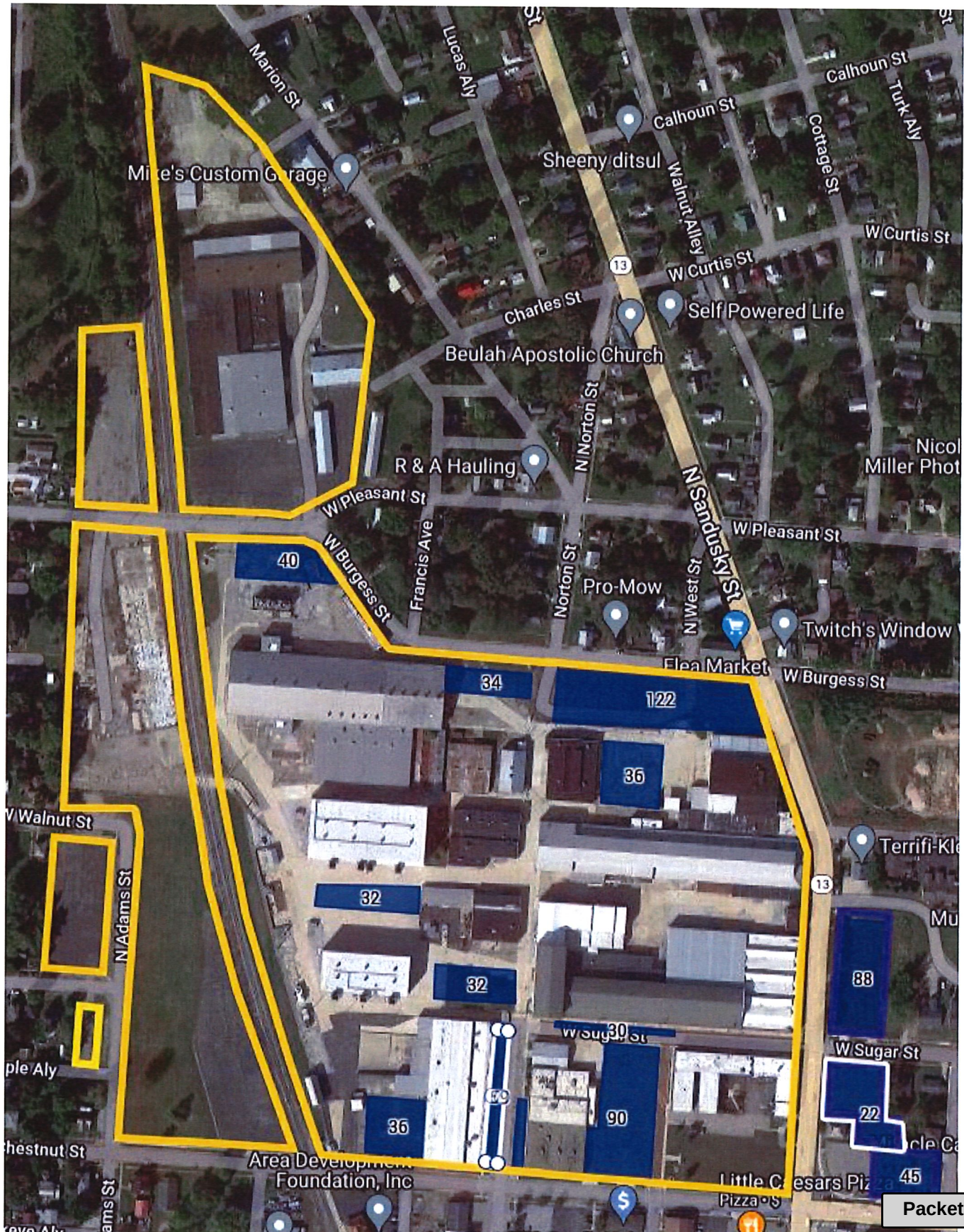
Sites for Future Buildings or Parking



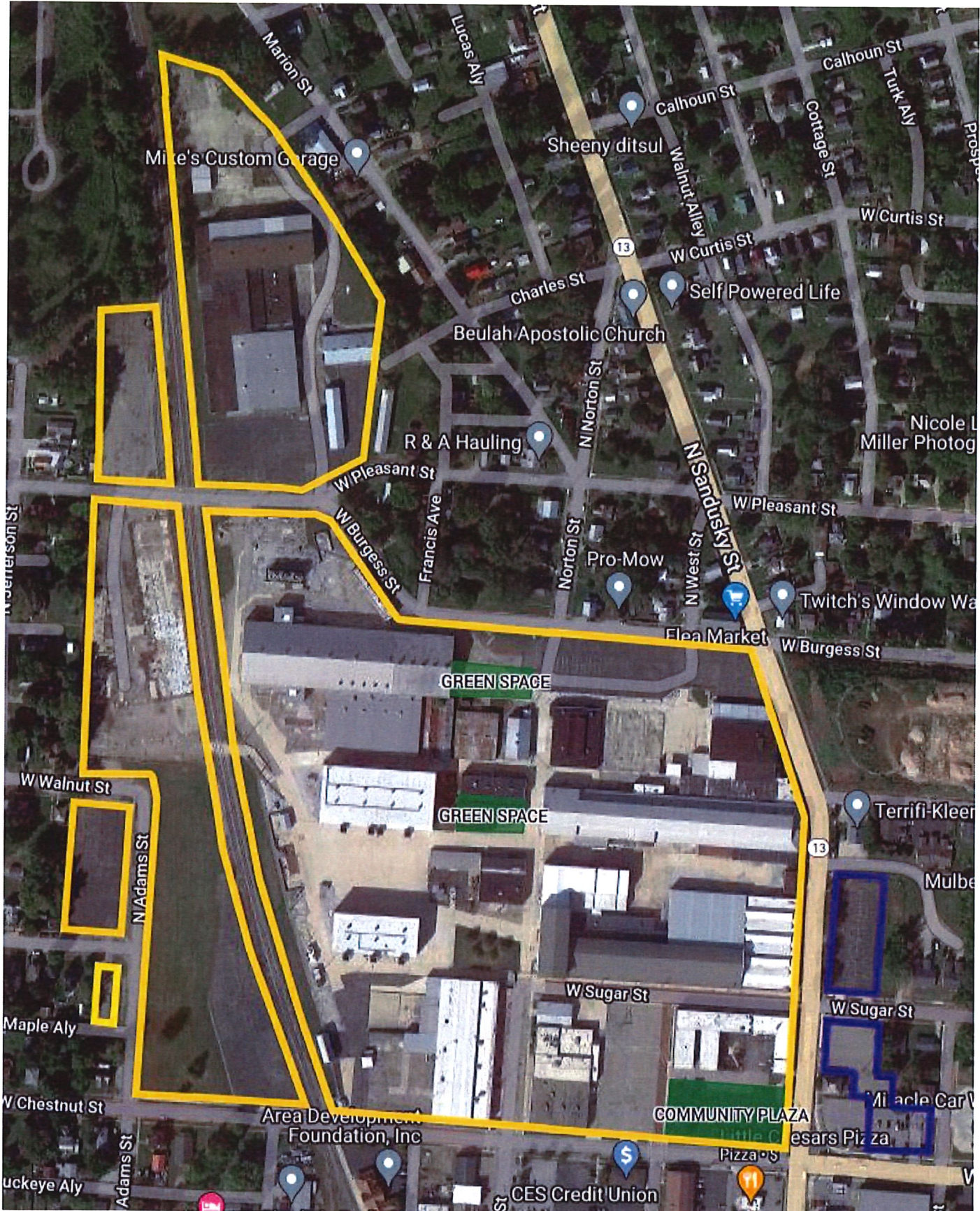
To be Demolished



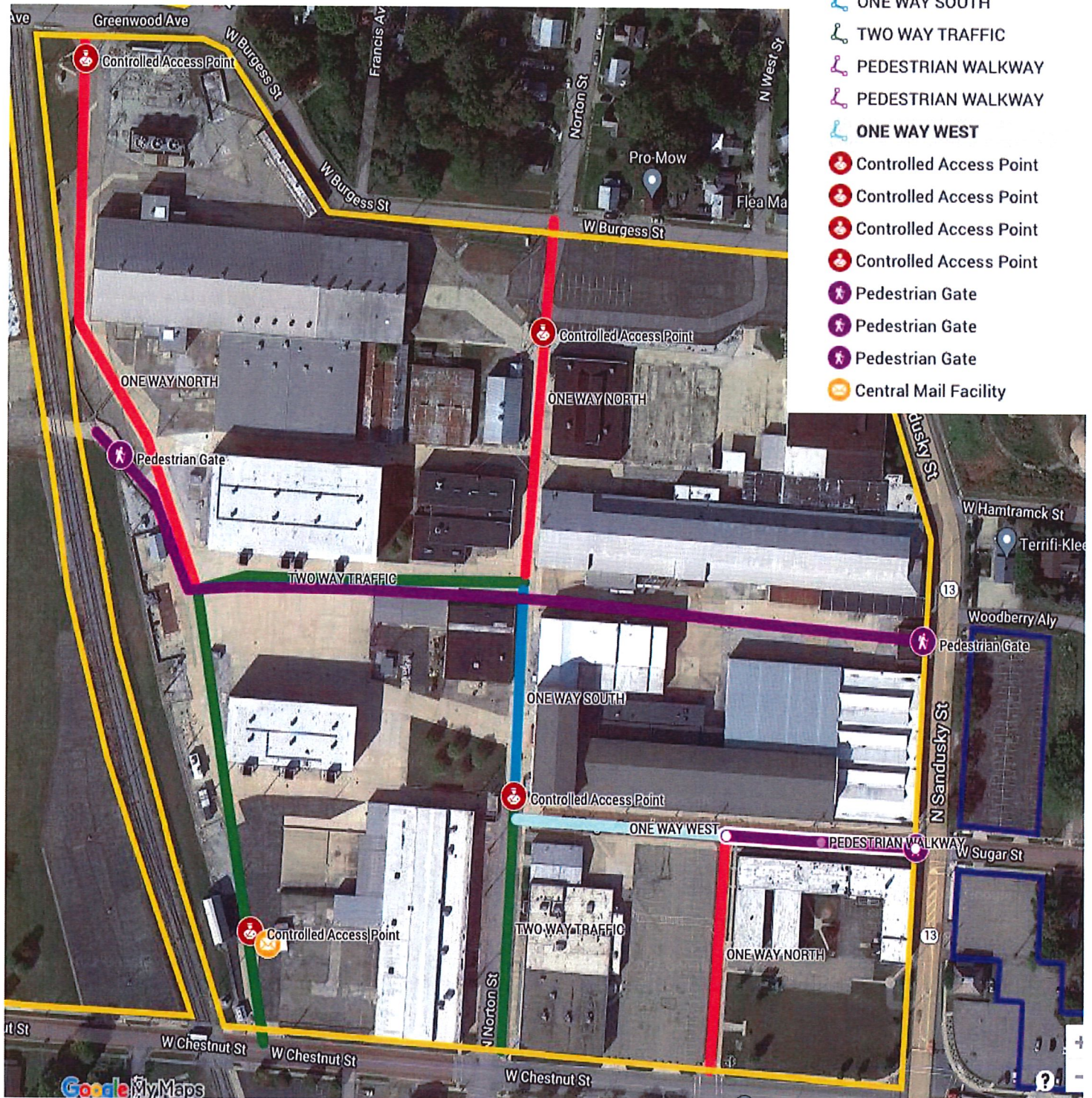
Current Planned Common Area Parking 681 Spots



Planned Parks & Green Space



Access & Travel Routes



DECLARATION AND BYLAWS

CREATING AND ESTABLISHING A PLAN FOR

PLANNED COMMUNITY PURSUANT TO CHAPTER 5312 OF THE REVISED CODE

OF OHIO

FOR

COOPER PROGRESS PARK PROPERTY OWNERS ASSOCIATION, INC.

This will certify that copies of this Declaration, together with Drawings and Bylaws attached thereto as Exhibits have been filed in the Office of the County Auditor, Knox County, Ohio.

