

ORDINANCE NO. 7006

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP TO REZONE THE PROPERTY AT 945 CAPSTONE DRIVE (CITY LOT #8058) FROM MOUND BUSINESS (MB-1) TO SPECIAL DEVELOPMENT DISTRICT (SDD-3), AND TO APPROVE THE COMPANION DEVELOPMENT GUIDELINES REPORT, PRELIMINARY DEVELOPMENT PLAN, AND FINAL DEVELOPMENT PLAN.

WHEREAS, an Agent of the Owner of City Lot #8058 filed an application with the City of Miamisburg Development Department to rezone the subject parcel from Mound Business (MB-1) to Special Development District (SDD-3); and

WHEREAS, the subject property, due to its distinctive history and construction, is uniquely difficult to re-utilize or redevelop for commercial or industrial purposes in accordance with the rules and regulations governing the Mound Business Park; and

WHEREAS, establishing the SDD-3 district will allow the Owner to make beneficial use of the property which would otherwise be unlikely under the MB-1 zoning designation; and

WHEREAS, the City of Miamisburg Planning Commission reviewed the requested rezoning in accordance with the provisions set forth in the City Charter and the Planning and Zoning Code; and

WHEREAS, the City of Miamisburg Planning Commission found the proposed rezoning and accompanying reports and plans to be consistent with the requirements and standards of the Planning and Zoning Code, and meets the intent of the City of Miamisburg Comprehensive Plan, and therefore recommends their adoption; and

WHEREAS, City Council reviewed the case material and concurred with the Planning Commission's recommendation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The Development Guidelines Report as shown in "Exhibit A", attached hereto, is hereby approved.

Section 2.

Due to the unique nature of the building and site, no exterior improvements of significance are proposed. Therefore, neither a Preliminary nor a Final Development Plan is required at this time. If exterior improvements of significance are proposed in the future, the Special Development District regulations shall be amended as required by the Planning and Zoning Code.

Section 3.

The Zoning Map is subsequently amended, attached to, and made a part of Ordinance No. 2712 is hereby amended, per Exhibit B, to reflect the foregoing rezoning classification contained herein and the City Manager is authorized and directed to cause said rezoning to be reflected on the Zoning Map.

Section 4.

This measure shall take effect and be in full force from and after the earliest period allowed by law.

Passed: March 21, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Mayor Michelle Collins
Michelle L. Collins, Mayor

EXHIBIT A
DEVELOPMENT GUIDELINES REPORT

Special Development District 3 (SDD-3)
Development Guidelines Report
945 Capstone Drive (aka T-Building)
January 2023

SECTION 1 - DESCRIPTION OF THE SITE AND INTENT:

Parcels Included.

The propose rezoning encompasses 4.26 acres located at 945 Capstone Drive, further identified as City Lot #8058 and County Parcel ID #K46 00501 0019.

Ownership of Site.

The Parcel Owner according to the Montgomery County Auditor is Patriot Communications, LLC with a mailing address of 965 Capstone Drive, Miamisburg, OH 45342.

Justification for Special Development District Designation.

The subject property, known as the Technical Building (aka T-Building), was the former site for enrichment of Polonium-210 needed in the manufacture of the initiators for nuclear weapons. Production of Polonium-210 at the T-Building began in 1947 and continued until 1975. The justification for a Special Development District is the unique architecture of the building. The structure is entirely subterranean, with no infrastructure on the surface except for the ventilation shafts visible above ground. The building walls are 16 feet thick, with 8-foot-thick floors, and three heavy blast doors protecting entrances to the interior vehicle tunnel. It was built to withstand the most powerful conventional weapon in the U.S. arsenal at the time: a 2,000 lb. semi-armor piercing jet-assisted torpedo. All waste liquids are pumped to the surface and ventilation is provided via air shafts and dual 200 ft. exhaust stacks. Due to its unique construction and the costs involved in maintaining the heating and ventilation systems, the building has extremely limited use for private commercial or industrial activity.

Intent.

The intent of this Special Development District is to allow the Owner to conduct specialized automotive manufacturing and storage within the building. It is believed these uses can co-exist with the uses permitted elsewhere on the Mound property. Furthermore, all activity related to the proposed uses would occur completely within the T-Building, thus having little to no impact on adjacent land uses and property owners. These uses are not permitted under the current MB-1, Mound Business, zoning classification.

Refer to Exhibit 1 – Building Floor Plans – attached to this Special Development District document and incorporated herein for the Floor Plan of the existing building.

SECTION 2 - DEVELOPMENT GUIDELINES.

The development of the site shall be in conformance with the following standards and guidelines:

- A) **Definitions:** In addition to the General Provisions and Definitions found in Chapter 1230 of the Miamisburg Zoning Code, the following definitions shall apply to this Special Development District.

- (1) **AFTER-MARKET CUSTOM VEHICLE MANUFACTURING AND RE-CONDITIONING:** The process of designing, re-conditioning, and manufacturing a unique, one-of-a-kind vehicle using after-market and custom parts and materials.
- (2) **LONG-TERM SECURE VEHICLE STORAGE, INTERNAL ONLY:** The long-term storage of private vehicles within a secured building.

B) Uses:

- (1) Permitted Uses. The following uses are permitted on the site:
 - A. After-Market Custom Vehicle Manufacturing and Re-Conditioning.
 - B. Long-term Secure Vehicle Storage, Internal Only.
 - C. All generally permitted uses in the MB-1 zoning district.
- (2) Special Uses. The following special uses are subject to review in accordance with Chapters 1294 and 1296 of the Planning and Zoning Code:
 - A. All special uses in the MB-1 zoning district.
- (3) Accessory Uses. The following accessory uses are permitted on the site:
 - A. Any accessory use customary to a Permitted Use provided it occurs wholly within the building.
- (4) Prohibited Uses. The following uses are prohibited:
 - A. All prohibited uses in the MB-1 zoning district, except for those expressly permitted as noted above.

C) Specific Requirements:

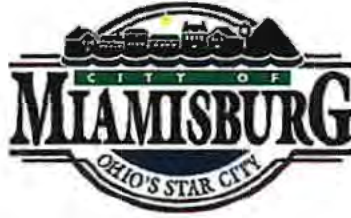
- (1) Outside storage of vehicles or materials of any kind for any reason, other than customary parking for employees, visitors, and customers, is prohibited.
- (2) Deliveries by semi-trailer or similar vehicle are prohibited.
- (3) Deliveries of vehicles, parts, or other materials shall not obstruct the normal flow of traffic on any public street, nor access to any parking lot from any public street.
- (4) Noise, fumes, vibrations, pollution, or any other negative externality shall not be readily perceptible beyond the property boundaries. Any such readily detectible negative externality shall cease immediately upon notification by the City of Miamisburg.
- (5) Detached accessory buildings or structures of any kind are prohibited.

D) All Other Requirements:

As required under MB-1 zoning and the rules and regulations of the Miamisburg Zoning Code and all other applicable codes and ordinances.

Exhibit Summary:

Exhibit 1 – Building Floor Plans



RECOMMENDATION OF THE PLANNING COMMISSION

January 24, 2023

Scott Thomae
14481 Anthony Road
Germantown, OH 45327

Cold War Customs
945 Capstone Drive
Miamisburg, OH 45342

RE: Case RZ-01-2023, Zoning Map Amendment @ 945 Capstone Drive

Greetings,

Please accept this letter as Official Notice of a recommendation in Case RZ-01-2023. On Monday, January 23, 2023, the Planning Commission, by a 5-0 vote, RECOMMENDED APPROVAL of an amendment to the Official Zoning Map to rezone the property located at 945 Capstone Drive (City Lot #8058) from Mound Business (MB-1) to Special Development District (SDD-3), and the companion Development Guidelines Report, Preliminary Development Plan, and Final Development Plan.

The matter will appear on the City Council agenda under New Business on Tuesday, February 21, 2023 at 6:00pm in Council Chambers at 10 N. First Street, Miamisburg, OH 45342. Your attendance at the meeting is requested to answer questions of City Council.

Should you have any questions or concerns, please call (937-847-6536) or email (andrew.rodney@cityofmiamisburg.com).

Sincerely,

Andrew E. Rodney, AICP
City Planner

CC: File

Development / Planning / Inspection Departments
20 E. Central Ave. • Miamisburg, Ohio 45342
937-847-6532 • FAX 937-847-6662

EXHIBIT B
PROPOSED ZONING MAP

Ord. 7006, Proposed Zoning Map



ORDINANCE NO. 7007

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO THE NINTH AMENDMENT AND ADDENDUM TO 2017 MIAMISBURG PROJECTS MANAGEMENT AND FINANCING AGREEMENT, AND DECLARING AN EMERGENCY.

WHEREAS, on or about June 17, 2017, the City of Miamisburg entered into the 2017 Miamisburg Projects Management and Financing Agreement with the Montgomery County Transportation Improvement District (TID); and

WHEREAS, the City desires to finance and construct improvements known as the Riverfront Park Improvement Project; and

WHEREAS, the City desires to engage the TID to manage and construct the improvements within the park under the terms of the PMFA Agreement; and

WHEREAS, the City desires to proceed to Phase II of the Park Project 2 as described in the Agreement or subsequent amendments.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The Ninth Amendment and Addendum to the PMFA Agreement is hereby determined to be necessary for the Riverfront Park Improvement Project.

Section 2.

The City Manager is hereby authorized to execute the Ninth Amendment and Addendum to the PMFA for the Riverfront Park Improvement Project.

Section 3.

The sum of \$1,572,400 is hereby set aside and appropriated from the Park Capital Improvement Fund in account number 360.990.54602. A General Fund transfer of \$1,572,400 will be made from account 110.129.57864 to the Park Capital Improvement Fund.

Section 4.

This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date in order to complete the project in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: January 17, 2023

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

**NINTH AMENDMENT AND ADDENDUM TO 2017 MIAMISBURG PROJECTS
MANAGEMENT AND FINANCING AGREEMENT**

THIS NINTH AMENDMENT AND ADDENDUM TO 2017 MIAMISBURG PROJECTS MANAGEMENT AND FINANCING AGREEMENT (this "**Ninth Amendment**") is made and entered into as of the ___ day of _____, 20___ (the "**Effective Date**"), by and between the CITY OF MIAMISBURG, OHIO (the "**City**"), and the MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT (the "**TID**") (the City and the TID are sometimes referred to herein individually as a "**Party**" and collectively as "**Parties**"), under the following circumstances:

- A. On or about June 27, 2017, the Parties entered into that certain 2017 Miamisburg Projects Management and Financing Agreement (the "**Original PMFA**"), which was subsequently modified by: (i) that certain First Amendment and Addendum dated on or about July 20, 2017 (the "**First Amendment**"); (ii) that certain Second Amendment and Addendum dated on or about August 8, 2018 (the "**Second Amendment**"); (iii) that certain Third Amendment and Addendum dated on or about January 10, 2019 (the "**Third Amendment**"); (iv) that certain Fourth Amendment and Addendum dated on or about June 16, 2019 (the "**Fourth Amendment**"); (v) that certain Fifth Amendment and Addendum dated on or about November 20, 2019 (the "**Fifth Amendment**"); (vi) that certain Sixth Amendment and Addendum dated on or about December 18, 2019 (the "**Sixth Amendment**"); (vii) that certain Seventh Amendment and Addendum dated on or about November 8, 2021 (the "**Seventh Amendment**", and collectively with each of the foregoing, the "**PMFA**"); and that certain Eighth Amendment and Addendum dated on or about June 30, 2022 (the "**Eighth Amendment**", and collectively with each of the foregoing, the "**PMFA**");
- B. The Parties now desire to enter into this Ninth Amendment in order to further define their respective rights and obligations related to the Park Project Part 2 (as defined in the Fifth Amendment); and
- C. The City, and the TID, acting pursuant to Resolution No. _____ adopted by its Board of Trustees on _____, 20___, have each authorized the execution of this Ninth Amendment.

NOW THEREFORE, the Parties agree as follows:

1. **Remaining Phase I Tasks.** Following the execution of this Ninth Amendment, the Parties will work together to accomplish any remaining Phase I Tasks for Phase I of the Park Project Part 2 as set forth in the Fifth Amendment, in addition to the following (collectively, the "**Remaining Phase I Tasks**"):
 - A. The City will complete or cause the completion of any design and engineering services necessary to bid and construct the Park Project Part 2;

B. The Parties will work together to determine the scope for Phase II of the Park Project Part 2 (the “**Part 2 Scope**”);

C. The Parties will work together to determine the budget for Phase II of the Park Project Part 2 (the “**Part 2 Budget**”); and

D. The Parties will work together to determine the schedule for Phase II of the Park Project Part 2, taking into account mutually agreeable sequencing for construction activities (the “**Part 2 Schedule**”).

2. **Phase II of the Park Project Part 2.** The Parties will only proceed to Phase II of the Park Project Part 2 upon written notification by the City that it desires to proceed to Phase II, which is then consented to in writing by the TID (a “**Phase II Commencement Notice**”). To the extent the Parties desire to proceed to Phase II, the Parties will negotiate and enter into an addendum to this Ninth Amendment (the “**Phase II Addendum**”) in connection with the delivery of the Phase II Commencement Notice that will set forth the Parties’ respective rights and obligations with respect to Phase II of the Park Project Part 2. If the Parties agree to proceed to Phase II, the City acknowledges that it will be required to pay the TID an amount equal to four percent (4%) of the Project Construction Cost as identified in the Part 2 Budget, for the TID’s activities to be undertaken in connection with Phase II of the Park Project Part 2, such amount to be contingent upon and paid pursuant to the terms of the negotiated Phase II Addendum.

3. **Fiscal Officer Certification.** The Fiscal Officer of the City hereby certifies that the monies required to meet the obligations of the City during the current fiscal year under this Ninth Amendment are in the process of collection and upon collection will be credited to the appropriate fund, free from any previous encumbrance. Pursuant to Section 5705.44 of the Ohio Revised Code, the Fiscal Officer of the City covenants that any requirement herein of an expenditure of City monies in any future fiscal year will be included, as a fixed charge, in the annual appropriation measure which is submitted to City Council for approval for that future fiscal year. The certifications in this Section 3 are given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

4. **TID Payment Obligations.** Notwithstanding any provision of this Ninth Amendment, it is understood and agreed that the TID will have no pecuniary obligations under the PMFA as amended by this Ninth Amendment or any related agreement and no obligation of the TID hereunder or thereunder will constitute a general debt or a pledge of the general credit of the TID.

5. **Miscellaneous.** Terms used but not otherwise defined herein will have the meanings set forth in the PMFA. Except as set forth in this Ninth Amendment, the PMFA remains in full force and effect and is hereby ratified in its entirety. In the event of a conflict between the terms of this Ninth Amendment and the terms of the PMFA, the applicable terms of this Ninth Amendment will govern and control. This Ninth Amendment will be construed under the laws of the State of Ohio. This Ninth Amendment may be executed in any number of counterparts, each of which will be deemed an original and together will constitute a single instrument. Delivery of an executed counterpart of a signature page to this Ninth Amendment by facsimile, email or other electronic means is effective as delivery of a manually executed counterpart of this Ninth Amendment. The headings of the clauses contained herein are solely for the convenience of the Parties and do not constitute a part hereof.

IN WITNESS WHEREOF, the Parties have executed this Ninth Amcndment effective as of the Effective Date.

CITY OF MIAMISBURG, OHIO

CITY OF MIAMISBURG OHIO, FISCAL OFFICER

(Section 3 only)

By: _____

By: _____

Its: _____

MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT

By: _____

Its: _____

Exhibit A: Sources and Uses

**SOURCES &
USES**

SOURCES	AMOUNT
City of Miamisburg	\$ 5,443,000
TOTAL	\$ 5,443,000

USES	AMOUNT	
Project Items & Amenities	\$ 865,000	Amount of amenities and items purchased outside of construction contract
Construction	\$ 4,400,000	Amount without items purchased outside of construction contract
TID Project Management	\$ 176,000	4% of construction
Third Party & Legal	\$ 2,000	
TOTAL	\$ 5,443,000	

ORDINANCE NO. 7008

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PANINI NORTH AMERICA, INC (DBA: PANINI) PROVIDING A JOB CREATION REFUNDABLE TAX CREDIT, GRANTING THE TAX CREDIT, AND DECLARING AN EMERGENCY.

WHEREAS, Section 718.15 of the Ohio Revised Code (the City Act) authorizes municipalities to grant refundable or non-refundable credits against their city income taxes in exchange for new jobs; and

WHEREAS, the granting of the tax credits by the City of Miamisburg, Ohio (the "City") to Panini North America, Inc. will (1) create jobs in the State of Ohio and this City, (2) the project is economically sound and will benefit the people of this State and the City by increasing opportunities for employment and strengthening the economy of the State and the City and (3) receiving the tax credits from the City is a major factor in the decision of Panini North America, Inc. to go forward with the project.

NOW THEREFORE BE IT ORDAINED THAT THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into a Job Creation Tax Credit Agreement with Panini North America, Inc. (the "Agreement") in substantially the form attached hereto as Exhibit "A" with only such changes as are approved by the City Manager. The agreement with the City will provide for the relocation of 28 jobs to the city, and in consideration of those new jobs, will provide a job creation tax credit as more specifically set forth in the Agreement.

Section 2.

The City Council hereby finds and determines the (1) the Project, as defined in the Agreement, will create jobs in the City of Miamisburg, Ohio, (2) the Project is economically sound and will benefit the people of the State and this City by increasing opportunities for employment and strengthening the economy of the State and (3) receiving the tax credits from the City is a major factor in the decision of Panini North America, Inc. to go forward with the Project.

Section 3.

The City Council hereby approves and grants a job creation tax credit as set forth in the Agreement authorized in Section 1 above.

Section 4.

That the City Manager, the Finance Director and the Clerk are hereby authorized to execute and deliver any other documents, agreements and certificates deemed necessary to effectuate the incentives set forth in the Agreement.

Section 5.

That the obligations of the City under this ordinance do not and shall not represent or constitute a debt or pledge of the full faith and credit or the taxing power of the City and no member of council, officer, official, employee, agent, or legal representative of the City shall be liable personally for any obligations under this Ordinance or the Agreement.

Section 6.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason to execute this agreement at the earliest possible date, therefore, this measure shall take effect and be in force from and after its passage.

Passed: January 17, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle Collins, Mayor

Exhibit "A"

Job Creation Tax Credit Agreement

JOB CREATION TAX CREDIT AGREEMENT

THIS TAX CREDIT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2023, even though the parties may sign at a later date, by and between the City of Miamisburg, Ohio, an Ohio municipal corporation (hereafter "City") and Panini North America, Inc. (hereafter "Company"), a Delaware corporation.

RECITALS

Company is headquartered in Washington Township, OH. The company is seeking to lease a new, larger facility in Miamisburg and has identified property on in Byers Business Park as their preferred Miamisburg site option.

Company is seeking to create at least 28 new jobs in Miamisburg (which includes the moving of current jobs from Washington Township, OH) and at least \$2,000,000 in annual payroll in Miamisburg as part of the project. Company will incur approximately \$175,000 in costs related to the relocation (the "Project"). The Project will create additional tax revenues for the City.

Company agreed to develop this Project in the City if various governmental entities provided the incentives for the development of the Project. The City has agreed to provide the hereinafter described incentive, if Company agrees to and does develop the Project, create the jobs and provide the other economic opportunities created by the Project.

The City desires to encourage development of the proposed site and to encourage job creation in the City.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties, intending to be legally bound, agree as follows:

- A. **Findings and Conclusions of the City.**
 1. The City hereby finds that

- a. Company has the requisite financial responsibility and business experience to create employment opportunities in the City and to improve the economic climate of the City, Montgomery County (“County”), and State of Ohio (“State”) and surrounding areas.
 - b. The Project (i) will create jobs in the City; (ii) is economically sound and will benefit the people of the City by increasing opportunities for employment and strengthening the economy of these areas; and (iii) receiving the tax credits provided in section 718.15 of the Ohio Revised Code (“The Legislation”) are major factors in Company’s decision to locate the Project in the City.
 - c. It is in the best interest of the City to provide an income tax credit to Company in order to create additional job opportunities in the City.
2. The City has reviewed the project, and the project has been approved by the City.
 3. The City Council (“Council”) authorized the City Manager to enter into an agreement with Company providing for a Job Creation Refundable Tax Credit.

B. Development of the Project.

Subject to the conditions contained in this Agreement, Company shall develop the Project at the site in Byers Business Park. The Project shall consist of the leasing of space and relocation of Company. The Project shall be completed by approximately June 1, 2023. As part of the Project, Company shall relocate

operations from Washington Township to the Project in Byers Business Park in Miamisburg, Ohio (the "Relocation").

C. **Creation of New Jobs.**

Company shall create, or cause to be created, by December 31, 2025, 28 new full-time permanent jobs in the City ("New Employees") with an annualized payroll of not less than \$2,000,000. "New Employees" include current employees of Company who move their place of employment to Miamisburg.

D. **New Job Tax Credits.**

1. Pursuant to section 718.15 of the Ohio Revised Code ("ORC 718.15"), the City is authorized to grant a refundable credit against the municipal income tax and to execute agreements with employers who are taxpayers of the City for the purpose of granting those employers new job creation tax credits against the employer's municipal income tax, those tax credits being provided to create new jobs in the City. To stimulate this job creation and to enhance the economic growth and stability of the City, State, County, and surrounding areas, the City finds that (i) the project will create new jobs in the City and State; (ii) the Project is economically sound and will benefit the people of Ohio and the City by increasing opportunities for employment and strengthen the economy of the State and the City; and (iii) receiving the municipal income tax credits provided herein is a major factor in the Company's decision to develop the Project in the City and the State.
2. The Company has submitted an application to the City. This application has been reviewed by the City and the City has determined to grant the

Company a new job creation tax credit (the "Tax Credit") of thirty percent (30%) of the new income tax revenue received by the City from New Employees hired by the Company in the City as a result of the development of the Project and its operations in the City. The Tax Credit shall relate to all New Employees employed in the City as a result of the development of the Project, with the credit commencing upon occupancy of the building by Company and ending on December 31, 2027. (the "Tax Credit Period").

3. Company hereby agrees to maintain operations of the Project for at least twice the number of years as the term of the Tax Credit. A calculation of the City Tax Credit pursuant to paragraph 3, below, for the application tax year shall be determined as follows:

$$\begin{array}{l} \text{The total amount of Miamisburg Income Tax} \\ \text{Withheld from New Employees during the} \\ \text{applicable tax year.} \\ \qquad \qquad \qquad \times \\ \text{The applicable Tax Credit percentage.} \\ \qquad \qquad \qquad = \\ \text{The Tax Credit for the applicable tax year.} \end{array}$$

The City and all its departments acknowledges that all this information is confidential and agree that it shall be used only for the computation, verification and collection of the City Tax Credit. The City agrees that it shall not disclose this information to any person(s) not needing this information for such computation, verification or collection.

4. Pursuant to approval by City Council (Ordinance No. _____, passed _____, 2022) and in compliance with the ORC 718.15, the City hereby grants a refundable new job creation credit equal to the Tax

Credit Percentage of the City's income tax revenue derived from the wages of the Company's New Employees employed at the Project commencing on commencing on occupancy of the building by Company and ending on December 31, 2027.

5. Commencing June 1, 2024, and then annually on or before June 1st, the City shall remit to the Company the Tax Credit amount for the prior fiscal year's income taxes with the last remittance under this agreement being made on or before June 1, 2028.
6. The City Tax Credit provided by subsection D2 hereof shall be received annually by Company. Should Company fail to employ 28 New Employees with a minimum annualized payroll of \$2,000,000 by December 31, 2025, and maintain a payroll of at least \$2,000,000 until at least December 31, 2027, the City may reduce the amount of the Tax Credit and/or reduce the Tax Credit Period.

If Company permanently ceases operation within the City anytime during the Tax Credit Period, Company shall have the obligation to repay, to the City, an amount equal to 100% of the total Tax Credits received by Company.

7. Company understands that they are expected to remain in business within the City of Miamisburg for at least twice as long as the term of the tax credit. If Company permanently ceases to operate in the City or fails to maintain at least \$1,250,000 in annual payroll any time between January 1, 2028 and

December 31, 2032 the Company shall be responsible to repay, to City, as follows:

- a. If Company permanently ceases to operate in the City or fails to maintain at least \$1,250,000 in annual payroll anytime in 2028, Company shall repay, to City, an amount equal to 50% of the total Tax Credits received by Company.
- b. If Company permanently ceases to operate in the City or fails to maintain at least \$1,250,000 in annual payroll anytime in 2029, Company shall repay, to City, an amount equal to 40% of the total Tax Credits received by Company.
- c. If Company permanently ceases to operate in the City or fails to maintain at least \$1,250,000 in annual payroll anytime in 2030, Company shall repay, to City, an amount equal to 30% of the total Tax Credits received by Company.
- d. If Company permanently ceases to operate in the City or fails to maintain at least \$1,250,000 in annual payroll anytime in 2031, Company shall repay, to City, an amount equal to 20% of the total Tax Credits received by Company.
- e. If Company ceases to operate in the City or fails to maintain at least \$1,250,000 in annual payroll anytime in 2032, Company shall repay, to City, an amount equal to 10% of the total Tax Credits received by Company.

8. The City and the Company agree to take any and all reasonable action necessary or appropriate to effect, claim, preserve and maintain the tax credits described in this Agreement, including without limitation, joining in the execution of all applications, agreements and other documents and providing any necessary certifications or designations required in connection with the Tax Credit.
9. Notwithstanding anything in this Agreement to the contrary, if Company, its business, its employees, or any of its assets or physical locations sustains a negative impact due to a Force Majeure Condition (as defined below) Company will be relieved of Company's obligations to remain in business in the City, to employ a certain number of employees, or to maintain a certain level of payroll for so long as such Force Majeure Condition continues to negatively impact Company, its business, its employees or any of its assets or physical locations. "Force Majeure Condition" means an act of God, accident, riot, war, terrorist act, epidemic, pandemic (including the Covid-19 pandemic), quarantine, civil commotion, breakdown of communication facilities, breakdown of internet service provider, natural catastrophe, governmental act or omission, change in laws or regulations, national strike, fire, explosion, generalized lack of availability of raw materials or energy, or any governmental order, law, regulation, or requirement in response to any of the foregoing.

E. **Conditions Precedent.**

Company's commitment to develop the Project is conditioned upon all the agreements contained in this Agreement being accomplished by all the parties hereto. If all the agreements contained in this Agreement are not accomplished, Company shall have no responsibility to develop the Project in the City and is free to develop the Project in any other location. Similarly, the City's commitments under this Agreement are conditional upon Company performing its obligations as described herein.

F. **Miscellaneous.**

1. **Covenants and Representations.** The City covenants and represents to the Company as follows:

- a. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the City of any contract, agreement, understanding or instrument to which the City is a party or by which the City is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;
- b. There is no pending litigation, investigation or claim which affects or which might affect the City's performance of this Agreement and to the best of the City's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect the City's performance of this Agreement;

- c. Except for actions contemplated by this Agreement, as of the date of the execution of this Agreement, the City has no information or knowledge of any change contemplated in the applicable laws, ordinances or restrictions or any judicial or administrative action that would prevent, limit, impede or render more costly the Company's undertaking of the project; and
- d. The representations and agreements of the City made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing representations and agreements and such representations made by the City are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the Company (except as expressly stated in this Agreement), the Company is placing complete reliance thereon and that such representations are to be treated as material to the Company in entering into this Agreement and the City further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

2. Company covenants and represents to the City as follows:

- a. Company intends to relocate to a new space in Byers Business Park;

- b. Company intends to employ at least 28 New Employees at the Site with a minimum annualized payroll of \$2,000,000 by December 31, 2025;
- c. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by Company of any contract, agreement, understanding or instrument to which Company is a party or by which Company is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;
- d. There is no pending litigation, investigation or claim which affects or which might affect Company's performance of this Agreement and to the best of Company's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect Company's performance of this Agreement; and
- e. The representations and agreements of Company made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as containing representations and agreements and such representations made by Company are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the City (except as expressly stated in this Agreement), the City is

placing complete reliance thereon and that such representations are to be treated as material to the City entering into this Agreement and Company further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

- G. Inspection of Records. The City shall, in addition to any rights already existing, have the right to audit the books and records of Company related to the employment dates and compensation of the New Employees during business hours and upon advance written notice of at least seven (7) business days.
- H. Successors and Assigns. The terms and provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns (including successive as well as immediate successors and assigns).
- I. Governing Law. This Agreement shall be governed by and construed in accordance of the laws of the State of Ohio.
- J. Waiver. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or noncompliance with this Agreement shall be held to be a waiver of any other or subsequent breach or noncompliance.

- K. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.
- L. Provisions Severable. If any provision of this Agreement or the application or any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provisions of this Agreement or the application of such provisions to any other person or circumstance, all of which other provisions shall remain in full force and effect; and, if any provision of this Agreement is capable of two constructions, one of which would render the provisions invalid, then such provision shall have the meaning which renders it valid.
- M. Captions. The captions contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement.
- N. Assignment. Company shall have the right to assign this Agreement to any of its successors or assigns only after written approval of such assignment by City, which approval shall not be unreasonably withheld, delayed, or conditioned.
- O. Notifications. Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any part of this Agreement shall be made in writing, addressed as follows, and sent by registered or certified mail, return receipt requested, and also by fax:
- P.

If to the City, to: City Manager
10 North First Street
Miamisburg, OH 45342
Email: manager@cityofmiamisburg.com

If to Company to: Until April 1, 2023:
Dan Landis, Controller
Panini North America, Inc.
577 Congress Park Drive
Dayton, OH 45459
Email: dan.landis@panini.com

On or after April 1, 2023
Dan Landis, Controller
Panini North America, Inc.
1229 Byers Road
Miamisburg, OH 45342
Email: dan.landis@panini.com

Or at such address as may be specified by any party, from time to time, by
prior written notification.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their duly authorized representatives to be effective as of the date first above written.

THE CITY OF MIAMISBURG, OHIO

By: _____
Keith D. Johnson
City Manager

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, the _____ of the City of Miamisburg, Ohio, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

My commission expires: _____

[NOTARY SEAL]

PANINI NORTH AMERICA, INC.

By: _____
Daniel Landis, Controller

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this ____ day of _____, 2023, by Daniel Landis, the Controller of Panini North America, Inc., a Delaware corporation, on behalf of the corporation.

Notary Public

My commission expires: _____

[NOTARY SEAL]

ORDINANCE NO. 7009

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES, AND DECLARING AN EMERGENCY.

WHEREAS, the need for additional raw water production wells was identified in the Water System Master Plan to accommodate future demands and build redundancy into the water supply; and,

WHEREAS, City Council has authorized the purchase of real property for the purpose of constructing a new wellfield; and,

WHEREAS, Arcadis U.S., Inc. has been selected as the engineering consultant having the knowledge, skills, abilities and experience necessary to effectively design the new production well and transmission main and oversee the bidding of the project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Addendum 15 to the Master Professional Services Agreement with Arcadis U.S., Inc. at a cost not to exceed \$661,300, is hereby determined to be necessary for the design and oversight of the Production Well and Raw Water Transmission Main Project.

Section 2.

The City Manager is hereby authorized to enter into an agreement with Arcadis U.S., Inc. for engineering services as delineated in the Scope of Services attached hereto and marked as Exhibit A at a cost not to exceed \$661,300.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the professional engineering services are needed at the earliest possible date to ensure eligibility for project funding, therefore, this measure shall take effect and be in force from and after its passage.