Dated: _____

Jonette Curry, Knox County Auditor

By: _____

This instrument was prepared by:
 Zachary H. DiMarco, Attorney-at-Law
 Critchfield, Critchfield & Johnston, Ltd.
 10 S. Gay Street, PO Box 469
 Mount Vernon, OH 43050
 Telephone: (740) 397-4040
 Email: dimarco@ccj.com

Attachment: CPP Comprehensive Development Plan (2022-34 : CPP Development Plan)

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DECLARATION OF PLANNED COMMUNITY ASSOCIATION

This Declaration of a Planned Community Association (“Declaration”) is made on or as of the ____ day of _____, 2022, pursuant to the provisions of Chapter 5312 of the Ohio Revised Code.

WHEREAS, the Knox County Land Reutilization Corporation (the “Declarant”) is the owner in fee simple of real estate and the Cooper Park Development Company is the Developer.

WHEREAS, it is the desire of the Declarant and Developer to create on this site individually owned Industrial and Commercial parcels as well as and commonly owned areas “Common Areas” also known as “Common Elements” and facilities which will all be part of the planned community, and to these ends, to submit the entire property to create a Planned Community Association under the provisions of Chapter 5312 of the Ohio Revised Code;

NOW THEREFORE, Declarant hereby makes and establishes the following plan for a planned community hereinafter described.

ARTICLE I - DEFINITIONS

The terms used in this document shall have these meanings, unless context requires otherwise:

“Articles” and “Articles of Incorporation” mean the articles, filed with the Secretary of State of Ohio, incorporating “Cooper Progress Park Property Owners Association, Inc.” as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio (the State of Ohio’s non-profit corporation statutory act), as the same may be lawfully amended from time to time.

“Association,” and “Cooper Progress Park” means, Cooper Progress Park Property Owners Association, Inc., an Ohio non-profit corporation, created by the filing of the Articles and is also one and the same.

“Association Instruments” mean this Declaration, the Bylaws, the Drawings, any contracts pertaining to the management of the Association Property, and, all other documents, contracts, or instruments establishing ownership of or exerting control over the association property.

“Assessment” means the liability for an expense that is allocated to an Owner.

“Assessment Formula” means the formula in which the Owners are assessed to pay the Common Expenses.

"Board" and "Board of Directors" mean those Owners or their representatives, who, as a group, serve as the Board of Directors of the Association pursuant to the provisions of the bylaws of the Corporation and Chapter 5212.

"Bylaws" mean the Bylaws of the Association which provides for the operation of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provisions ORC Section 5312.02, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702. A true copy of the Bylaws is attached hereto and made a part hereof as **Exhibit B**.

"Common Area" means all of the Property owned or leased by the Association or that is subject to an easement provided to the Association that will be used for the common purpose of the Owners of the Association as delineated on the Plat of Cooper Progress Park.

"Common Area Expense" means the expense or financial liability of the Association.

"Common Area Expense Formula" means the expenses of the Association which will be assessed against Owners pursuant to the formula which shall become part of the Declaration.

"Common Elements" shall have the same meaning as Common Area and means all of the Property owned or leased by the Association or an easement provided to the Association that will be used for the common purpose of the Owners of the Association.

"Declarant" means the Knox County Land Reutilization Corporation.

"Developer" means Cooper Park Development Company, and its successors and assigns.

"Director" and "Directors" mean that person or those persons serving at the time pertinent as a Director or Directors of the Association.

"Drawings" mean the Plat for the planned community pursuant to Chapter 5312 of the Ohio Revised Code, filed simultaneously with the submission of this Declaration for recording, and shall include additional drawings included with any amendments to the Declaration or the Plat and any amendment thereto, as the same may lawfully be amended from time to time.

"Limited Common Area" mean means a common area that the declaration designates as reserved for use by a certain lot or lots, to the exclusion of other lots as delineated on the Plat.

"Occupant" or "Tenant" means a person or entity lawfully in possession of a Parcel, regardless of whether that person is a Parcel Owner, and any agents, guests, invitees, customers, officers, or employees of an Occupant or Tenant or assignee or subtenant. The word "Occupant" shall include a Tenant where appropriate or the context requires.

"Owner", "Owners" and "Parcel Owners" mean that person or those persons, Commercial Owner or Industrial Owner owning a fee-simple interest in a Parcel, each of whom is also a

"member" of the Association, as defined in Ohio's non-profit corporation statutory act (currently contained in Chapter 1702, Ohio Revised Code).

"Organizational Documents" mean the Articles, the Bylaws, the Drawings, and this Declaration, as the same may lawfully be amended from time to time.

"Parcel" mean that portion or portions of the Association Property or Owners' property identified as a Parcel in this Declaration. Parcels shall have their own legal description and tax parcel number. All parcels shall be described as commercial, industrial, or as a common area.

"Planned Community" and "Planned Community Property" means the community comprised of Parcels for which this declaration requires the Owners become members of the Association, the Owners may hold or lease real property, and the owners support by membership and assessment the Association.

"Unique Parcel" means a parcel that has been designated as unique by the Developer, Declarant, or the Association. A unique parcel does not have any structures or improvement at the time of designation by the Developer, is a parking lot, or is isolated from the main campus. Upon the completion of the structure or improvements, excluding the completion of a parking lot and necessary improvements related to the parking lot, the Unique Parcel shall become a Parcel as defined herein.

ARTICLE II - THE LAND

A legal description of the land constituting the Cooper Progress Park Property Owners Association, Inc., A Planned Community Property, located in the City of Mount Vernon, Knox County, Ohio, is attached hereto and marked **EXHIBIT "A."** Each Parcel will have its own legal description according to the Plat created and the Common Areas are described therein as well.

ARTICLE III - NAME

The name by which the Planned Community shall be known is "Cooper Progress Park."

ARTICLE IV - PURPOSES; RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish individual Parcels from the original Property to which fee simple interests may be conveyed; to establish an Owners' Association to administer the Planned Community; to provide for the preservation of the values of Parcels and the Common Areas; to provide for and promote the benefit, enjoyment, and well-being of Parcel Owners, Occupants, and Tenants; to administer and enforce the covenants, easements, charges, and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes.

Section 2. Restrictions. The Planned Community Property shall be subject to the following restrictions:

(a) Uses. All Parcels shall comply with this Declaration and the Bylaws. Notwithstanding the foregoing all Parcels shall comply with all applicable zoning regulations and the restrictions recorded in the public records and are part of the chain of title. Except as otherwise specifically provided in this Declaration, the Parcels **shall not** be used for any residential purpose. In addition to the requirements contained in this Declaration which relate to the Planned Community in general, no Parcel shall be used for:

(1) indecent or illegal purposes, including, but not limited to, the sale of tobacco or marijuana (or similar substances);

(2) any activity which produces noise or sound that is audible beyond the Commercial Parcel from which it originates and that is objectionable due to intermittence, beat, frequency, shrillness, or loudness to reasonable persons in other parcels or on the Common Areas. To assist in determining reasonableness, no sound shall exceed 85 decibels recorded outside the commercial parcel. This clause shall not be interpreted to defeat reasonable business purposes;

(3) any activity which produces obnoxious odors that are perceptible beyond the Commercial Parcel from which they originate;

(4) any activity which causes the cancellation of insurance policies carried by the Association or by the Owners of other Industrial or Commercial Parcels within the Association;

(b) Deed Restrictions. The Parcels are subject to existing restrictive covenants held by and enforceable by Cameron International Corporation, its successors, heirs, and assigns as provided in Official Record Book 1909, Page 266 and Book 1909, Page 275 which include, but are not limited to the following:

(1) The real property shall not be used for any purposes other than non-agricultural, non-mining and non-water collection commercial/industrial land use. Commercial/industrial land use means use of the Real Property for anything other than use for human habitation or for other purposes with a similar potential for human exposure. Human habitation includes, but is not limited to residential land use.

(2) The real property shall not be used for recreational/residential land use or for food or water production. Recreational/residential land use means use for dwelling and areas, such as, but not limited to single family houses and multi-family apartments, children's homes, nursing homes, residential portions of government-owned land (local, state or federal), day care facilities, educational facilities (excepting therefrom any post-secondary, professional, or trade school), hospitals, ranch and farm land, and community or recreational parks (whether local, state, federal, or private).

(c) Common Area Uses. The Common Areas (except Limited Common Areas) shall be used in common by Parcel Owners and Occupants and their agents, servants, customers, invitees, and licensees, in accordance with the purposes for which they are intended, and as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the Parcels; provided, however, that unless expressly provided otherwise in this Declaration, no Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation, or enjoyment of Parcel Owners and Occupants, subject to such rules and regulations as may from time to time be by the Board. All Owners, occupants, tenants and their invitees, shall have an easement of ingress and egress to and from each parcel in this Planned Community. No person, entity, Owner, Occupant, shall block or impede access or use of the Common Areas.

(d) Limited Common Area. Those portions of the Common Areas described herein and shown on the Drawings as Limited Common Areas shall be used and possessed exclusively by the owners of the Parcels and their occupants, as specified in this Declaration, subject to the restrictions on use of Common Areas and Limited Common Areas set forth in this Declaration and such rules and regulations as may from time to time be promulgated by the Board. As is shown in particularity on the Plat, Limited Common Areas shall exist between Lots 10 and 11, Lots 14 and 8, Lots 7 and 8, and Lots 15 and 11.

(e) Signage. Signage on Parcels or Common Areas advertising or identifying the Parcel shall be uniform as determined and approved by the Board in its design standards. The Signage shall be submitted by the Parcel Owner or Occupant to the Board for approval. The Board shall have thirty (30) days from the date of submission by the Parcel Owner or Occupant to review the proposed signage. The Board shall provide written approval or disapproval of the signage to the Parcel Owner or Occupant. If the Board does not approve the signage the Parcel Owner or Occupant shall revise the signage and resubmit the signage to the Board for review. This review process shall be repeated until the signage is approved by the Board.

(f) Nuisances. No illegal, noxious, or offensive activity shall be carried on or in any Parcel, or upon the Common Areas; nor shall any use be permitted which results in the cancellation of the Association's insurance; nor shall any use be permitted which increases the cost of insurance above that which would otherwise be available for normal uses conducted within such Parcel, unless the Owner of such Parcel responsible for the increase reimburses the Association and any other Parcel Owner who experiences such increase; nor shall any Parcel or the Common Areas be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant.

(g) Vehicles. The Board may promulgate regulations which regulate the outside parking of automobiles, inoperable vehicles, trucks, boats, and recreational vehicles in the Common area, and may enforce such regulations or restrictions by levying fines, having such vehicles towed away, or taking such actions as it, in its sole discretion, deems appropriate. The Board controls and shall assign temporary and permanent parking spots on the Common Area as well as the designated parking spots.

(h) Renting and Leasing. The vision of the Developer was to enhance a broad base of commercial and industrial jobs to the community. Leasing and subleasing of Parcels is permitted to Tenants operating within allowed uses.

(i) Conveyances. Each Parcel shall be conveyed as a separately designated and legally described fee simple estate subject to the terms, conditions, and provisions hereof. All conveyances shall reference this Declaration. The undivided interest of a Parcel in the Common Area shall be deemed to be conveyed or encumbered with the Parcel even though that interest is not expressly mentioned or described in the deed, mortgage, or other instrument of conveyance or encumbrance. No closing shall occur until all assessments have been paid in full and the Association has been given the name of the new owner.

(1) Right of First Refusal to Declarant. The Declarant shall have a right of first refusal on any and all transfers of any Parcel. Declarant shall have the right to match or exceed the offered consideration and terms of sale by any bona fide third party offers for the purchase of all or any portion of any Owner's Premises. Each Owner shall present any such bona fide third party offer to Declarant within ten (10) days of receiving such offer. Declarant shall then have thirty (30) days to demonstrate such matching offer. If Declarant exercises its option to purchase, said purchase shall close within 90 days of the tendered matching offer.

(2) Development Agreement. All prospective purchasers must have entered into a development agreement with Area Development Foundation, Inc., an Ohio non-profit corporation, P.O. Box 29, Mount Vernon, Ohio 43050, in order to become an Owner and member of the Association.

In addition, each Parcel Owner shall provide to a purchaser of that owner's Parcel a copy of the Association's Organizational Documents and all effective rules and regulations.

(j) Discrimination. No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Parcel Owner in favor of another.

(k) Architectural Control. Except for improvements constructed by the Developer and those in existence as of the date of this Declaration, no Parcel, or any exterior part thereof, may be improved, altered, or replaced by a Parcel Owner or Occupant, unless the plans and specifications ("Proposal") showing the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing by the Board, as to lawfulness and appropriateness, and as to harmony of external design, color, and location in relation to surrounding structures and topography. The Board may, in its sole discretion, approve or disapprove such proposals, and may condition approval upon the requesting Parcel Owner's agreement to maintain the same, and such agreement shall be binding upon the Parcel Owner and the Parcel Owner's successors in ownership of the Parcel, notwithstanding any provision of the Association's Organizational Documents to the contrary. The Board shall have sixty (60) days to approve or disapprove the Proposal. If the Board does not approve the Proposal the Parcel Owner shall submit revised proposal to the Board for review. This review process shall be repeated until the Proposal is approved by the Board. Such obligation to maintain and repair such improvements

shall be memorialized in an agreement prepared at the direction of the Board (but at the expense of the requesting Parcel Owner) and recorded in the chain of title so that all successors in title shall have notice that the maintenance and repair of such improvements are not the responsibility of the Association. The Board shall adopt design standards from time to time to establish rules and regulations as to the architectural design and control over Cooper Progress Park.

(l) Mediation. In the event of any dispute between Parcel Owners as to the application of these restrictions, Declaration or Bylaws, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date, and place for a hearing thereon within ten (10) days thereafter, and give written notice to each party thereof no less than seven (7) days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No action at law may be instituted by either party to such a dispute unless the mediation pursuant hereto has first occurred.

(m) Rules and Regulations. In addition to the rules and regulations hereinbefore specifically described as being authorized to be established by the Board, the Board, from time to time, may adopt such further reasonable rules and regulations concerning the use of Parcels and the Common area as it deems necessary or desirable to promote harmony, to serve the best interests of the Parcel Owners, and to protect and preserve the nature of the Association.

Copies of all such rules and regulations shall be furnished by the Board to each Parcel Owner prior to the time when the same shall become effective. No such rule or regulation shall discriminate against any Owner or Occupant on the basis of race, religion, national origin, or sex.

(n) Amendment. Any amendment to the provisions of this Declaration, Bylaws, or any other Association Organizational Document, requires consent of at least seventy-five percent (75%) of the Owners, either in writing or in a meeting called for that purpose, pursuant to the modified voting formula provided for in Article XVIII, Section 1 of this Declaration. No amendment shall be effective until it is recorded in the Official Records of Knox County, Ohio.

ARTICLE V - IMPROVEMENT DESCRIPTIONS

Section 1. Parcels/Buildings There shall be 22 Parcels in the Planned Community along with Common Area. Some Parcels shall have designated parking. All others will share Parking. The Board may assign certain Common Areas as designated Parking under a fee arrangement. All Owners shall be responsible for the interior and exteriors of the improvements located upon the Parcels.

Section 2. Other Improvements/Common Areas. In addition to the designated Parcels there are Common Areas which include parking areas and various service or maintenance buildings as well as additional improvements, piping and wiring as well as other necessary devices to supply utility services to the Parcels.

ARTICLE VI - PARCELS

Section 1. Parcels. Each of the Parcels is designated by a number on the Drawings set forth in EXHIBIT "A" attached hereto. Declarant reserves the right for a period of up to seven (7) years from the filing of this Declaration to add additional property (may add but shall not be required to add) to the Declaration by an amendment, which property may be common area, or additional Parcels.

Section 2. Composition of Parcels. Each Parcel consists of the described real estate and all within said description.

ARTICLE VII – COMMON AREAS AND LIMITED COMMON AREAS

Section 1. Common Areas– Description. All of the Planned Community Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described herein or in the Drawings as a Parcel, are Common Areas or Common Elements.

The Association shall have full responsibility for maintenance, repair, and replacement of such common buildings, common parking areas, common areas and other improved areas. In addition, the common fire suppression system shall be considered a common element even if a portion is located within a Parcel.

All parking and access ways within the Association Property are private in nature, and part of the Common Areas, and none of the same shall be dedicated to public use. The Association shall have full responsibility for maintenance and repair of such areas, as part of the Common Areas pursuant to this Declaration.

Section 2. Limited Common Areas Those portions of the Common Areas that are labeled or designated "LCA" or "limited common areas" on the Drawings, are Limited Common Areas. Areas reserved for the exclusive use of the Owners and occupants of the Parcel to which it is appurtenant.

Section 3. Common Areas. Pursuant to ORC 5312.01, the Common Areas shall be owned by the Association in fee simple.

ARTICLE VIII – OWNERS' ASSOCIATION

Section 1. Establishment of Association. The Association has been formed to be and to serve as the Owners' Association. The Declarant is, at the time of execution and recording of this Declaration, the sole member of the Association.

Section 2. Membership. Membership in the Owners' Association shall be limited to the Parcel Owners and all subsequent Parcel Owners. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Parcel, and transfer of a Parcel shall automatically transfer membership to the transferee.

Section 3. Board of Directors. The Declarant shall control the Owners Association and appoint and remove members of the Board of Directors until five Parcels have been conveyed to five separate Owners, at which time the Board of Directors shall call a special election. The Board of Directors shall consist of five directors whom shall be voted upon by vote of the Owners. The first term shall consist of Declarant and four Owners. Each Director shall serve a term of three years with the initial terms being staggered so that two will serve an initial term of one year; two will serve an initial term of two years; and one will serve an initial term of three years. Thereafter, each will serve a term of three years. Each Parcel Owner, including Unique Parcel Owners, shall have one vote, except a Parcel with a foot print greater than 50,000 square feet, and Lot 4 will have two votes for the Board of Directors.

Section 4. Authority. The Board shall have all authority to manage, maintain, repair, replace, alter, and improve the Common Areas and assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by the Organizational Documents or the pursuant to Chapter 5312 of the Ohio Revised Code that are not specifically reserved to Owners, including, without limitation:

- (a) Hire and fire managing agents, attorneys, accountants, and other independent contractors and employees that the Board determines are necessary or desirable in the management of the Association's Property and the Association;
- (b) Commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Association Property, or that involves two or more Owners and relates to matters affecting the Association's Property;
- (c) Enter into contracts and incur liabilities relating to the operation of the Association's Property;
- (d) Subject to the restrictions set forth in this Declaration, regulate the use, maintenance, repair, replacement, modification, and appearance of the Association's Property or Parcels within the Association in accordance with the restrictions set forth herein;
- (e) Subject to the restrictions set forth in this Declaration, adopt rules that regulate the use or occupancy of Parcel, the maintenance, repair, replacement, modification, and appearance of Parcels, Common Area when the actions regulated by those rules affect Common Areas or other Parcels;
- (f) Cause additional improvements to be made as part of the Common Areas;

(g) Acquire, encumber, convey, or otherwise transfer personal property of the Association;

(h) Hold in the name of the Association the real property and personal property acquired pursuant to subsections (f) and (g) of this section;

(i) Grant easements, leases, licenses, and concessions through or over the Common Areas;

(j) Impose and collect fees or other charges for the use, rental, or operation of the Common Areas or for services provided to Parcel Owners;

(k) Impose interest and late charges for the late payment of assessments and impose returned check charges;

(l) Promulgate and impose, with notice to Owners reasonable enforcement assessments for violations of the Declaration, the Bylaws, and the rules of the Owners' Association, and reasonable charges for damage to the Common Areas or other property;

(m) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;

(n) Impose reasonable charges for preparing, recording, or copying amendments to the Declaration, resale certificates, or statements of unpaid assessments;

(o) Enter a Parcel for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to Common Areas, another Parcel, or to the health or safety of the Occupants of that Parcel or another Parcel;

(p) To borrow funds, as needed, and pledge such security and rights of the Association as may be necessary or desirable to obtain any such loan including, without limitation, the pledge or assignment of the Association's right to future income and the Association's right to levy assessments upon the members;

(q) Suspend the voting privileges of an Owner or the Occupants which are delinquent in the payment of assessments for more than thirty (30) days;

(r) Purchase insurance and fidelity bonds required by this Declaration and/or the Bylaws, or such other insurance and fidelity bonds as the Directors consider appropriate or necessary;

(s) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law;

(t) Exercise all power and authority granted Chapter 5312.08, Ohio Revised Code, as the same may be amended from time to time;

(u) Exercise powers that are: (1) conferred by this Declaration or the Bylaws, or the laws of the State of Ohio; (2) necessary to incorporate or reincorporate the Association as an Ohio not-for-profit corporation; (3) permitted to be exercised in Ohio by a not-for-profit corporation; or (4) necessary and proper for the government and operation of the Association.

Section 5. Procedures for Enforcement of Violations.

(a) Notice. Prior to imposing charges for damages to the Common Areas or other property, or assessments for the enforcement of violations of the provisions of the Declaration, Bylaws, or rules and regulations of the Association, the Board shall give the Owners of the subject Parcel a written notice containing the following information:

- (1) A description of the property damaged or the violation;
- (2) The amount of the proposed charge or assessment;
- (3) A statement that the Owners of the subject Parcel shall have the right to a hearing before the Board to contest the proposed charge or assessment;
- (4) A statement setting forth the procedures to request a hearing pursuant to Section 5(b) below; and
- (5) A reasonable date by which the Owners of the subject parcel must cure the violation to avoid the proposed charge or assessment.

(b) Hearing. The Owners of a subject Parcel may request a hearing by delivering written notice of such request no later than the tenth (10th) day after receiving the notice provided in Section 6(a) above. If the Owners of a subject Parcel fail to make a timely request for a hearing, the right to such hearing shall be considered waived, and the Board may immediately impose the charge for damages or enforcement assessment referenced in the notice provided pursuant to Section 6(a) above, or may allow a reasonable time to cure the violation before imposing a charge or assessment. If the Owners of a subject Parcel request a hearing, the Board shall not levy the charge or assessment before holding a hearing, and will, at least seven (7) days prior to the hearing, provide the Owners of a subject Parcel with a written notice of the date, time, and location of the hearing. Within thirty (30) days following a hearing at which the Board imposes a charge or assessment, the Board shall deliver a written notice of the charge or assessment to the Owners of the subject Parcel.

(c) Manner of Notice. Any notice required under this Section to be served:

- (1) upon an Owner or Owners shall be delivered personally to the Owners or Occupants at the Parcel, or mailed (by certified mail, return receipt requested) to the Owners at the address of the Parcel, provided that if the Owners have provided the Association with an alternate address, all such notices shall be mailed (by certified mail, return receipt requested) to the Owners at such alternate address;

(2) upon the Association shall be delivered personally to any officer of the Association or to any on-site representative of any professional management company hired by the Association, or mailed (by certified mail, return receipt requested) to any officer of the Association or to the management company hired by the Association.

Section 6. Delegation of Authority; Professional Management. The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense; provided however, that any agreement for professional management: (i) shall be terminable by the Association for cause on thirty (30) days' written notice; (ii) shall be terminable by either party, without penalty, on ninety (90) days' written notice; (iii) shall not exceed one (1) year unless renewed by agreement of the parties for successive one-year periods; and (iv) shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing.

ARTICLE IX - AGENT FOR SERVICE

The name of the initial entity to receive service of process for the Association and that agent's place of business is:

C C & J Agents, Inc.
P.O. Box 469
Mount Vernon, Ohio 43050

In the event this entity for any reason ceases to be registered with the Secretary of State of Ohio as Statutory Agent for the Association, the successor so registered shall be the person to receive service of process for the Association.

ARTICLE X - MAINTENANCE AND REPAIR

Section 1. Association Responsibility. Management of the property and financial affairs of the Association, and the allocation of funds therefor, shall be the responsibility of the Association, which shall maintain and repair the Common Areas.

Section 2. Individual Responsibility.

(a) General. Each Owner shall repair, replace, and maintain the Parcel and all improvements upon the Parcel. If the Owner is using the Common Area, they shall provide routine upkeep and cleaning of the Common Area appurtenant to such Owner's Parcel or used by the Owner.