Passed: January 17, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

**EXHIBIT A
SCOPE OF SERVICES**

Production Well No. 14 and Raw Water Main Design

ARCADIS U.S., Inc., will provide the engineering services described below for the design and bidding of the Production Well #14 and Raw Water Main Project.

Background

The objective of this project is to increase the volume of raw water able to be supplied to the City of Miamisburg's Water Treatment Facility (WTF). The raw water pumped to the City of Miamisburg Water Treatment Facility has hardness values of greater than 300 mg/L. Water that exhibits a hardness of 150mg/L is considered hard water. The City of Miamisburg upgraded the WTF in 2016/2017 to include RO Softening. A new production well to supplement the existing, aging wells is necessary to provide adequate raw water supply for the WTF softening process and meet demand projections. Additionally, a new raw water main, approximately 10,400 LF in length, will need to be installed from the proposed production well to the WTF.

Design Services

The design elements for this project include:

- Production Well No. 14 (capacity currently estimated to be 1,500 gpm) located near 5938 Soldiers Home – Miamisburg Rd.
- Approximately 10,400 ft. of larger-diameter raw water main to be located:
 - From 5938 Soldiers Home – Miamisburg Rd to 302 South Riverview Ave
 - Within the road on Soldiers Home – Miamisburg Rd.
 - Within the road on North Riverview Ave.
 - Within the road on South Riverview Ave.
- The City intends to construct the new production well on an undeveloped, open parcel of land measuring approximately 26 acres (5938 Soldiers Home – Miamisburg Rd.)

The City intends to construct the new transmission mains within the public rights-of-way along Soldiers Home – Miamisburg Road, North Riverview Avenue, and South Riverview Avenue. The proposed alignments will require stream and larger road crossings (OH 725 and West Linden Avenue) but will not require any railroad crossings.

Production Well Development & Construction

Arcadis will provide design and construction services for services for the new production well, including the well casing, screen, filter pack, and grouting materials. Design and construction services for the new production well will include:

- Negotiation Assistance with Jefferson Regional Water
- Drilling a test boring at the final production well location to design the below grade components of the production well including the casing, screen, filter pack, and grouting materials
- Installing 2 pairs (4 total) of shallow and deep wellhead protection monitoring wells on the southeast end of the property
- Preparing drawings and specifications for the below grade components of the production well
- Solicit bids from potential drilling contractors for construction of the well
- Evaluate bids and provide recommendations for award of a drilling services contract
- Provide oversight services during the construction and testing of the production well
- Analyze testing data, update the groundwater flow model, and provide informational packages required for OEPA well plan approval.

Private Well Impact Mitigation

Pumping the new production well will lower groundwater levels near the property, which may impact nearby private well owners. Arcadis will obtain access to private well owners within an approximately one-half mile of the new production well to take measurements from the private wells and determine if those wells will be impacted. Wells likely to be impacted will be mitigated prior to completion of the project by either furnishing new, deeper wells or lowering well pumps. The private well impact mitigation will include:

- Contacting and obtaining access agreements from 25 private well owners.
- Taking well depth, pump setting depth, and static and pumping water level measurements from the private wells to determine which wells would be impacted.
- Collecting baseline water quality samples for reference in the event of future water quality complaints.

- Retaining and directing a local residential well driller to mitigate the private wells that will be impacted by either drilling a new deeper well (5 assumed) or if possible, lowering the pump settings in the wells (7 assumed).

Topographic Survey

- ARCADIS understands that the City will contract directly with a surveyor to perform a property survey, perform a topographic survey along the proposed water main alignments, and prepare the required easement documents, if any. ARCADIS further understands that the surveyor will provide us with the survey data as soon as it is available.

Raw Water Main Preliminary (60%) Design

The preliminary design will include:

- Contracting with a subconsultant to perform a subsurface soil investigation and prepare a technical report signed by a licensed geotechnical engineer that provides design recommendations and construction considerations
- Analysis and implementation of data obtained from the production well development and testing, and construction
- Field reconnaissance and hydraulic analysis to develop the water main alignments
- Presenting status update at monthly progress meetings
- Developing 60% drawings
- Developing a Table of Contents of the technical specifications that will be required
- Developing preliminary opinion of probable construction cost (OPCC)
- Providing the City with three half-size sets of preliminary drawings for review.
- Leading a review meeting to discuss the design and receive City input
- Preparing meeting minutes

Raw Water Main Preliminary (90%) Design

The detailed design will include:

- Presenting status update at monthly progress meetings
- Developing 90% drawings
- Developing all technical specifications that will be required
- Developing 90% opinion of probable construction cost (OPCC)
- Providing the City with three half-size sets of preliminary drawings for review.
- Leading a review meeting to discuss the design and receive City input
- Preparing meeting minutes
- Submittal of drawings and specifications for OEPA plan review

Raw Water Main Final Design

The final design will include:

- Submittal of construction drawings suitable for bidding
- Submittal of a Project Manual that contains bidding documents, contract documents, and technical specifications, suitable for bidding
- Assisting the City in filing applications for permits with, and obtaining approvals from, the governmental authorities that have jurisdiction to approve the design
- Submitting a revised OPCC that shows unit costs (based on manufacturer's quotes, cost estimating manuals, and recent cost estimating experience) and includes allowances for contractor overhead and profit, including contingency
- Assisting the City in obtaining and managing an Ohio EPA Water Supply Loan Account (WSRLA)

The construction drawings will show the general scope, extent and character of the work to be furnished and performed by Contractor(s). Drawings will be prepared to show the water main plan and profile, site plans, access roads, site security and facilities, structural components and details, mechanical equipment configuration and layout, piping layout and details, details of electrical equipment and connections, and equipment and schematics for process instrumentation and control. Drawings will be prepared on a 22-inch x 34-inch format using AutoCAD software.

The technical specifications will be based on ARCADIS's standard construction documents. The specifications follow Construction Specifications Institute (CSI) 50-division Master Format. A complete Project Manual will be provided as part of the final submittal.

ARCADIS will assist the City as-needed during the WSRLA funding process. Our assistance may include:

- Coordinating between the City and Ohio EPA during the environmental review process
- Reviewing the draft loan exhibits for consistency with the loan application prior to signature of the loan agreement by the City
- Submitting pay requests for disbursement of loans funds, change orders, and loan closeout associated with the loans for WSRLA 2015 program year
- Preparing/updating a schedule of loan requirements and due dates

Raw Water Main Bidding Services

ARCADIS will provide the following bidding phase engineering services:

- Coordinate the production and sale of drawings and Project Manuals with a printer
- Attend a pre-bid meeting
- Respond to Contractor's questions during bid preparation
- Prepare Bid Addenda
- Participate in the public bid opening
- Tabulate and evaluate the bids, and prepare award letter
- Coordinate execution of Construction Contract
- Schedule pre-construction meeting

ARCADIS understands that the City will publish the advertisement for bids.

Loan Assistance

ARCADIS will assist the City as-needed during the loan funding process related to the design of the Richard Street Elevated Tank and Water Main Improvements. These tasks may include:

- Provide coordination between the City and Ohio EPA during the environmental review process

- Review the draft loan exhibits for consistency with the loan application prior to signature of the loan agreement by the City.
- Submit pay requests for disbursement of loans funds, change orders, and loan closeout associated with the loans for WSRLA 2015 program year.
- Prepare and/or update a schedule of loan requirements and due dates.

ADDENDUM NO. 15
TO
MASTER PROFESSIONAL SERVICES AGREEMENT

This Addendum is executed this ____ day of _____, 2023 in connection with the Master Professional Services Agreement between the **City of Miamisburg, Ohio** ("OWNER") and **ARCADIS U.S., Inc.**, ("ENGINEER") dated as of January 23, 2014 (the "Agreement") which is incorporated herein by reference and made a part hereof. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement. In the event a term of this Addendum conflicts with a term of the Agreement, the terms of this Addendum shall prevail.

SCOPE OF SERVICES:

The ENGINEER will provide design, permitting and bidding services for the **Production Well No. 14 & Raw Water Main Project** as further provided in Exhibit A attached hereto and incorporated herein by reference (the "Services").

COMPENSATION:

The OWNER will compensate ENGINEER for the Services as follows:

Project Management & Loan Assistance	\$ 63,100
Well Design, Well Impact Mitigation & Monitoring Wells	\$ 262,300
Raw Water Main and Pump Design	\$ 305,900
Raw Water Main and Pump Bidding	<u>\$ 30,000</u>
Compensation Maximum Price	\$ 661,300

SCHEDULE:

The ENGINEER shall complete the Services in accordance with the schedule attached hereto as Exhibit B and incorporated herein by reference (the "Schedule").

IN WITNESS WHEREOF, the parties hereto have made and executed this ADDENDUM the day and year indicated herein:

Attest:

CITY OF MIAMISBURG, OHIO

Witness

By: _____

Name: Keith D. Johnson

Title: City Manager

Attest:


ARCADIS U.S., Inc.



Jason M. Abbott

Title: Project Manager

By: _____


Name: Brad Olson, PE

Title: Vice President

ORDINANCE NO. 7010

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROJECT AGREEMENT WITH MIAMI TOWNSHIP FOR JOINT PARTICIPATION IN THE 2023 ASPHALT PAVING PROGRAM AND DECLARING AN EMERGENCY.

WHEREAS, Miamisburg conducts competitive bidding for an annual asphalt paving program, and Miami Township would like to enter into an arrangement whereby Miamisburg would include certain designated Miami Township roadways in their 2023 asphalt paving program; and

WHEREAS, Ohio Revised Code § 5535.08 (C)(1) authorizes the Parties to enter into such an agreement, and

WHEREAS, it is the desire of both the City and Township that this resurfacing program be undertaken in a coordinated manner to reduce over-all construction costs; and

WHEREAS, the City shall be designated as the lead agency to solicit bids for this resurfacing work in accordance with approved plans and specifications, and said solicitation to be made in accordance with applicable law; and

WHEREAS, the Township shall reimburse the City for actual construction costs for work completed within Township boundaries based on contract unit prices, as-built quantities, and construction changes approved by the Township; and

WHEREAS, the Township and City jointly desire to enter into a certain agreement for the roadway resurfacing, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into an agreement, attached herein as Exhibit "A", with Miami Township for joint participation in the City's 2023 Asphalt Paving Program.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to remain on schedule for the summer road maintenance season, therefore, this measure shall take effect and be in force from and after its passage.

Passed: January 27, 2023

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT "A"

AGREEMENT FOR JOINT PARTICIPATION IN AN ASPHALT PAVING PROGRAM

This Agreement is entered into on this ____ day of _____, 2023, by and between Miami Township, Montgomery County, Ohio (hereinafter "Miami Township"), and the City of Miamisburg, Montgomery County, Ohio (hereinafter "Miamisburg"). (Miamisburg and Miami Township are collectively referred to herein as the "Parties" and may be referred to individually as a "Party").

RECITALS

WHEREAS, Miamisburg conducts competitive bidding for an annual asphalt paving program, and Miami Township would like to enter into an arrangement whereby Miamisburg would include certain designated Miami Township roadways in their 2023 asphalt paving program bidding; and

WHEREAS, Ohio Revised Code § 5535.08 (C)(1) authorizes the Parties to enter into such an agreement,

NOW, THEREFORE, it is agreed by and between the Parties as follows:

- Section 1.** This Agreement shall commence on the __ day of _____, 2023 (the "Effective Date") and shall continue until the 31st day of December 2023.
- Section 2.** Miami Township has submitted a list of roadways to Miamisburg-to be placed in Miamisburg's Asphalt Paving Program for competitive bidding.
- Section 3.** Miami Township agrees, at its cost, to aid Miamisburg in field inspections along Miami Township's list of roadways during the asphalt paving process.
- Section 4.** Miami Township shall reimburse the Miamisburg for actual construction costs for work completed within township boundaries based on contract unit prices, as built quantities, and construction changes approved by the township. Payments shall be made to Miamisburg within thirty (30) days after receipt of an invoice.
- Section 5** This Agreement may only be modified in writing and signed by both Parties.
- Section 6** This Agreement may be executed in any number of counterparts, each of which is deemed an original but all of which constitute the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**CITY OF MIAMISBURG
MONTGOMERY COUNTY, OH**

**MIAMI TOWNSHIP
MONTGOMERY COUNTY, OH**

By: _____

By: _____

Title: _____

Title: _____

ORDINANCE NO. 7011

AN ORDINANCE APPROVING PROJECT CONSENT LEGISLATION WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) FOR D07 BP/BH FY24 AND DECLARING AN EMERGENCY

PRELIMINARY CONSENT LEGISLATION

Rev. 6/26/00

**PID No. 105416
D07 BP/BH FY24**

The following is an Ordinance enacted by the City of Miamisburg, Montgomery County, Ohio, hereinafter referred to as the Local Public Agency (LPA), in the matter of the stated described project.

SECTION I – Project Description

WHEREAS, the State has determined the need for the described project:

This project is to paint the structural steel and reset bearings for SFN 5710154 on SR 725 mile marker 11.10 in the City of Miamisburg

NOW THEREFORE, be it ordained by the City of Miamisburg of Montgomery County, Ohio.
LPA

SECTION II – Consent Statement

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project.

SECTION III – 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 costs of the improvement.

The LPA 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.

SECTION IV – Utilities and Right-of-Way Statement

The LPA agrees that all right-of-way required for the described project will be made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.

The LPA agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

SECTION V – 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 VI – Authority to Sign

I, City Manager of said City of Miamisburg, is hereby empowered on behalf of the
(Contractual Agent) (LPA)

City of Miamisburg to enter into contracts with the Director of Transportation which is
(LPA)

necessary to complete the above described project.

Passed: February 7, 2023.
(Date)

Attested: Kim Conner
(Clerk)

Attested: Kim Conner
(Clerk)



City Manager


Mayor

The Ordinance is hereby declared to be an emergency measure to expedite the highway project and to promote highway safety. Following appropriate legislative action, 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.

**CERTIFICATE OF COPY
STATE OF OHIO**

City of Miamisburg of Montgomery County, Ohio

I, Kim Combs, as Clerk of the City of Miamisburg, of Montgomery County, Ohio, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 7011 adopted by the legislative Authority of the said City of Miamisburg on the 7 day of February, 2023.

That the publication of such Ordinance has been made and certified of record according to law; that no proceedings looking to a referendum upon such Ordinance have been taken; and that such Ordinance and certificate of publication thereof are of record in Ordinance No. 7011 Page _____

Record No.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable, this 8 day of February 2023.

Kim Combs

(Clerk)

(CITY SEAL)

City of Miamisburg, Montgomery County, Ohio
(LPA)

(If the LPA is designated as a City then the "City Seal" is required. If no Seal, then a letter stating "No Seal is required to accompany the executed legislation.")

The foregoing is accepted as a basis for proceeding with the project herein described for the City of Miamisburg, Montgomery County, Ohio.
(LPA)

Attested: _____ [Signature] _____ Date 2.8.23
(Contractual Agent)

.....
For the State of Ohio

Attested: _____ Date _____
(Director, Ohio Department of Transportation)

ORDINANCE NO. 7012

AN ORDINANCE APPROVING PROJECT CONSENT LEGISLATION WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) FOR D07, GR TYPE A REPLACEMENT AND DECLARING AN EMERGENCY

PRELIMINARY CONSENT LEGISLATION

Rev. 6/26/00

**PID No. 113767
D07 GR Type A
Replacement**

The following is an Ordinance enacted by the City of Miamisburg, Montgomery County, Ohio, hereinafter referred to as the Local Public Agency (LPA), in the matter of the stated described project.

SECTION I – Project Description

WHEREAS, the State has determined the need for the described project:

Remove and replace guardrail Type A anchor assemblies on SR 725 14.355 to 14.365 in the City of Miamisburg

NOW THEREFORE, be it ordained by the City of Miamisburg of Montgomery County, Ohio.
LPA

SECTION II – Consent Statement

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project.

SECTION III – 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 costs of the improvement.

The LPA 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.

SECTION IV – Utilities and Right-of-Way Statement

The LPA agrees that all right-of-way required for the described project will be made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.

The LPA agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

SECTION V – 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 VI – Authority to Sign

I, City Manager of said City of Miamisburg, is hereby empowered on behalf of the
(Contractual Agent) (LPA)

City of Miamisburg to enter into contracts with the Director of Transportation which is
(LPA)

necessary to complete the above described project.

Passed: February 7, 2023.
(Date)

Attested: Kim Conner
(Clerk)

Attested: Kim Conner
(Clerk)



City Manager


Mayor

The Ordinance is hereby declared to be an emergency measure to expedite the highway project and to promote highway safety. Following appropriate legislative action, 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.

**CERTIFICATE OF COPY
STATE OF OHIO**

City of Miamisburg of Montgomery County, Ohio

I, Kim Combs, as Clerk of the City of Miamisburg, of Montgomery County, Ohio, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 7012 adopted by the legislative Authority of the said City of Miamisburg on the 7 day of February, 2023.

That the publication of such Ordinance has been made and certified of record according to law; that no proceedings looking to a referendum upon such Ordinance have been taken; and that such Ordinance and certificate of publication thereof are of record in Ordinance No. 7012 Page _____

Record No.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable, this 8 day of February 2023.

Kim Combs

(Clerk)

(CITY SEAL)

City of Miamisburg, Montgomery County, Ohio
(LPA)

(If the LPA is designated as a City then the "City Seal" is required. If no Seal, then a letter stating "No Seal is required to accompany the executed legislation.")

The foregoing is accepted as a basis for proceeding with the project herein described for the City of Miamisburg, Montgomery County, Ohio.

(LPA)

Attested: _____ Date 2-8-23
(Contractual Agent)

.....
For the State of Ohio

Attested: _____ Date _____
(Director, Ohio Department of Transportation)

ORDINANCE NO 7013

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR PROFESSIONAL ENGINEERING SERVICES TO PROVIDE RIGHT-OF-WAY ACQUISITION, RIGHT-OF-WAY PLANS, AND FINAL CONSTRUCTION PLANS FOR THE RIVERVIEW AVENUE ROADWAY IMPROVEMENT PROJECT AND DECLARING AN EMERGENCY:

WHEREAS, the City has identified a need for roadway, sidewalk, and drainage improvements on Riverview Avenue; and

WHEREAS, this project design is identified in the City's Capital Improvement Plan; and

WHEREAS, the engineering firm of LJB Inc. previously completed a Riverview Avenue feasibility study, conceptual design, and preliminary design.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into a contract with LJB Inc. for professional engineering services for right-of-way acquisition, right-of-way plans, and final construction plans for the Riverview Avenue Roadway Improvement Project at a cost not to exceed two hundred eighty thousand dollars (\$280,000).

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety and welfare and for the further reason that these services are needed at the earliest possible date to complete the design and maintain the project schedule; therefore, this measure shall take effect and be in force from and after its passage.

Passed: February 7, 2023

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7014

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 2023 ASPHALT PAVING PROGRAM AND DECLARING AN EMERGENCY.

WHEREAS, the City has advertised and received bids for the 2023 Asphalt Paving Program in accordance with law; and

WHEREAS, the City and Miami Township have entered into a Project Agreement for joint participation in the 2023 Asphalt Paving Program.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by Barrett Paving Materials, Inc. in the amount of One Million, Three Hundred Forty Thousand, Nine Hundred Ninety-Two Dollars and Thirty-Five Cents (\$1,340,992.35) for the 2023 Asphalt Paving Program pursuant to the bid forms submitted March 2, 2023, is hereby determined to be the lowest and best bid after bidding conducted according to law and is hereby accepted.

Section 2.

The City Manager is hereby authorized to enter into a contract with Barrett Paving Materials, Inc. in accordance with the terms contained in the bid specifications dated March 2, 2023.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed as soon as possible to remain on schedule for the summer road maintenance season, therefore, this measure shall be in force from and after its passage.

Passed: March 7, 2023

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle Collins

Michelle L. Collins, Mayor

ORDINANCE NO. 7015

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 2023 SIDEWALK, CURB AND GUTTER PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the City has advertised and received bids for the 2023 Sidewalk, Curb & Gutter Program in accordance with law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by R.A. Miller Construction Co. in the amount of One Hundred Eighty Eight Thousand, Eight Hundred Fifty Three Dollars and Forty Six Cents (\$188,853.46) for the 2023 Sidewalk, Curb and Gutter Program, pursuant to the bid forms submitted February 28, 2023, is hereby determined to be the lowest and best bid after bidding conducted according to law, and is hereby accepted.

Section 2.

The City Manager is hereby authorized to enter into a contract with R.A. Miller Construction Co. for the 2023 Sidewalk, Curb and Gutter Program, in accordance with the terms contained in the bid specifications dated February 28, 2023.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare, and for the further reason that this contract is needed at the earliest possible date to remain on schedule; therefore, this measure shall take effect and be in force from and after its passage.

Passed: March 7, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved:

Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7016

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A FACILITY USE AGREEMENT WITH DAN PROFITT WITH MIAMI VALLEY TOURNAMENTS FOR THE PURPOSE OF HOSTING AND FACILITATING BASEBALL AND SOFTBALL TOURNAMENTS AT RICE FIELD AND DECLARING AN EMERGENCY.

WHEREAS the City of Miamisburg owns and operates Rice Field, located at 2001 Cincinnati-Dayton Pike, Miamisburg, Ohio, and

WHEREAS the City of Miamisburg typically executes baseball and softball tournaments through a variety of mechanisms, such as in-house, through facility rentals, or otherwise, and

WHEREAS the parties have an interest in simplifying and strengthening the partnership and the delivery of quality baseball and softball tournaments in Miamisburg and have agreed to the facility use structure contained herein, and

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO THAT TWO-THIRDS OF ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into an agreement with Dan Profitt with Miami Valley Tournaments for the purposes of providing baseball and softball tournaments in Miamisburg and is attached hereto as Exhibit "A".

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date to ensure an understanding of the use at Rice Field and to allow for the continued planning of said tournaments, this measure shall take effect and be in force from and after its passage.

Passed: March 7, 2023

Attested: _____

Kim Combs
Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

AGREEMENT

THIS AGREEMENT, made by and between the CITY OF MIAMISBURG, hereinafter called the "City" and the Dan Profit, hereinafter called the "Organizer" entered on _____, 2023.

WITNESSETH

WHEREAS the City owns certain property as described in this agreement; and

WHEREAS the Organizer desires to use such property for the purposes herein contained, the City and the Organizer agree as follows:

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the City and the Organizer agree as follows:

USE

1) The use of Rice Field, 2001 Dayton-Cincinnati Road, Miamisburg OH 45342

The Organizer have use access to Rice Field to coordinate and implement five baseball/softball tournaments for the 2023 season on the following dates:

April 14 – 16, 2023

May 26 – 28, 2023

June 23 – 25, 2023

June 30 – July 2, 2023

The Organizer shall use only the locations designated in the agreement as outlined in the agreement.

The Organizer shall only use fields designated as "Open." Field closures are determined by the City and communicated through the "RainoutLine" Application.

The Organizer shall provide a full list of fields required and the times required 2 weeks in advance of each tournament.

The Organizer shall allow the Miamisburg Baseball Softball League 1 complementary team per age group for baseball and 1 complementary team per age group for softball for the Recreation All Star Tournament on June 30 – July 2, 2023

The Organizer shall be allowed to contract additional vendors/contractors, such as souvenir providers and concessionaires. No duplication in concessions offerings may exist between tournament contractors and the Rice Field concession stand. The Organizer shall provide written notice of intended vendors 30 days before scheduled activity. All vendors must adhere to City vendor conditions and responsibilities. Vendor terms shall be provided to the Organizer as outside vendor requests are received. The Organizer and Organizer's insurance shall be held responsible for vendor issues.

TERMS

This Agreement shall be for a term of one (1) year, commencing April 1, 2023, and expiring on March 30, 2024. On an annual basis, the City and Organizer agree to meet and review the completed year's activities, working relationship, and plan for the upcoming year's activities and needs. During that time, based upon mutual consent, this Agreement may be modified or amended.

TERMINATION OF AGREEMENT

- 1) Either party may terminate this Agreement at any time by giving a minimum 30 day's advance written notice of its intent. No waiver of any such covenant in the Agreement, or of any breach of any such covenant or condition shall be taken to constitute a waiver of any subsequent breach of covenant or condition, or to justify or authorize the nonobservance on any other occasion of the same or of any other covenants, or conditions hereof. The City shall have the right to terminate this Agreement as to any part of the property upon 30 day's advance written notice to the Organizer.

- 2) Either party may terminate this Agreement at any time by giving a minimum thirty (30) days advanced written notice of its intention to so terminate for the other party's failure to comply with the terms and conditions hereof.

ORGANIZER RESPONSIBILITIES

- 1) The Organizer shall maintain and keep the properties in safe and healthful condition according to the local ordinances and direction of the proper public officers during the term of this agreement. The Organizer shall not permit the same to be used for any unlawful purposes; and shall conform to and obey all existing and future laws, ordinances, and regulations of the United States, and of the state and local organizations of the place of property, subdivision, and agencies thereof, and of the City, respecting the property and use thereof.
- 2) The Organizer agrees to incur the cost for the materials and/or services for field lining, drying agent, port-o-let rental, trash collection and removal of any other expenses relating to the provision of Organizer business. A bill for materials will be issued after each tournament.
- 3) The Organizer agrees to pay for field usage as outlined in Exhibit A attached to this agreement. This fee includes exclusive use of the facility and one staff person to assist with upkeep and cleanliness of the facility and fields. Field usage fees will only be charged based on actual field usage and will account for cancellations and changes in scheduling due to weather, team cancellations and other unforeseen modifications.
- 4) The Organizer shall pay all fees within 7 days after the conclusion of the tournament. Failure to pay will result in denial of future field rental requests.
- 5) The Organizer shall not assign or transfer this agreement or sublet any portion thereof without the prior written consent of the City.
- 6) The Organizer will be responsible to reimburse the City the cost of materials to repair field if

excessive damage is caused from Organizer usage. Cost and repair needs will be discussed with the Organizer prior to any work being performed.

- 7) The City recommends that the Organizer require board members, coaches, officials, and parents are provided an understanding the various aspects of providing youth sports programs. The City also requires that Board Members, all Coaches and Officials undergo background checks prior to participation in Organizer activities.
- 8) The Organizer agrees that any publicity concerning the subject matter of this agreement may not be conducted without the prior approval of the City
- 9) The Organizer is required to provide an event budget summary to the City before and after the event.

CITY RESPONSIBILITIES

- 1) The City hereby agrees that if the Organizer shall perform every one of the covenants, undertakings and agreements contained herein to be performed by the Organizer, the Organizer shall during the term hereof, freely, peaceable, and quietly enjoy the use of the property for said public purposes without molestation, hindrance, eviction, or disturbance by the City or persons under its control.
- 2) The City agrees to maintain the parks and facilities as they were utilized as a passive park without Organizer activities. The City will also mow, trim, and maintain the parks and facilities during Organizer use times as an active park. This includes mowing and trimming, bleachers, trash cans, buildings, dumpsters, tree lines, grills, playgrounds, and any additional structures, either permanent or temporary, that may be in place. The City shall provide maintenance to repair facility amenities such as the parking lot, security lights, fencing, signs, and playground areas.

- 3) The City shall coordinate all facility usage at the City's discretion and will schedule all Organizer activities as a priority during the term of this agreement.
- 4) The City shall provide sufficient staff persons for the duration of play to maintain fields, facilities, and the operation of Rice Field. If staff persons are not on site, an on-call number will be provided to the organizer.
- 5) The City shall maintain concessions operations at the Rice Field concession stand.

LIABILITY

- 1) The Organizer agrees to defend, indemnify and hold harmless the City, its officers, employees, agents and volunteers against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the City, its officers or employees may hereafter sustain, incur or be required to pay, arising wholly or in part due to any act or omission of the Organizer, its agents, servants or employees, in the execution, performance or failure to adequately perform the Organizer's obligations pursuant to this Agreement. The Organizer further agrees to assume all risks of loss, damage or injury caused by whatever kind, or whomsoever caused (other than loss, damage or injury caused by any act or omission of the City, its employees, agents, or volunteers) to any person(s) or the property of the parties, or anyone on or about the property.
- 2) The Organizer agrees to obtain at its own cost and expense comprehensive general liability insurance acceptable to the City, with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, including participant liability, products completed operations, personal injury and advertising injury; and the Organizer shall, at the time of the execution of this agreement, furnish the City with a satisfactory certificate of such insurance, providing for a (10) ten day advance written notice of cancellation. However, failure to obtain the required documents shall not waive the Organizer's obligation to provide them. The City, its officers, employees, and volunteers shall be named as an additional insured there under. For any

claims related to this Agreement, the Organizer's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Organizer's insurance and shall not contribute with it. The Organizer shall further require the same insurance coverage and conditions from any subsequent lessee or assignee of the property.

ENFORCEABILITY

- 1) If any provision of this Agreement shall be determined to be void, invalid, unenforceable, or illegal for any reason, it shall be ineffective only to the extent of such prohibition, and the validity and enforceability of all the remaining provisions shall not be affected thereby and shall be ratified by action of the Council of the City of Miamisburg where appropriate to become enforceable.
- 2) This Agreement shall be governed by and construed under the laws of the State of Ohio.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on this ____ day of _____, 2023.

DAN PROFITT
(Organizer)

CITY OF MIAMISBURG
(City)

By _____

By _____

Dan Profit, Organizer

Keith D. Johnson, City Manager

Date _____, 2023

Date _____, 2023

Witness _____

Witness _____

Date _____, 2023

Date _____, 2023

Exhibit A – 2023 Field Usage and Fees

The following outlines the fees anticipated to be charged based on the agreed upon usage. All schedules should be finalized with an anticipated play schedule submitted to the City no later than 24 hours prior to the commencement of the tournament. At the conclusion of the tournament, the organizer will provide the City with the number of games played. All payments will be due in full within 7 days of the conclusion of the tournament.

1) Deposit

- a. A \$250 deposit is required to hold these tournament dates for the season. This deposit is non-refundable. The deposit will be applied toward future payments. Deposit is due April 1, 2023.

2) Tournaments – 2023

- a. Fees will be based upon a rate of \$30 per game.
- b. Tournaments exceeding the use of 5 fields will be charged an additional \$5 per game.
- c. Anticipated times used are TBD.

3) Material reimbursement shall be billed at a rate of \$40 per bag of Turface Conditioner and \$15 per bag of chalk.

4) Fees for actual field use and material usage will be billed at the conclusion of each tournament.

ORDINANCE NO. 7017

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A FACILITY USE AGREEMENT WITH THE MIAMISBURG LACROSSE CLUB AND DECLARING AN EMERGENCY.

WHEREAS the City of Miamisburg owns and manages Beachler Field, located at 412 N. Ninth St., Miamisburg, Ohio, and

WHEREAS the parties have an interest in updating the facility use partnership to provide for the provision of recreational lacrosse programming within Miamisburg and have agreed to the facility use structure contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into an agreement with Miamisburg Lacrosse Club for the purposes of providing lacrosse programming and leagues in Miamisburg and is attached hereto as Exhibit "A".

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date to ensure an understanding of the use at Beachler Field and to allow for the continued planning of said facility use, this measure shall take effect and be in force from and after its passage.

Passed: March 7, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

AGREEMENT

THIS AGREEMENT, made by and between the CITY OF MIAMISBURG, hereinafter called the "City" and the MIAMISBURG LACROSSE CLUB, hereinafter called the "Association" entered on _____, 2023.