(b) Failure to Maintain. In the event an Owner shall fail to make any such repair or perform such maintenance as is required under this Declaration, or in the event the need for maintenance or repair of any part of the Common Area is caused by the negligent or intentional act of any Parcel Owner or Occupant, or any guests or invitees of the Owners or Occupants, or is a result of the failure of any Owner or his, her, or its predecessors in title to timely pursue to a conclusion a claim under any warranty (express, implied, or imposed by law), then in any such event, the Association may perform such repair or maintenance and, to the extent that the cost is not covered by insurance proceeds collected by or paid to the credit of the Association, the costs not recovered by the Association shall constitute a Special Individual Owner Assessment, as hereinafter defined, on the Parcel owned by such Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be voted upon by the Board.

ARTICLE XI - UTILITY SERVICES

Each Owner by acceptance of a deed to a Parcel agrees to pay for utility services separately metered or sub-metered, or separately charged by the utility company or the Association to that Parcel. In the event any utility service is not separately metered the cost thereof shall be a shared expense between the Owners. Utility services for Common Areas shall be paid for by the Association.

ARTICLE XII - INSURANCE; LOSSES; BONDS

Section 1. Fire and Extended Coverage Insurance. The Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures, and equipment and common personal property and supplies now or at any time hereafter constituting a part of the Common Area, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Association Property, in amounts at all times sufficient to prevent the Parcel Owners from becoming co-insurers under the terms of any applicable co-insurance clause or provision and not less than one hundred percent (100%) of the current replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage), as determined from time to time by the insurer, with a guaranteed replacement cost endorsement or replacement cost endorsement, and if there is a co-insurance provision, with agreed amount endorsement, and with a deductible not greater than five percent (5%) of the face amount of the policy.

Section 2. Liability Insurance. The Association shall obtain and maintain a comprehensive commercial general liability insurance policy, written on a per-occurrence basis, covering all of the Common Areas, public ways, and any other areas under the Association's supervision, insuring the Association, the Directors, and the Owners and Occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, or (b) two million dollars

(\$2,000,000) for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall have the insurance industry's standard mortgagee clause, shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association, the Board, or other Owners or Occupants, and shall include such additional coverages as are commonly required by private mortgage investors for developments similar in construction, location and uses, including, without limitation, contractual liability, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Area and arising out of lawsuits related to employment contracts of the Association. Each such policy must provide that it may not be canceled or substantially modified by any party without at least ten (10) days prior written notice to the Association, any named mortgagee, and to each holder of a first mortgage lien upon any Parcel.

Section 3. Fidelity Coverage. The Board shall, to the extent such coverage is available, obtain and maintain fidelity coverage for the Association and shall require professional management to carry such insurance, against dishonest or fraudulent acts on the part of the officers, directors, trustees and employees of the Association and all agents or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association as the named obligee or insured and shall be written in an amount sufficient to provide protection which is in no event less than the greater of: (1) the maximum funds (including reserves) that will be in the custody of the Association or its agent at any time; or (ii) the sum of three months' worth of assessments plus the Association's reserves. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The bond or policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, any insurance trustee, and any holder, insurer, guarantor, or servicer on behalf of any holder of any mortgage on a parcel who requires such rights. Any managing agent that handles funds for the Association shall be required to obtain its own fidelity bond providing similar coverage.

Section 4. Other Association Insurance. In addition, the Board may purchase and maintain such other insurance as the Board may determine, or as may be required by law (including, without limitation, ' compensation, flood insurance. All such insurance shall be obtained from generally accepted insurance carriers, and the premiums for all such insurance described in Sections 1 through 4 of this Article XII, obtained by the Association, shall be paid by the Association as a common expense.

Section 5. Insurance Representative; Power of Attorney. Notwithstanding any of the foregoing provisions of this Article, or any requirement relating to property or liability insurance herein, there may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy and to perform such other functions as are necessary to accomplish this purpose. Each Owner, by acceptance of a deed to a parcel, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact

for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purposes. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Owner, and their respective first mortgage holders, and the Association, and such power runs with the land, is coupled with an interest and is irrevocable.

Section 6. Owner's Insurance. Any Owner and Occupant must, at their own expense, carry and maintain appropriate insurance, including, but not limited to, property and liability insurance, in addition to that provided by the Association pursuant hereto as that Owner or Occupant may determine, subject to the provisions hereof, and provided that no Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by insurance carried pursuant hereto by the Association. In the event any Owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Owner who acquired or whose Occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, an Owner or Occupant may obtain insurance against liability for events occurring within a parcel, losses with respect to personal property and furnishings, and losses to improvements owned by the Owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Owner with respect to improvements within the Parcel shall be limited to the type and nature of coverage commonly referred to as "tenant's improvements and betterments." All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Directors, and all other Owners and Occupants, and shall name the Association as an additional insured.

To be specific, the Owner shall be responsible to insure its own parcel in its entirety to include the exterior.

Tenants shall be responsible for their respective insurance.

Section 7. Sufficient Insurance. In the event the improvements forming a part of the Common area or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration, or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Board in payment therefor unless otherwise agreed to.

Section 8. Insufficient Insurance. In the event the improvements forming a part of the Common Area or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration, or reconstruction, then, unless the Parcel Owners shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration, or reconstruction, the Association shall make repairs, restoration, or reconstruction of the Common

Area so damaged or destroyed at the expense (to the extent not covered by insurance) of all Parcel Owners in proportion to their respective undivided interest in the Common Area. Should any Owner refuse or fail after reasonable notice to pay that Owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the parcel of such Owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments. Unless otherwise unanimously agreed by the owners, any assessment levied due to insufficient insurance shall be made on or before October 31st, to become effective in the next calendar year.

ARTICLE XIII - RESTORATION OF DAMAGE OR DESTRUCTION

Section 1. No Obligation to Restore/Right to Demolish. Some of the structures in the Association Common Areas are in need of destruction. The Developer reserves the right to demolish buildings. Further, in the event of damage to or destruction of all or any part of a building, structures, or fixtures constituting a part of the Association Property, the Board may elect to replace or restore as it determines in the best interest of the Association.

ARTICLE XIV - RESERVED

ARTICLE XV - GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitations. Every Owner shall have the right and easement of enjoyment in, over, and upon the Common Areas and a right of access to and from its Parcel, and a right and easement for utilities serving that Parcel, which rights and easements shall be appurtenant to and shall pass with the title to a Parcel, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, provided that no such rule or regulation shall limit or prohibit the right to utility services or the right of ingress and egress to a Parcel, or any part thereof.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of necessary entry and access to, over, upon, and through all of the Association Property, including each Parcel, to enable the Association to perform its obligations, rights, and duties pursuant hereto with regard to maintenance, repair, restoration, and/or servicing of any items, things, or areas of or in the Association Property. In the event of an emergency, the Association's right of entry to a Parcel may be exercised without notice; otherwise, the Association shall give the Owners or Occupants of a Parcel no less than twenty-four (24) hours' advance notice prior to entering a Parcel.

Section 3. Easements for Encroachments. Each Parcel and the Common Areas shall be subject to easements for encroachments by any other Parcel Owner or the Common Areas created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, or repair; or by reason of shifting, settlement, or movement of the structures; or by reason of errors in the

Drawings. Valid easements for these encroachments and for the maintenance of same, so long as the encroaching structures remain, shall and do exist.

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of any Property in the Association contributing to the support of another building, utility line, or improvement on another portion of the Association Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements, and other portions of the Association Property.

Section 5. Easements for Utilities and Operation of the Association Property. There is hereby created upon, over, and under all of the Property part of the Planned Community, easements to the Association for ingress and egress to, and the installation, replacing, repairing, and maintaining of all utilities, including, but not limited to, water, sewer, gas, telephone, communication lines, electricity, security systems, master television antennas, and cable television. By this easement it shall be expressly permissible for the Association to grant to the providing company and/or contractors permission to construct and maintain the necessary poles and equipment, wires, circuits, conduits, or other facilities, appurtenances, and improvements on, above, across, and under the Property in the Association, so long as such poles, equipment, wires, circuits, conduits, facilities, appurtenances, and improvements do not unreasonably interfere with the use and enjoyment of the Association Property. Should any utility company furnishing a service request a specific easement by separate recordable document, the Board shall have the right to grant such easement without conflicting with the terms hereof. In addition, to the extent that such grant does not unreasonably interfere with the use and enjoyment of the Association Property, the Board shall have the authority, on behalf of the Association and the Owners, to grant permits, leases, easements, licenses, and concessions on, over, above, across, and under the Common Areas for utilities, roads, and other purposes necessary, in the sole opinion of the Board, for the proper operation of the Association.

Section 6. Easements for Services. A non-exclusive perpetual easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common area in the performance of their duties.

Section 7. Power of Attorney. Each Owner, by acceptance of a deed to a Parcel, hereby irrevocably appoints the Association as his, her, or its attorney-in-fact, to execute, deliver, acknowledge, and record, for and in the name of such Owner, such deeds of easement and other instruments as may be necessary or desirable, in the sole discretion of the Board, to further establish or effectuate the foregoing easements. This power is for the benefit of each and every Owner, the Association, and Declarant, and the real estate to which it is applicable; it runs with the land, is coupled with an interest, and is irrevocable.

Section 8. Easements Reserved to Association. Non-exclusive easements are hereby reserved to the Association, its successors and assigns, over and upon the Common Area for access to and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available.

Section 9. General. The Easements and grants provided herein shall in no way affect any other recorded grant or easement.

ARTICLE XVI - ASSESSMENTS AND ASSESSMENT LIENS

Section 1. Types of Assessments. The Declarant hereby covenants, and each Owner by acceptance of a deed to a Parcel (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association: (1) annual operating assessments; (2) special assessments for capital improvements; and (3) special individual Parcel assessments. All of such assessments shall be established and collected as hereinafter provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively 1) to promote the health, safety, and welfare of Owners and Occupants, 2) provide for Common Area utility services, 3) for cost of maintenance, repair, or replacement in the Common Areas, 4) for cost associated with the enforcement of the Declaration, By-Laws or rules and regulations of the Association, and 5) cost or charges of the Declaration or By-laws recording or permit.

Section 3. Apportionment; Due Dates.

(a) Annual Operating Assessments.

(1) At any time prior to the closing by Declarant of the transfer of the first Parcel, and prior to October 31st of each year thereafter, **the Board shall adopt a budget and estimate**, and allocate among the Parcels in the manner set forth below, the common expenses of the Association, consisting of the following:

- A. the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;
- B. the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;
- C. the estimated next fiscal year's costs for utility services not separately metered;
- D. the estimated amount required to be collected to maintain a working capital reserve to assure availability of funds for normal operations of the Association, in an amount not less than three (3) months' estimated common expenses for each Parcel. The initial contribution to such working capital reserve fund shall be collected at the closing of each Parcel, but not later than the date that control of the Association is transferred to the Parcel Owners, as provided in this Declaration, and such initial amounts paid into this fund shall not be considered as advance payments of regular assessments. Such initial contributions shall be

completed at the time that election of all Directors is turned over to the Association, and such funds shall be placed by the Directors in a segregated fund. Prior to such date, such funds may not be used to defray expenses, reserve contributions, construction costs, or to make up budget deficits.

E. Pursuant to ORC 5312.06, the budget shall include reserves in an amount adequate to repair and replace major capital items in the normal course of operations without the necessity of special assessments, unless 75% of the Owners (as determined by the voting formula) waive the reserve requirement annually. Otherwise, the Board shall budget an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements, and periodic maintenance, repair, and replacement of improvements, and for the repair and replacement of major capital items in the normal course of operations without the necessity of special assessments, and for the funding of insurance deductibles in the event of casualty loss; provided that the amount set aside annually for such reserve shall not be less than ten percent (10%) of the budget for that year.

F. The estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

(2) Apportionment. Such assessments shall be allocated among the Parcels according to each Parcel's use.

A. All Parcels shall share in the common expense for insurance, security, administration and project management, snow removal, landscaping, facility building utilities, reserves and capital expenditures;

B. All Parcels, except for Lot 4 and Lot 5, shall share in the common expense for fire monitoring and sprinkler inspections, extinguisher inspections, PIV inspections, exit lighting inspections, in-house fire system maintenance, riser and compressor inspections, sprinkler dry valve inspections, and fire system maintenance and repairs.

C. All Parcels, except for Lot 16, Lot 4, and Lot 5 shall share in the common expense for real estate taxes, water/wastewater system inspections, water/wastewater system maintenance, gas line maintenance and storm water fees.