WITNESSETH

WHEREAS, the City owns certain property as described in this agreement; and

WHEREAS, the Association desires to use such property for the purposes herein contained, the City and the Association agree as follows:

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the City and the Association agree as follows:

USE

- 1) The use of **Beachler Park and Field** from approximately February 20, 2023 to June 1, 2023.

The Association shall use only the locations designated in the agreement as outlined in the agreement. All other requests for City park, green space, and/or field usage not described herein must be determined and negotiated and attached to this agreement in the form of an addendum.

TERMS

This Agreement shall be for a term, commencing February 20, 2023 and expiring on June 1, 2023. Following each season, the City and Association agree to meet and review the completed year's activities, working relationship, and plan for the upcoming year's activities and needs. During that time, based upon mutual consent, this Agreement may be modified or amended.

TERMINATION OF AGREEMENT

- 1) Either party may terminate this Agreement at any time by giving a minimum 30 days advance written notice of its intent. No waiver of any such covenant in the Agreement, or of any breach of any such covenant or condition shall be taken to constitute a waiver of any subsequent breach of covenant or condition, or to justify or authorize the nonobservance on any other occasion of the same or of any other covenants, or conditions hereof. The City shall have the right to terminate this Agreement as to any part of the property upon 30 days advance written notice to the Association.
- 2) Either party may terminate this Agreement at any time by giving a minimum of sixty (60) days advanced written notice of its intention to so terminate for the other party's failure to comply with the terms and conditions hereof.

ASSOCIATION RESPONSIBILITIES

- 1) The Association shall maintain and keep the properties in safe and healthful condition according to the local ordinances and direction of the proper public officers during the term of this agreement. The Association shall not permit the same to be used for any unlawful purposes; and shall conform to and obey all existing and future laws, ordinances, and regulations of the United States, and of the state and local organizations of the place of property, subdivision, and agencies thereof, and of the City, respecting the property and use thereof.
- 2) The Association agrees that the improvements for the benefit of the property are to be done at the Association's expense and without cost to the City, unless otherwise agreed to in writing by the parties. No improvements, including, but not limited to, lighting, irrigation, signage, fence work, tree and brush removal, and location of parking lots shall be completed without prior written approval by the City. Upon termination of this agreement all improvements become part and parcel of the property, excluding the temporary improvements which are to be removed by the Association and at its expense, except by prior written agreement of the parties to the contrary.
- 3) The Association agrees to incur the cost for the materials and/or services for field lining, port-o-let rental, trash collection and removal of any other expenses relating to the provision of Association business.
- 4) The Association shall not assign or transfer this agreement or sublet any portion

thereof without the prior written consent of the City.

- 5) The Association will be responsible to reimburse the City the cost of materials to repair field if excessive damage is caused from Association usage. Cost and repair needs will be discussed with the Association prior to any work being performed.
- 6) The City recommends that Association board members, coaches, officials and parents are provided an understanding the various aspects of providing youth sports programs. The City also requires that Board Members, all Coaches and Officials undergo background checks prior to participation in Association activities.
- 7) The Association agrees that any publicity concerning the subject matter of this agreement may not be conducted without the prior approval of the City.
- 8) The Association will provide a list of current Board members and will keep the City apprised of any changes to the executive board (President, Vice-President, Treasurer) and if unfilled vacancies exist on the Board. The Association will notify the City of the current schedule of Board and General membership meetings. The Association shall designate one individual to serve as liaison between the City and the Association. The designee will coordinate needs and uses with the Sports Operations Supervisor or designee.
- 9) The Association is required to provide an annual budget summary to the City annually.
- 10) The Association will incur the cost for material and/or services for lacrosse goals, nets, field lining, equipment, and any other expenses related to the provision of club business.
- 11) The Association shall provide a facility use schedule by March 1 of each year including practices, games and clinic dates.
- 12) The Association is required to verify and show proof of their 501(c)3 non-profit status to the City annually.

CITY RESPONSIBILITIES

- 1) The City hereby agrees that if the Association shall perform every one of the covenants, undertakings and agreements contained herein to be performed by the Association, the Association shall during the term hereof, freely, peaceably, and

quietly enjoy the use of the property for said public purposes without molestation, hindrance, eviction, or disturbance by the City or persons under its control.

- 2) The City agrees to maintain the parks and facilities as they were utilized as a passive park without Association activities. The City will also mow, trim, and maintain the parks and facilities during Association use times as an active park. This includes mowing and trimming, bleachers, trash cans, buildings, dumpsters, tree lines, grills, playgrounds, and any additional structures, either permanent or temporary, that may be in place. The City shall provide maintenance to repair facility amenities such as the parking lot, security lights, fencing, signs, and playground areas.
- 3) The City shall coordinate all facility usage at the City's discretion and will schedule all Association activities as a first priority.

LIABILITY

- 1) The Association agrees to defend, indemnify and hold harmless the City, its officers, employees, agents and volunteers against any and all liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the City, its officers or employees may hereafter sustain, incur or be required to pay, arising wholly or in part due to any act or omission of the Association, its agents, servants or employees, in the execution, performance or failure to adequately perform the Association's obligations pursuant to this Agreement. The Association further agrees to assume all risks of loss, damage or injury caused by whatever kind, or whomsoever caused (other than loss, damage or injury caused by any act or omission of the City, its employees, agents or volunteers) to any person(s) or the property of the parties, or anyone on or about the property.
- 2) The Association agrees to obtain at its own cost and expense comprehensive general liability insurance acceptable to the City, with limits no less than \$1,000,000 per occurrence for bodily injury and property damage, including participant liability, products completed operations, personal injury and advertising injury; and the Association shall, at the time of the execution of this agreement, furnish the City with a satisfactory certificate of such insurance, providing for a (10) ten day advance written notice of cancellation. However, failure to obtain the required documents shall not waive the Association's obligation to provide them. The City, its officers, employees and volunteers shall be named as an additional insured there under. For any claims related to this Agreement, the Association's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees or volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Association's insurance and shall not

contribute with it. The Association shall further require the same insurance coverage and conditions from any subsequent lessee or assignee of the property.

ENFORCEABILITY

- 1) If any provision of this Agreement shall be determined to be void, invalid, unenforceable or illegal for any reason, it shall be ineffective only to the extent of such prohibition, and the validity and enforceability of all the remaining provisions shall not be affected thereby and shall be ratified by action of the Council of the City of Miamisburg where appropriate to become enforceable.

- 2) This Agreement shall be governed by and construed under the laws of the State of Ohio.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on this _____ day of _____, 2023.

MIAMISBURG LACROSSE CLUB
(Association)

CITY OF MIAMISBURG
(City)

By _____
Ray Eaton, President

By _____
Keith D. Johnson, City Manager

Date _____ 2023

Date _____ 2023

Witness _____

Witness _____

Date _____ 2023

Date _____ 2023

ORDINANCE NO. 7018

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE MOT-DAYTON-CINCINNATI PIKE RESURFACING PROJECT (PID 116953) AND DECLARING AN EMERGENCY.

WHEREAS, the City has advertised and received bids for the MOT-Dayton-Cincinnati Pike Resurfacing Project (PID 116953) in accordance with law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by Barrett Paving Materials, Inc. in the amount of Three Hundred Ninety Three Thousand, Eight Hundred Eighty Five Dollars (\$393,885.) for the MOT-Dayton-Cincinnati Pike Resurfacing Project (PID 116953), pursuant to the bid forms submitted March 2, 2023, is hereby determined to be the lowest and best bid after bidding conducted according to law and is hereby accepted.

Section 2.

The City Manager is hereby authorized to enter into a contract with Barrett Paving Materials, Inc. in accordance with the terms contained in the bid specifications dated March 2, 2023.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed as soon as possible to remain on schedule for the summer road maintenance season, therefore, this measure shall be in force from and after its passage.

Passed: March 21, 2023

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7019

AN ORDINANCE TO ACCEPT CERTAIN EASEMENTS FOR CITY SANITARY SEWER LINE PURPOSES, AND DECLARING AN EMERGENCY

WHEREAS, the City of Miamisburg requires an easement for the extension of a sanitary sewer line to serve the Byers Road area; and

WHEREAS, said easement has been identified graphically in Exhibit "A"; and

WHEREAS, acceptance of this easement is necessary in order to proceed with installation and maintenance of the sanitary sewer line.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

City Council hereby accepts the easement identified in Exhibit "A" which is attached hereto and made a part hereof. The City Manager is hereby authorized to sign the easement document upon its completion.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and further for the reason that the easement needs to be accepted at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage.

Passed: March 21, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7020

AN ORDINANCE TO AMEND ORDINANCE 6915 TO MODIFY THE PREVIOUSLY ESTABLISHED RULES AND REQUIREMENTS NEEDED TO ENSURE THE HEALTH, SAFETY, AND WELFARE WITHIN AN APPROVED DESIGNATED OUTDOOR REFRESHMENT AREA WITHIN THE CITY OF MIAMISBURG AND DECLARING AN EMERGENCY.

WHEREAS, Section 4301.82 of the Ohio Revised Code permits a municipality with a population of less than thirty-five thousand to create a Designated Outdoor Refreshment Area within its corporate limits; and

WHEREAS, on April 20, 2021 City Council approved Ordinance No. 6914 approving an application and establishing a Designated Outdoor Refreshment Area within the city; and

WHEREAS, Council exercised their authority under ORC 4301.82(F) and adopted Ordinance 6915 to establish rules and requirements that it deems necessary to ensure the health, safety and welfare of the area; and

WHEREAS, Council created and appointed members to a DORA Oversight Board to review the operation of the DORA; and

WHEREAS, The Miamisburg Merchants Association has requested, and the DORA Oversight Board has recommended, changes to the hours of operation of the DORA in order to alleviate confusion and make the daily management and operation of the program easier for everyone involved; and

WHEREAS, City Council hereby wishes to amend the rules and requirements for the approved designated outdoor refreshment area to reflect the DORA Oversight Board's recommendation.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, OHIO, STATE OF OHIO, TWO THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Section 1 (C) of Ordinance 6915 which reads as follows:

- (c) The DORA hours of operation shall be Thursdays (4pm-9pm), Fridays (4pm-11pm), Saturdays (12pm-11pm), and Sundays (4pm-9pm). Special hours of DORA operation shall be allowed as designated in advance by the City Manager with the consent of City Council.

Is hereby amended to read as follows:

- (c) The DORA hours of operation shall be from 11:00am to 11:00pm Monday through Sunday. Special hours of DORA operation shall be allowed as designated in advance by the City Manager with the consent of City Council.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this amendment is needed as soon as possible to set hours for the DORA to accommodate the 2023 downtown event season, therefore, this measure shall be in force from and after its passage.

Passed: April 4, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Mayor Michelle Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7021

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP TO REZONE THE PROPERTY LOCATED AT 341 NORTH MAIN STREET (CITY LOT #139), FROM GENERAL BUSINESS (GB-1) TO RESIDENTIAL (R-3).

WHEREAS, an Owner of the property located at 341 N. Main Street (City Lots #139), as illustrated in Exhibit A, filed an application with the City of Miamisburg Development Department to rezone the property from General Business (GB-1) to Residential (R-3); and

WHEREAS, the property includes a single-family residence for which General Business (GB-1) zoning does not permit single-family residential uses; and

WHEREAS, the Owner currently utilizes the property as a single-family residence and desires a zoning designation which allows such a use by right; and

WHEREAS, the City of Miamisburg Planning Commission reviewed the requested rezoning in accordance with the provisions set forth in the City Charter and the Planning and Zoning Code; and

WHEREAS, the City of Miamisburg Planning Commission found the proposed Official Zoning Map amendment to be consistent with the requirements and standards of the Planning and Zoning Code; and

WHEREAS, the City of Miamisburg Planning Commission found the proposed Official Zoning Map amendment is in conformance with and meets the intent of the City of Miamisburg Comprehensive Plan; and

WHEREAS, City Council has reviewed the Planning Commission's recommendation on this matter and concurs with its recommendation.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The Official Zoning Map is hereby amended to reflect the foregoing rezoning classification contained herein and the City Manager is authorized and directed to cause said rezoning to be reflected on the Official Zoning Map as illustrated in Exhibit B.

Section 2.

This measure shall take effect and be in full force from and after the earliest period allowed by law.

Passed: May 16, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle Collins
Michelle L. Collins, Mayor

Exhibit A Current Zoning

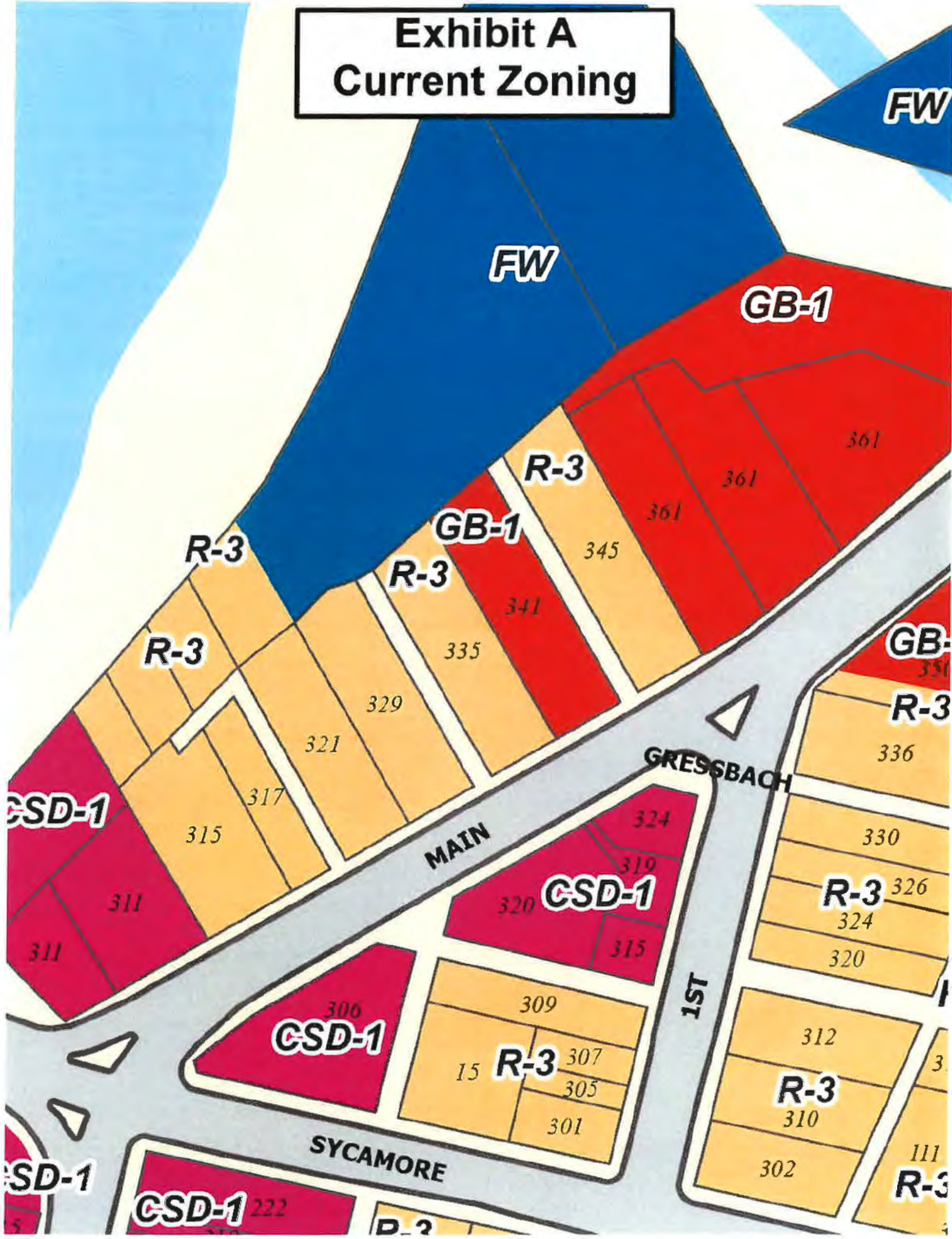
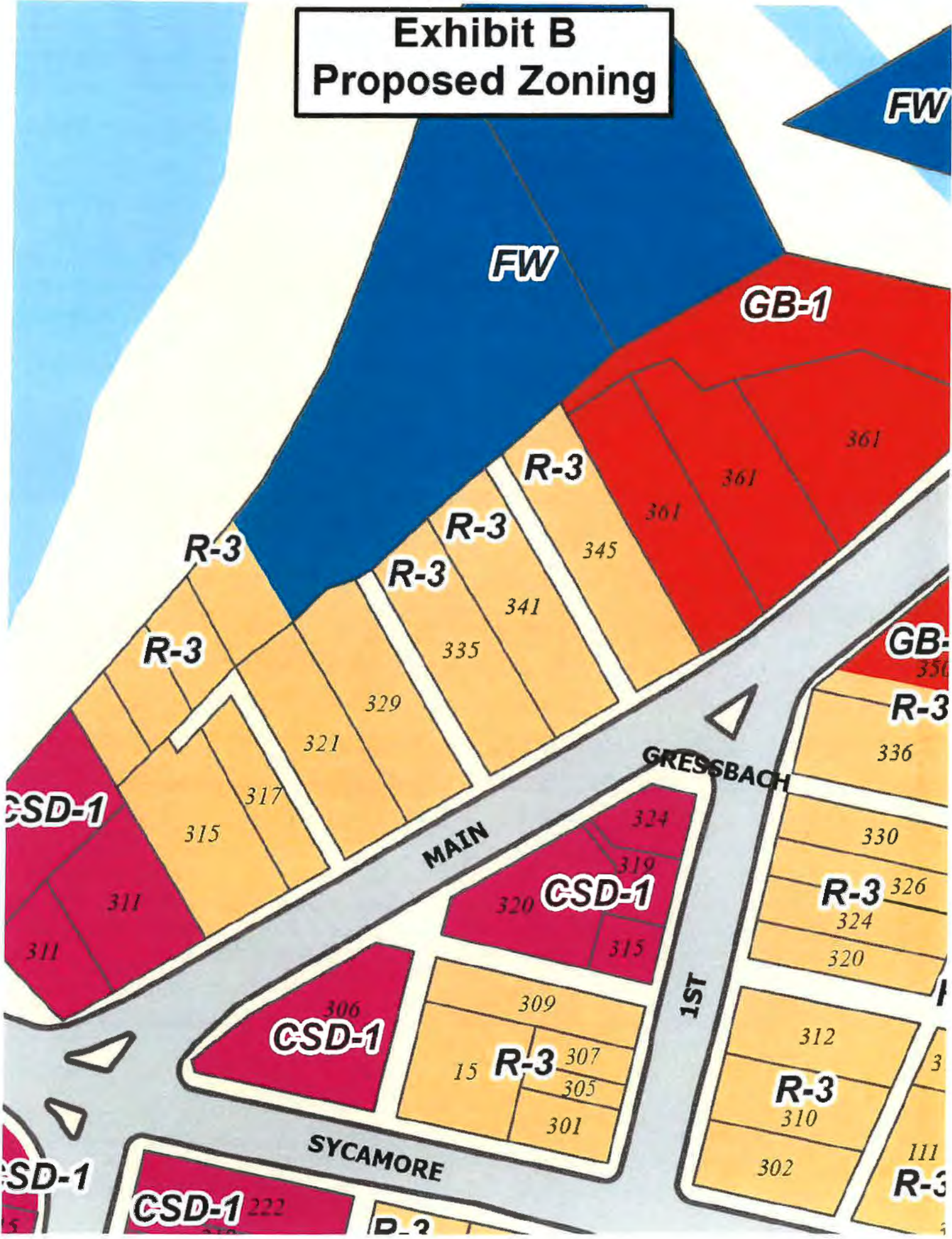


Exhibit B Proposed Zoning



ORDINANCE NO. 7022

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT FOR THE 2023 PAVEMENT MARKING PROGRAM AND DECLARING AN EMERGENCY.

WHEREAS, the Miami Valley Cable Council has advertised and received bids for the 2023 Pavement Marking Program in accordance with law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The bid submitted by First Star Safety, LLC, in the amount not to exceed Eighty Thousand, Three Hundred Ninety-Eight Thousand Dollars, Ninety-One Cents (\$80,398.91) for the 2023 Pavement Marking Program pursuant to the bid forms submitted April 3, 2023, is hereby determined to be the lowest and best bid after bidding conducted according to law and is hereby accepted.

Section 2.

The City Manager is hereby authorized to enter into a contract with First Star Safety, LLC in accordance with the terms contained in the bid specifications dated April 3, 2023.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date to remain on schedule for the summer road maintenance season, therefore, this measure shall be in force from and after its passage.

Passed: April 18, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7023

AN ORDINANCE AMENDING THE 2023 BUDGET AND ANNUAL APPROPRIATION ORDINANCE AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

To provide for current expenses of the City of Miamisburg for the fiscal year 2023, the annual appropriation ordinance is amended to add the following sum and it is hereby set aside and appropriated as follows:

<u>FUND</u>	<u>AMOUNT</u>
Court Modernization Fund	\$115,250.00

Section 2.

This ordinance is declared to be an emergency measure necessary for the public peace, health, safety, and welfare and for the further reason that these appropriations are needed at the earliest possible date to meet current obligations of the City for fiscal year 2023; therefore, this measure shall take effect and be in force from and after its passage.

Passed: April 18, 2023

Attested: 
Kim Combs, Clerk of Council

Approved: 
Michelle L. Collins, Mayor

ORDINANCE NO. 7024

AN ORDINANCE TO AMEND ORDINANCE NO. 3421 WHICH CREATED AN ACCESS MANAGEMENT PLAN FOR OHIO STATE ROUTE 741 AND INCORPORATING THE SAME INTO THE MASTER THOROUGHFARE PLAN ORIGINALLY ADOPTED BY ORDINANCE NO. 4692 AND AS SUBSEQUENTLY AMENDED AND DECLARING AN EMERGENCY.

WHEREAS, in 1983 City Council adopted an Access Management Plan for State Route 741, and said plan has been subsequently amended as needed.

WHEREAS, the 1993 Miamisburg Thoroughfare Plan was adopted by City Council on September 7, 1993 and subsequently amended in 1997, 2005, 2010 and 2016; and

WHEREAS, the approval of the Chamberlin Crossing Planned Development Plan in 2021 necessitates an amendment to both plans in order to preserve and protect adequate traffic flows along SR 741 while at the same time, providing manageable access to adjacent undeveloped parcels; and

WHEREAS, it is necessary to remove portions of the access management plan that are consider obsolete and establish new methods of access; and

WHEREAS, it is necessary to further amend the thoroughfare plan to include roadway improvements that will provide access to properties that will have limited access without such improvements; and

WHEREAS, the Planning Commission, has recommended that Council amend the Access Management Plan and Thoroughfare Plan as set forth herein; and

WHEREAS, Council, after reviewing the Planning Commission's recommendation, deem it in the best interest of the City to adopt certain amendments as recommended by the Planning Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Council does hereby amend the SR 741 Access Management Plan and incorporate those amendments into the City's Master Thoroughfare Plan as recommended by the Planning Commission as follows:

- 1) Remove a proposed "frontage road" parallel to SR741 and add a new roadway access that connects Chamberlin Drive to an existing traffic signal located at the intersection of SR741 and Habitat Blvd. as graphically depicted in Exhibit A attached hereto.

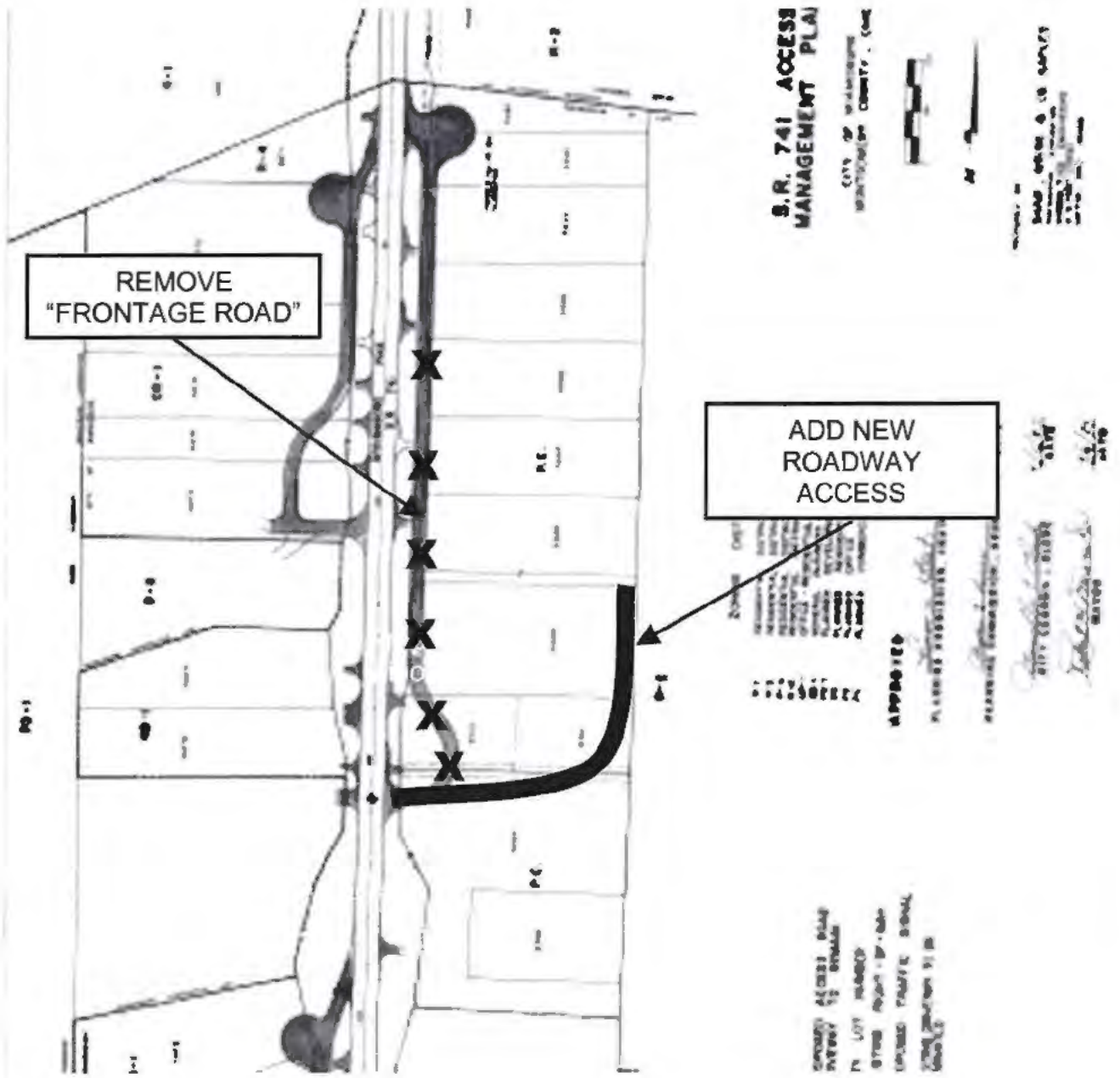
Section 2.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason that development has begun on Chamberlin Crossing and the improvements identified in this amendment will be needed to accommodate that development, therefore, this measure shall take effect and be in force from and after its passage.

Passed: May 2, 2023 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

Exhibit "A" – Proposed Plan Amendments



S.R. 741 ACCESS MANAGEMENT PLAN

CITY OF TAMPA
HILLSBORO COUNTY, FLORIDA



DATE: 06/10/2010
DRAWN BY: [Signature]
CHECKED BY: [Signature]
APPROVED BY: [Signature]

ADD NEW ROADWAY ACCESS

REMOVE "FRONTAGE ROAD"

PROPOSED ACCESS POINTS
IN LOT 1000
STREET FRONT 10' WIDE
CROSS STREET SIGNAL
CROSS STREET 10' WIDE

APPROVED

[Signatures and stamps]

ORDINANCE NO. 7025

AN ORDINANCE TO APPROVE THE EDITING AND INCLUSION OF CERTAIN ORDINANCES AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CODIFIED ORDINANCES; TO PROVIDE FOR THE ADOPTION OF NEW MATTER IN THE UPDATED AND REVISED CODIFIED ORDINANCES; TO PROVIDE FOR THE PUBLICATION OF SUCH NEW MATTER; TO REPEAL ORDINANCES AND RESOLUTIONS IN CONFLICT THEREWITH; AND DECLARING AN EMERGENCY.

WHEREAS, American Legal Publishing has completed its annual updating and revision of the Codified Ordinances of the City; and

WHEREAS, various ordinances and a resolution of a general and permanent nature that have been passed by Council since the date of the last updating and revision of the Codified Ordinances (December 31, 2021), have now been made a part of the Codified Ordinances; and

WHEREAS, certain changes were made in the Codified Ordinances to bring City law into conformity with State law.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

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 the City, so as to conform to the classification and numbering system of the Codified Ordinances.

<u>Ord. No.</u>	<u>Date</u>	<u>C.O. Section</u>
6965	6-21-22	1222.08
6998	12-6-22	1060.13

Section 2.

The following sections of the Codified Ordinances are or contain new matter in the Codified Ordinances and are hereby approved, adopted and enacted:

434.11, 438.10, 438.16, 624.01, 678.02, 678.04, 678.13, 678.14

Section 3.

All ordinances and resolutions or parts thereof which are in conflict or inconsistent with any provision of the new matter adopted in Section 2 of this ordinance are hereby repealed as of the effective date of this ordinance except as follows:

- (a) The enactment of such sections shall not be construed to affect a right or liability accrued or incurred under any legislative provision prior to the effective date of such enactment, or an action or proceeding for the enforcement of such right or liability. Such enactment shall not be construed to relieve any person from punishment for an act committed in violation of any such legislative provision, nor to affect an indictment or prosecution therefor. For such purposes, any such legislative provision shall continue in full notwithstanding its repeal for the purpose of revision and recodification.
- (b) The repeal provided above shall not affect any legislation enacted subsequent to February 21, 2023.

Section 4.

Pursuant to Section 4.15 of the City Charter, the Clerk of Council shall cause a notice of this ordinance to be published one time in a newspaper determined by the Council to be of circulation within the Municipality at least seven days prior to the final approval of this ordinance by Council, and no further publication shall be necessary.

Section 5.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that it is immediately necessary to have an up-to-date codification of the legislation of the City; therefore, this measure shall take effect and be in full force from and after its passage.

Passed: May 2, 2023

Attest:



Kim Combs, Clerk of Council

Approved:



Michelle L. Collins, Mayor

EXHIBIT A

SUMMARY OF NEW MATTER CONTAINED IN THE 2023 REPLACEMENT PAGES FOR THE CODIFIED ORDINANCES OF MIAMISBURG, OHIO

New matter in the Codified Ordinances of Miamisburg, Ohio, as contained in the 2023 Replacement Pages therefor, includes legislation regarding:

<u>Section</u>	<u>New or amended matter regarding:</u>
434.11	Operation restricted for mini-trucks and low-speed, under-speed, or utility vehicles.
438.10	Lights, emblems, and reflectors on slow-moving vehicles, farm machinery, agricultural tractors, and animal-drawn vehicles.
438.16	Number of lights permitted; red and flashing lights.
624.01	Definitions relating to drug offenses.
678.02	Carrying concealed weapons.
678.04	Improperly handling firearms in a motor vehicle.
678.13	Possession of an object indistinguishable from a firearm in a school safety zone.
678.14	Concealed handgun licenses: possession of a revoked or suspended license; additional restrictions; posting of signs prohibiting possession.

ORDINANCE NO. 7026

AN ORDINANCE TO AMEND THE NON-UNION HOLIDAY POLICY TO PROVIDE FOR THE OBSERVANCE OF AN ADDITIONAL HOLIDAY JUNETEENTH DAY AND DECLARING AN EMERGENCY

WHEREAS, the Council of the City of Miamisburg, upon the recommendation of the City Manager, desires to adopt Juneteenth Day (June 19) as a paid holiday for the employees of the City of Miamishurg.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City's Holiday Policy is hereby amended to read as follows and to add the holiday of Juneteenth Day to be observed by the City:

305 HOLIDAYS

The City will grant holiday time off to all non-union full-time employees on the holidays listed below.

*New Years Day (January 1st)
Martin Luther King Day
Good Friday (Friday before Easter)
Memorial Day (last Monday in May)
Juneteenth Day (June 19)
Independence Day (July 4th)
Labor Day (first Monday in September)
Thanksgiving (fourth Thursday in November)
Day after Thanksgiving (fourth Friday in November)
Christmas Eve (December 24)
Christmas (December 25)*

The City Manager will determine the exact date of the designated holidays on or before December 15 of each year. Holiday pay will be calculated based on the employee's straight -time rate (as of the date of the holiday) times the number of hours the employee would otherwise have worked on that day.

~~With the exception of the Fire Department, a A recognized holiday that falls on a Saturday will be observed on the preceding Friday. Typically, a A recognized holiday that falls on a Sunday will be observed on the following Monday. If a recognized holiday falls during an eligible employee's paid absence (e.g., vacation, sick leave), holiday pay will be provided instead of the paid time off benefit that would otherwise have applied. If an eligible~~

employee works on a recognized holiday, he or she will receive holiday pay plus wages at one and one half a shift or 12 hours.

Section 2.

The adoption of the Juneteenth Day as a paid holiday shall be subject to any collective bargaining agreement and any bargaining obligation the City may have.

Section 3.

The City Manager or his designee shall take any and all actions necessary to implement Juneteenth Day as a holiday consistent with this Ordinance.

Section 4.

Council, by a vote of at least two-thirds of its members, dispenses with the requirement that this Ordinance be read on two different days and authorizes the adoption of this Ordinance upon the first reading.

Section 5.

This Ordinance is declared to be an emergency measure necessary for the public peace, health, safety, and welfare and for the further reason that the Council desires that the first Juneteenth Day holiday be recognized on June 19, 2023 and that the City Manager is provided sufficient time to implement this holiday; therefore, this measure shall take effect and be in force from and after its passage.

Passed: May 16, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7027

AN ORDINANCE AUTHORIZING THE TRANSFER OF A TRUCK TO THE HILLGROVE UNION CEMETERY AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to a request from the Hillgrove Union Cemetery (the "Cemetery"), the City of Miamisburg, Ohio (the "City") purchased on April 9, 2019, a 2018 GMC dump truck (the "truck") for use in maintaining the cemetery; and

WHEREAS, the cemetery has made payments to the City in the full amount of the cost of truck;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1. That Council hereby approves and authorizes the transfer of the truck to the Cemetery.

Section 2. That the City Manager and the Finance Director are each hereby authorized and directed to take any action necessary including executing any required documents to effectuate such transfer.

Section 3. That the Parks and Recreation Director is hereby directed to deliver the truck to the Cemetery.

Section 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

Section 5. This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this transfer of equipment is needed at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage.

Passed: May 16, 2023 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7028

AN ORDINANCE AMENDING ORDINANCE NO. 6970 TO PROVIDE FOR THE COST OF GROUP HEALTH INSURANCE BENEFITS THROUGH THE OHIO BENEFITS COOPERATIVE, INC., AND DECLARING AN EMERGENCY.

WHEREAS, the City Council authorized the City's membership and participation in the Ohio Benefits Cooperative, Inc. in January, 1995 for the purchase of group insurance benefits for City employees, and

WHEREAS, the Cooperative has authorized a renewal through Anthem Blue Cross/Blue Shield, as its current provider, and

WHEREAS, the City has entered into an agreement with the Cooperative to purchase group health insurance benefits.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Section 1 of Ordinance No. 6970, which reads as follows:

The City shall purchase through the Cooperative, health insurance benefits provided to City employees in accordance with the rules and regulations of the Cooperative, and shall pay through the Cooperative the appropriate premiums from September 1, 2022 not to exceed as follows:

<u>OBC PPO Option #1</u>		<u>OBC HSA Option #2</u>	
Single	\$927.88	Single	\$726.80
Family	\$2,501.65	Family	\$1,959.51

Is now hereby amended to read as follows:


The City shall purchase through the Cooperative, health insurance benefits provided to City employees in accordance with the rules and regulations of the Cooperative, and shall pay through the Cooperative the appropriate premiums from September 1, 2023 not to exceed as follows:

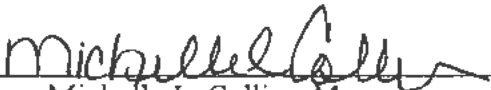
<u>OBC PPO Option #1</u>		<u>OBC HSA Option #2</u>	
Single	\$949.69	Single	\$755.77
Family	\$2,560.45	Family	\$2,037.60

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this premium payment authorization is needed immediately to ensure the timely enrollment of employees; therefore, this measure shall take effect and be in force from and after its passage.

Passed: June 6, 2023

Attested: 
Kim Combs, Clerk of Council

Approved: 
Michelle L. Collins, Mayor

ORDINANCE NO. 7029

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE OHIO ASSOCIATION OF PUBLIC TREASURERS (OAPT) WORKERS' COMPENSATION GROUP RETROSPECTIVE RATING PROGRAM FOR THE POLICY YEAR BEGINNING JANUARY 1, 2024, AND DECLARING AN EMERGENCY.

WHEREAS, under the authority of Section 4123.29 of the Ohio Revised Code, employers may group together to achieve a potentially lower premium rate than they might have as individual employers; and

WHEREAS, the OAPT has created a Workers' Compensation Group Retrospective Rating Program to allow members to collaborate for that purpose.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is authorized to sign the agreement applicable to membership in the Ohio Association of Public Treasurers (OAPT) Workers' Compensation 2024 Group Retrospective Rating Program on behalf of the City. Further, the City Manager is authorized to execute any other necessary or appropriate documents in connection with this program.

Section 2.

The City Manager is authorized to extend the agreement and all documents associated therewith for such periods as deemed appropriate and necessary.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that the authorization is needed immediately to ensure the timely enrollment for participation in this cost savings program; therefore, this measure shall take effect and be in force from and after its passage.

Passed: June 6, 2023

Attested: _____



Kim Combs, Clerk of Council

Approved: _____


Michelle L. Collins, Mayor

ORDINANCE NO. 7030

AN ORDINANCE DELEGATING AUTHORITY TO MAKE DECLARATIONS OF OFFICIAL INTENT AND ALLOCATIONS WITH RESPECT TO REIMBURSEMENTS OF TEMPORARY ADVANCES DURING FISCAL YEAR 2023 AND 2024 MADE FOR CAPITAL IMPROVEMENTS AND ACQUISITIONS FOR MUNICIPAL PURPOSES TO BE MADE FROM SUBSEQUENT BORROWINGS AND DECLARING AN EMERGENCY.

WHEREAS, Treasury Regulation §1.150-2 (the "Reimbursement Regulations"), issued pursuant to Section 150 of the Internal Revenue Code of 1986, as amended, (the "Code") prescribes certain requirements by which proceeds of tax-exempt bonds, notes, certificates or other obligations included in the meaning of "bonds" under Section 150 of the Code ("Obligations") used to reimburse advances made for Capital Expenditures (as hereinafter defined) paid before the issuance of such Obligations may be deemed "spent" for purposes of Sections 103 and 141 to 150 of the Code and therefore, not further subject to any other requirements or restrictions under those sections of the Code; and

WHEREAS, such Reimbursement Regulations require that an Issuer (as hereinafter defined) make a Declaration of Official Intent (as hereinafter defined) to reimburse any Capital Expenditure paid prior to the issuance of the Obligations intended to fund such Capital Expenditure and require that such Declaration of Official Intent be made no later than sixty (60) days after payment of the Capital Expenditure and further require that any Reimbursement Allocation (as hereinafter defined) of the proceeds of such Obligations to reimburse such Capital Expenditures occur no later than eighteen (18) months after the later of the date the Capital Expenditure was paid or the date the property acquired with the Capital Expenditure was placed in service, except that any such Reimbursement Allocation must be made no later than three years after such Capital Expenditure was paid; and

WHEREAS, the Reimbursement Regulations provide that an Issuer may delegate the authority for making such Declarations of Official Intent and Allocations to one or more individuals; and

WHEREAS, this Council wishes to ensure compliance with the Reimbursement Regulations; and

WHEREAS, this Council intends to construct and acquire capital improvements in the City for municipal purposes, including the design, engineering, acquisition and construction of road improvements (the "Project"). The City intends that the design, engineering, construction, installation and acquisition costs will be paid from the proceeds of municipal securities issued by the City for the Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1. Definitions. That the following definitions apply to the terms used herein:

“Allocation” means written evidence that proceeds of Obligations issued subsequent to the payment of a Capital Expenditure are to reimburse the City for such payments. “To allocate” means to make such an allocation.

“Authorized Officer” means City Manager or Finance Director of the City and any persons with authority at the time to exercise functions of those offices.

“Capital Expenditure” means any expense for an item that is properly depreciable or amortizable or is otherwise treated as a capital expenditure for purposes of the Code, as well as any costs of issuing Reimbursement Bonds.

“Declaration of Official Intent” means a written declaration that the City intends to fund Capital Expenditures with an issue of Reimbursement Bonds and reasonably expects to be reimbursed from the proceeds of such an issue.

“Issuer” means either a governmental unit that is reasonably expected to issue Obligations or any governmental entity or 501(c)(3) organization that is reasonably expected to borrow funds from the actual issuer of the Obligations.

“Reimbursement” means the restoration to the City of money temporarily advanced from other funds, including moneys borrowed from other sources, of the City to pay for Capital Expenditures before the issuance of Obligations intended to fund such Capital Expenditures.

“To reimburse” means to make such a restoration.

“Reimbursement Bonds” means Obligations that are issued to reimburse the City for Capital Expenditures, and for certain other expenses permitted by the Reimbursement Regulations, previously paid by or for the City.

“Reimbursement Regulations” means Treasury Regulation §150-2 and any amendments thereto or superseding regulations, whether in proposed, temporary or final form, as applicable, prescribing conditions under which the proceeds of Obligations may be allocated to reimburse the City for Capital Expenditures and certain other expenses paid prior to the issuance of the Obligations such that the proceeds of such Obligations will be treated as “spent” for purposes of Sections 103 and 141 to 150 of the Code.

Section 2. Declaration of Official Intent.

(a) The City declares that it reasonably expects that the Capital Expenditures described in Section (b), which were paid no earlier than sixty days prior to the date hereof, or which will be paid prior to the issuance of any Obligations intended to fund such Capital Expenditures, will be reimbursed with the proceeds of Obligations, representing a borrowing by the City or other governmental issuer in the maximum principal amount, for such Reimbursements, of \$2,750,000; and

(b) The Capital Expenditures made in fiscal year 2023 and 2024 to be reimbursed are to be used for the construction and acquisition of capital improvements in the City, including the design, engineering, acquisition and construction of road improvements and related costs.

Section 3. Reasonable Expectations.

The City does not expect any other funds (including the money advanced to make the Capital Expenditures that are to be reimbursed) to be reserved, allocated on a long-term basis, or otherwise set aside by the City or any other entity, with respect to the Capital Expenditures for the purposes described in Section 2(b).

Section 4. Open Meeting.

It is found and determined that all formal actions of this Council concerning and relating to the adoption of this ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

Section 5.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this is needed; therefore, this measure shall take effect and be in force from and after its passage.

Passed: June 6, 2023 Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

CERTIFICATE

I, undersigned Clerk of Council of the City of Miamisburg, Ohio hereby certify that the above Ordinance is a true and correct copy as passed by the Council of the City of Miamisburg, this 7 day of June, 2023 and that at least a majority of the elected members voted in the affirmative on said motion.

Clerk of Council

DECLARATION OF OFFICIAL INTENT TO REIMBURSE

The undersigned has been authorized by Ordinance No. 7030 adopted by the City Council of the City of Miamisburg, Montgomery County, on June 6, 2023, to make this declaration.

The City is, or will be, proceeding with the design, engineering, construction and acquisition of capital improvements in the City and related costs (the "Project"). In connection with the Project, the City expects to make capital expenditures in the amount set forth below and expects to advance from its own funds money to pay for some or all of such capital expenditures.

The City reasonably expects to issue its notes or bonds to pay for such capital expenditures, and reasonably expects to reimburse itself from the proceeds of such issue for moneys advanced by it.

<u>Project</u>	<u>Estimated Capital Expenditures</u>
Chamberlin Crossing Road Improvements	\$

**CITY OF MIAMISBURG,
MONTGOMERY COUNTY, OHIO**

By: _____

Title: _____

Dated: _____, 2023

ORDINANCE NO. 7031

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH YASKAWA AMERICA, INC PROVIDING A JOB CREATION REFUNDABLE TAX CREDIT, GRANTING THE TAX CREDIT, ACCEPTING GRANT FUNDS FROM THE MONTGOMERY COUNTY ED/GE PROGRAM, AND AUTHORIZING ASSOCIATED GRANT AGREEMENTS, AND DECLARING AN EMERGENCY.

WHEREAS, Section 718.15 of the Ohio Revised Code (the City Act) authorizes municipalities to grant refundable or non-refundable credits against their city income taxes in exchange for new jobs; and

WHEREAS, the granting of the tax credits by the City of Miamisburg, Ohio (the "City") to Yaskawa America, Inc. will (1) create jobs in the State of Ohio and this City, (2) the project is economically sound and will benefit the people of this State and the City by increasing opportunities for employment and strengthening the economy of the State and the City and (3) receiving the tax credits from the City is a major factor in the decision of Yaskawa America, Inc. to go forward with the project.

WHEREAS, the Board of Commissioner's for Montgomery County Ohio created the Economic Development/Government Equity (ED/GE) grant program to foster economic development within Montgomery County; and

WHEREAS, The City has been awarded \$350,000 in ED/GE grant funding for the Yaskawa project; and

WHEREAS, Council is required to take official action to accept such grant funding; and

WHEREAS, the ED/GE program requirements require an agreement between the City of Miamisburg and the recipient business and/or building owner for the use of the grant funds.

NOW THEREFORE BE IT ORDAINED THAT THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into a Job Creation Tax Credit Agreement with Yaskawa America, Inc (the "Agreement") in substantially the form attached hereto as Exhibit "A" with only such changes as are approved by the City Manager. The agreement with the City will provide for the creation of 70 jobs to the city, and in consideration of those new jobs, will provide a job creation tax credit as more specifically set forth in the Agreement.

Section 2.

The City Council hereby approves and grants a job creation tax credit as set forth in the Agreement authorized in Section 1 above.

Section 3.

That the City Manager, the Finance Director and the Clerk are hereby authorized to execute and deliver any other documents, agreements and certificates deemed necessary to effectuate the incentives set forth in the Agreement.

Section 4.

That the obligations of the City under this ordinance do not and shall not represent or constitute a debt or pledge of the full faith and credit or the taxing power of the City and no member of council, officer, official, employee, agent, or legal representative of the City shall be liable personally for any obligations under this Ordinance or the Agreement.

Section 5.

The Council of the City of Miamisburg hereby accepts grant funds from Montgomery County in the amount of \$350,000 from the spring 2023 ED/GE program for the project. The City Manager is hereby authorized to execute the ED/GE Project Agreements required to facilitate the receipt of said grant funds. Including the Agreement Regarding ED/GE Funds attached hereto as "Exhibit B."

Section 6.

The Council of the City of Miamisburg, Ohio hereby appropriates, and the Finance Director is hereby authorized to pay, from Account No. 110.125.57401, Three Hundred and Fifty Thousand Dollars (\$350,000), for costs related to this Economic Development/ Government Equity grant project. The Finance Director shall make such payment only upon receipt of appropriate documentation.

Section 7.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety, and welfare and for the further reason to execute this agreement at the earliest possible date, therefore, this measure shall take effect and be in force from and after its passage.

Passed: June 6, 2023

Attested: Kim Combs

Kim Combs, Clerk of Council

Approved: Michelle Collins

Michelle Collins, Mayor

Exhibit "A"

Job Creation Tax Credit Agreement

JOB CREATION TAX CREDIT AGREEMENT

THIS TAX CREDIT AGREEMENT (the "Agreement") is made and entered into this ____ day of _____, 2023, even though the parties may sign at a later date, by and between the City of Miamisburg, Ohio, an Ohio municipal corporation (hereafter "City") and Yaskawa America, Inc., (acting through its Motoman Robotics Division) (hereafter "Company"), an Illinois corporation.

RECITALS

Company has a facility located at 100 Automation Way, Miamisburg, OH. Company plans to make significant capital investments into their building, site and machinery and equipment.

Company is currently one of the City's largest employers with over 330 employees and a corresponding annual payroll of \$30.4M

Company is seeking to create at least 70 new jobs and at least \$5,700,000 in annual payroll in Miamisburg as part of the project. Company owns the property at 100 Automation Way and will invest nearly \$22,000,000 into building, site, machinery and equipment (the "Project"). The Project will create additional tax revenues for the City.

Company agreed to undertake this Project in the City, if various governmental entities provided the incentives for the development of the Project. The City has agreed to provide the hereinafter described incentive, if Company agrees to and does undertake the Project, create the jobs and provide the other economic opportunities created by the Project.

The City desires to encourage investment at the site and to encourage job creation in the City.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties, intending to be legally bound, agree as follows:

A. **Findings and Conclusions of the City.**

1. The City hereby finds that:
 - a. Company has the requisite financial responsibility and business experience to create employment opportunities in the City and to improve the economic climate of the City, County, State, District and surrounding areas.
 - b. The Project (i) will create jobs in the State, City, County and District; (ii) is economically sound and will benefit the people of the State, City, County and District by increasing opportunities for employment and strengthening the economy of these areas; and (iii) receiving the tax credits provided in section 718.15 of the Ohio Revised Code ("The Legislation") are major factors in Company's decision to locate the Project in the State, City and County.
 - c. It is in the best interest of the City to provide an income tax credit to Company in order to create additional job opportunities in the City.
2. The City has reviewed the project, and the project has been approved by the City.
3. The City Council ("Council") authorized the City Manager to enter into an agreement with Company providing for a Job Creation Refundable Tax Credit.

B. **Development of the Project.**

Subject to the conditions contained in this Agreement, Company shall undertake the Project at 100 Automation Way. The Project shall consist of building, site, machinery and equipment investments of nearly \$22,000,000 to be completed by June 1, 2024. As part of the Project, Company shall retain three hundred and thirty three (333) Existing Employees in the City with an annualized payroll of not less than \$30,400,000.

C. **Creation of New Jobs.**

Company shall create, or cause to be created, by December 31, 2025, 70 new full-time permanent jobs ("New Employees") with an annualized payroll of not less than \$5,700,000.

D. **New Job Tax Credits.**

1. Pursuant to section 718.15 of the Ohio Revised Code ("ORC 718.15"), the City is authorized to grant a refundable credit against the municipal income tax and to execute agreements with employers who are taxpayers of the City for the purpose of granting those employers new job creation tax credits against the employer's municipal income tax, those tax credits being provided to create new jobs in the City. To stimulate this job creation and to enhance the economic growth and stability of the City, State, County, and surrounding areas, the City finds that (i) the Project will create new jobs in the City and State; (ii) the Project is economically sound and will benefit the people of Ohio and the City by increasing opportunities for employment and strengthen the economy of the State and the City; and (iii) receiving the

municipal income tax credits provided herein is a major factor in the Company's decision to undertake the Project in the City and the State.

2. The Company has submitted an application to the City. This application has been reviewed by the City and the City has determined to grant the Company a new job creation tax credit (the "Tax Credit") of fifty percent (50%) of the new income tax revenue received by the City from New Employees hired by the Company in the City as a result of the development of the Project and its operations in the City for three (3) years. The Tax Credit shall relate to all New Employees hired in the City as a result of the development of the Project, with the credit commencing January 1, 2024, and for five (5) consecutive fiscal years of the Company thereafter (the "Tax Credit Period"). City acknowledges that the Company may commence employing New Employees at the Project prior to January 1, 2024, as a result of the development of the Project.
3. Company hereby agrees to use its best commercially reasonable efforts to maintain operations in the City for at least twice the number of years as the term of the Tax Credit. A calculation of the City Tax Credit pursuant to paragraph 3, below, for the application tax year shall be determined as follows:

A = Company existing payroll as indicated in this agreement.
B = Company total payroll each year during the Tax Credit Period
C = Miamisburg Tax Rate
D = The applicable Tax Credit percentage.

$(B-A) \times C \times D$ = The Tax Credit for the applicable tax year.

The City and all its departments acknowledges that all this information is confidential and agree that it shall be used only for the computation, verification and collection of the City Tax Credit. The City agrees that it shall not disclose this information to any person(s) not needing this information for such computation, verification or collection. The City further agrees not to disclose any of the information obtained by Company relating to the activities of the Company, including but not limited to those areas and market sectors where the Company is investing or making new hires.

4. Pursuant to approval by City Council (Ordinance No. _____, passed _____, 2023) and in compliance with the ORC 718.15, the City hereby grants a refundable new job creation credit equal to the Tax Credit Percentage of the City's income tax revenue derived from the wages of the Company's New Employees employed at the Project for the period from January 1, 2024, through December 31, 2028.
5. Commencing June 1, 2025, and then annually on or before June 1st, the City shall remit to the Company the Tax Credit amount for the prior fiscal year's income taxes with the last remittance under this agreement being made in 2029.
6. The City Tax Credit provided by subsection D2 hereof shall be received annually by Company. Should Company fail to create 70 new jobs with a corresponding minimum annualized payroll of \$5,700,000 by December 31,

2025, the City may reduce the amount of the Tax Credit and/or reduce the Tax Credit Period.

If Company ceases operation within the City anytime during the Tax Credit Period, and the cessation in operation was due in part a general down turn in the economy, imposition of legislation, tariffs other regulatory burdens not contemplated at the time of the application, the inability of the Company to be able to hire or retain a workforce needed for the Project due to conditions in the City or surrounding area, or a sale or transfer of the business in Miamisburg to another entity, Company shall have the obligation to repay, to the City, an amount of the total Tax Credits received by Company on a pro-rata basis based on the portion of the job creation that did not occur.

7. Company understands that they are expected to remain in business within the City of Miamisburg for at least twice as long as the term of the tax credit. If Company ceases to operate in the City or fails to maintain at least \$30,500,000 in annual payroll any time between January 1, 2029 and December 31, 2033 the Company shall be responsible to repay, to City, as follows, except as otherwise provided herein:
 - a. If Company ceases to operate in the City or fails to maintain at least \$36,100,000 in annual payroll anytime in 2029, Company shall repay, to City, the lesser of an amount equal to 50% of the total Tax Credits

received by Company or the pro-rata amount based on the portion of the job creation that did not occur.

- b. If Company ceases to operate in the City or fails to maintain at least \$30,500,000 in annual payroll anytime in 2030, Company shall repay, to City, the lesser of an amount equal to 40% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- c. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 in annual payroll anytime in 2031, Company shall repay, to City, the lesser of an amount equal to 30% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- d. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 in annual payroll anytime in 2032, Company shall repay, to City, the lesser of an amount equal to 20% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.
- e. If Company ceases to operate in the City or fails to maintain at least \$ 30,500,000 in annual payroll anytime in 2033, Company shall repay, to City, the lesser of an amount equal to 10% of the total Tax Credits received by Company or the pro-rata amount based on the portion of the job creation that did not occur.

8. The City and the Company agree to take any and all action necessary or appropriate to effect, claim, preserve and maintain the tax credits described in this Agreement, including without limitation, joining in the execution of all applications, agreements and other documents and providing any necessary certifications or designations required in connection with the Tax Credit.

E. **Conditions Precedent.**

Company's commitment to develop the Project is conditioned upon all the agreements contained in this Agreement being accomplished by all the parties hereto. If all the agreements contained in this Agreement are not accomplished, Company shall have no responsibility to develop the Project in the City and is free to develop the Project in any other location. Similarly, the City's commitments under this Agreement are conditional upon Company performing its obligations as described herein.

F. **Miscellaneous.**

1. **Covenants and Representations.** The City covenants and represents to the Company as follows:

a. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by the City of any contract, agreement, understanding or instrument to which the City is a party or by which the City is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon

- them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;
- b. There is no pending litigation, investigation or claim which affects or which might affect the City's performance of this Agreement and to the best of the City's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect the City's performance of this Agreement;
 - c. Except for actions contemplated by this Agreement, as of the date of the execution of this Agreement, the City has no information or knowledge of any change contemplated in the applicable laws, ordinances or restrictions or any judicial or administrative action that would prevent, limit, impede or render more costly the Company's undertaking of the project; and
 - d. The representations and agreements of the City made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as continuing representations and agreements and such representations made by the City are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the Company (except as expressly stated in this Agreement), the Company is placing complete reliance thereon and that such representations are to be treated as material to the Company in entering into this Agreement and the City further represents that no

representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

2. Company covenants and represents to the City as follows:
 - a. Company intends make significant investments in their property located at 100 Automation Way.
 - b. Company shall retain Three Hundred Thirty Three (333) Existing Employees in the City with an annualized payroll of not less than \$30,400,000.
 - b. Company intends to create at least seventy (70) jobs at the Site with a minimum annualized payroll of \$5,700,000 by December 31, 2025;
 - c. Neither the entering into this Agreement nor the performance thereof will constitute a violation or breach by Company of any contract, agreement, understanding or instrument to which Company is a party or by which Company is subject or bound, of any judgment, order, writ, injunction or decree issued against or imposed upon them, or will result in the violation of any applicable law, order, rule or regulation of any governmental or quasi-governmental authority;

- d. There is no material pending litigation, investigation or claim which affects or which might affect Company's performance of this Agreement and to the best of Company's knowledge, there is no threatened litigation, investigation or claim that affects or that might affect Company's performance of this Agreement; and
- c. The representations and agreements of Company made in this Agreement shall be deemed to apply as of the date of the execution of this Agreement and shall be construed as containing representations and agreements and such representations made by Company are made with the knowledge and expectation that notwithstanding any investigation conducted by or on behalf of the City (except as expressly stated in this Agreement), the City is placing complete reliance thereon and that such representations are to be treated as material to the City entering into this Agreement and Company further represents that no representation set forth in this Agreement contains any untrue statement of material fact or omits to state a material fact necessary in order to make the statement contained herein not materially misleading or not misleading in light of circumstances under which they are made.

G. Inspection of Records. The City shall, in addition to any rights already existing, have the right to audit the books and records of Company pertaining to costs related to The Project and the associated jobs and/or payroll creation of The Project, during business hours and upon advance written notice of at least seven (7) business days.

Any such inspection or audit shall be conducted in accordance with any published or delivered terms and conditions in place at the site, including health, safety, environmental, confidentiality, treatment of employees and the like.

- H. Successors and Assigns. The terms and provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, successors and permitted assigns (including successive as well as immediate successors and assigns).
- I. Governing Law. This Agreement shall be governed by and construed in accordance of the laws of the State of Ohio.
- J. Waiver. The failure of any party hereto to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way affect the validity of this Agreement or any part hereof, or the right of such party thereafter to enforce each and every such provision. No waiver of any breach of or noncompliance with this Agreement shall be held to be a waiver of any other or subsequent breach or noncompliance.
- K. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.
- L. Provisions Severable. If any provision of this Agreement or the application or any such provision to any such person or any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provisions of this Agreement or the application of such provisions to any other person or circumstance, all of which other provisions shall remain in full force and effect; and, if any provision of this Agreement is capable of two constructions, one

of which would render the provisions invalid, then such provision shall have the meaning which renders it valid.

- M. Captions. The captions contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement.
- N. Assignment. Company shall have the right to assign this Agreement to any of its successors or assigns only after written approval of such assignment by City, unless Company is prohibited from notifying the City due to securities laws in which case Company shall notify the City as soon as reasonably practical.
- O. Notifications. Any notices, statements, acknowledgements, consents, approvals, certificates or requests required to be given on behalf of any part of this Agreement shall be made in writing, addressed as follows, and sent by registered or certified mail, return receipt requested, and also by fax:

If to the City, to: City Manager
 10 North First Street
 Miamisburg, OH 45342
 Email: manager@cityofmiamisburg.com

If to Company to: Ryan Richey,
 Senior Dir. Of Accounting and Finance
 Yaskawa America
 100 Automation Way
 Miamsiburg, OH 45342

Email: ryan.richey@motoman.com

Or at such address as may be specified by any party, from time to time, by prior written notification.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed by their duly authorized representatives to be effective as of the date first above written.

THE CITY OF MIAMISBURG, OHIO

By: _____
Keith D. Johnson
City Manager

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this _____ day of _____, 2023, by _____, the _____ of the City of Miamisburg, Ohio, an Ohio municipal corporation, on behalf of the corporation.

Notary Public

My commission expires: _____

[NOTARY SEAL]

YASKAWA AMERICA, ACTING THROUGH ITS
MOTOMAN ROBOTICS DIVISION,

By: _____
Steve Barhorst
Chief Operating Officer

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this _____ day of _____,
2023, by _____, the _____ of
Yaskawa America, Inc., an Illinois corporation, on behalf of the corporation.

Notary Public

My commission expires: _____

[NOTARY SEAL]

Exhibit "B"

Agreement Regarding ED/GE Funds

AGREEMENT REGARDING ED/GE FUNDS

THIS AGREEMENT is made and entered into by and between **the City of Miamisburg** (the "Member Jurisdiction"), Montgomery County, Ohio and the **Yaskawa America, Inc.** (the "Recipient/Business").

WHEREAS on _____, by **Resolution No.** _____, the Montgomery County Board of County Commissioners (the "County") awarded the Member Jurisdiction, an amount not to exceed \$ \$350,000, or 1.6% of total project costs, from the Primary Economic Development Fund, to provide funding support for a project known as the **Yaskawa Expansion Project** (the "ED/GE grant"); and

WHEREAS under Agreement between the County and the Member Jurisdiction, the Member Jurisdiction is responsible for administering the ED/GE grant; and

WHEREAS the Recipient/Business hereby acknowledges that all Member Jurisdictions awarded ED/GE grants are required to enter into a written development agreement with the Recipient/Business receiving the grant funds. The Recipient/Business should understand the project cost reimbursements (fifty percent (50%) reimbursed for eligible project costs, twenty-five percent (25%) when the company meets 50% of total pledged jobs and the remaining twenty-five percent (25%) when the company meets 100% of its total pledge jobs amount. In addition, sets forth the grant monitoring and reporting obligations of the Recipient/Business and Member Jurisdiction; and

WHEREAS as part of the Yaskawa Expansion Project, the Recipient/Business is guaranteeing the creation of 70 new jobs during a three-year period, along with a capital investment of \$22M.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with the intent to be legally bound, agree as follows:

1. **PROJECT** — The project calls for the construction of a 190,000 sq. ft. building addition to there existing facility. ED/GE funds will be used to offset the cost of the above. The foregoing is referred to herein as the "Project". Over the next 3 years, the Recipient/Business expects to retain its current employees and add 70 new employees, bringing its total employment to 403 by the end of 2025.

2. **GRANT AMOUNT** The Member Jurisdiction agrees to provide the ED/GE grant funds made available to the Member Jurisdiction by the County for this Project pursuant to both the terms and conditions of the ED/GE contract between the Member Jurisdiction and the County and this Agreement.