(3) The annual operating assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Owner from prepaying assessments in annual, semi-annual, quarterly, or monthly increments. The due dates of any such installments shall be established by the Board, and, unless otherwise

provided, the Association shall collect on or before the first day of each month from those who own the Parcel an equal monthly prorata share of the annual operating assessment for that Parcel.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board, among the Parcels on the same basis as heretofore set forth.

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained by the Board as reserves, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Parcel Owners.

(6) The Declarant shall require three (3) months of annual operating assessments to be paid ahead upon the first conveyance of a Parcel to an Owner.

(b) Special Assessments for Capital Improvements.

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Areas to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required by governmental regulation or to correct any deficiency or defect creating a safety or health hazard) shall not be constructed nor funds assessed therefore, if the cost thereof in any twelve consecutive month period would exceed an amount equal to five percent (5%) of that fiscal year's budget, without the prior consent of Owners exercising no less than seventy-five percent (75%) of the voting power of all Owners. Any special assessment which is levied for capital improvements shall be levied to be effective in the next calendar year. Each levied assessment shall occur before October 31st, to be effective in the next calendar year.

(2) Any such assessment shall be allocated among all Parcels pursuant to the Assessment Formula, and shall become due and payable on such date or dates as the Board determines following written notice to the Parcel Owners.

(3) The Board shall endeavor to avoid special assessments for capital items by complying with the reserve requirements of Article XVI, Section 3(a)(l)(E) above.

(c) Special Individual Parcel Assessments. The Board may levy an assessment against an individual Parcels to reimburse the Association for those costs incurred in connection with that Parcel properly chargeable by the terms hereof to a particular Parcel (such as, but not limited to, the cost of making repairs that are the responsibility of an Owner; the cost of insurance premiums separately billed to an Owner; the cost of cleaning and removing debris from the Owner's Parcel where, in the opinion of the Board, the Owner has allowed the same to become unsightly; penalties and charges imposed pursuant to the Rules and Regulations of the Board for violations of the Declaration, Bylaws, and Rules and Regulations; and an Owner's enforcement and mediation

charges including, without limitation, the costs and attorneys' fees involved in bringing actions to enforce the terms of the Declaration, Bylaws, Rules and Regulations). Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Owners subject thereto. Additionally, during the first years of the Association's existence and until such time as real estate taxes and assessments are split into separate tax bills for each Parcel, the Association shall have the right to pay the real estate taxes and assessments attributable to the Association in the event the same have not been paid, when due, and assess each Owner for his, her, or its share of such real estate taxes and assessments as a special individual Parcel assessment. The share of those taxes and assessments attributable to a Parcel shall be computed by multiplying the total taxes and assessments for all of the Association Property by the undivided interest in Common Areas attributable to that Parcel. The calculation by the Association of the Parcel's shares of taxes and assessments shall be binding upon all Parcel Owners. (discuss-may not be applicable)

(d) Rules for Levying Fines and Assessments for Violations. The Board of Directors may levy fines and/or assessments under a written policy adopted by the Board and given or made available to each Owner, for the purposes of enforcing the Declaration, Bylaws, or Rules and Regulations as determined by the Board. Such fines and/or assessments may include, without limitation, interest and late charges for the late payment of assessments, returned check charges, and reasonable enforcement assessments for violations of this Declaration, the Bylaws, and the Rules and Regulations of the Association, and reasonable charges for damage to the Common Areas or other property. Prior to imposing a charge for damages or an enforcement assessment, the Board shall comply provide notice to the Owner and give a right to be heard before the Board.

Section 4. Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Owner subject thereto at least ten (10) days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Notwithstanding the foregoing, if the notice is not sent when required, it will nevertheless be due within ten (10) days after such later date that the notice is actually sent, including all amounts that would have been due had such notice been given in a timely manner. Written notice mailed or delivered to an Owner shall constitute notice to that Owner, unless the Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Owner.

Section 5. Effect of Nonpayment of Assessments; Remedies of the Association.

(a) Interest, Fees and Costs. If any assessment, or any installment or portion of any assessment, is not paid within ten (10) days after the same has become due, the entire unpaid balance of the assessment shall immediately, without notice or demand, become due and payable, and the Board, at its option, without notice or demand may charge additional amounts for any or all of the following: (i) reasonable, uniform administrative late fees as determined by the Board from time to time; (ii) enforcement charges and collection costs (including, without limitation, attorneys and paralegal fees) the Association incurs or estimates that it will incur in connection with the collection of the delinquency; (iii) interest on the entire unpaid balance of assessments, and upon the amount of costs incurred by the Association in connection with such collection, at the rate of six percent (6%) per annum or at such other rate as the Board may from time to time

determine; (iv) any other charges authorized by the Declaration, Bylaws, or the Rules and Regulations promulgated by the Board; all to the extent not prohibited by Ohio law. All of the foregoing are collectively referred to herein as the "Interest, Fees and Costs."

(b) Application of Payments. Payments made by an Owner for assessments shall be applied as follows:

(1) First, for the payment of interest accrued on the delinquent installments or portions of unpaid assessments and on the costs incurred by the Association in connection with such collection, at the rate of six percent (6%) per annum or at such other rate as the Board may from time to time have otherwise determined which shall not exceed the maximum rate allowed by law

(2) Second, for the payment of administrative late fees charged with respect to the delinquency applicable to the Parcel;

(3) Third, to reimburse the Association for enforcement charges and collection costs (including, without limitation, attorneys and paralegal fees) incurred by the Association in connection with the delinquency;

(4) Fourth, to the payment of the delinquent installments or portions of assessments which remain unpaid.

(c) Creation of Lien; Certificate of Lien. Annual operating and both types of special assessments, together with Interest, Fees and Costs, shall be a charge and a continuing lien in favor of the Association upon the Parcel against which each such assessment is made, from the effective date thereof. At any time after an assessment or portion of an assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, with Interest, Fees and Costs, may be filed with the Recorder of Knox County, Ohio, pursuant to authorization given by the Board. The certificate, and thereafter, renewal certificates as necessary to keep the lien in effect, shall contain a description of the Parcel against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments with Interest, Fees and Costs, and shall be signed by the president or other chief officer of the Association.

(d) Expiration of Lien. The lien provided for herein shall remain valid for a period of five (5) years from the date a certificate of lien was duly filed therefor, unless sooner released or satisfied in the same manner provided by law in the State of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in any action brought to discharge the lien.

(e) Action to Discharge Lien. Any Owner who believes that an assessment chargeable to his, her, or its Parcel (for which a certificate of lien has been filed by the Association) has been improperly charged against that Parcel, may bring an action in the Court of Common Pleas of Knox County, Ohio for the discharge of that lien. In any such action, if it is finally determined that

all or a portion of the assessment has been improperly charged to that Parcel, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(f) **Personal Obligation of Owners.** Each such assessment together with Interest, Fees, and Costs shall also be the joint and several personal obligation of the Owner or Owners who own the Parcel at the time when the assessment fell due. The obligation for delinquent assessments, with Interest, Fees, and Costs, shall not be the personal obligation of that Parcel Owner's successors in title unless expressly assumed by the successors; provided however, that the right of the Association to a lien against that Parcel, or to foreclose any lien thereon for these delinquent assessments, with Interest, Fees, and Costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(g) **Legal Actions.** In addition to the lien permitted by this Section 5, the Association, as authorized by the Board, may bring an action at law against the Owner or Owners personally obligated to pay the same, and an action to foreclose a lien, or any other action permitted by law. In any foreclosure action, the Owner or Owners affected shall be required to pay a reasonable rental for that Parcel during the pendency of such action, and the Association shall be entitled to the appointment of a receiver to collect rentals. Rentals collected by a receiver during the pendency of a foreclosure action shall be applied first to the payment of the portion of the common expenses chargeable to the Parcel during the pendency of the foreclosure action. In any legal action, interest and the costs of such action (including but not limited to attorney and paralegal fees) shall be added to the amount of any such assessment, to the extent permitted by Ohio law. The Association shall be entitled to become a purchaser at any foreclosure sale

(h) **No Waiver.** No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common area, or any part thereof, or by abandonment of his, her, or its Parcel.

Section 6. Subordination of the Lien. The lien of the assessments provided for herein shall be superior in priority to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments of political subdivisions and the liens of first mortgages that have been filed for record

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the President, Treasurer, Secretary, or other designated representative of the Association, setting forth whether the assessments on a specified Parcel have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Declarant's Obligations. Declarant will assume the rights and obligations of an Owner in its capacity as Owner of Parcel(s) not yet transferred if any, including the obligation to pay common expenses attaching to such Parcels, from the date the Declaration is filed for record. If no assessments are charged to any Parcel, then the Declarant will, likewise, pay no assessments for Parcels owned by the Declarant until such time as common expenses are first charged with respect to any Parcel.

ARTICLE XVII - NOTICES TO LENDING INSTITUTIONS

Any holder, insurer, guarantor, or servicer of a first mortgage on a Parcel, upon written request to the Association (which request states the name and address of such holder, insurer, guarantor, or servicer, and the Parcel designation or address), shall have the right to inspect Association documents and records on the same terms as the members of the Association and entitled to all rights granted by the Ohio Revised Code.

ARTICLE XVIII - AMENDMENTS AND CERTAIN ACTIONS

Section 1. Modified Voting Formula for Amendments. Except as otherwise provided herein, the following amendments of any Planned Community Organizational Documents shall require the consent of 75% of Parcel Owners either in writing or in a meeting called for that purpose pursuant to the voting formula wherein each Parcel Owner shall have one vote, except a Parcel with a foot print under roof of greater than 50,000 square feet and Lot 4, shall be entitled two votes.

- (a) the boundaries of any Parcel or the convertibility of Parcel into Common area or vice versa;
- (b) the construction of an addition to or an expansion of a Parcel onto the Common Area;
- (c) the undivided interest in the Common Areas appertaining to a Parcel or the liability for common expenses appertaining thereto, or the right to use Common Areas;
- (d) a change to any of the provisions governing voting rights;
- (e) a change to any of the provisions governing assessment basis, assessment liens, or the priority of assessment liens;
- (f) a change to any of the provisions governing reserves for maintenance, repair or replacement of Common Area improvements;
- (g) a change to any of the provisions governing maintenance obligations or the responsibility for maintenance and repairs;
- (h) a change to any of the provisions governing: (a) the method of expansion or contraction of the project; or (b) the method of addition, annexation, or withdrawal of land to or from the project;
- (i) a change to any of the provisions governing hazard, fidelity or other insurance requirements;

(j) a change to any of the provisions governing restrictions affecting the sale of a Parcel;

(k) a change to any of the provisions governing the method of determining whether professional management shall be established or discontinued;

(l) a change to any of the provisions governing restoration or repair of improvements in the Association;

(m) a change to any of the provisions which provision is for the express benefit of mortgagees;

(n) a change to any of the provisions which affect the scheme of regulation or enforcement of standards for maintenance, architectural design, or exterior appearance of improvements on Parcels;

(o) a change to any of the provisions governing the voting rights of any specific class of members;

(p) a change to any of the provisions governing the conveyance of any or all of the Common area;

(q) any other amendment to any of the Organizational Documents; and

(r) a reduction in reserves for maintenance, repair, or replacement of Common Area improvements;

(s) the imposition of any new restrictions affecting the sale of a Parcel

(t) the decision by the Association not to restore or repair any portion of the Association Property (after damage or destruction or partial condemnation), or not to restore or repair such property in a manner specified by the Organizational Documents; or

(u) revisions in the regulation or enforcement of standards for maintenance, architectural design, or exterior appearance of improvements on Parcels.

Section 2. Amendments Not Requiring Consent of Owners. Notwithstanding any provision in this Declaration to the contrary, the following amendments to the Declaration or Bylaws shall not require the consent of the Parcel Owners, provided that such amendment does not involve changes of a material adverse nature.