The amount of the ED/GE Grant is \$ 350,000 or 1.6% of the total project cost, whichever is less. The parties acknowledge that this Agreement is made pursuant to the Montgomery County ED/GE program and that the distribution of funds provided for herein is made pursuant to that program. The parties further acknowledge that they have been informed and fully understand that ED/GE grants are given to Member Jurisdictions as follows:

Following execution of this Agreement, (1) fifty percent (50%) of the grant amount will be reimbursed to the Member Jurisdiction on an invoice basis for eligible expenses; (2) twenty-five percent (25%) of the grant amount will be reimbursed to the Member Jurisdiction, on an invoice basis when the Recipient/Business attains 50% of total pledged jobs; and 3) twenty-five percent (25%) of the grant amount will be reimbursed to the Member Jurisdiction, on an invoice basis when the Recipient/Business attains 100% of total pledged jobs. Job creation will happen over a three-year period commencing with the Recipient/Business' provision of adequate proof to the Member Jurisdiction that the jobs have been created and actually hired and/or filled.

3. **GRANT PAYMENT** The Member Jurisdiction shall distribute the Grant, if at all, only after the following conditions are met and verified by the Member Jurisdiction in advance of Grant distribution: The Recipient/Business shall supply the Member Jurisdiction with written evidence of the amount of monies expended by the Recipient/Business in the furtherance of the Project, containing a statement therein identifying the date of each expenditure, the name of the person or business enterprise paid, and the goods or services provided warranting the payment. The Recipient/Business shall also provide a copy of any fully executed lease between it and another party for the subject property that is part of the Project. The County, through its Office of Economic Development, has the authority to meet with any contractor, person or business entity employed by the Recipient/Business to determine that the ED/GE funds are being expended for Project purposes.

4. **ED/GE FUNDS ACKNOWLEDGEMENT** The Recipient/Business agrees that the ED/GE grant is expended by the County in its sole discretion, and that the County's financial assistance is voluntarily and that the Recipient/Business has no legal or equitable claim to any of the ED/GE funds.

5. **PAYROLL CREATION** The Recipient/Business agrees to creation of 70 jobs during a three year period.

6. **LOCATION IDENTIFICATION** The Recipient/Business agrees to make a good-faith effort in all its business communications to identify that the Company's facility is located in the Member Jurisdiction, Montgomery County, Ohio. Communication may include signage, promotional literature, stationery, and licensed vehicles.

7. **TAXES CURRENT** The Recipient/Business agrees to pay all respective applicable real and tangible personal property taxes and all municipal earnings tax amounts, including payroll withholding owed, in a timely manner.

8. **COMPLIANCE WITH ED/GE PROGRAM AND INDEMNIFICATION.** The Recipient/Business agrees to use any grant money received from the ED/GE program only for the purpose(s) provided in this Agreement, which have been determined to serve valid public purpose under the ED/GE Program. The Recipient/Business agree(s) to indemnify, defend and save harmless the Member Jurisdiction, its officials, agents and employees, from and against all suits, claims demands or actions, damages, liabilities, judgments, losses, costs and reasonable attorney fees arising out of or flowing from its failure to use the funds for the stated purpose. Further if any of the ED/GE funds are used for any purpose other than that of the Project, the Recipient/Business agrees that it will repay the County the amount improperly expended and will do so within seven (7) calendar days of written notice delivered to it by the Member Jurisdiction that such an improper expenditure has occurred. Said notice shall state the amount which the Member Jurisdiction believes to have been improperly expended.

9. **INFORMATION WARRANTED** The Recipient/Business affirmatively covenant(s) that it/they has/have made no false statements to the Member Jurisdiction in the process of obtaining approval of the ED/GE funds. If any representative of the Recipient/Business knowingly made false statements to the Member Jurisdiction to obtain or maintain the incentive provided by this Agreement, it is mutually agreed that such false statements shall be legally attributed to the representative's principal for purposes of this Agreement.

10. **AUDIT** The Recipient/Business acknowledge(s) that if they are receiving public funds, and that documentation of the use of such funds may be subject to audit by the County Auditor or the State Auditor or their representatives. The Recipient/Business agree(s) to allow either the County or its representative, or a representative of the State Auditor's Office, to enter upon its premises during regular business hours and to supply the books/financial records concerning the receipt and expenditure of the economic development funding received pursuant to the Agreement. The Recipient/Business also agree(s) to notify persons or business entities with which (it/they) (does/do) business in the prosecution of the work called for in the "Project" of the fact that such person or business entity is receiving public funds and that such funds may be audited by the County Auditor or the State Auditor even though they have been received by a private person or business entity.

11. **RECORD RETENTION** The Recipient/Business agree(s) that all documentation, financial records and other evidence of project activity under this Agreement shall be maintained by the Recipient/Business, consistent with the records retention requirements of the Ohio Revised Code, for a period of three (3) years after the completion or termination of the Project. After this three (3) year retention period, the Recipient/Business must notify the Member Jurisdiction, in writing, of its intent to destroy said records. The Member Jurisdiction reserves the right to extend the retention period for such records, and if it decides to do so it will notify the Recipient/Business in writing, otherwise, the Member Jurisdiction will issue to the Recipient/Business a written Certificate of Records Disposal. It is mutually understood and agreed that no records in the Recipient/Business' possession will be destroyed until the Recipient/Business has received a Certificate of Records Disposal.

12. **NO DISCRIMINATION** The Recipient/Business agrees not to discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The Recipient/Business will ensure that applicants are employed and that employees are treated during employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient/Business agree(s) not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything related to this Agreement, or in reference to any contractors or subcontractors.

13. **TRANSFER** This Agreement is not transferable or assignable without the express, written approval of the Member Jurisdiction.

14. **AMENDMENT** This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either written or oral, between the parties. This Agreement shall not be modified in any manner

except by an instrument, in writing, executed by the parties hereto. This Agreement may only be voided or amended by written mutual consent.

15. **SEVERABILITY** If any term or provision of this Agreement or the application thereof to any entity, person or circumstance shall, to any extent be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to entities, persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

16. **GOVERNING LAW** This Agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the laws of the State of Ohio.

17. **SIGNATURES** Signatures hereon shall act as express representations that the signing agents are authorized to bind their respective principals to all rights, duties, remedies, obligations, and responsibilities incurred by way of this Agreement.

MEMBER JURISDICTION:

RECIPIENT/BUSINESS:

By: _____
Keith Johnson
Its: City Manager

By: _____
Steve Barhorst
Its: CEO

Date: _____

Date: _____

ORDINANCE NO. 7032

AN ORDINANCE AMENDING CHAPTER 1042.01 OF THE CODIFIED ORDINANCES OF THE CITY OF MIAMISBURG, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1

Chapter 1042.01 (a) and (b) of the Codified Ordinances of the City of Miamisburg, Ohio, which reads as follows:

Chapter 1042.01 Water Service Charges

Effective for usage from and after September 1, 2014, there is hereby levied and assessed the following quarterly water rates charged by the City to inhabitants and other users for the service of the City's water system:

(a)

Effective Date	Meter Size (In)	Sept. 1, 2014	Sept. 1, 2015	Sept. 1, 2016	Sept. 1, 2017	Sept. 1, 2018
		3/4" and smaller	\$ 43.57	\$ 51.41	\$ 59.12	\$ 60.89
Minimum charge including 1,000 cubic feet	1"	\$ 72.58	\$ 85.64	\$ 98.49	\$ 101.44	\$ 104.48
	1 1/2"	\$ 145.16	\$ 171.29	\$ 196.98	\$ 202.89	\$ 208.98
	2"	\$ 232.31	\$ 274.13	\$ 315.25	\$ 324.71	\$ 334.45
	3"	\$ 435.73	\$ 514.16	\$ 591.28	\$ 609.02	\$ 627.29
	4"	\$ 726.02	\$ 856.70	\$ 985.21	\$ 1,014.77	\$ 1,045.21
	6"	\$ 1,566.01	\$ 1,847.89	\$ 2,125.07	\$ 2,188.82	\$ 2,254.48
	8"	\$ 2,322.96	\$ 2,741.09	\$ 3,152.25	\$ 3,246.82	\$ 3,344.22

(b)

Effective Date	Sept. 1, 2014	Sept. 1, 2015	Sept. 1, 2016	Sept. 1, 2017	Sept. 1, 2018
Cubic Feet	(\$ per 100 cubic feet)				
Next 9,000	\$ 4.65	\$ 5.49	\$ 6.31	\$ 6.50	\$ 6.70
Next 30,000	\$ 4.19	\$ 4.94	\$ 5.68	\$ 5.85	\$ 6.03
Next 60,000	\$ 3.67	\$ 4.33	\$ 4.98	\$ 5.13	\$ 5.28
Over 100,000	\$ 3.42	\$ 4.04	\$ 4.65	\$ 4.79	\$ 4.93

The above listed rates shall be effective for usage from and after September 1, 2014.

Rates effective for usage from and after September 1, 2019, shall be governed by an appropriate consumer price index.

- (1) Any unmetered residence containing one or more families shall pay the minimum quarterly charge for each and every family residing therein.
- (2) The City reserves the right to increase the quarterly rates at any time, should the revenues of the water and sanitary sewer system prove insufficient to pay the operating and maintenance expenses and the debt service charges on the revenue bonds issued, or other obligations incurred, to pay for improvements to the water and sanitary sewer system.
- (3) The charge for consumers outside the corporate limits shall be forty percent higher than the prevailing rates within the corporate limits.

(a)

Effective Date	Meter Size (In)	Sept. 1, 2014	Sept. 1, 2015	Sept. 1, 2016	Sept. 1, 2017	Sept. 1, 2018
		3/4" and smaller	\$ 61.00	\$ 71.97	\$ 82.77	\$ 85.25
Minimum charge including 1,000 cubic feet	1"	\$ 101.61	\$ 119.90	\$ 137.89	\$ 142.02	\$ 146.27
	1 1/2"	\$ 203.22	\$ 239.81	\$ 275.77	\$ 284.05	\$ 292.57
	2"	\$ 325.23	\$ 383.78	\$ 441.35	\$ 454.59	\$ 468.23
	3"	\$ 610.02	\$ 719.82	\$ 827.79	\$ 852.63	\$ 878.21
	4"	\$ 1,016.43	\$ 1,199.38	\$ 1,379.29	\$ 1,420.68	\$ 1,463.29
	6"	\$ 2,192.41	\$ 2,587.05	\$ 2,975.10	\$ 3,064.35	\$ 3,156.27
	8"	\$ 3,252.14	\$ 3,837.53	\$ 4,413.15	\$ 4,545.55	\$ 4,681.91

(b)

Effective Date	Sept. 1, 2014	Sept. 1, 2015	Sept. 1, 2016	Sept. 1, 2017	Sept. 1, 2018
Cubic Feet	(\$ per 100 cubic feet)				
Next 9,000	\$ 6.51	\$ 7.69	\$ 8.83	\$ 9.10	\$ 9.38
Next 30,000	\$ 5.87	\$ 6.92	\$ 7.95	\$ 8.19	\$ 8.44
Next 60,000	\$ 5.14	\$ 6.06	\$ 6.97	\$ 7.18	\$ 7.39
Over 100,000	\$ 4.79	\$ 5.66	\$ 6.51	\$ 6.71	\$ 6.90

- (4) Bulk rate charges to water haulers shall be the same as prescribed above in tables (3)(a) and (3)(b), but no less than the minimum.
- (5) Should the bill rendered for any property or consumer served by the water and sanitary sewer system remain unpaid for fifteen days after the date of such bill, a penalty equal to five percent of the unpaid bill shall also become due and payable. Should the bill rendered for any property or consumer served by the water and sanitary sewer system remain unpaid for forty-five days, the water service to such property or consumer shall thereupon be suspended and shall only be resumed upon payment of the gross amount due, plus an additional fee of forty dollars (\$40.00), during weekdays from 8:00 a.m. to 3:00 p.m. However, after 3:00 p.m. on weekdays and during weekends and on holidays, the additional fee will be one hundred dollars (\$100.00). Bills rendered to persons other than the record owners of property shall be guaranteed in writing by such owners in the manner provided by the application forms of the City.
- (6) The owners of real property which is served by such water and sanitary sewer system by pipes connected with such system shall, as well as the lessee of the premises, be liable to the City for the lawful charges for all services of such system rendered to such premises.
- (7) Where more than one family or place of business is on a single meter, the City Manager may require that the billing be made to the property owner.
- (8) Where payment delinquencies occur due to frequency of tenant changes, the City Manager may require that the property owner be billed for service.

be and hereby is amended to read as follows:

Chapter 1042.01 Water Service Charges

Effective for usage from and after July 15, 2023, there is hereby levied and assessed the following monthly water rates charged by the City to inhabitants and other users for the service of the City's water system:

(a)

Effective Date	Meter Size (In)	July 15, 2023
Minimum charge 0 - 300 cubic feet	3/4" and smaller	\$20.77
	1"	\$34.60
	1 1/2"	\$69.19
	2"	\$110.73
	3"	\$207.68
	4"	\$346.05
	6"	\$746.42
	8"	\$1,107.21

(b)

Effective Date	July 15, 2023
Cubic Feet	(\$ per 100 cubic feet)
301-3,300	\$7.13
3,301 - 13,300	\$6.42
13,301 - 33,300	\$5.62
33,301 and higher	\$5.24

Rates effective for usage from and after November 15, 2023, shall be governed by an appropriate positive consumer price index as authorized by Council. If no action is taken, these rates will remain in effect.

- (1) Any unmetered residence containing one or more families shall pay the minimum monthly charge for each and every family residing therein.
- (2) The City reserves the right to increase the monthly rates at any time, should the revenues of the water and sanitary sewer system prove insufficient to pay the operating and maintenance expenses and the debt service charges on the revenue bonds issued, or other obligations incurred, to pay for improvements to the water and sanitary sewer system.
- (3) The charge for consumers outside the corporate limits shall be forty percent (40%) higher than the prevailing rates within the corporate limits.

(a)

Effective Date	Meter Size (In)	July 15, 2023
Minimum charge 0 - 300 cubic feet	3/4" and smaller	\$29.07
	1"	\$48.43
	1 1/2"	\$96.86
	2"	\$155.01
	3"	\$290.76
	4"	\$484.47
	6"	\$1,044.99
	8"	\$1,550.10

(b)

Effective Date	July 15, 2023
Cubic Feet	(\$ per 100 cubic feet)
301-3,300	\$9.98
3,301 - 13,300	\$8.98
13,301 - 33,300	\$7.86
33,301 and higher	\$7.34

- (4) Bulk rate charges to water haulers shall be the same as prescribed above in tables (3)(a) and (3)(b), but no less than the minimum.
- (5) Should the bill rendered for any property or consumer served by the water and sanitary sewer system remain unpaid for fifteen days after the date of such bill, a penalty equal to five percent of the unpaid bill shall also become due and payable. Should the bill rendered for any property or consumer served by the water and sanitary sewer system remain unpaid for forty-five days, the water service to such property or consumer shall thereupon be suspended and shall only be resumed upon payment of the gross amount due, plus an additional fee of forty dollars (\$40.00), during weekdays from 8:00 a.m. to 3:00 p.m. However, after 3:00 p.m. on weekdays and during weekends and on holidays, the additional fee will be one hundred dollars (\$100.00). Bills rendered to persons other than the record owners of property shall be guaranteed in writing by such owners in the manner provided by the application forms of the City.
- (6) The owners of real property which is served by such water and sanitary sewer system by pipes connected with such system shall, as well as the lessee of the premises, be liable to the City for the lawful charges for all services of such system rendered to such premises.

- (7) Where more than one family or place of business is on a single meter, the City Manager may require that the billing be made to the property owner.
- (8) Where payment delinquencies occur due to frequency of tenant changes, the City Manager may require that the property owner be billed for service.

Section 2.

This measure shall take effect and be in force from and after the earliest period allowed by law.

Passed: August 1, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7033

AN ORDINANCE AMENDING CHAPTER 1042.04 OF THE CODIFIED ORDINANCES OF THE CITY OF MIAMISBURG, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1

Chapter 1042.04 (a) and (c) of the Codified Ordinances of the City of Miamisburg, Ohio, which reads as follows:

Chapter 1042.04 Sewerage Service Charges

Effective for usage from and after September 1, 2014, there is hereby levied and assessed upon occupied premises, having any sewer connection with or having access to the sanitary sewerage system of the City or otherwise discharging sewage or industrial wastes into the City sanitary sewerage system, a sewer service charge, payable as hereinafter provided in an amount determinable for all users of the City sanitary sewerage system, except as hereinafter provided. The rates shall be as follows:

(a)

Effective Date		Sept. 1, 2014	Sept. 1, 2015	Sept. 1, 2016	Sept. 1, 2017	Sept. 1, 2018
A. Quarterly minimum charge for 0-1,000 cubic feet	Per Quarter	\$ 60.10	\$ 73.92	\$ 80.57	\$ 82.99	\$ 85.48
B. Quarterly minimum charge for over 1,000 cubic feet	Per 100 Cubic Feet	\$ 4.85	\$ 5.97	\$ 6.51	\$ 6.71	\$ 6.91

Rates effective for usage from and after September 1, 2019 shall be governed by an appropriate consumer price index.

(b) Other Charges

- (1) The charge for consumers outside the corporate limits shall be in accordance with the sewer service charge listed in subsection (a) hereof, plus a system capital equalization charge as follows:

Effective Date		Sept. 1, 2014	Sept. 1, 2015	Sept. 1, 2016	Sept. 1, 2017	Sept. 1, 2018
A. Quarterly minimum charge for 0-1,000 cubic feet	Per Quarter	\$ 24.04	\$ 29.57	\$ 32.23	\$ 33.20	\$ 34.19
B. Quarterly minimum charge for over 1,000 cubic feet	Per 100 Cubic Feet	\$ 1.94	\$ 2.39	\$ 2.60	\$ 2.68	\$ 2.76

- (2) Should the bill rendered for any property or consumer served by the water and sanitary sewer system remain unpaid for fifteen days after the date of such bill, a penalty equal to five percent of the unpaid bill shall also become due and payable. Should the bill rendered for any property or consumer served by the water and sanitary sewer system remain unpaid for forty-five days, the water service to such property or consumer shall thereupon be suspended and shall only be resumed upon payment of the gross amount due, plus an additional fee of twenty dollars (\$20.00), during weekdays from 8:00 a.m. to 3:00 p.m. However, after 3:00 p.m. on weekdays and during weekends and on holidays, the additional fee will be forty dollars (\$40.00). Bills rendered to persons other than the record owners of property shall be guaranteed in writing by such owners in the manner provided by the application forms of the City.
- (3) The owners of the real property which is served by such water and sanitary sewer system by pipes connected with such system shall, as well as the lessee of the premises, be liable to the City for the lawful charges for all services of such system rendered to such premises.
- (4) Where more than one family or place of business is on a single meter, the City Manager may require that the billing be made to the property owner.
- (5) Where payment delinquencies occur due to frequency of tenant changes, the City Manager may require that the property owner be billed for service.
- (6) Any waste that is discharged into the City wastewater system with BOD, suspended solids or any other pollutants that are in excess of normal domestic sewage, (i.e. 200 mg/l BOD and 250 mg/l suspended solids) will be subject to a surcharge. The surcharge for BOD and suspended solids shall be as follows:
- A. For BOD - \$0.12/pound of BOD.
 - B. For suspended solids - \$0.10/pound of suspended solids.

be and hereby is amended to read as follows:

Effective for usage from and after July 15, 2023, there is hereby levied and assessed upon occupied premises, having any sewer connection with or having access to the sanitary sewerage system of the City or otherwise discharging sewage or industrial wastes into the City sanitary sewerage system, a sewer service charge, payable as hereinafter provided in an amount determinable for all users of the City sanitary sewerage system, except as hereinafter provided. The rates shall be as follows:

(a)

Effective Date		July 15, 2023
A. Quarterly minimum charge for 0-300 cubic feet	Per Month	\$28.30
B. Quarterly minimum charge for over 300 cubic feet	Per 100 Cubic Feet	\$7.35

Rates effective for usage from and after November 15, 2023 shall be governed by an appropriate positive consumer price index as authorized by Council. If no action is taken, these rates will remain in effect.

(b) Other Charges

- (7) The charge for consumers outside the corporate limits shall be in accordance with the sewer service charge listed in subsection (a) hereof, plus a system capital equalization charge as follows:

Effective Date		July 15, 2023
A. Quarterly minimum charge for 0-300 cubic feet	Per Month	\$39.62
B. Quarterly minimum charge for over 300 cubic feet	Per 100 Cubic Feet	\$10.29

- (8) Should the bill rendered for any property or consumer served by the water and sanitary sewer system remain unpaid for fifteen days after the date of such bill, a penalty equal to five percent of the unpaid bill shall also become due and payable. Should the bill rendered for any property or consumer served by the water and sanitary sewer system remain unpaid for forty-five days, the water service to such property or consumer shall thereupon be suspended and shall only be resumed upon payment of the gross amount due, plus an additional fee of forty dollars (\$40.00), during weekdays from 8:00 a.m. to 3:00 p.m. However, after 3:00 p.m. on weekdays and during weekends and on holidays, the additional fee will be one hundred dollars (\$100.00). Bills rendered to persons other than the record owners of property shall be guaranteed in writing by such owners in the manner provided by the application forms of the City.
- (9) The owners of the real property which is served by such water and sanitary sewer system by pipes connected with such system shall, as well as the lessee of the premises, be liable to the City for the lawful charges for all services of such system rendered to such premises.
- (10) Where more than one family or place of business is on a single meter, the City Manager may require that the billing be made to the property owner.
- (11) Where payment delinquencies occur due to frequency of tenant changes, the City Manager may require that the property owner be billed for service.
- (12) Any waste that is discharged into the City wastewater system with BOD, suspended solids or any other pollutants that are in excess of normal domestic sewage, (i.e. 200 mg/l BOD and 250 mg/l suspended solids) will be subject to a surcharge. The surcharge for BOD and suspended solids shall be as follows:
- C. For BOD - \$0.12/pound of BOD.
- D. For suspended solids - \$0.10/pound of suspended solids.

Section 2.

This measure shall take effect and be in force from and after the earliest period allowed by law.

Passed: August 1, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7034

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CT CONSULTANTS TO PROVIDE PROFESSIONAL SERVICES FOR DEVELOPMENT OF THE MIAMISBURG TRANSPORTATION PLAN, AND DECLARING AN EMERGENCY.

WHEREAS, the City of Miamisburg last adopted the Major Thoroughfare Plan in 1993; and

WHEREAS, the Major Thoroughfare Plan requires a comprehensive overhaul to account for the evolution of land use and transportation in the City of Miamisburg over the last 30 years; and

WHEREAS, having an updated, comprehensive Transportation Plan will direct future governmental investments in transportation infrastructure and provide support to current and future applications for infrastructure funding; and

WHEREAS, having an updated, comprehensive Transportation Plan will ensure future private land use development includes necessary improvements within the public right-of-way to provide multi-modal transportation access for residents and visitors; and

WHEREAS, the City of Miamisburg issued a Request for Proposals to various planning, design, and transportation engineering firms for a new Transportation Plan; and

WHEREAS, CT Consultants was found to be a qualified firm with the personnel and equipment necessary to draft the Miamisburg Transportation Plan; and

WHEREAS, the City of Miamisburg desires to enter into a professional services contract with CT Consultants (Exhibit A) to facilitate development of the Miamisburg Transportation Plan for eventual adoption by City Council.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to enter into a contract with CT Consultants for professional services for the Miamisburg Transportation Plan, at a total project cost not to exceed \$75,000.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date to ensure the initiation of professional services may commence immediately, therefore, this measure shall take effect and be in full force from and after its passage.

Passed: July 18, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A

CONTRACT AND AGREEMENT
BETWEEN OWNER AND ENGINEER/ARCHITECT
FOR PROFESSIONAL SERVICES

THIS AGREEMENT made as of _____, by and between the City of Miamisburg Development Department, 10 N. First Street, Miamisburg, OH 45342 (OWNER), and CT Consultants, Inc., 4420 Cooper Road, Suite 200, Cincinnati, Ohio, 45242 (ENGINEER/ARCHITECT), for the following PROJECT:

MIAMISBURG TRANSPORTATION PLAN PROJECT

NOW THEREFORE, the OWNER and the ENGINEER/ARCHITECT, in consideration of their mutual covenants, herein agree in respect of the performance of professional services by the ENGINEER/ARCHITECT and payment for those services by the OWNER as set forth below:

THE OWNER WILL:

1. Provide full information as to his requirements for the PROJECT;
2. Assist the ENGINEER/ARCHITECT by placing at his disposal all available information pertinent to the PROJECT;
3. Guarantee access to and make all provisions for the ENGINEER/ARCHITECT to enter upon private property as required to perform his services under this Agreement;
5. Give prompt written notice to the ENGINEER/ARCHITECT whenever the OWNER observes or otherwise becomes aware of any defect in the PROJECT or other event which may substantially affect the ENGINEER/ARCHITECT'S performance of services under this Agreement; and
6. Compensate the ENGINEER/ARCHITECT for services rendered under this Agreement.

THE ENGINEER/ARCHITECT WILL:

1. Perform professional services in connection with the attached *Proposal Dated April 28, 2023*.
2. Provide additional services when requested and authorized by the OWNER.

GENERAL PROVISIONS

1. Ownership of Documents

All calculations, drawings, specifications and other work products, whether in hard copy or information on electronic media, of the ENGINEER/ARCHITECT for this PROJECT are instruments of service for this PROJECT only and shall remain the intellectual property of the ENGINEER/ARCHITECT whether the PROJECT is completed or not. Reuse of any of the instruments of service of the ENGINEER/ARCHITECT by the OWNER on extensions of this PROJECT or any other project is expressly prohibited without written approval by the ENGINEER/ARCHITECT.

CADD Files: Any use or reuse by the OWNER or others without written verification by the ENGINEER/ARCHITECT or CADD adaptation for the specific purpose intended will be at the OWNER'S risk and full legal responsibility. Furthermore, the OWNER will, to the fullest extent permitted by law, indemnify and hold the ENGINEER/ARCHITECT harmless from any and all claims, suits, liability, demands, or costs arising out of or resulting therefrom. Any such adaptation by the OWNER will entitle the ENGINEER/ARCHITECT to additional compensation at his current rate.

Because data stored on electronic media can deteriorate undetected or be modified without the ENGINEER/ARCHITECT'S knowledge, the OWNER agrees that the ENGINEER/ARCHITECT cannot be held liable for the competence or correctness of the electronic data after an acceptance period of 30 days from delivery of the electronic files.

2. Termination

This Agreement may be terminated by either party by thirty (30) days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party, or for no reason by either party. If this agreement is terminated, the ENGINEER/ARCHITECT shall be paid for all services performed to the termination date.

3. Standard of Care

The ENGINEER/ARCHITECT'S services as defined herein shall be performed in accordance with the professional engineering/architectural standard of care prevailing at the time and same locality the Services are provided. The OWNER agrees to notify the ENGINEER/ARCHITECT in writing of any problems that arise during the course of this Project and allow the ENGINEER/ARCHITECT to recommend solutions to the problems. If the OWNER proceeds to implement a remedy to a problem without written notification to the ENGINEER/ARCHITECT, the OWNER does so at his own risk and shall have no recourse to ENGINEER/ARCHITECT for any damage or relief.

The OWNER shall add similar language to his contract with the Contractor and/or subcontractor(s) that also notifies the Contractor and/or subcontractor(s) that such procedure shall be followed by the Contractor and/or subcontractor(s) who shall give written notice to all problems to the Owner.

4. Disputes

Any controversy or claim arising out of or relating to this Agreement or the breach thereof may be settled by arbitration or mediation in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

5. Insurance

The ENGINEER/ARCHITECT shall acquire and maintain statutory workmen's compensation insurance coverage, comprehensive general liability insurance coverage, and professional liability insurance coverage. The OWNER agrees to limit the ENGINEER/ARCHITECT'S liability to the OWNER and to all Construction Contractors and Subcontractors on the PROJECT, due to the ENGINEER/ARCHITECT'S professional negligent acts, errors, or omissions, such that the total aggregate liability of the ENGINEER/ARCHITECT to those named shall not exceed seventy five thousand (\$) dollars or the ENGINEER/ARCHITECT'S total fee charged for services rendered on this PROJECT, whichever is greater, unless an additional fee based on the liability amount requested is paid to the ENGINEER/ARCHITECT prior to the commencement of work by the ENGINEER/ARCHITECT.

6. Disclaimer: Asbestos, Hazardous Waste, Pollution, & Mold

The ENGINEER/ARCHITECT hereby states, and the OWNER acknowledges, that the ENGINEER/ARCHITECT has no professional liability (errors and omissions) or other insurance, and is unable to reasonably obtain such insurance, for claims arising out of the performance of or failure to perform professional services related to asbestos, hazardous wastes, pollutions, or to mold. The ENGINEER/ARCHITECT further acknowledges he will not perform work in these areas and if an asbestos, hazardous wastes, pollutions, or mold problem is identified on the OWNER'S site, a qualified consultant will be required. Accordingly, the OWNER hereby agrees to bring no claim for negligence or breach of contract against the ENGINEER/ARCHITECT.

7. Opinions of Costs

Since ENGINEER/ARCHITECT has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER/ARCHITECT'S opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of ENGINEER/ARCHITECT'S best judgment; but ENGINEER/ARCHITECT cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions or probable cost prepared by ENGINEER/ARCHITECT. If, prior to the Bidding or Negotiating Phase, the OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent Cost Estimator.

8. Site Observation

Notwithstanding anything to the contrary which may be contained in this agreement, the ENGINEER/ARCHITECT shall not have control and shall not be responsible for the means, methods, techniques, sequences or procedure or construction or illegal disposal of construction debris nor shall the ENGINEER/ARCHITECT be responsible for the acts or omissions of the owner. ENGINEER/ARCHITECT shall not be responsible for the failure of the owner, any third party architect or engineer, consultant, contractor or subcontractor to carry out their respective responsibilities in accordance with the project documents or any other agreement concerning the project.

PAYMENTS TO THE ENGINEER/ARCHITECT

In accordance with the Terms and Conditions of this Agreement, the OWNER shall compensate the ENGINEER/ARCHITECT Zero dollars (\$0.00) prior to commencement of work on this PROJECT and to pay all balances due to ENGINEER/ARCHITECT when ENGINEER/ARCHITECT delivers monthly and final billing to OWNER or his agent.

The total fee charged for Tasks I – IV in attached proposal.

X Total Fee of up to \$75,000 for Scope of Services per the attached proposal dated April 28, 2023.

X computed on an actual time and expense basis according to the attached Fee Schedule. This Fee Schedule is only applicable for the calendar year in which this Agreement for Professional Services is signed. All work performed in subsequent years shall be invoiced based on the then current Fee Schedule.

Any Additional Services can be performed upon request for a pre-determined Lump Sum Fee or on a Time and Expenses basis and will be invoiced separately from our Scope of Services as described in the proposal.

TIME OF PAYMENT

The OWNER will make prompt payments to the ENGINEER/ARCHITECT in response to his monthly statements. Payments to the ENGINEER/ARCHITECT of the monthly statements will not be contingent upon the OWNER obtaining project funding. All amounts outstanding at the end of thirty (30) days will receive a 1% per month service charge from the 30th day. OWNER agrees to pay all cost of collection incurred by ENGINEER/ARCHITECT in the collection of any monies owed to ENGINEER/ARCHITECT by OWNER which are more than 45 days outstanding. If after 45 days from the date of ENGINEER/ARCHITECT'S statement, OWNER has not made payment in full to ENGINEER/ARCHITECT, ENGINEER/ARCHITECT may, after giving seven days written notice to the OWNER, suspend services under this agreement. In addition to the contract fee, the OWNER shall reimburse the ENGINEER/ARCHITECT for all sales taxes, if any, required to be paid on engineering services.

SIGNATURES

Should OWNER be a corporation, the person signing this Agreement agrees to take full personal responsibility for the payment of the amounts specified therein.

In witness whereof, the parties hereto have made and executed this Agreement as of the day and year first above written.

**OWNER: CITY OF MIAMISBURG, OHIO
CONSULTANTS INC.**

ENGINEER/ARCHITECT: CT

BY: _____
City Manager

BY:  _____
Vice President

FEDERAL ID#/S.S.# _____

WITNESS _____

WITNESS _____



April 28, 2023

Mr. Andrew Rodney
City Planner
City of Miamisburg Development Department
20 E. Central Avenue
Miamisburg, OH 45342

RE: Request for Proposal - Miamisburg Transportation Plan

Dear Andrew,

We appreciate the opportunity to submit our qualifications for the City of Miamisburg's Transportation Plan project. We look forward to working with the City to help guide Miamisburg's efforts to grow and expand. For 100 years, CT has managed and solved issues for our clients, including several long and productive relationships in our region.

Our team provides the right mix of planning, design, community engagement, and similar experience needed for the success of this vital project. We routinely work with City governments to update their plans and programs. Working with CT offers several advantages, including:

Keen Project Understanding. We have met with your staff and visited Miamisburg numerous times to gather the information needed to develop a strong approach and work plan for this project. We know the need to update the City's Transportation and Thoroughfare plans to ensure it is well-positioned and organized for future growth. Completing this project will also have the benefit of maintaining eligibility for state and federal funding sources to help the City secure the funds to implement plan recommendations.

The Right Team for the Job. As the proposed Project Manager for this effort, I have experience leading several relatable projects throughout my career. I am currently working with the City of Springdale on a Thoroughfare Plan update. I will apply my experience from that project and more than two decades of working with similar clients and projects.

Local Knowledge and Experience. Our team will be supported by professionals well-versed in issues typically found on the municipal level. For example, Traffic Engineer Jay Korrus will serve as a technical lead for this part of the project. Jay is a local resident and traffic signal expert. His role will be vital to this portion of the proposed work. Jay operates and maintains traffic signal systems for several communities in our region, including the cities of Franklin, Monroe, and Montgomery, among others.

We look forward to continued growth and prosperity for the City of Miamisburg and would be excited to partner with you on this project. If you have any questions regarding our submittal, please feel free to contact me via email at 513.792.8431 or sriggs@ctconsultants.com.

Sincerely,

CT Consultants, Inc.

Shawn Riggs, PE
Project Manager

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SECTION ONE: KEY PERSONNEL

SHAWN RIGGS, PE

PROJECT MANAGER

YEARS OF EXPERIENCE

19

EDUCATION

University of North Carolina at Charlotte, BSCE

LICENSES & AFFILIATIONS

Registered Professional Engineer: KY, OH; Public Works Officials of Southwest Ohio (PWOSO)

Certifications; KY Grade & Drain Level 1 Technician; KYTC Grade & Drain Level 2 Technician; KYTC Structures Inspector Level 1; KYTC Aggregate Sampling Technician; ODOT Construction Engineer Level 1 & 2



Shawn is an accomplished and multi-talented City Engineer with many years of significant experience in planning, scheduling, and administering transportation and utility services. He has had over eight years of professional experience in the public sector under various State and Local government agencies. Shawn serves as the City/Village Engineer for several communities in the greater Cincinnati area, including Hamilton County and Northern Kentucky. He possesses strong interpersonal, negotiating and communication skills coupled with a proven track record of creating a work culture that fosters teamwork and cooperation.

- **Springdale Thoroughfare Plan Update, Springdale, OH - Project Manager** who updated the Thoroughfare Plan to include a multi-modal system.
- **Louisville Metro East Market Street Streetscape Master Plan, Louisville, KY - Transportation Engineer** who provided preliminary engineering, master planning, and public involvement assistance for a streetscape master plan for East Market Street. The NuLu neighborhood has been thriving, but unfortunately, the transportation connectivity has not kept up. The design team offered guidance on the best ways to move people along this busy corridor while still being respectful of the historic nature of the corridor. The resulting design was based on modal-balance and provides the best possible way to truly move people not only through but to this corridor as a destination. Our team pushed for strengthened pedestrian and bicycle zones that interact with the heavy transit-focused corridor seamlessly.

JAY KORROS, PE, PTOE

SENIOR TRAFFIC ENGINEER

YEARS OF EXPERIENCE

32

EDUCATION

University of Cincinnati, BSCE

LICENSES & AFFILIATIONS

Registered Professional Engineer: KY, OH; Institute of Transportation Engineers; International Municipal Signal Association

CERTIFICATIONS:

Professional Traffic Operations, ODOT Traffic Academy - Traffic Signals, Railroad Preempted, Traffic Signals, Highway Lighting, Interchange Justification Studies, Safety Studies, Maintenance of Traffic



Jay has many years of experience in the traffic engineering field. He is certified as a Professional Traffic Operations Engineer by the Transportation Professional Certification Board. His specialties include designing and implementing intelligent, real-time traffic control systems, transportation planning, and traffic engineering studies.

- **I-275/Reed Hartman Highway Improvements Phase I (HAM-275-29.79, PID 20128), Blue Ash & Sharonville, OH - Project Traffic Manager** who oversaw the closed loop system design, traffic signal design, copper wire interconnect design, signing and striping plans, and traffic-responsive set up on I-275 between US 42 and RHH
- **Ongoing Traffic Signal Management, Various Locations, OH - Project Manager** responsible for the signal system management services for the Cities of Blue Ash, Forest Park, Montgomery, Sharonville, and Franklin, which include 15 systems encompassing 106 signalized intersections.
- **Downtown Signal Management System, Franklin, OH - Project Manager** responsible for the reconstruction of three traffic signals in downtown Franklin, Ohio at the intersections of Second Street at River Street, Second Street at Main Street, and Second Street at Riley Boulevard.

SECTION ONE: KEY PERSONNEL

JEFFREY WALLACE, AICP

PUBLIC ENGAGEMENT



YEARS OF EXPERIENCE

33

EDUCATION

The Ohio State University, BA
Journalism

Northern Kentucky University,
Masters of Public Administration

LICENSES & AFFILIATIONS

AICP

AREAS OF EXPERTISE

Public Engagement
Project Management
Urban Planning
Transportation Planning

Jeff has experience in transportation planning and public engagement throughout the state of Ohio and beyond. This experience includes five years at the Ohio Department of Transportation (ODOT) and nearly 30 years in the private sector.

He has either managed or played a key public engagement role in a number of high-profile transportation projects in Ohio, including the Brent Spence Bridge Rehabilitation/Replacement Study, Fort Washington Way Reconstruction, the I-75 Corridor Study, and the Ohio 3C Passenger Rail Quick Start project.

- **Brent Spence Bridge Rehabilitation/Replacement Study, Cincinnati, OH*** - Planning Task Lead responsible for leading all public communications efforts aimed at providing progress updates, information regarding alternative designs to be studied, and potential traffic pattern changes.
- **MOT/GRE 35 Corridor Study, Dayton/Beavercreek, OH** - Project Manager for two companion corridor studies on US 35 in Montgomery and Greene counties between I-75 and the east end of Beavercreek. The studies identified, developed, and analyzed a series of transportation alternatives that were aimed at improving interchange access and converting rural sections of the corridor to a limited access freeway.

*With previous employer

PAUL CIUPA, EIT

SENIOR TRAFFIC ENGINEER



YEARS OF EXPERIENCE

33

EDUCATION

Cleveland State University, BSME
The Ohio State University, Electrical Engineering, Additional Studies of Math, Statistics, Surveying, Economics, Marketing, and Finance

LICENSES & AFFILIATIONS

Engineer-in-Training; ODOT Construction Engineer Level 1/Construction Manager; International Municipal Signal Association (I.M.S.A.) - Tri-State Section President & Delegate;

Work Zone, Signs and Markings Level I, II and III; Traffic Signal Level I, Level II; Traffic Signal Inspector Level I; Traffic Signal Technician; Construction Level II; Roadway Lighting Technician Level I; Certification Instructor/Moderator

National Committee on Traffic Control Devices (NCUTCD) - Guide & Motorist Information Signs and Voting Council

Paul has many years of traffic and construction inspection experience. He has practical decision-making skills and meets deadlines in planning and organizing public works projects. He has extensive project management experience in road, traffic signal, parking, and bike path/ lane construction.

Paul supports consultants, contractors, employees, and public relations to promote guidance, knowledge, and understanding of services, projects, and professional development.

- **Cuyahoga County Department of Public Works, Cleveland, OH*** - Senior Project Manager who prepared agreements for projects and planning; prepared and maintained project work schedules; prepared complete packages for submittal to regulatory agencies; prepared and updated information for project status reports and meetings; and responded to complaints.
- **City of Mentor Engineering Department, Mentor, OH*** - Traffic Engineer who was responsible for preparing a yearly report for the City Council of all traffic engineering projects.

*With previous employer

SECTION ONE: KEY PERSONNEL

TAJUDEEN BAKARE, PE, M.ASCE

CHIEF BRIDGE ENGINEER



YEARS OF EXPERIENCE

38

EDUCATION

City College of New York, BECE, MECE

LICENSES & AFFILIATIONS

Registered Professional Engineer:
OH, TN, WV, PA, NY

AREAS OF EXPERTISE

Bridge Design & Construction
Bridge Rehabilitation & Retrofits
LRFD Specifications
OTEC Structures Committee Member
Association for Bridge Design &
Construction (ABDC)

Taj Bakare has many years of structural engineering experience and specializes in management, design, review, and construction support for transportation projects. He is prequalified and certified for ODOT Bridge Design Levels 1 and 2, including ODOT Bridge Inspection Level 1. He is experienced in bridge design, rehabilitation, widening, load rating, geometrics, and Structures Maintenance of Traffic (MOT) alternatives analysis. His experience includes short and long-span conventional steel and concrete bridges.

- **Big Run South Road Bridge over I-270 (FRA-270-3.09), ODOT District 6, Franklin County, OH** - Project Manager for the replacement and widening of a structurally deficient deck of the existing 4-span (71'-109'-109'-71') continuous welded steel plate girder structure over mainline I-270.
- **MOT-70-22.890, ODOT, District 7, I-70/I-75 System Interchange Design, Phases 1-3, Montgomery County, Dayton, OH** - Assistant Project Manager responsible to replace the existing substandard cloverleaf ramps and improve to the I-70 and I-75 mainlines to accommodate the reconstruction of ramps, eight bridges, CIP walls, soil-nail retaining walls, MSE walls, noisewalls, storm drainage, major culvert extensions, traffic control, maintenance of traffic, landscaping and right-of-way plans.

KRISTIN HOPKINS, FAICP

LAND USE STUDIES



YEARS OF EXPERIENCE

38

EDUCATION

Cleveland State University, MPA &
Economic Development Certificate
University of Cincinnati, BS Urban
Planning

LICENSES & AFFILIATIONS

American Planning Association,
American Planning Association, Ohio
Chapter, American Institute of
Certified Planners (AICP)

AREAS OF EXPERTISE

Comprehensive City and
Neighborhood Planning, Citizen
Participation & Public Meetings, Land
Use and Public Health, Zoning &
Other Land Use Development,
Regulations, Market Assessments

Kris is a certified urban planning professional with broad public sector planning and zoning experience at the county, city, village, and township levels. Over the course of her career, she has developed a unique combination of expertise, including research, land use planning, economic analysis, zoning, subdivision and stormwater management regulations, design guidelines, community surveys, meeting facilitation, project management, and planning education and training. In 2016 Kris was inducted into the Fellows of the American Institute of Certified Planners for her contributions to the planning profession.

- **Rt. 20 Corridor Land Use Analysis & Zoning Update, North Perry, OH** - Project Manager for Rt. 20 corridor land use and zoning analysis, which clarifies a number of provisions, related residential district regulations, site development standards, signs, parking, landscaping, non-conforming uses, and zoning and subdivision review procedures..
- **Comprehensive Land Use Plan & Zoning Update, Olmsted Township, OH (2012-2013)** - As project manager, updated large segments of the Township's Zoning Resolution, which included new Planned Development Overlay Districts.

SECTION ONE: KEY PERSONNEL

JOHN MAAR, PE, CPESC

STORMWATER MANAGEMENT & DRAINAGE STUDIES



YEARS OF EXPERIENCE
20

EDUCATION
Ohio University, BSCE

LICENSES & AFFILIATIONS
Registered Professional Engineer: OH
Certified Professional in Erosion & Sediment Control, NASSCO Lateral Assessment Certification, NASSCO Manhole Assessment Certification, NASSCO Pipeline Assessment Certification, OSU, Inspection & Maintenance Certification for Stormwater Control Measures

John's responsibilities include site layout, utility coordination, field investigation, plan production, construction drawings, specifications, cost estimating, construction administration/management, water line, and storm and sanitary sewer design. He has been involved in a variety of site development, buried infrastructure/utility (water line, storm, and sanitary sewers), roadway, stormwater management, and residential design projects. John specializes in stormwater management/post-construction BMPs, is well-versed with the current edition of the Ohio EPA NPDES permit, and how to apply the EPA's requirements to new or rehabilitation site projects.

- **Lyra Drive Extension, Phases 1-2, Columbus, OH** - Lead Designer responsible for utility coordination/relocation, water main design/layout, sanitary sewer design, stormwater prevention plan 3, and post-construction best management practices.
- **Kasson Street Improvements, Johnstown, OH** - Project Manager for this local street utility and roadway widening/reconstruction project located in the Village of Johnstown. OPWC funding was secured for the funding of this 700 ft improvement project. The project included roadway design, storm sewer design/layout, utility coordination, and reconnection of service laterals (water and sanitary).

PAUL ROSZAK, ASLA, LEED GA

LANDSCAPE ARCHITECT



YEARS OF EXPERIENCE
39

EDUCATION
The Ohio State University, BSLA
The Agricultural Technical Institute,
Associates Degree of Applied Science

LICENSES & AFFILIATIONS
Registered Landscape Architect:
KY, NC, NY, OH, PA, TN
Council of Landscape Architectural
Registration Boards (CLARB)
American Society of Landscape
Architects

Paul is a registered landscape architect and has experience providing site planning and urban design services, emphasizing downtown district, mixed-use corridor, and park & recreation improvement projects. Paul's responsibilities as a project landscape architect include conceptual design, master planning, site design and detailing, planting design, construction documents, cost estimating and budgeting, project management, and construction administration.

- **Dover Downtown District & Riverfront Area Master Plan, Dover, OH** - Project Manager/Landscape Architect for the core downtown business district (approximately 4-5 square blocks) and the adjacent riverfront. The Master Plan provides connectivity between the downtown district and the riverfront, with connections to the proposed Dover Downtown Riverfront Park, including a new public boat ramp, walking paths, a playground, and visitor information.
- **Munroe Falls Bike & Hike Trail Extension, MetroParks Serving Summit County, Munroe Falls, OH** - Landscape Architect in connection with the planning and design of improvements to a 40-car parking lot that provided a connection from the parking facilities with the pavilion and the bike and hike trail. Project also included relocation of a section of the bike and hike trail under an existing bridge which crosses the Cuyahoga River to eliminate the unsafe crossing of SR 91.

SECTION TWO: WORKLOAD/AVAILABILITY OF PERSONNEL

STAFF AVAILABILITY

CT is a multi-disciplined engineering and architectural firm with 292 engineers, architects, planners, landscape architects, technicians, surveyors, inspectors, and funding specialists. Our staff has completed assignments in many different disciplines since 1922.

CT maintains a large permanent staff such that we can meet the schedules demands of this project. When working with a new assignment, we will develop a work plan that defines the client's expectations and CT's course of action necessary to exceed those expectations.

Key personnel schedules will be adjusted to meet project time limitations. By assigning experienced staff, CT will be able to provide the City with the necessary expertise that has the ability to respond to changes in project priorities or schedule requirements. Applicable in-house and/or subconsultant resources will be procured by our project manager to meet specialized requirements.

CT has the experienced staff available in our local office to take on important assignments for the City of Miamisburg.



Discipline	Total	Registered
Administrative	42	n/a
Architects	15	14
CAD Designers	20	1
Cartographer	6	n/a
Civil Engineers/Stormwater	44	29
Construction Claims Analyst	1	n/a
Construction Field Representatives	17	2
Construction Project Managers	8	5
Electrical Engineers	1	1
Environmental Engineer	2	1
Environmental Scientists	8	1
Foundation/Geotechnical Engineer	4	2
Geologist	7	1
Industrial Hygiene	3	n/a
Land Surveyors	16	10
Landscape Architects	3	2
Mechanical Engineers	2	1
Photogrammetrist	4	1
Planners and Grant Writers	14	5
Project Manager	2	n/a
Sanitary/Wastewater Engineers	17	11
Structural/Bridge Engineers	5	5
Technician Analyst	17	n/a
Transportation Engineers	15	11
Water Resource Engineers	18	10
Water/Wastewater Operators	1	n/a
Total:	292	113

SECTION THREE: PAST PERFORMANCE

SPRINGDALE THOROUGHFARE PLAN UPDATE

SPRINGDALE, OH



CLIENT

City of Springdale
John Jones
City Administrator
513.346.5700
jjones@springdale.org

SERVICES

Thoroughfare Plan Update

BUDGET

\$38,900

COMPLETION DATE

2023

While a Thoroughfare Plan update has not been completed for the City of Springdale since 1998, a number of transportation reports and master plans are being reviewed, consolidated, and updated as a part of our comprehensive approach.

These reports include the City's Comprehensive Plan, adopted in March 2022, and the Bike and Pedestrian Connectivity Plan was adopted in November 2022, among various other studies and plans. In creating the plan, an emphasis is being placed on improved connectivity to lessen the traffic burden on collector and arterial roadways. Expanding bicycle systems will also assist in reducing vehicular traffic.

Likewise, ensuring transit has an appropriate role, particularly in serving the elderly, is essential to building a truly multi-modal system. The development of this plan is rooted in established visions and goals for long-term mobility, evaluation of current transportation programming, and identification of network needs. It culminates with a thoroughfare plan document, including the thoroughfare plan map, to advance long-term transportation improvements.

The plan is being coordinated through City staff and stakeholders and will go before the City's Planning Commission for adoption per the City's Charter. The adopted plan will ultimately provide a statement of policy regarding the general location and size of the thoroughfare network and serve as a basis for defining transportation improvements over time and through the development process.

WAR-CLEAR CREEK (CLEAR CREEK BIKE PATH)

FRANKLIN, OH



CLIENT

City of Franklin
Barry Conway
City Engineer
937.746.9921
bconway@franklinohio.org

SERVICES

Design
Plans
Bidding Assistance
Construction Services

BUDGET

\$3,420,000

COMPLETION DATE

2023

This project consisted of designing and constructing a ten-foot-wide bike path, which will connect the Lions Club Municipal Park with Hazel Wood Park in the City of Franklin, Ohio. The length of the bike path is 1.7 miles and is roughly parallel to Clear Creek. The alignment of the bike path winds its way through a forest, under I-75, and over Clear Creek.

The profile of the bike path has hills and dips, with a maximum grade of 5%. One interesting part of this project was the design of a retaining wall for the bike path as it passes under the Interstate 75 Bridge over Clear Creek. Also, a bridge for the bike path over Clear Creek had to be designed as part of this project.

One challenge in this project occurred during construction. An unauthorized detention pond was constructed in the bike path corridor a few months prior to the construction of the bike path. CT had to redesign 1,150 ft of the bike path in order to avoid the new detention pond. This involved revising the alignment, profile, cross sections, drainage system, right of way, and quantities.

SECTION THREE: PAST PERFORMANCE

WAR-SR 123-29.40 COMMUNITY PARK ROUNDAABOUT

FRANKLIN, OH



CLIENT

City of Franklin
Barry Conway, PE
City Engineer
937.743.1401
Bconway@franklinohio.org

SERVICES

Engineering Design
Plan Production

BUDGET

\$1,958,100

COMPLETION DATE

2025

This project initially started as an intersection realignment with traffic signal installation. However, after multiple safety concerns were brought to the attention of the City and School Board, the project now consists of the construction of a roundabout at the intersection of SR 123 and Community Park Drive with a proposed access drive to the new Franklin High School parking facility.

Approximately 1,000' of pavement of the SR 123 approaches are proposed to be removed and reconstructed to stabilize the subgrade, thicken the asphalt layers, and correct the cross slopes. Approximately 200' of pavement of the Community Park approach is proposed to be reconstructed to better align traffic entering the roundabout and provide appropriate sight distances.

The inscribed diameter of the roundabout is proposed to be 130' to better serve WB-62 design vehicles moving north and south along SR 123 and school buses making left and right turns into the High School access drive. The northbound, southbound, and eastbound approaches are all proposed to have right-turn bypass lanes to better accommodate the high turning volumes of the intersection.

Drainage and lighting design are also included in the improvements of this project. Because pedestrian safety is a major concern between the High School and Community Park, Rapid Rectangular Flashing Beacons (RRFBs) are also proposed to be installed at the pedestrian crossings of the SR 123 approaches.

SECTION THREE: PAST PERFORMANCE

DOWNTOWN SIGNAL MANAGEMENT SYSTEM

FRANKLIN, OH



CLIENT

City of Franklin
Barry Conway, PE
City Engineer
937.743.1401
Bconway@franklinohio.org

SERVICES

Traffic Signal Design, Fiber Optic Cable Interconnect Design, ADA Curb Ramp Design, Utility Coordination

FINAL COST

\$1,063,000

COMPLETION DATE

2020

The project includes the reconstruction of three traffic signals in downtown Franklin, Ohio, at the intersections of Second Street at River Street, Second Street at Main Street, and Second Street at Riley Boulevard. New mast-arm signal poles, illuminated street name and lane use signs, uninterruptible power supply (battery backup), and traffic management cameras.

The design also included emergency vehicle preemption and integration with the City's Fire Station located on Riley Boulevard. The signalized intersections will be incorporated into a Traffic-Responsive Advanced Traffic Management Central Controlled System.

Fiber optic interconnect was designed and routed from City Hall on Benjamin Franklin Way along Riley Boulevard and integrated into each intersection controller cabinet along Second Street for remote communications. Spread Spectrum Ethernet radio was designed to establish communications with the intersection of Miami Avenue across the Great Miami River to aid in managing the operation of the system.

Closed Circuit Television (CCTV) cameras with pan, tilt, and zoom (PTZ) capabilities were incorporated into the design for city traffic engineers and police dispatch to see the intersection operations at all times.

N. FAIRFIELD ROAD AT ROCK DRIVE TRAFFIC SIGNAL

BEAVERCREEK, OH



CLIENT

City of Beavercreek
Jeff Moorman
City Engineer
937.427.5513
moorman@beavercreekohio.gov

SERVICES

Design of Traffic Signal Plans and Specifications, Quantities and Cost Estimate

FINAL COST

\$300,000

COMPLETION DATE

2021-2022

This project was initiated by a new Dayton Children's Outpatient Care Center that was being constructed at the intersection of Rock Drive at N. Fairfield Road. The project involved the design of a temporary traffic signal installation and a new mast arm traffic signal at the intersection of N. Fairfield at Rock Drive.

The temporary signal installation was necessary to have the intersection operational for the Dayton Children's opening.

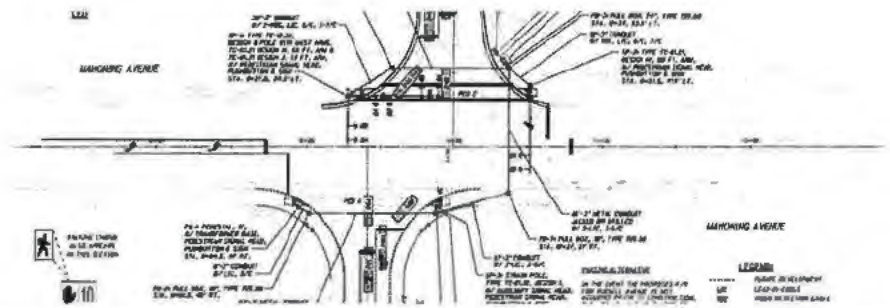
The new mast arm signal installation incorporated a fiber optic design, which included identifying the location of the existing slack installation, design and routing of a fiber optic drop cable, splicing into the existing fiber optic trunk cable, and integrating into the City's existing fiber-optic interconnected signal system along N. Fairfield Road.

The project included significant coordination with another engineering firm involved in widening the Rock Drive and relocating the St. Luke access driveway across from Rock Drive to incorporate both with access points to the new traffic signal design.

SECTION THREE: PAST PERFORMANCE

MAHONING/VICTORIA TRAFFIC SIGNAL

MAHONING COUNTY, OH



CLIENT

Mahoning County Engineer
Patrick Ginnetti
pginnetti@mahoningcountyoh.gov

SERVICES

Design
ODOT Coordination

FINAL COST

Initial Design - \$37,004

COMPLETION DATE

2017

CT designed a traffic signal including ADA-compliant curb ramps, LED signal heads, crosswalks, and pedestrian signals for the Mahoning County Engineer at the intersection of Mahoning Avenue and Victoria Road in Austintown Township, Ohio.

The original design scope included traffic volume counts, traffic signal warrants, survey, and traffic signal design plans.

The location presented challenges in design due to the industrial nature of the immediate study area and the large percentage of semi-tractor-trailer traffic through the intersection. As a result, the project was expanded to include intersection widening.

Further considerations included possible future development in one quadrant of the intersection, the offset local roadway to the south, and traveled speeds on Mahoning Avenue.

Close coordination with ODOT and the County Engineer was required to bring this project to fruition.

POR-HIRAM HIKE AND BIKE NORTH PID NO. 93823

HIRAM, OH



CLIENT

Village of Hiram
Lou Bertrand
Mayor
330.569.7677

SERVICES

Topographic Survey
Environmental Document &
Coordination
Right of Way Acquisition
Plans & Specifications
ODOT Coordination

FINAL COST

\$704,000

COMPLETION DATE

2017

CT provided the planning and design of a new multi-use (pedestrian/bicycle only) trail extending 2,800 ft from the Hiram College campus to the Hiram Village corporation line on SR 305 (Wakefield Road.).

This was the first phase of a trail connecting the Village to the Hiram College James H. Barrow Field Station and the existing Headwaters Trail that links Mantua and Garrettsville.

The project provided users with a safer, dedicated multi-use pedestrian/bicycle facility along the Silver Creek natural corridor and a link to the Portage County Park District network of trails.

The work included clearing and grubbing, excavation, embankment, drainage, and construction of a pervious asphalt pavement, which also serves as a post-construction stormwater control measure.

SECTION THREE: PAST PERFORMANCE

ROCK CREEK TRAIL PHASE I AND HEDGES- BOYER PARK ROCK CREEK PEDESTRIAN BRIDGE

TIFFIN, OH



CLIENT

City of Tiffin
Bryce Kuhn
Parks & Recreation Director
419.448.5408
bkuhn@tiffinohio.gov

SERVICES

Trail Planning/Alignment, Trail
Design, Construction Administration
and Inspection

FINAL COST

\$500,000 (Trail)
\$119,000 (Ped Bridge)

COMPLETION DATE

2016 (Trail)
2019 (Pedestrian Bridge)

CT worked with the City to finalize the trail alignment and evaluate alternative locations to construct a bridge crossing Rock Creek.

The project included the construction and installation of 0.8 miles of a multi-use asphalt trail from Heidelberg University's Mayer Field to an existing rail at Hedges-Boyer Park, the 90-ft pedestrian bridge, signage, fencing, retaining wall, and storm sewer.

An alternate was also developed for an additional 490 lf of the trail to connect to Hedges Park.

As a follow-up to this project, CT secured state capital funds to replace a 4-ft wide, 60-ft long pedestrian bridge crossing Rock Creek with a 6-ft wide prefabricated truss bridge.

TALLGRASS PRAIRIE TRAIL, PHASES I-5

MARION COUNTY, OHIO



CLIENT

Marion County Park District

CONTACT

Dan Sheridan

SERVICES

Surveying
Landscape Architecture
Engineering Design
Construction Administration and
Inspection Services

The Tallgrass Prairie Trail project is a major recreational trail being developed in Marion County. This multi-use trail follows the alignment of the former Erie-Lackawanna railroad line. It connects the City of Marion to numerous villages, parks and scenic areas, including the Big Island Wildlife Area and Elgin Nature Center. The trail will extend to Union County, be approximately 12 miles long, and provide visitors an opportunity to view some of the unique natural resources in the area, for instance, trumpeter swans, bald eagles, and beaver lodges.

Surveying, design, engineering, and construction administrative services were provided for this important first phase of the trail's development. Highlights of this multi-phase project include the planning, design, and construction of over 12 miles of multi-use trail, a trailhead, the renovation of two railroad bridges to pedestrian use, an underpass at Riley Road, and a connection to the newly developed trailhead on Holland Road. This project was funded through local funds and by the ODNR Clean Ohio Trail Fund.

SECTION THREE: PAST PERFORMANCE

LOWELLVILLE ROAD & SIDEWALK IMPROVEMENTS

LOWELLVILLE, OH



CLIENT

Village of Lowellville
Richard Day
Village Administrator
330.536.6415
RMDay56@gmail.com

SERVICES

Road Resurfacing, Curbing,
Sidewalks, Right-of-Way, Lighting
Improvements

FINAL COST

\$289,000

COMPLETION DATE

2018

The Village initiated this OPWC and CDBG-funded project in part to revitalize the downtown central business district and address infrastructure needs. The scope of work included the removal and replacement of existing curbing, driveway aprons, and sidewalks, adding sidewalks, and pavement resurfacing. The project also included repairs to storm structures and decorative street lighting improvements.

At the request of Mahoning County, the improvements were designed as two separate contracts to allow separate administration of the CDBG-funded improvements. During the design stages, CT worked with the Village to coordinate with local utility companies and encourage them to make any planned upgrades prior to the final installation of curbing, sidewalk, and pavement. This would help to ensure these roadway improvements would not be compromised by utility work for the next several years.

As part of the Village's match projects for CDBG and OPWC funding leverage, there were many other projects occurring within or immediately adjacent to the project's work zone, conducted by the Village, private businesses and residents, or by local utility companies.

FIELDS-ERTEL ROAD IMPROVEMENTS/US 42 & COPPERFIELD DRIVE

SHARONVILLE, OH



CLIENT

City of Sharonville
Jim Lukas
Safety Services Director
513.563.1144

SERVICES

Project Management, Preliminary
Studies, Roadway Design,
Construction Administration,
Construction Inspection

FINAL COST

\$2,500,000

COMPLETION DATE

2019

CT worked with the City of Sharonville, Hamilton County, West Chester Township, and Butler County on the roadway and safety improvements to the Village of Newtown Road from US 42 to Copperfield Dr.

The 3,700-ft long project corridor, which consisted of an existing two-lane road with side ditches in a residential setting, was improved by constructing 12-ft lanes, installing curb and gutter, storm sewer, water main, and sidewalk along the north side of the pavement. Retaining walls were used in several locations due to the steep roadside grades and the wider corridor.