(a) Statutorily Authorized Amendments Affecting Parcel Boundaries, and Undivided Interests in Common area. Amendments to the Declaration or Bylaws which are authorized pursuant to the following provisions of this Declaration shall require only the approvals of the Parcel Owner and adjacent Parcel Owners for such amendments for the relocation of boundaries of Parcels and Common area; and

(b) Amendments by Declarant to Address Compliance and Other Issues. The Declarant reserves the right and power, and each Parcel Owner by acceptance of a deed to a Parcel is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Parcel and is irrevocable (except by Declarant) for a period of seven (7) years from the date of the filing of the Declaration, to amend the Declaration for the following purposes: (i) to the extent necessary to conform to the requirements of any federal, state, or local law; (ii) to correct any scrivener's errors, typographical errors, or factual errors or omissions, the correction of which would not impair the interest of any Parcel Owner or mortgagee; or (iii) to amend or change the name of the Association; provided that if there is an Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant;

(c) Amendments by the Board Pursuant to Statutory Authority. The Board may, without a vote of the Owners, amend the Declaration in any manner necessary for any of the following purposes:

(1) to meet the requirements of institutional mortgagees, guarantors, insurers, and servicers of first mortgage loans, the Federal National Mortgage Association ("Fannie Mae"), the Federal Home Loan Mortgage Association ("Freddie Mac"), the Federal Housing Administration (FHA), the Veterans Administration (VA), and similar institutions;

(2) to meet the requirements of insurance underwriters;

(3) to bring the Declaration into compliance with Chapter 5312, Ohio Revised Code, as the same may be amended from time to time;

(4) to correct clerical or typographical errors or obvious factual errors in the Declaration or an exhibit to the Declaration; or

(5) to designate a successor to the person named to receive service of process for the Association, by filing with the Ohio Secretary of State an appropriate change of statutory agent designation.

Section 3. Amendments Requiring Unanimous Consent of Owners. Notwithstanding any provision in this Declaration to the contrary, a vote to terminate the applicability of this Declaration and to dissolve the Planned Community requires the unanimous consent of owners either in writing or in a meeting called for that purpose.

Section 4. Method to Amend. An amendment to this Declaration (or the Drawings or the Bylaws), adopted with the consents hereinbefore provided, shall be in a writing executed with the same formalities as this Declaration by two officers of the Association and shall contain their certification that the amendment was duly adopted in accordance with the foregoing provisions and in conformance with Chapter 5312 of the Ohio Revised Code. Any amendment adopted by the Declarant or the Board pursuant to authority granted it under the Declaration shall be in a

writing duly executed by it with the same formalities as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested by the Declaration in the Declarant or Board. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same in the Official Records of Knox County, Ohio.

ARTICLE XIX - INSTRUMENT REQUIREMENTS

RESERVED.

ARTICLE XX - GENERAL PROVISIONS

Section 1. Instruments. ORC Chapter 5312 requires certain provisions and information to be provided in the Declaration. All individual deeds of Parcels and the language therein are incorporated by reference to this Declaration.

Section 2. Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Property which is part of this Planned Community, and its Association, and their respective heirs, executors, administrators, successors and assigns.

Section 3. Enforcement; Mediation of Certain Disputes. In addition to any other remedies provided in this Declaration, Declarant, (only with respect to those rights directly benefiting the Declarant), the Association, and each Parcel Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, conditions, covenant, reservation, easement, lien or charge. Further, the Association and each Owner shall have rights of action against each other for failure to comply with the provisions of the Association's Organizational Documents, rules and regulations, and applicable law, with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Parcel Owner who fails to comply with the same, including but not limited to the right to assess charges for the costs of enforcement and arbitration. Notwithstanding the foregoing, in the event of any dispute between the Association and any Owner or Occupant, other than with regard to assessments, that cannot be settled by an agreement between them, the matter shall first be submitted to Mediation prior to an action being filed.

Section 4. Severability. Invalidation of any one or more of these covenants, conditions, restrictions, or easements by judgment or court order shall in no way affect any other provisions,

which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of Chapter 5312 of the Ohio Revised Code, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

Section 5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, limited liability companies, other types of business entities, men or women, shall in all cases be assumed as though in such case fully expressed.

Section 6. Captions. The captions of the various provisions of this Declaration are not part of the content thereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the Declarant has executed this Declaration by its duly authorized this _____ day of _____, 2022.

DECLARANT

Knox County Land Reutilization Corporation,
an Ohio Corporation

By: _____

Its: _____

STATE OF OHIO)
) ss:
KNOX COUNTY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, the _____ of Knox County Land Reutilization Corporation, an Ohio corporation, on behalf of said company.

Notary Public

DEVELOPER

Cooper Park Development Company
an Ohio corporation

By: _____

Its: _____

STATE OF OHIO)
) ss:
KNOX COUNTY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022,
by _____, the _____ of Cooper Park Development Company, an
Ohio corporation, on behalf of said company.

Notary Public

EXHIBIT A
Legal Descriptions and Drawings

[insert drawings]

EXHIBIT B

By Laws

-of-

COOPER PROGRESS PARK PROPERTY OWNERS ASSOCIATION, INC.

Article I

BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the Association shall be managed by a Board of Directors (the “Board”).

Section 2. Number of Directors. The Board shall consist of five (5) Directors. The number of Directors shall be fixed from time to time by the Members and the number so fixed shall comprise the entire Board.

Section 3. Election Meeting. The Declarant shall control the Owners Association and appoint and remove members of the Board of Directors until five Parcels have been conveyed to Owners, at which time the Board of Directors shall call a special election. The Board of Directors shall consist of five directors whom shall be voted upon by vote of the Owners. The first term shall consist of Declarant and four Owners. The Directors of the Board shall be elected during the Annual Meeting by a majority of Members present and voting.

Section 4. Election by Members. Owners may elect 1) Owners or their Spouses, 2) any principal member of a limited liability company, 3) any partner of a partnership, 4) any director, officer, trustee, or employee of a corporation, and 5) any trustee of a trust may be elected to the Board.

Section 5. Term of Office. The term of office for any Director shall be three (3) years. All Directors may serve an unlimited number of consecutive or non-consecutive terms. For the initial five Directors, two shall be appointed effective for the 2022-2025 term, one shall be appointed for the 2022-2023 term, and two shall be appointed for the 2022-2024 term. Thereafter, all Directors shall serve a three-year term based on when voted upon.

Section 6. Board Vacancies and Succession.

A. Board vacancies shall occur from the disqualification, death, declaration of incompetency or resignation of any Director; or from the removal (with or without cause) of a Director from the Board;

B. Any Director may be removed from the Board (with or without cause) by a two-thirds vote of the Board. Such action shall be taken at the Annual Meeting or at a Regular Board Meeting, and the proposed removal shall be set forth in the notice of any such meeting.

C. At any time, as Director may resign from the Board by providing written notice to any officer other than the resigning Director. The resignation shall be effective upon actual receipt of the notice by the officer, unless the notice specifies a later resignation date.

D. In the case of any vacancy on the Board, the remaining Directors by an affirmative vote of a majority thereof may appoint a successor to hold office until the next meeting for the election of Directors and until the election and qualification of his or her successor.

Section 7. Compensation. Directors **shall not** receive any stated salaries for their services unless agreed upon by the members.

Section 8. Powers and Duties of the Board of Directors.

A. Except as otherwise provided in the Declaration, all the powers, duties, and functions of the Association conferred by the Articles of Incorporation, the By-Laws, state statutes, common law, court decisions, or otherwise, shall be exercised, performed, or controlled by the Board.

B. The Board shall have general charge of the affairs, property, and assets of the Association. It shall be the duty of the Board to carry out the aims and purposes of this Association, and to this end to manage, and control, all of its property or assets. Each Director shall serve in a fiduciary capacity.

C. The Board may, from time to time, appoint, as advisors, persons whose advice, assistance, and support may be deemed helpful in determining policies and formulating programs for carrying out the Association's purposes.

D. Notwithstanding any contrary provision in these Bylaws, all Board actions, powers, duties and authorities shall be exercised (and exercisable) only in furtherance of the Association's purposes as stated in the Articles of Incorporation and the Code of Regulations.

E. The Board is authorized to engage such persons, including an executive officer/manager and assistants, attorneys, accountants, trustees, and agent, as in its opinion are needed for the administration of the Association, and to pay reasonable compensation for services and expenses thereof.

F. As periodically determined by the Board, a Director may be reimbursed for such Director's actual expenses incurred in discharging the Association's business and the Trustee's duties as a Director.

G. Except as otherwise expressly designated by the Board, individual Directors shall have no powers and authority to act on behalf of the Association and all Directors shall act and vote as a Board.

Section 9. Miscellaneous. To the extent permitted by the laws of the State of Ohio, neither the Board nor any of its members individually, shall be liable for the negligent acts or omissions of an employee, agent, or representative selected with reasonable care, nor for anything the Board may do, or refrain from doing, in good faith, including the following: errors in judgment, acts done or committed on advice of counsel, or mistakes of fact or law.

Article II

MEETINGS

Section 1. Annual Meetings. The annual meeting of the Owners (herein called the “Annual Meeting”) shall be held on the same date, time and place as the First Meeting of Members (as set forth in the Declaration) or at a date, time and place as determined by the Board. Special meetings of the Board may be called by the President, (or, in case of the President's absence, death, or disability, by the Vice President), by the Directors by action at a meeting, by a majority of the Directors acting without a meeting, or by Owners representing fifty percent of the voting power.

Section 2. Regular Board Meetings. Regular meetings of the Board (herein called “Regular Board Meeting”) may be periodically held on such days and at such times and places as the Board determines. Only Directors may attend or participate in any discussion or deliberation of a meeting of the Board unless the Board expressly authorizes the owner to attend or participate.

Section 3. Notices of Meetings. Written notice of each Annual Meeting, Special Meeting (as set forth in the Code of Regulations) or Regular Meeting of the Board stating the date, time and place thereof shall be given by the Secretary or the person or persons calling the meeting by written notice, personal delivery or by mail, telegram or other written media to each Owner or Director entitled to notice of the meeting, not more than thirty (30) days nor less than seven (7) days before any such meeting. Except as otherwise provided in the O.R.C 5312, the notice need not specify the purposes of the meeting. If mailed, such notice shall be directed to the Owner or Director at the mailing address as the same appears upon the records of the Association. The giving of notice shall be deemed to be waived by any Owner or Director who shall attend and participate in such meeting without protesting, prior to or at the commencement of such meeting, the lack of proper notice and may be waived, in a writing, by any Trustee either before or after such meeting.

Section 4. Place of Meetings. Meetings of Directors shall be held at such place as the Board determines and causes the notice thereof to be so stated.

Section 5. Voting. For purposes of any vote of Directors, each Director shall have one vote. Any Director may be represented and considered present at any meeting of Director or vote thereof and exercise any other rights by proxy or proxies appointed by a writing signed by such Director. Unless otherwise provided in the O.R.C. 5312 or by law, the Board shall act by a

majority vote of the Directors at a duly constituted meeting or through a written document signed by all Directors.

Section 6. Quorum. A majority of Directors present at any meeting of the Board shall constitute a quorum for the transaction of business to be considered at such meeting, provided, however, that no action required by law to be authorized or taken by a designated proportion or number of Directors or of any class of Directors may be authorized or taken by a lesser proportion or number.

Section 7. Action Without a Meeting. Any action which might be taken at any meeting of the Directors may be taken without such meeting by a writing or writings signed by all of the Directors, in accordance with Ohio Revised Code Section 1702.25. The writing or writings evidencing such action without a meeting shall be filed with the Secretary of the Association and inserted in the permanent records relating to meetings of the Directors.

Section 8. Meetings Via Communications Equipment. Meetings of the Board may be held through any communications equipment including electronic or telephonic communication, provided all persons participating can hear each other or read the in real time, and such participation in a meeting shall constitute presence at such meeting.

Article III

OFFICERS

Section 1. Election. The officers of this Association shall be a President, a Vice President; a Secretary; and a Treasurer from the members of the Board. The Board may also elect additional Vice Presidents; an Assistant Secretary; an Assistant Treasurer; and such additional officers as they deem desirable. Said officers shall be chosen by the Board, and the Board may choose one person to hold two offices, except the offices of President and Secretary, and the offices of President and Vice President. Officers shall hold office until the date fixed pursuant to these Regulations for the annual meeting of the Board next following the election of such officers, and until their successors are elected and qualified.

Section 2. Authority and Duties of Officers. The officers of this Association shall have such authority and shall perform such duties as are customarily incident to their respective offices, and such other and further duties as may from time to time be required of them by the Board or the President. In particular, the following officers shall have the following authority and duties:

A. President. The President of the Association shall: preside at all meetings of the Board; ensure that all Board orders and actions are implemented; sign the Association's documents; exercise general executive supervision, management and control over the Association's affairs, property, business, activities, other officers, and funds (subject to control by the Board); and generally perform all duties incident to the office and such other duties and responsibilities as the Board periodically requires.

B. Vice-President. The Vice-President of the Association shall: upon request of the Board, perform all duties and responsibilities of the President during the President's absence or incapacity; and perform such other duties and responsibilities as the Board periodically requires.

C. Secretary. The Secretary of the Association shall: take and maintain (or cause to be taken and maintained) minutes of all meetings of the Board; unless otherwise provided herein, give (or cause to be given) Notice of all meetings of the Board as required by these Regulations; maintain (or cause to be maintained) the Association's Seal (if any), a register of the address of each Director, and all other books, records and other documents of the Association; and generally perform all duties incident to the office and such other duties and responsibilities as the Board periodically requires.

D. Treasurer. The Treasurer of the Association shall: maintain (or cause to be maintained) custody of the Association's funds, securities, properties and other assets as periodically required by the Board; prepare (or cause to be prepared) accurate financial accounts and statements of all funds received and paid by the Association and of the Association's financial condition, as periodically required by the Board; and generally perform all duties incident to the office and such other duties and responsibilities as the Board periodically requires.

E. Other Officers. Any other officer(s) of the Association shall have such duties and responsibilities as the Board periodically requires.

Section 3. Officer Vacancies and Succession.

A. Officer vacancies shall occur from the disqualification, death, declaration of incompetency or resignation of any officer; or from the removal (with or without cause) from office.

B. An officer may be removed from office at any time (with or without cause) by a two-thirds vote of the Board.

C. At any time, an officer may resign from office by providing written notice to any officer or Director (other than the resigning officer). The resignation shall be effective upon actual receipt of the notice by the officer or Trustee, unless the notice specifies a later resignation date.

D. Unless otherwise determined by the Board, the Vice-President shall fill any vacancy in the Presidency for its unexpired term and until a successor is chosen, or until an earlier resignation, disqualification, death, declaration of incompetency or removal from office. If the Board has elected more than one Vice-President as designated in Section 1 of this Article III, the Board shall determine which Vice-President shall fill and vacancy in the Presidency. The Board shall fill all other officer vacancies by electing (when and as determined by the Board) successor officers to serve the unexpired terms of the vacant offices and until their successors are elected, or until their earlier resignation, disqualification, declaration of incompetency, death or removal from office or death.

Section 4. Tax Exempt Purposes. Notwithstanding any contrary provision herein, all officers' actions, powers, duties and authorities shall be exercised (and exercisable) only in furtherance of the Association's purposes stated in the Articles of Incorporation and the Code of Regulations.

Article IV

INDEMNIFICATION AND INSURANCE

Section 1. Authorization.

A. In the event that any person who was or is a party to, or is threatened to be made a party to any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, seeks indemnification from the Association against expenses, including attorney fees (and in the case of actions other than those by or in the right of the Association, judgments, fines and amounts paid in settlement), actually and reasonably incurred by him in connection with such action, suit, or proceeding by reason of the fact that such person is or was a trustee, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a trustee, director, officer, employee, or agent of another Association, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust, or other enterprise, then, unless such indemnification is ordered by a court, the Association shall determine or cause to be determined in the manner provided in (under the statutes or precedent of the state of organization of this Association) whether or not indemnification is proper in the circumstances because the person claiming such indemnification has met the applicable standards of conduct set forth in (such statutes and precedent), and, to the extent that it is so determined that such indemnification is proper, the person claiming such indemnification shall be so indemnified.

B. The indemnification provided by this Article IV shall not be deemed exclusive of any other rights to which any person seeking indemnification may be entitled under the Articles or any agreement, vote of members or disinterested trustees, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a trustee, officer, employee or agent of the Association and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 2. Insurance. The Association, to the extent permitted by pertinent state statutes, may purchase and maintain insurance on behalf of any person who is or was such a trustee, officer, employee, or agent of the Association, or is or was serving at the request of the Association as such a trustee, officer, employee, or agent of another Association, domestic or foreign, nonprofit or for profit, partnership, joint venture, trust, or other enterprise.

Article V

BOOKS AND RECORDS

The Association shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of the Board, a written consents of the Board, and committees

having any of the authority of the Board. An Owner may examine and copy 1) the books and records of accounts that specify the receipts and expenditures relating to the common areas, and other common receipts and expenses, 2) records showing the collection of the common area from the owners, 3) minutes of the meetings of Association and the Board of Directors, and 4) records of the names and addresses of the Owners. The Board may determine the times and location at which the documents may be examined or copied and a reasonable fee for copying the documents. An Owner may not examine or copy 1) information that pertains to property-related personnel matters, 2) communications with legal counsel, or attorney work products, 3) information pertaining to contracts or transactions under negotiations or containing confidentiality clauses, 4) information that relates to the enforcement of the Declaration, By-laws or rules of the Association against other Owners, and 5) information the disclosure of which is prohibited by law.

Article VI

FISCAL YEAR

The fiscal year of the Association shall be the twelve-month period ending on the last day of December, or such other period as may be designated by the Board.

Article VII

AMENDMENTS

These Bylaws may be amended or repealed by a seventy-five percent (75%) majority vote of the Members present at a meeting called for that purpose, in writing, or at any annual meeting of the Members.

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City Council
City of Mount Vernon
Mount Vernon, OH 43050

SCHEDULED

ORDINANCE 2022-35

Meeting: 09/26/22 7:30 PM
Dept: Planning and Zoning
Hillier, Severns
Category: Planning and Zoning
Prepared By: Rob Broeren
Initiator: Todd Hill
DOC ID: 3650

AN ORDINANCE AMENDING THE ZONING CLASSIFICATION OF A PORTION OF PARCEL #66-00501.000 LOCATED ON NEWARK ROAD FROM THE PRESENT ZONING OF NC - NEIGHBORHOOD COMMERCIAL DISTRICT, TO PND - PLANNED NEIGHBORHOOD DISTRICT; AND DECLARING AN EMERGENCY.

WHEREAS, the Council for the City of Mount Vernon has received an application for rezoning certain property within the City of Mount Vernon, specifically a portion of Parcel #66-00501.000 located on Newark Road; and

WHEREAS, the Municipal Planning Commission for the City of Mount Vernon met on September 8, 2022 and voted unanimously to approve the zoning change from Neighborhood Commercial District to Planned Neighborhood District.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mount Vernon, State of Ohio:

SECTION 1: That the City of Mount Vernon hereby amends the zoning classification of a portion of Parcel #66-00501.000, located on Newark Road. The zoning will be as indicated:

<u>PARCEL NO.</u>	<u>PROPOSED ZONING</u>
66-00676.000	PND - Planned Neighborhood District

SECTION 2: That the zoning classification be recorded in Title XI of the Planning and Zoning Codes of the Codified Ordinances of the City of Mount Vernon.

SECTION 3: This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety, and for the further reason to allow the development of needed housing within the City, the said Ordinance shall, therefore, become effective upon its date of passage and approval by the Mayor, provided that it receives the affirmative vote of two-thirds (2/3) of the members elected to the Council of the City of Mount Vernon; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.



Liberty
CROSSING

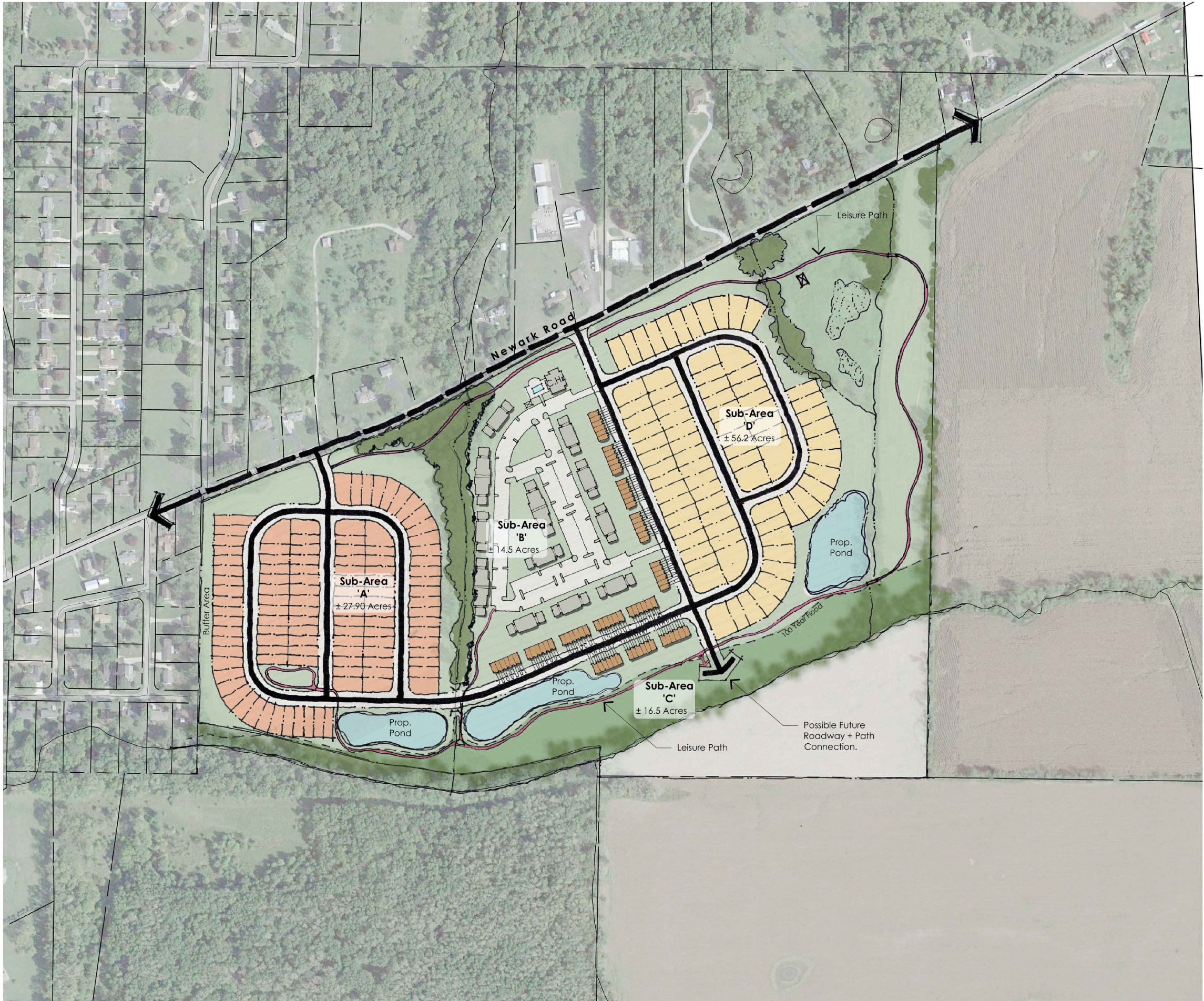
ZONING AMENDMENT

NEIGHBORHOOD COMMERCIAL TO PLANNED NEIGHBORHOOD DISTRICT

CITY OF MOUNT VERNON, OHIO
08.11.2022



Communication: 09-26-22 Zoning Amendment (Ordinances for First Reading)



Site Data: Concept 'A'

Total Site: ± 115.10 Gross Acres
R.O.W (Newark Road) ± 2.27 Acres
Floodplain ± 20.41 Acres

Sub-Area A: Single-Family ± 27.90 Acres
- Total Lots 109
- Lot Width 40'

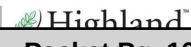
Sub-Area B: Multi-Family ± 14.5 Acres
- Total Units 252