The project also included the installation of a new 18 ft x 11 ft precast reinforced concrete three-sided arch structure over an existing channel. Construction cost was roughly \$2.5 million with several funding sources, including local funds from Sharonville and West Chester, OPWC Districts 10 and 2, and Hamilton County.

SECTION THREE: PAST PERFORMANCE

MCCARTNEY ROAD RECONSTRUCTION, STORM SEWER AND STORM WATER PUMP STATION

SHARONVILLE, OH



CLIENT

City of Sandusky
Josh Snyder
Assistant City Engineer
419.627.5875
jsnyder1@ci.sandusky.oh.us

SERVICES

Design
Bidding Assistance
Construction Assistance

FINAL COST

\$1,616,000

COMPLETION DATE

2020

The design process for McCartney Road began as a full-depth reclamation project, but due to upfront coordination and investigation into existing soil conditions, it was determined that a full-depth reconstruction was a better fit for this project.

In addition to the pavement improvements, storm sewer improvements were planned to provide more system capacity and reduce localized flooding for nearby residents.

The McCartney Road storm sewer outlet into Mix Ditch flowing north, passing under Barrett Road to the railroad ditch. During the project, it was discovered that the existing 24" CMP under Barrett Road was not only grossly undersized but also partially collapsed, allowing little storm water to pass. As part of the project, the 24" culvert was replaced with a 54" culvert and a check valve at the outlet.

A stormwater pump station was also installed to overcome high tail water conditions.

HAM-HAUCK ROAD WIDENING PART II, PID 106411

HAMILTON COUNTY,
SHARONVILLE, OH



CLIENT

City of Sharonville
ODOT District 8
James Lukas
Safety Services Director
513.563.1144
jlukas@cityofsharonville.com

SERVICES

Right-of-Way Plans, Roadway Design
& Widening, Traffic Signal
Pavement Replacement & Rehab
Widening, Maintenance of Traffic,
Sidewalk/Multi-Use Path, Street
Lighting

FINAL COST

\$7,000,000

COMPLETION DATE

2022

The Hauck Road reconstruction project will improve traffic flow, mobility, and safety by widening this 4,400 ft roadway segment that serves an industrial and commercial area. This existing two-lane roadway will be widened to include a two-way left-turn lane with a curb and gutter section with a new storm sewer system. Hauck Road is located just north of I-275 in Sharonville and runs between Reading Road and US 42.

This project involved all aspects of a major roadway design with a new roadway and pavement design, including a signalized at-grade rail crossing with Norfolk Southern Railroad with two tracks. Other design elements include water line, storm sewer, post-construction stormwater management, sidewalks, traffic signal design, roadway culverts, and hydraulic and hydrologic design services. Additionally, a significant right-of-way design was required for the improvements along the project corridor.

SECTION FOUR: PROJECT APPROACH

PROJECT UNDERSTANDING AND APPROACH

CT understands that the purpose of truly multimodal transportation and thoroughfare plans is to establish physical and cultural environments that support and encourage safe, comfortable, and convenient travel by a variety of modes. This work can also establish the parameters for growth.

Miamisburg's existing Major Thoroughfare Plan dates back nearly 30 years (1993), so an update is needed to properly document existing conditions that have changed over this period of time. The new Transportation Plan is also needed to identify service gaps, prioritize maintenance efforts, and plan future improvements. This update will include all the essential elements listed in the March 21, 2023, Request for Proposals (RFP).

The development of this plan will be rooted in established visions and goals for long-term mobility, evaluation of current transportation programming, identification of network needs, and culminating a plan document (and map) to advance long-term transportation improvements. The plan will be coordinated through City staff and stakeholders as directed in the RFP.

The plan will ultimately provide a statement of policy regarding the general location and size of the thoroughfare network and serve as a basis for defining transportation improvements over time throughout the development process. The approach outlined below follows a planning process that is combined with the expressed needs of the City today. The individual tasks listed below provide details about each step in this process.

TASK 1: GOALS AND OBJECTIVES

The City of Miamisburg has developed a set of broad-based, clearly stated transportation goals, as noted in the RFP. These are stated below and will provide guidance for our work to develop this plan.

- Goal 1: Update the City's current Thoroughfare Plan, including current and future roadway classifications and right-of-way needs
- Goal 2: Account for current and future growth in multimodal traffic by identifying gaps or deficiencies in the current system and prioritizing key transportation corridors for investment
- Goal 3: Identify opportunities to implement Complete Streets to improve safety, health, and vibrancy
- Goal 4: Provide a balanced schedule for maintenance and improvements of the City's transportation network
- Goal 5: Set a policy framework of recommendations to guide future investments in the transportation system
- Goal 6: Incorporate advancements in planning and design which create a multimodal transportation system

TASK 1.1: THOROUGHFARE PLAN GOALS AND OBJECTIVES

The development of a set of broad-based, clearly stated transportation goals and objectives will provide the City with the impetus from which policy actions can be developed to implement the plan. Plan goals may be situated among guiding tenants, including providing effective mobility, maintaining and improving existing infrastructure, fiscal stewardship, and enhancing economic vitality. The initiation of the development of plan goals would be facilitated through input from the City Planning Commission and City Department Heads to City Administration.

Based on identified goals, draft specific objectives for achieving stated goals. These objectives will ultimately be used to assess the identification of specific proposed transportation improvements. Based on the identified objectives, a set of performance measures will be developed to facilitate the implementation of the established objectives of the plan.



SECTION FOUR: PROJECT APPROACH

TASK 1.2 - REVIEW CURRENT PLANS AND PROGRAMS

Coordinate and collect relevant transportation planning documents from the City, ODOT, MVRPC, other agencies, and adjacent cities. Planning work to be gathered includes previous city transportation plans, regional or sub-regional planning and programming for highways, and capital improvement planning documents. Data collected from transportation planning documents will be summarized in a matrix. Available electronic data (mapping and associated attributes) will be assembled into a project-level GIS database using ArcGIS. For any pertinent data not in GIS format and deemed critical or required from outside sources, CT will prepare and submit a cost estimate to the City to obtain such data as an additional service and cost.

CT will also collaborate with the Miami Valley Regional Planning Commission (MVRPC) to document committed (funded) and planned improvements or other initiatives for the current thoroughfare system. Based on this data, CT will assess the existing and committed system to identify any shortcomings or perceived mobility, safety, and congestion issues needed to attain the plan's short- and long-range goals. The assessments will consider how the existing facilities and policies meet the guiding principles, goals, and objectives identified for the project. This assessment will identify issues and potential improvements formulated for discussion with the Planning Commission and City Administration.

TASK 1.3 - INPUT AND FEEDBACK

TASK 1.3.1 - CITY INPUT

CT will conduct up to two (2) input meetings with City's Department Heads and Administration to identify key current transportation issues or areas of concern within the City, key mobility needs, and desires for long-term thoroughfare improvements from communities, stakeholders, and stakeholders affected agencies. CT will provide discussion materials and mapping to solicit input to the thoroughfare plan process and provide meeting minutes. The City will assist in providing a suitable location for meetings.

TASK 1.3.2 - AGENCY/STAKEHOLDER INPUT

Conduct one (1) joint meeting to obtain input from individual cities, agencies, and key developers within the county. Participating cities or stakeholders shall be provided up to three (3) hours for representatives to provide transportation-related input. CT will schedule the meeting. The City's assigned Project Coordinator/Manager will assist CT by providing contact information of affected stakeholders and coordinating/securing a meeting location.

TASK 2 - PUBLIC INVOLVEMENT

From our years of experience, we believe that one of the main reasons plans sit on shelves is the lack of community engagement. From our previous discussion with City staff, we believe that a more robust program is what you seek. And we agree. Our team intends to engage the general public and stakeholders on multiple levels. The first part of this effort would be to develop a group of project stakeholders as a resource to help identify data collection needs, develop engagement methods for the general public and offer input on the technical aspects of the plan as it develops.

We envision this stakeholder group to consist of 8-12 individuals representing various city staff as appropriate, along with member representatives from the City's robust system of volunteer Boards and Commissions. To the extent possible, membership should

include participation from various locations and neighborhoods throughout the City's geography. Major employers in the City might also be a consideration. We would also encourage participation from outside agencies working with the City, such as the Miami Valley Regional Planning Commission (MVRPC), the Montgomery County Engineer's Office, and the Montgomery County Transportation Improvement District (TID). CT will work with City staff to identify potential members for this effort.

The stakeholder committee should meet at distinct times during project development. One would be an initial kick-off meeting to communicate the project's scope and solicit ideas related to plan objectives, data collection, and general public engagement strategies. A second meeting would be an in-progress meeting to communicate the status and to help inform key upcoming considerations. A third meeting would be held near the end of the project to gain final inputs before the project is completed and adopted.



SECTION FOUR: PROJECT APPROACH

A separate public engagement effort will build on the stakeholder committee and seek to gather additional input and suggestions. The RFP suggests two public meetings, which could be held after the second and third stakeholder meetings, respectively. This approach would provide multiple meaningful opportunities for engagement. We would ask the members of the stakeholder committee to act as ambassadors to the general public, communicating with the boards and commissions they represent as well as helping to carry the project message further into the community than the typical outreach methods such as website, social media, online surveys, and event participation, which are also anticipated for consideration.

TASK 3: DOCUMENTATION OF EXISTING ISSUES

CT will review and work with City staff to identify existing transportation system conditions, issues, and gaps in service. As stated in the RFP, we will work with City staff to augment data collection efforts for this task. This work will ultimately form a basis for updating roadway classifications and design standards going forward. It will also form the basis of a process for prioritizing projects to both extend the existing transportation network and close gaps within it.

This portion of our work will address the existing system review portion of the plan's Essential and Optional Elements listed on page 2 of the RFP. These include:

Conditions assessments for non-local roadways will be conducted to determine current classifications, right-of-way widths, lane configurations, traffic counts, intersection control, and adjacent land uses. This work will baseline the City's plans for updating these conditions and outline action steps to implement recommended improvements. A bridge inventory and ownership review will also be conducted as requested by the RFP

- Average Daily Traffic (ADT) GIS maps will be created for comparison of the Pre-Covid and Post-Covid traffic counts. Projected future traffic conditions will be modeled on a 20-year horizon. CT will initially rely on available data from the City, MVRPC, and ODOT to gather existing traffic data in this effort

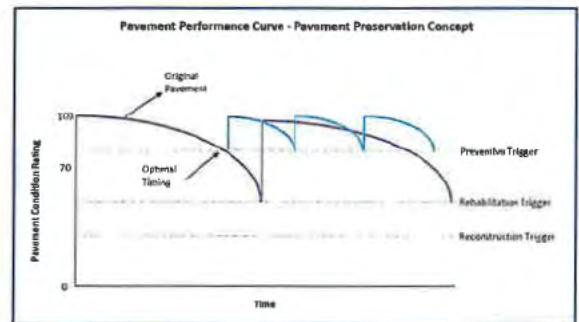
Crash heat maps in ArcGIS will be created to identify hotspot areas of safety concerns which may determine the need for future road safety audits

- Planned Future Improvements will be factored into our traffic projections and study efforts to provide an anticipated look at their impact on the future City network. We know of projects currently being pursued, such as the Mound Connector and the I-75/SR 725 interchange upgrade project. We are also aware of a potential widening of I-75 in southern Montgomery County that could also impact the City's future network. In addition, MVRPC's Transportation Improvement Plan (TIP) and Long Range Plans will also be consulted

- Identify Bicycle and Pedestrian System Gaps. Miamisburg is served by a section of the Great Miami River Trail and a series of other local connections to the Miami Valley Region's overall system of 350 miles of paved, multi-use recreational trails—the largest such system in the country. Providing local connections to this vast system is an outstanding opportunity for connectivity beyond the City's borders

- Identify sidewalk gaps/ADA analysis. Just as important as the City's bicycle and pedestrian trail system is its network of sidewalks providing residents safe everyday pedestrian access. Our analysis will help the City identify sidewalk gaps and improvements needed for compliance with the Americans with Disabilities Act of 1990 (ADA) guidelines.

- Transit Service is also key to Miamisburg. Greater Dayton Regional Transit Authority (GDRTA) serves City with a total of three routes providing service to downtown Dayton, including one line that connects from downtown Miamisburg (Route 18) and two that connect from the RTA South Hub, near Dayton Mall (Routes 17 and 19). Route 19 runs through downtown Dayton and eventually connects to Huber Heights (Route 19)



SECTION FOUR: PROJECT APPROACH

TASK 4: ASSESSMENT OF NEEDS

The needs and issues identified in Task 3 will be analyzed in coordination with City staff and the stakeholders committee as part of the work covered in this task. The system needs will consider county population growth/development trends, land uses, current and future major generators, functional system connectivity, and other considerations addressing mobility needs, safety issues, and other long-range considerations.

This task will address proposed future conditions as expressed in the RFP's Essential and Optional Elements section on page 2.

- Proposed non-local roadway functional classifications will be developed along with traffic recommendations for standard design criteria. This will include right-of-way widths, cross-sections, and intersection control guidelines. A matrix depicting various street types by functional class will also be prepared to convey flexibility in sections by street class. Roadway functional class will be depicted graphically on the thoroughfare plan map and in written format to support plan documentation
- Proposed standards for access management will also be developed in consideration of potential future developments, land uses, transportation improvements, and with respect to potential future annexation areas. Corridor capacity is directly correlated with the amount and presence of intersecting streets, curb cuts, driveways, and median openings (as appropriate). This portion of the plan will focus on fundamental design parameters necessary to maximize the effectiveness of key corridors within the City.
- A Complete Streets policy will be developed specifically for the City as part of the plan and will be consistent with the adopted MVRPC Complete Streets Policy
- Proposed truck routes will be developed in coordination with the City, the project stakeholder committee, and other agencies as deemed appropriate
- Proposed improvements and projects to close service gaps will be recommended for bicycle and pedestrian trails, sidewalks, intersection crossings, and other facilities
- A maintenance and replacement schedule for City-owned bridges will be developed based on data collected, conditions assessments, and available budgets

Other regulatory documents will be incorporated into the plan by reference, including the ODOT Multimodal Design Guide, the MVRPC Complete Streets Policy, and others, as appropriate.

General design standards and typical sections will be prepared for each functional classification. These will be provided graphically and in table format to support plan documentation. Design standards to include roadway type (class and divided/undivided), right-of-way, pavement width, turn lanes and width, median and parkway width, presence of sidewalks and width, roadway spacing, design speed, and general horizontal and vertical design parameters. Design standards will be coordinated with other current planning initiatives by the City, such as the City Engineering Design Standards and updates of the City's Subdivision Regulations. The Planning Commission will review design standards before public distribution in the plan document.

Guideline tables are important components that will provide flexibility in roadway requirements based on factors such as land use, type of roadway, type of land use, and even differences in time of day. The Transportation Plan will contain guideline tables and cross-sections for residential streets and mixed-use streets. Content for the street design matrices should reflect best practices from sources such as the following: Institute of Transportation Engineers (ITE) and Congress for New Urbanism's (CNU) Designing Walkable Urban Thoroughfares report, and best practices from the National Association of City Transportation Officials (NACTO).



SECTION FOUR: PROJECT APPROACH

As part of our work to develop implementation strategies, the CT team will work with the City to identify potential funding sources for essential plan improvements identified in the final plan. Current funding sources, potential partnerships, and/or special funding mechanisms will also be identified. Potential funding sources will also be listed on the implementation matrix of specific actions. CT maintains a dedicated staff of project funding specialists that has worked to award over \$800M to our client's projects company-wide. These funds have been from several state and federal sources, including USDOT, OPWC, ODOT, Metropolitan Planning Organizations, and ODNR, among others.

We envision that the plan will have a web-based, interactive format and be publicly posted on the City's website or possibly at another unique location. This will increase transparency for future City decision-making and improve engagement from the general public.

PROPOSED FEES

The total estimated fee for the basic scope of services listed in this proposal is \$75,000 and will be billed hourly each month utilizing the below Hourly Fee Schedule. Any charges above the provided task budgets will be billed as additional services. Additional services may be added, and any out-of-scope work or additional services will require a written scope and written approval in advance of the conduct of such work. As noted in the RFP, this proposal was prepared with the intention to utilize the City of Miamisburg staff resources as needed to augment data collection and other efforts as necessary.

Task	Fee
Task 1: Goals & Objectives	\$8,325.00
Task 2: Public Involvement	\$10,350.00
Task 3: Documentation of Existing Issues	\$34,975.00
Task 4: Assessment of Needs	\$31,350.00
Total	\$75,000.00

Hourly Rates	
Classification	Rate
Senior Project Manager	\$182.50
Project Engineer	\$151.25
Engineer 2	\$126.75
Engineer 1	\$110.25
Designer 3	\$116.50
Designer 2	\$96.00
Survey Crew	\$166.75
Construction Rep 3	\$96.00
Technical Support	\$61.00
Expenses at cost plus 10% (Mileage)	

\$SCHEDULE

We understand and acknowledge the City's desire to complete work on this project in a six-month time frame. All proposed staff resources are available for immediate assignment to this project if CT is selected. Our proposed Project Manager, Shawn Riggs, will have the authority to assign resources to complete all work as necessary.

SECTION FIVE: EXPERIENCE WORKING WITH MIAMISBURG

CT has served the surrounding communities of Miamisburg with many projects through the years. Below is a brief project history.

Client	Project	Year
City of Centerville	Clyo Road Signal Timing / Operation Evaluation	2019
	Project SMD / MOU & TIS Review	2019
	Public Works Building Programming	2020
	Police Station Renovations	2021
City of Beavercreek	Grange Hall & National Road Widening	2015
	N. Fairfield Road Traffic Impact Study	2019
	N. Fairfield Road Signal Retiming	2019
	N. Fairfield Road at Rock Drive Signal Design	2020
City of Dayton	Planning & Zoning Consultation	2014
	GCRC Parking Lot Expansion	2017
City of Franklin	General Traffic Operations	2014-2023
	West Jackson Street ROW Vacation	2014
	Closed Loop System Management	2014-2023
	Foster Street Stream Bank Stabilization	2014
	Downtown Signal Management Phase 2	2014
	Beam Creek Stabilization	2015
	Downtown Signal Management Phase 1	2015
	Downtown Signal Operations	2017
	Hydraulic Water Model GIS Map	2017
	Clear Creek Bikepath Connector	2017
	Industrial Park	2018
	Culvert Extension/ I-75 SB Ramp at SR 73	2018
	Community Park Drive Improvements	2019
	Traffic Signal Management	2020
	Bryant Avenue Water Main Replacement	2021
	Millard Drive Water Main Replacement	2021
WAR-123-29.40 Roundabout	2022	
City of Monroe	Traffic Signal Management	2014
	SR 63 / Hollytree & Todhunter Road Signal Warrant	2015
	Traffic Signal Management	2016-2023
	Lawton Avenue Right-of-Way	2018
	SR 63 Coordination / Main Street	2021
	Kroger Expansion / TIS	2022
City of Springboro	Hazel Woods Park Bikepath FEMA Bridge Analysis	2023

ORDINANCE NO. 7035

AN ORDINANCE PROVIDING FOR THE SUBMISSION TO THE ELECTORATE OF AMENDMENTS TO THE CITY CHARTER AS RECOMMENDED BY THE CHARTER REVIEW COMMISSION AND THE COUNCIL OF THE CITY OF MIAMISBURG, OHIO, AND DECLARING AN EMERGENCY.

WHEREAS, the Council has reviewed the recommendations of the Charter Review Commission of the City of Miamisburg and recommended amendments to the Charter of the City as described herein; and

WHEREAS, the Council desires to submit the amendments of the Charter to the electors of the City, as recommended by the Charter Review Commission.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, THAT:

Section 1.

The question of the amendment to Article III, Section 3.10 of the Charter of the City of Miamisburg which reads as follows:

“SECTION 3.10 SPECIAL COUNCIL MEETINGS.

Special meetings of the Council may be called as provided by its rules, regulations or bylaws, or by resolution or ordinance of the Council. In the absence of any such provision, special meetings may be called by a vote of Council taken at any regular or special meeting thereof or may be called by the Mayor or any three members of Council. The Clerk of Council, or in his or her absence, incapacity or refusal to act, the Mayor, shall cause notice in writing of each special meeting to be served personally or to be left at the usual place of residence of each member of the Council and the Mayor not less than twelve hours preceding the time for such special meeting. A copy of such notice shall be posted in the Council Chamber and on electronic media as deemed appropriate by Council at least twelve hours prior to such special meeting, but failure to so post or to maintain posting for twelve hours shall not affect the validity of any meeting or any action taken at such meeting. In the event that a special meeting is called by a vote of Council taken at a regular or special meeting from which any member of Council or the Mayor is absent, written notice of such special meeting shall be given to each absentee in the manner hereinbefore described. Service of notice of any special meeting shall be deemed conclusively to have been waived by any member of Council or the Mayor who shall be present at such special meeting.”

(Amended Nov. 4, 2008; Nov. 5, 2013)

so that as amended the same shall be and read as follows:

“SECTION 3.10 SPECIAL COUNCIL MEETINGS.

Special meetings of the Council may be called as provided by its rules, regulations or bylaws, or by resolution or ordinance of the Council. In the absence of any such provision, special

meetings may be called by a vote of Council taken at any regular or special meeting thereof or may be called by the Mayor or any three members of Council. The Clerk of Council, or in his or her absence, incapacity or refusal to act, the Mayor, shall cause notice in writing of each special meeting to be served personally, *to be delivered to a verified email address, or be* left at the usual place of residence of each member of the Council and the Mayor not less than twelve hours preceding the time for such special meeting. A copy of such notice shall be posted in the Council Chamber and on electronic media as deemed appropriate by Council at least twelve hours prior to such special meeting, but failure to so post or to maintain posting for twelve hours shall not affect the validity of any meeting or any action taken at such meeting. In the event that a special meeting is called by a vote of Council taken at a regular or special meeting from which any member of Council or the Mayor is absent, written notice of such special meeting shall be given to each absentee in the manner hereinbefore described. Service of notice of any special meeting shall be deemed conclusively to have been waived by any member of Council or the Mayor who shall be present at such special meeting.”

and the question of the amendment to Article IV, Section 4.13 of the Charter of the City of Miamisburg which reads as follows:

“SECTION 4.13 PUBLIC HEARING ON ZONING ORDINANCE OR RESOLUTION.

The Mayor or other presiding officer of the Council shall set a date for a public hearing on each ordinance or resolution establishing, amending, revising, changing or repealing zoning classifications, districts, uses or regulations, such hearing shall be after return of the Planning Commission's recommendations as provided for in Section 4.12 within which the Planning Commission is required to return its written recommendations to the Clerk of Council. The Clerk of Council shall cause a notice of such public hearing to be published one time on electronic media as deemed appropriate by Council and in a newspaper determined by the Council to be of circulation within the Municipality at least fifteen days prior to the date of such public hearing, and when such amendment, revision, change or repeal involves ten or fewer parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council, by certified mail with return receipt requested, at least fifteen days before the date of the public hearing, to the owners of property within and contiguous to or directly across the street from such parcel or parcels and within a minimum radius of two hundred feet from any point on the exterior boundary of such parcel or parcels, to the addresses of such owners appearing on the county Auditor's current tax list or the Treasurer's mailing list and to such other lists as may be required by the Council. The failure of delivery of such notice shall not invalidate any such ordinance or resolution.”

(Amended Nov. 2, 1993; Nov. 4, 2008; Nov. 5, 2013)

so that as amended the same shall be and read as follows:

“SECTION 4.13 PUBLIC HEARING ON ZONING ORDINANCE OR RESOLUTION.

The Mayor or other presiding officer of the Council shall set a date for a public hearing on each ordinance or resolution establishing, amending, revising, changing or repealing zoning

classifications, districts, uses or regulations, such hearing shall be after return of the Planning Commission's recommendations as provided for in Section 4.12 within which the Planning Commission is required to return its written recommendations to the Clerk of Council. The Clerk of Council shall cause a notice of such public hearing to be published one time on electronic media as deemed appropriate by Council and *in three public places as determined by Council* at least fifteen days prior to the date of such public hearing, and when such amendment, revision, change or repeal involves ten or fewer parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the Clerk of Council, by certified mail with return receipt requested, at least fifteen days before the date of the public hearing, to the owners of property within and contiguous to or directly across the street from such parcel or parcels and within a minimum radius of two hundred feet from any point on the exterior boundary of such parcel or parcels, to the addresses of such owners appearing on the county Auditor's current tax list or the Treasurer's mailing list and to such other lists as may be required by the Council. The failure of delivery of such notice shall not invalidate any such ordinance or resolution."

and the question of the amendment to Article IV, Section 4.15 of the Charter of the City of Miamisburg which reads as follows:

"SECTION 4.15 CODIFICATION OF ORDINANCES AND RESOLUTIONS.

By a majority vote of the members elected to Council, the Council may cause the ordinances and resolutions of the Municipality to be revised, codified, recodified, rearranged or published in book form. Such revision, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall be immediately effective upon approval by a majority vote of the members elected to Council and may contain new matter therein. The Clerk of Council shall cause a notice of such proposed revision, codification, recodification, rearrangement or publication of ordinances in book form to be published one time on electronic media as deemed appropriate by Council and in a newspaper determined by the Council to be of circulation within the Municipality at least seven days prior to the final approval thereof by the Council, and no further publication shall be necessary. A current service supplementing such revision, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall be maintained in the manner prescribed by the Council."

(Amended Nov. 4, 2008; Nov. 5, 2013)

so that as amended the same shall be and read as follows:

"SECTION 4.15 CODIFICATION OF ORDINANCES AND RESOLUTIONS.

By a majority vote of the members elected to Council, the Council may cause the ordinances and resolutions of the Municipality to be revised, codified, recodified, rearranged or published in book form. Such revision, codification, recodification, rearrangement or publication of ordinances and resolutions in book form shall be immediately effective upon approval by a majority vote of the members elected to Council and may contain new matter therein. The Clerk of Council shall cause a notice of such proposed revision, codification, recodification, rearrangement or publication of ordinances in book form to be published one time on electronic media as deemed appropriate by Council *and in three public places as determined by Council* at least seven days prior to the final approval thereof by the Council, and no further publication shall be necessary. A current service supplementing such revision, codification, recodification,

rearrangement or publication of ordinances and resolutions in book form shall be maintained in the manner prescribed by the Council.”

and the question of the amendment to Article IV, Section 4.16 of the Charter of the City of Miamisburg which reads as follows:

“SECTION 4.16 PUBLICATION OF ORDINANCES AND RESOLUTIONS.

Each ordinance or resolution passed by the Council shall be published:

- a) By publication in full once on electronic media as deemed appropriate by Council and in a newspaper determined by Council to be of circulation within the Municipality; or
- b) By publication of its title once on electronic media as deemed appropriate by Council and in a newspaper determined by Council to be of circulation within the Municipality, and such publication shall contain a statement that a copy of the full text of such ordinance or resolution is available for inspection at the office of the Clerk of Council, Miamisburg, Ohio.

The method of publication, in accordance with this section, shall be determined by Council, and the Clerk of Council shall cause such publication to be made. (Amended Nov. 4, 2008; Nov. 5, 2013)

A failure to publish or an omission, delay or error in said publication on the part of a newspaper, its officers, employees or agents, shall not cause such ordinance or resolution to be declared invalid or otherwise affect the validity of such ordinance or resolution, and in such events the Clerk of Council may authorize publication at a later date. After the publication of each ordinance or resolution as hereinabove provided, the Clerk of Council shall affix the appropriate following certification to the copy of the ordinance or resolution maintained in the official Journal or record provided for in Section 4.10 of this Charter, and such certification shall be prima-facie evidence of such publication.

- (1) The following Certificate of Publication shall be used when the full text of an ordinance or resolution is published as provided by subsection (a) of this section:

CERTIFICATE OF PUBLICATION

I, the undersigned Clerk of Council of the Municipality of Miamisburg, Ohio, hereby certify that the full text of the foregoing (ordinance or resolution) was published on appropriate electronic media and in the (name of newspaper in which publication took place) on the _____ day of _____, 20____, and that at such date said newspaper was determined by the Council to be of circulation within the Municipality of Miamisburg, Ohio.

Dated this _____ day of _____ 20____.

(Name)

Clerk of Council

Municipality of Miamisburg, Ohio

- (2) The following Certificate of Publication shall be used when the title to an ordinance or resolution is published as provided by subsection (b) of this section:

CERTIFICATE OF PUBLICATION

I, the undersigned Clerk of Council of the Municipality of Miamisburg, Ohio, hereby certify that the title to the foregoing (ordinance or resolution) was published on appropriate electronic media and in the (name of newspaper in which publication took place) on the _____ day of _____, 20____, and that at such date said newspaper was determined by the Council to be of circulation within the Municipality of Miamisburg, Ohio, and that said publication contained, in addition to the title to the foregoing (ordinance or resolution), a statement that a copy of the full text of such (ordinance or resolution) was available for inspection at the office of the Clerk of Council, Municipal Building, Miamisburg, Ohio.

Dated this _____ day of _____ 20____.

(Name)

Clerk of Council

Municipality of Miamisburg, Ohio

The failure of the Clerk of Council to affix the appropriate "Certificate of Publication" provided hereinabove shall not affect the validity of an otherwise duly and properly enacted ordinance or resolution."

(Amended Nov. 6, 2018)

so that as amended the same shall be and read as follows:

"SECTION 4.16 PUBLICATION OF ORDINANCES AND RESOLUTIONS.

Each ordinance or resolution passed by the Council shall be published:

(a) By publication in full once electronic media as deemed appropriate by Council *and in three public places as determined by Council*; or

(b) By publication of its title once on once electronic media as deemed appropriate by Council *and in three public places as determined by Council*, and such publication shall contain a statement that a copy of the full text of such ordinance or resolution is available for inspection at the office of the Clerk of Council, Miamisburg, Ohio.

The method of publication, in accordance with this section, shall be determined by Council, and the Clerk of Council shall cause such publication to be made.

A failure to public or an omission, delay or error in said publication *as required by this section* shall not cause such ordinance or resolution to be declared invalid or otherwise affect the validity of such ordinance or resolution, and in such events the Clerk of Council may authorize publication at a later date. After the publication of each ordinance or resolution as hereinabove provided, the Clerk of Council shall affix the appropriate following certification to the copy of the ordinance or resolution maintained in the official Journal or record provided for in Section 4.10 of this Charter, and such certification shall be prima-facie evidence of such publication.

- (1) The following Certificate of Publication shall be used when the full text of an ordinance or resolution is published as provided by subsection (a) of this section:

CERTIFICATE OF PUBLICATION

I, the undersigned Clerk of Council of the Municipality of Miamisburg, Ohio, hereby certify that the full text of the foregoing (ordinance or resolution) was published on

appropriate electronic media *and as prescribed by Sections 4.13, 4.15 and 4.16 of the Miamisburg Charter* on the _____ day of _____, 20 ____.

Dated this _____ day of _____ 20__.

(Name)

Clerk of Council

Municipality of Miamisburg, Ohio

(2) The following Certificate of Publication shall be used when the title to an ordinance or resolution is published as provided by subsection (b) of this section:

CERTIFICATE OF PUBLICATION

I, the undersigned Clerk of Council of the Municipality of Miamisburg, Ohio, hereby certify that the title to the foregoing (ordinance or resolution) was published on appropriate electronic media *and as prescribed by Sections 4.13, 4.15 and 4.16 of the Miamisburg Charter* on the _____ day of _____, 20 ____, and that said publication contained, in addition to the title to the foregoing (ordinance or resolution), a statement that a copy of the full text of such (ordinance or resolution) was available for inspection at the office of the Clerk of Council, Municipal Building, Miamisburg, Ohio.