Sub-Area C: Townhomes ± 16.5 Acres
Total Units 78

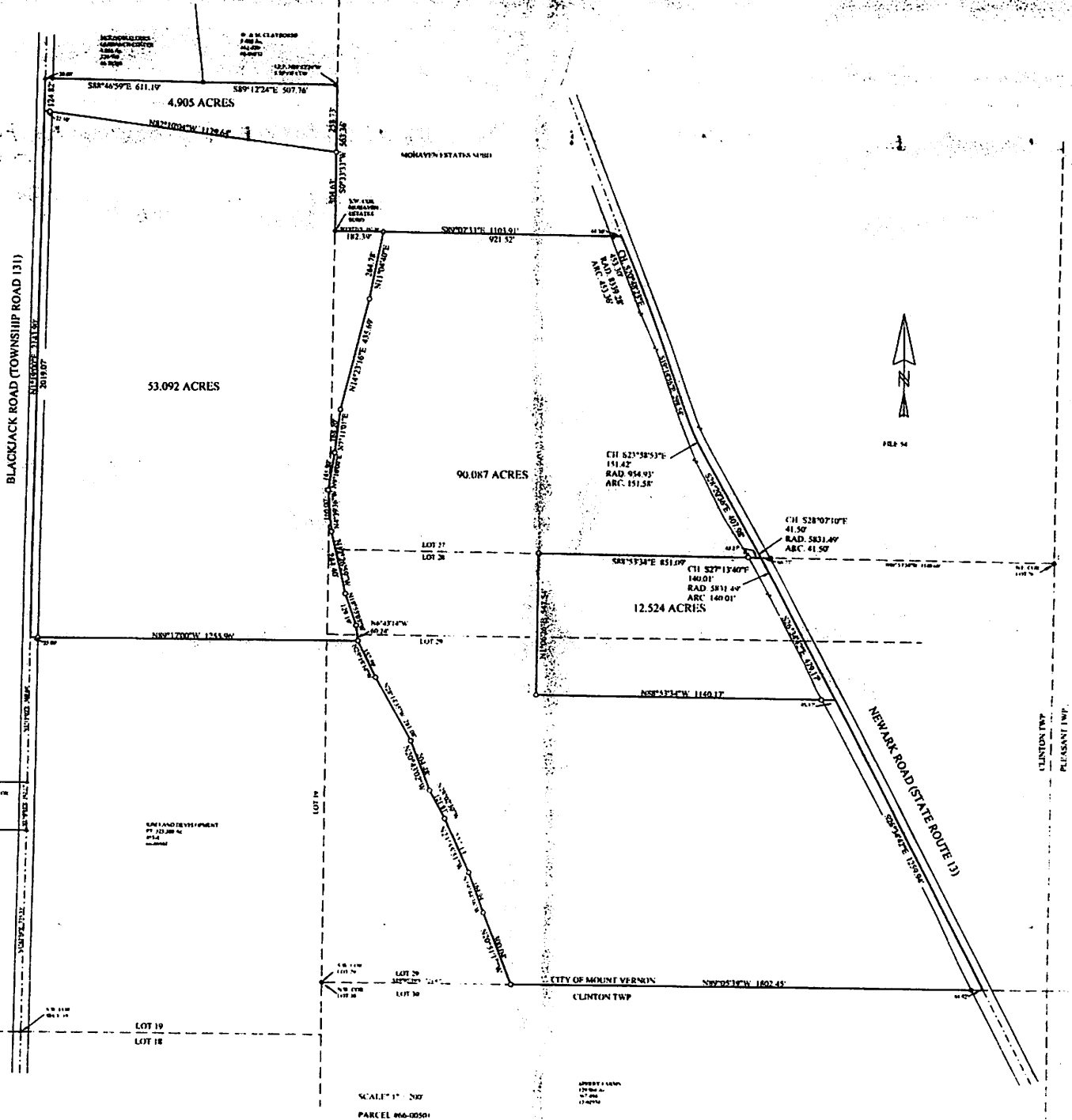
Sub-Area D: Single-Family ± 56.2 Acres
- Total Lots 80
- Lot Width 52'

Open Space ± 59.41 Acres (52%)
Total Dwelling Units: ± 519
Gross Density: ± 4.51 du/acre

Communication: 09-26-22 Zoning Amendment (Ordinances for First Reading)



PART OF LOTS 19, 27, 28 AND 29, QTR. 4, T6, R13, CITY OF MOUNT VERNON, KNOX COUNTY, OHIO.



SCALE 1" = 200'

PARCEL 046-00501

● - IRPN PIN SET

○ - IRPN PIN FOUND

▲ - K.R. SPIKE FOUND

△ - CONC. MONUMENT



I CERTIFY THIS PLAT TO BE A TRUE COPY OF A SURVEY MADE FOR LAND DEVELOPMENT.

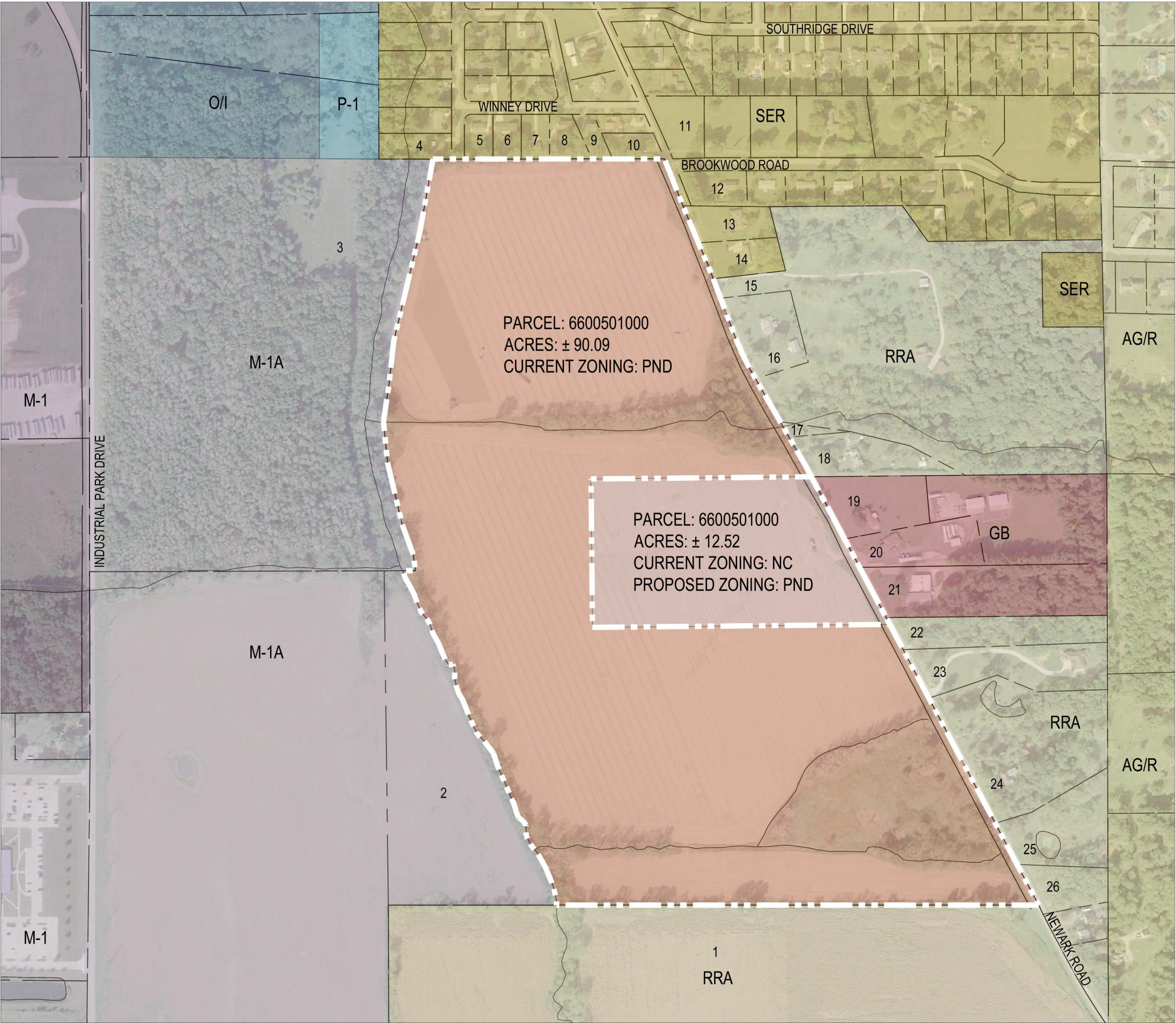
DAVID R. MILLS, SURVEYOR #7157

TRACY & MILLS SURVEYORS

10 E. VINE STREET MT. VERNON, OHIO

JULY 2004 C.S.S.

Communication: 09-26-22 Zoning Amendment (Ordinances for First Reading)



17.2

ADJACENT OWNERS:		
LOT #	OWNER NAME	ADDRESS
1	SPERRY FARMS INC	6712 RANGELINE RD. MOUNT VERNON, OH 43050
2	CONCORD ROAD PROPERTIES LLC	5662 SPORTSMAN CLUB RD. JOHNSTOWN, OH 43031
3	CITY OF MOUNT VERNON	40 PUBLIC SQ. MOUNT VERNON OH, 43050
4	NEACE DANIEL A SR & SHEILA L	19 MEADOWBROOK DR. MT VERNON, OH 43050
5	BARRAU ALAIN & GOIRE SOLMARI	10 WINNEY DR. MOUNT VERNON, OH 43050
6	MOHN JANET M	8 WINNEY DR. MOUNT VERNON, OH 43050
7	MOHN JANET M	8 WINNEY DR. MOUNT VERNON, OH 43050
8	PICCIRILLO MARK A	4 WINNEY DR. MOUNT VERNON, OH 43050
9	PRATT JEFFREY A & GLORIA	2 WINNEY DR. MOUNT VERNON, OH 43050
10	DRISCOLL JACQUELINE D	1595 NEWARK RD. MOUNT VERNON, OH 43050
11	MAYHEW FRED E & CAROL S	745 BROOKWOOD DR. MOUNT VERNON, OH 43050
12	BURTON TIMOTHY J & LEANNE D	730 BROOKWOOD RD. MOUNT VERNON, OH 43050
13	RETFERFORD JAMES P & JEAN A	8280 NEWARK RD. MOUNT VERNON, OH 43050
14	SZILAGYI DOUGLAS M	8260 NEWARK RD. MOUNT VERNON, OH 43050
15	EVERETT ROBERT W	12 WOODLAND CIR. MOUNT VERNON, OH 43050
16	CONKLE RONALD L & LINDA S	8200 NEWARK RD. MOUNT VERNON, OH 43050
17	HUEHNER MARTIN K	8104 NEWARK RD. MOUNT VERNON, OH 43050
18	HUEHNER MARTIN K	8104 NEWARK RD. MOUNT VERNON, OH 43050
19	SHAFFER PATRICK KYLE	8068 NEWARK RD. MOUNT VERNON, OH 43050
20	SUBURBAN PROPANE L.P.	240 ROUTE 10 W PO BOX 206 WHIPPANY, NJ 07981
21	GHERMAN RHONDA & CHARLES	70 FAIRWAY DR. MOUNT VERNON, OH 43050
22	WILLIAMS PATRICIA A & GARY L	7980 NEWARK RD. MT VERNON, OH
23	DIGUILIO NICHOLE D TRUSTEE	7950 NEWARK RD. MOUNT VERNON, OH 43050
24	CHANEY FRED A M	7864 NEWARK RD. MOUNT VERNON, OH 43050
25	MILLER CHRISTOPHER C & HEIDI J	7820 NEWARK RD. MOUNT VERNON, OH 43050
26	P3T LTD AN OHIO LIMITED LIABILITY CO	3396 SHARON VALLEY RD. NEWARK, OH 43055

- EXISTING ZONING:**
- PLANNED NEIGHBORHOOD DISTRICT (PND) CITY OF MOUNT VERNON
 - NEIGHBORHOOD COMMERCIAL (NC) CITY OF MOUNT VERNON
 - PUBLIC, SEMIPUBLIC (P-1) CITY OF MOUNT VERNON
 - OFFICE-INSTITUTIONAL (O/I) CITY OF MOUNT VERNON
 - LIGHT INDUSTRIAL (M-1A) CITY OF MOUNT VERNON
 - MANUFACTURING (M-1) CITY OF MOUNT VERNON
 - SUBURBAN ESTATE RESIDENTIAL (SER) CLINTON TOWNSHIP
 - RURAL RESIDENTIAL AND AGRICULTURAL (RRA) CLINTON TOWNSHIP
 - GENERAL BUSINESS (GB) CLINTON TOWNSHIP
 - AGRICULTURAL-RESIDENTIAL (AG/R) PLEASANT TOWNSHIP

Communication: 09-26-22 Zoning Amendment (Ordinances for First Reading)