Dated this _____ day of _____ 20__.

(Name)

Clerk of Council

Municipality of Miamisburg, Ohio

The failure of the Clerk of Council to affix the appropriate "Certificate of Publication" provided hereinabove shall not affect the validity of an otherwise duly and properly enacted ordinance or resolution.

and the question of the amendment to Article IX, Section 9.09 of the Charter of the City of Miamisburg which reads as follows:

"SECTION 9.09 REFERRAL OF ORDINANCE OR RESOLUTION TO THE ELECTORS BY COUNCIL.

By a two-third vote of the members of the Council any pending ordinance or resolution may be referred to the electors of the Municipality at a general, primary or special election. The action of referral provided for in this section shall be taken by motion and shall go into immediate effect without publication. Such motion shall be passed not less than sixty days prior to the date of the primary or general election at which such referred ordinance or resolution is to be submitted. In the event that such ordinance or resolution is to be referred for approval or rejection at a special election, the Council shall, by motion, fix a date for such special election which shall be not less than sixty days after the date of the passage of the motion to refer, and the Clerk of Council shall cause notice of the special election to be published on the same day of each week for two consecutive weeks on electronic media as deemed appropriate by Council and in a newspaper determined by Council to be of circulation in the Municipality.

The Clerk of Council shall certify to the appropriate Board of Elections that an election is to be held referring such ordinance or resolution to a vote of the electors at the date fixed by Council as hereinbefore provided. The Clerk of Council shall also certify a copy of the ordinance or resolution to be voted upon to the appropriate Board of Elections.

At such primary, general or special election this question shall be placed upon the ballot: "Shall an (ordinance or resolution) providing: (the wording contained in the title of the proposed ordinance or resolution shall be inserted here) be adopted?", with the provision on the ballot for voting affirmatively or negatively. In the event a majority of those voting on the issue shall be in the affirmative, the ordinance or resolution shall go into immediate effect, without the need for further publication.

(Amended Nov. 4, 2008; Nov. 5, 2013)

so that as amended the same shall be and read as follows:

"SECTION 9.09 REFERRAL OF ORDINANCE OR RESOLUTION TO THE ELECTORS BY COUNCIL.

By a two-third vote of the members of the Council any pending ordinance or resolution may be referred to the electors of the Municipality at a general, primary or special election. The action of referral provided for in this section shall be taken by motion and shall go into immediate effect without publication. Such motion shall be passed not less than sixty days prior to the date of the primary or general election at which such referred ordinance or resolution is to be submitted. In the event that such ordinance or resolution is to be referred for approval or rejection at a special election, the Council shall, by motion, fix a date for such special election which shall be not less than sixty days after the date of the passage of the motion to refer, and the Clerk of Council shall cause notice of the special election to be published on the same day of each week for two consecutive weeks on electronic media as deemed appropriate by Council *and in three public places as determined by Council.*

The Clerk of Council shall certify to the appropriate Board of Elections that an election is to be held referring such ordinance or resolution to a vote of the electors at the date fixed by Council as hereinbefore provided. The Clerk of Council shall also certify a copy of the ordinance or resolution to be voted upon to the appropriate Board of Elections.

At such primary, general or special election this question shall be placed upon the ballot: "Shall an (ordinance or resolution) providing: (the wording contained in the title of the proposed ordinance or resolution shall be inserted here) be adopted?", with the provision on the ballot for voting affirmatively or negatively. In the event a majority of those voting on the issue shall be in the affirmative, the ordinance or resolution shall go into immediate effect, without the need for further publication."

Section 2.

The ballot for said election shall, at the top thereof, be entitled "City Charter Amendment Ballot" and the question to be submitted on said ballot shall be in the following words: "Shall the Charter of the City of Miamisburg be supplemented and amended as recommended by the Charter Review Commission and the Council of the City of Miamisburg?"

To the left of such ballot, in a box with an appropriate place for marking shall appear the words "Yes" and "No" and each voter shall indicate his or her vote in the place so provided.

Section 3.

That the Clerk of Council be, and is hereby directed to publish the full text the of proposed Charter amendments, as set forth above, once a week for not less than two (2) consecutive weeks in a newspaper published in the municipal corporation, with the first publication being at least fifteen (15) days prior to the election herein provided, all in accordance with Article XVIII, Section 9 of the Ohio Constitution, and the Ohio Revised Code Section 731.211.

That the Clerk of Council is further authorized and directed to cause a certified copy of this ordinance to be filed with the Montgomery County Board of Elections which shall be made available for public inspection and review by an elector desiring to read same prior to voting and the Clerk of Council is hereby directed to make the necessary arrangements with the Montgomery County Board of Elections for placing the question on the ballot.

Section 4.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council desires this measure to be in effect from and after the earliest date in order to ensure that the amendments to the Charter be submitted to a vote of the qualified electors of the City at the General Election to be held on November 7, 2023; therefore, this measure shall take effect and be in force from and after its passage.

Passed: August 1, 2023

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Mayor Michelle L. Collins
Michelle L. Collins, Mayor

Section 3.

That the Clerk of Council be, and is hereby directed to publish the full text the of proposed Charter amendments, as set forth above, once a week for not less than two (2) consecutive weeks in a newspaper published in the municipal corporation, with the first publication being at least fifteen (15) days prior to the election herein provided, all in accordance with Article XVIII, Section 9 of the Ohio Constitution, and the Ohio Revised Code Section 731.211.

That the Clerk of Council is further authorized and directed to cause a certified copy of this ordinance to be filed with the Montgomery County Board of Elections which shall be made available for public inspection and review by an elector desiring to read same prior to voting and the Clerk of Council is hereby directed to make the necessary arrangements with the Montgomery County Board of Elections for placing the question on the ballot.

Section 4.

This measure is hereby declared an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council desires this measure to be in effect from and after the earliest date in order to ensure that the amendments to the Charter be submitted to a vote of the qualified electors of the City at the General Election to be held on November 7, 2023; therefore, this measure shall take effect and be in force from and after its passage.

Passed: August 1, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Mayor Michelle L. Collins
Michelle L. Collins, Mayor

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CITY OF MIAMISBURG

I hereby certify that the above is a true and correct copy of Ordinance No. 7035 adopted by the Council of the City of Miamisburg, Ohio, on August 1, 2023.

August 2, 2023

Kim Combs
Kim Combs, Clerk of Council

ORDINANCE NO. 7036

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE TEAMSTERS LOCAL #957 AND DECLARING AN EMERGENCY.

WHEREAS, negotiations have occurred between the Teamsters Local #957 and the City of Miamisburg, and

WHEREAS, a mutually acceptable tentative agreement has been reached between the parties; and

WHEREAS, the tentative agreement has been approved by the Teamsters Local #957 bargaining unit; and

WHEREAS, the Council finds it in the best interest of the City of Miamisburg to adopt the agreement with the Teamsters Local #957.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized and directed to enter into an agreement for and on behalf of the City of Miamisburg with the Teamsters Local #957 to implement the provisions of the contract items in accordance with the negotiations between the parties, same having been reviewed by Council.

Section 2.

This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, safety, health, and welfare and for the further reason that Council desires to implement the provisions of the agreement between the Teamsters and the City of Miamisburg at the earliest possible date; therefore, this measure shall take effect and be in force from and after its passage effective January 1, 2023.

Passed: August 1, 2023 Attested: Kim Combs

Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7037

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A LAND USE PERMIT WITH THE MIAMI CONSERVANCY DISTRICT FOR THE MAINTENANCE OF IMPROVEMENTS MADE IN RIVERFRONT PARK ON MIAMI CONSERVANCY DISTRICT PROPERTY AND DECLARING AN EMERGENCY.

WHEREAS the City of Miamisburg is making improvements within Riverfront Park, located in downtown, Miamisburg, Ohio, and

WHEREAS the Miami Conservancy District owns and maintains property along the river including the levee, bike trail and flood protection infrastructure and

WHEREAS the parties jointly approved plans to improve the area to be constructed in 2023-2024, and

WHEREAS to ensure clarity of responsibilities a Land Use Permit is required which outlines the parties responsibilities within shared use space, areas where City property and improvements are made within Conservancy District Property, as contained herein.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into a Land Use Agreement with the Miami Conservancy District for the purposes of maintaining property and infrastructure in Riverfront Park within Miami Conservancy District Property attached hereto as Exhibit "A".

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this contract is needed at the earliest possible date to ensure an understanding of use for land is established at the earliest possible date to allow for the continued planning and implementation of improvements within the site, this measure shall take effect and be in force from and after its passage.

Passed: August 15, 2023

Attested: Kim Combs

Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A

The Miami Conservancy District

LAND USE PERMIT NO. 16-3895-1

THE MIAMI CONSERVANCY DISTRICT, a body corporate and political subdivision of the State of Ohio, hereinafter called "MCD", in consideration of compensation as specified within this Permit, and subject to the terms, conditions and restrictions hereinafter set forth, hereby grants to

**CITY OF MIAMISBURG
10 N FIRST STREET
MIAMISBURG, OHIO 45342**

hereinafter called the "Grantee" the authority and permission to use that portion of MCD property as further described below for the following specified use and for no other use without express written consent by MCD.

The right to construct, use, maintain and remove the following for **RIVERFRONT PARK** as shown on the attached Exhibit "A":

- **10' ASPHALT WALK**
- **14' ASPHALT WALK**
- **PARKING LOTS partially located on MCD property**
- **2 - 8" BARRIER CURBS**
- **COVERED BENCH SWINGS**
- **OVERLOOK PAVERS**
- **LITTER/RECYCLING RECEPTACLE**
- **RECREATION TRAIL relocated within the Park**

The property, **Part MCD Parcel No. 26, 490, 497, 498, 717, 796, 830, 853, 874, 881, 959, 1070, 1071, 1666, 1674 & 1750**, is located in the City of Miamisburg, Montgomery County, Ohio, and more specifically along the left bank of the Great Miami River along North Miami Avenue between Linden Avenue and Ferry Street as shown on the attached Exhibit "B".

All real property, easements, land, structures, infrastructure, and facilities that are owned or controlled by MCD or any MCD subdistrict shall hereinafter be called "MCD property."

THIS PERMIT IS GRANTED SUBJECT TO COMPLIANCE WITH THE FOLLOWING TERMS, CONDITIONS AND RESTRICTIONS AS SET FORTH BY MCD IN ACCORDANCE WITH SECTION 6101.19 OF THE OHIO REVISED CODE:

SECTION I - TERMS AND CONDITIONS:

1. PROPERTY USE, MAINTENANCE & RESTRICTION: The Grantee AGREES to maintain all property as authorized for use within this Permit. Maintenance shall include regular inspection and repair of all items listed above within the park. The Grantee is responsible for mowing and trimming within the park area including trash and debris removal.

Whenever the employees, agents, or contractors of said Grantee enter upon MCD property, for the purpose of maintaining, modifying, repairing or removing any structures and/or improvements as described within this Permit, the Grantee AGREES all operations will be confined to a reasonable area adjacent to said structures and/or improvements.

The Grantee AGREES all MCD property will be continually used and maintained in a safe and responsible manner that does not affect MCD operations and maintenance.

The Grantee must contact MCD for approval prior to performing any repairs or maintenance on MCD property that would result in any land disturbance.

Any land disturbing activity on MCD property involving the services of a contractor will require that the contractor contact MCD to acquire a MCD Construction Permit prior to doing any work on MCD property.

The Grantee, prior to initiating any land disturbing activity, AGREES to contact OUPS to determine if there are any utilities located within the permit area. The Grantee further AGREES to protect all identified utilities from damage that could result from land use as outlined within this Permit.

The Grantee AGREES all use of vehicles on MCD property shall be in compliance with the Ohio Revised Code and other applicable laws.

By providing public use and access, the Grantee, AGREES to enforce the following regulations regarding MCD land.

- Motor vehicles are permitted in the designated parking areas.
- No type of plant material can be picked, collected or disturbed.
- Dogs are allowed on leash only. Pick up and proper disposal of waste is required.
- Alcohol is prohibited except within the Designated Outdoor Refreshment Area (DORA).
- No hunting or trapping.
- No trash may be placed on the ground. All trash generated or placed shall be removed from the site by the Grantee.

2. DAMAGE TO MCD PROPERTY: Any damages, resulting from the land use granted, caused to MCD structures and facilities including, but not limited to, levees, dams, floodwalls, bikeways, roads, gates, wells, gages, monitoring equipment, monuments and/or MCD property shall be repaired or replaced in a manner satisfactory to MCD as more specifically defined in Section III of this Permit. Revocation, termination or expiration of the Permit does not release the Grantee from its obligation to repair damages. In the event the repair or replacement is not completed in a reasonable amount of

time, MCD may, at its option, cause said repairs or replacements to be accomplished and Grantee shall reimburse MCD for any expenses incurred.

3. TERM: The term of this Permit shall be for a period of **twenty (20) years, effective May 1, 2023 and terminating on April 30, 2043.**

4. MCD's RIGHT OF REVOCATION

- a. If the property use causes damage or imminent damage to MCD property, or creates a health or safety hazard, MCD will order all use by the Grantee be stopped immediately and notify the Grantee to repair or replace MCD Property and remove the hazard. If the Grantee fails to respond in the time set by MCD, MCD will revoke the rights granted by this Permit. Such revocation would not release the Grantee from its obligation to restore the land as required by item 6 below.
- b. If, at any time, in the opinion of MCD, the said use interferes with the primary objectives of MCD; or should the best interests of MCD so justify; this Permit shall be revoked. MCD will provide seven (7) days written notice of revocation. Such revocation would not release the Grantee from its obligation to restore the land as required by item 6 below.

5. GRANTEE'S RIGHT OF TERMINATION: The Grantee may request termination of this Permit if the use of MCD property described in this Permit is no longer necessary or desired. The Grantee shall notify the MCD Property Administrator within forty-eight (48) hours following cessation of the permitted land use to request termination.

6. RESTORATION: Prior to termination of this Permit, the Grantee AGREES to remove or properly abandon all structures and/or improvements and repair or restore all MCD property as specified in Section III of this Permit. Revocation, termination or expiration of the permit does not release the Grantee from its obligation to restore the property. In the event the Grantee does not restore or remove the said structures and/or improvements within a timely manner, MCD may, at its option, cause said work to be accomplished and Grantee shall reimburse MCD for any expenses incurred.

7. FAILURE TO IMPLEMENT LAND USE: Should the Grantee fail to implement the requested land use within one (1) year of the effective date of this Permit, the Permit will terminate. Furthermore, MCD will retain all permit fees unless the Grantee, prior to termination, has submitted written notification concerning cancellation of the Permit.

8. FINAL INSPECTION: Within forty-eight (48) hours following cessation of the permitted use and all restoration, the Grantee AGREES to notify the MCD Property Administrator for final inspection.

9. OPTION OF RENEWAL: This Permit may be renewed, subject to MCD approval, provided all terms, conditions, and restrictions of the Permit have been maintained to the reasonable satisfaction of MCD. All renewals will be subject to those terms, conditions, and Permit fees in effect at time of renewal.

10. INSURANCE: The Grantee AGREES to purchase a commercial general liability insurance policy in an amount not less than **Two Million (\$2,000,000) Dollars**, protecting both Grantee and MCD from any liability resulting from injuries to persons or property and all direct cost and expenses associated therewith. Prior to issuance of this Permit the Grantee AGREES to provide to MCD with a certificate

of insurance evidencing MCD's status as an additional insured with coverage in favor of MCD applying on a primary and non-contributing basis. Insurance coverage must be in force throughout the term of the permit. If insurance coverage is cancelled the permit will terminate. The Grantee AGREES to require its general liability insurance carrier to provide MCD with a minimum of thirty (30) days written notice of cancellation or non-renewal to Grantee general liability policy. Should Grantee elect to purchase limits in excess of Two Million (\$2,000,000) Dollars, said higher limits shall also inure to MCD's benefit as an additional insured.

11. SOIL & WATER CONTAMINATION: The Grantee AGREES to assume all liability and responsibility for clean-up and restoration required due to soil and water contamination resulting from the land use granted within this Permit.

12. RELEASE OF LIABILITY: The Grantee herein releases MCD, to the extent permitted by law, from any and all liability resulting from injuries to persons or property and all direct cost and expenses associated therewith, resulting from or caused by floodwater, maintenance or construction operations and/or any other activities of MCD, its agents, employees or contractors provided such damages were not caused by the negligent act or omission of MCD, its agents, employees or contractors.

13. RIGHT OF ACCESS: MCD, shall at all times, have the right to enter upon any MCD property for the purpose of using, monitoring, maintaining, altering or repairing any works, or improvements owned or controlled by MCD. MCD retains the right to photograph, for private and/or public use, any use, work or event, which takes place on MCD property.

MCD shall have the right of inspection to determine compliance with this Permit. Upon notification of any violation, the Grantee AGREES to promptly take corrective action as directed by MCD. Should corrective action not be taken within the time specified, MCD may revoke this Permit, subject to the terms and conditions as stated within this Permit.

14. TRANSFER OF LAND USE RIGHTS: This Permit is NOT assignable or transferable.

15. PRE-EXISTING LAND USE RIGHTS: All rights granted within this Permit will be limited by, and subject to, any rights and claims of record that exist prior to the effective date of this Permit, regarding all property described within this Permit. Said claims of record include, but are not limited to, any existing easements, right-of-ways, and/or permits.

16. ADDITIONAL RIGHTS: MCD does not claim full warranty deed ownership to all MCD property. The Grantee must accept full responsibility for acquiring any additional rights to property not owned by MCD, when use of such property is necessary for the purposes of this Permit. Furthermore, MCD, in granting land use authorization, is to be released from any additional expense and/or all liability related to any unauthorized use of property.

17. PUBLIC DISCLOSURE: All MCD records, including deeds, leases, permits and all related correspondence, will be considered public records and shall be available for public use and disclosure.

18. COMPLIANCE WITH LAWS: The Grantee AGREES that MCD property is not to be used or occupied for any unlawful purpose. Additionally, all use of MCD property will comply with all laws, ordinances, rules, regulations, requirements, and orders of the United States of America, the State of Ohio, and of all governmental authorities or agencies, including, without limitation, all bureaus, boards or officials thereof respecting said premises and the use and occupation thereof.

19. ADDITIONAL IMPROVEMENTS: The Grantee AGREES no additional temporary or permanent structures and/or improvements will be constructed by the Grantee on MCD property without prior written MCD approval.

20. PERMIT FEE: The Permit fee is **One Hundred Fifty (\$150.00) Dollars.**

SECTION II - PROHIBITED USE:

The following activities are prohibited on MCD property:

- a. Violating any federal, state, county, municipal, or other applicable law, ordinance, rule, regulation or requirement.
- b. Soliciting.
- c. Abandoning any animal.
- d. Lighting fires or burning any materials.
- e. Sledding, skiing, or ice skating.
- f. Camping.
- g. Operating any vehicle on dam or levee slopes.
- h. Moving, by-passing, or damaging any gate, barricade or barrier so placed to temporarily or permanently close a road or area to traffic.
- i. Hunting and trapping.
- j. Depositing burning material or hot ashes on grass, plants or in refuse receptacles.
- k. Dumping, depositing or discarding, intentionally or unintentionally, any trash, garbage, building debris, rubble, metal, concrete, asphalt, organic waste, or other noxious materials.
- l. Damaging, destroying, or disturbing any MCD land as described below:
 1. Removing any property, structures, facilities, or amenities, or any part thereof.
 2. Writing upon, painting, cutting, mutilating, defacing, or damaging in any manner any building, flood control structure, equipment, or other property, or part thereof.
 3. Climbing or rappelling any flood control structure, rock escarpment or other natural features.
 4. Willfully destroying, injuring or removing any bench marks, witness marks, stakes, or other reference marks (ORC 6101.81).
 5. Disturbing, defacing, removing, or injuring trees or other vegetation.

SECTION III - RESTORATION REQUIREMENTS:

All MCD owned or controlled property disturbed by land use and/or construction will be restored to the reasonable satisfaction of MCD **within thirty (30) days** of project completion and/or prior to termination of this Permit as follows:

Restoration of Levee Slopes:

1. Grantee shall contact MCD's Property Administrator 48 hours in advance of restoration of any dam or levee slopes.
2. Seed mix and erosion control blankets specifications shall be submitted to MCD for approval.
3. All fill materials for embankment construction and restoration shall be submitted to MCD for approval.
4. Material shall conform to the Dam and Levee Material Specifications listed below.
5. Fill shall be clean earthen material free of loam, roots, organic matter, boulders, concrete, asphalt, wood, metal, building rubble, and other unsuitable material.
6. MCD reserves the right to reject any fill material.
7. MCD requires a Standard Proctor test to be performed on the proposed material prior to use to determine the optimal water content at which the soil can reach its maximum dry density. Testing for Atterberg limits, grain size distribution and soil type classification are also required. Copies of all test reports shall be provide to MCD for approval.
8. Grantee shall provide contact information of all sources of materials.
9. MCD may require environmental testing of material.
10. MCD may require a physical sample of the proposed material for approval.
11. Fill may not be placed on frozen, wet subgrade, or in standing water.
12. Fill for restoring levee slopes shall be placed in loose lifts not to exceed six-inch in depth and compacted to 95% Standard Proctor as determined by a certified testing company. Testing will be performed every two (2) compacted lifts of height at one-hundred (100) foot intervals beginning fifty (50) feet from the ends of the project or as directed by MCD. Copies of all compaction and laboratory test reports shall be provided to MCD.
13. Moisture control limits are to be within -1% to +3% of optimum.
14. Lifts may not contain any veins of gravel material.
15. Fill material shall be no larger than three (3) inches in diameter.

16. Fill material shall have no more than 15% gravel.
17. The fill shall be graded to the lines and grades of the adjoining areas.
18. The surface of the levee shall be stripped of organics and topsoil to a depth of six (6) inches prior to benching the levee slope.
19. The existing levee embankment shall be over-excavated in all directions by benching one (1) foot vertical and a minimum of one (1) foot horizontal into stiff undisturbed soil. A level bottom surface day-lighting toward the levee toe shall be provided from which the upward benching on the sides shall initiate. Benching may have to be performed by hand methods or using small-scale excavation equipment.
20. The levee soil on which the backfill is to be placed should not be excavated until immediately before backfilling, and shall not be allowed to become overly wet or dry while exposed.
21. The surface area of the benches shall be scarified as necessary to ensure a good bond between the existing soil and the backfill material.

Top Soil

1. After the final lines, grades, and elevations have been established, six (6) inches of topsoil placed in loose lifts that construct a four (4) inch compacted depth shall be spread on all disturbed areas.
2. The topsoil shall be tracked in with a dozer or approved equipment to compact and provide a good contact between the topsoil and the surface of the fill material.
3. Topsoil shall be scarified prior to seeding.

Vegetation Restoration of Levee Slopes shall consist of one of the following methods:

Hydroseeding:

1. Between the Seeding Period of **March 15th through October 30th** all disturbed levee slopes shall be hydroseeded.
2. Seed types shall consist of an 80/20 Turf Type Tall Fescue Mix with perennial rye with an application rate of 8 pounds per 1000 square feet.
3. Fertilizer shall be 18-24-12 25% Polyplus Fertilizer.
4. Mulch shall consist of Cellulose (Paper) Fiber Mulch, or Wood Fiber Mulch. Application Rate for mulch shall be 2000 pounds per acre.
5. Tackifier shall be added to the solution and applied at an application rate of 2 gallons per acre. The tackifier shall not contain any priority pollutants listed under the U.S. Clean Water Act Section 307(2)(1) Priority Pollutant List (40 CFR 401.15).

6. Application of the slurry should proceed until a uniform cover is achieved.
7. Prior to application, the topsoil on the levee slope shall be scarified by tracking it in using a steel cleated piece of equipment.
8. Hydraulic matrices require 24 hours to dry before rainfall occurs to be effective.
9. Hydroseeded slopes should be inspected periodically for damage due to wind, water, or human disturbance.
10. Repair all damaged areas immediately using hydroseeding at the original specifications.
11. Supplemental watering may be required.

Note: Smaller projects during the Seeding Period of **March 15th through October 30th** may use erosion control blankets as described below with approval from MCD.

Erosion Control Blankets:

1. Between the Seeding Period of **October 31st through March 14th** all disturbed levee slopes shall be protected with biodegradable straw erosion control blankets.
2. The erosion control blankets shall consist of a rapid-breakdown polypropylene netting design, using the finest straw fibers available, be environmentally sensitive and shall be certified that they are weed seed free.
3. Performance capabilities shall have a shear stress rating of 84 Pa (1.75 lb/ft²) for slopes that are 2:1 and flatter.
4. Seed types shall consist of an 80/20 Turf Type Tall Fescue Mix with perennial rye with an application rate of 8 pounds per 1000 square feet.
5. Fertilizer shall be 18-24-12 25% Polyplus Fertilizer

Inspection:

1. A representative of MCD **MUST** be on site at all times to observe all levee restoration activities.
2. MCD will do a preliminary inspection after 4 weeks to ensure that grass is being established after final seeding.
3. MCD will inspect all seeded areas no earlier than 6 months and no later than 12 months after final seeding. For any area identified without uniform density of at least 90 percent grass cover, the grantee will be required to seed, fertilize and mulch any areas where sufficient turf has not been established.
4. If seeding of an area is not successful, MCD may require sodding of disturbed areas.

5. All property is to be properly monitored and maintained until sufficient turf has been established.
6. MCD inspection and approval must be acquired prior to obtaining all other necessary approvals.

Levee Material Specifications:

1. Levee embankment – material placed in levee embankments should be naturally occurring or contractor blended clayey material. Addition of lime, cement, or other soil amendments for any reason is not permitted. Soil that is classified in accordance with ASTM D2487 and the Unified Soil Classification System as CH and CL is suitable. Soil classified as ML shall be considered unsuitable; however, minor amounts of ML may be suitably blended with CH or CL to formulate a material that classifies as a CL as per ASTM D2487. Soil must be free from masses of organic matter, sticks, branches, roots, broken concrete, asphalt, metal, building rubble, and other debris, including hazardous and regulated solid wastes. Soil from a contractor-supplied earthen clay material source may not contain excessive amounts of wood. Not more than 1% (by volume) of objectionable material shall be contained in clay material. Pockets and/or zones of wood shall not be acceptable. Material consisting of greater than 35% sands (by dry weight) or materials with a Plasticity Index (PI) of less than 10 will not be accepted as well as material having an organic content exceeding 9% by weight. Under no circumstances shall frozen earth, snow, or ice in the material be considered acceptable.

Restoration of Property:

1. Grantee shall contact MCD's Property Administrator 48 hours in advance of restoration.
2. Seed mix specifications shall be submitted to MCD for approval.
3. All disturbed areas shall be graded to the lines and grades of the adjacent undisturbed areas
4. All disturbed areas shall be graded away from the toe of the levees or dams and all run off shall flow towards the river.
5. All disturbed areas shall be graded in a way as to not create any ponding.
6. Any top soil lost during land use shall be replaced to a compacted depth of four inches.
7. After regrading and placing top soil where necessary all disturbed areas shall be seeded, fertilized, and mulched.
8. Seed types shall consist of an 80/20 Turf Type Tall Fescue Mix with perennial rye with an application rate of 8 pounds per 1000 square feet.
9. Fertilizer shall be 18-24-12 25% Polyplus Fertilizer.
10. Mulch shall consist of straw, and be free of weed seed.
11. Evenly place straw mulch over all seeded areas at the following rates:

<u>Seeding Period</u>	<u>Rate</u>
From March 15 to October 30	2 Tons per acre
From October 31 to March 14	3 Tons per acre

12. Hydroseeding is acceptable, approved tackifier shall be applied at 2 gallons per acre.

Inspection:

1. MCD will do a preliminary inspection after 4 weeks to ensure that grass is being established after final seeding.
2. MCD will inspect all seeded areas no earlier than 6 months and no later than 12 months after final seeding. For any area identified without uniform density of at least 90 percent grass cover, the grantee will be required to seed, fertilize and mulch any areas where sufficient turf has not been established.
3. If seeding of an area is not successful, MCD may require sodding of disturbed areas.
4. All property is to be properly monitored and maintained until sufficient turf has been established.
5. MCD inspection and approval must be acquired prior to obtaining all other necessary approvals.

Restoration of Pavement, Recreation trails (asphalt):

1. Depending of the severity of damage to the recreation trail, MCD shall require either, pavement planing (milling) and a surface course of asphalt be applied or full depth replacement with intermediate and surface courses of asphalt per MCD's typical recreation trail section drawings.
2. Full depth replacement will require sub-base to be compacted to not less than 100% of maximum dry density.
3. Base shall consist of 8" of ODOT ITEM 304 aggregate base material compacted to not less than 98% of maximum dry density.
4. See typical recreation trail section drawings located at the end of this Permit for asphalt concrete details.
5. For asphalt roads, parking lots, and all other asphalt surfaces, MCD will determine the design on a per project basis.
6. Concrete roads, trails and parking lots disturbed shall be restored to their original lines and grades. Remove all damaged areas by saw-cutting to the closest construction joint to provide a clean square joint. The concrete for the pavement shall be Class QC1 per ODOT ITEM 499. All replacement concrete pavement shall be dowelled into existing pavement per ODOT ITEMS 509 and 510. The size and spacing of dowels shall be determined by MCD on a per project basis.

7. ODOT ITEMS are referenced to the most recent ODOT Construction and Material Specifications publication.

Roads, Driveways, Sidewalks, and Trails:

1. MCD will determine whether a road, driveway, sidewalk, or trail must be removed or may remain in place.
2. All roads, driveways, sidewalks, and trails designated for removal shall be addressed as follows:
 - All materials including but not limited to asphalt, concrete, brick and other pavement material shall be removed from MCD property and legally disposed.
 - Site shall be restored to match adjacent lines and grades.
 - Any damaged sections of recreational trail or revetment shall be restored using materials and construction requirements that meet the MCD Land Use Policy APPENDIX III and V.
 - Gravel, mulch, and earthen trails shall be disked.
 - All areas shall be restored to MCD's satisfaction.
3. MCD or an MCD subdistrict may elect to assume ownership and maintenance of a road, driveway, sidewalk, or trail. The terms of the ownership transfer shall be agreed to in writing by both parties before the obligations of the Grantee are released.

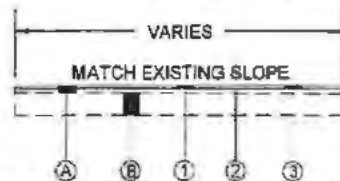
Poles, Towers, Fences, Signs, Buildings, Bridges and other Above-Ground Structures:

1. All above-ground structures, improvements, and physical installations must be completely removed from MCD property.



- ① ITEM 203 - SUBGRADE COMPACTION
- ② ITEM 304 - AGGREGATE BASE - 8" COURSE
- ③ ITEM 407 - TACK COAT @ 0.075 GAL/SY
- ④ ITEM 448 - ASPHALT CONCRETE - 2" INTERMEDIATE COURSE, TYPE 2, PG 64-22 PER ITEM 441.02
- ⑤ ITEM 448 - ASPHALT CONCRETE - 1" SURFACE COURSE, TYPE 1, PG 64-22 PER ITEM 441.02

**TYPICAL SECTION
(FULL DEPTH REPLACEMENT)**



- Ⓐ EXISTING ASPHALT CONCRETE (THICKNESS MAY VARY)
- Ⓑ EXISTING AGGREGATE BASE - 6" COURSE
- ① ITEM 254 - 1" PAVEMENT PLANING, ASPHALT CONCRETE
- ② ITEM 407 - TACK COAT @ 0.075 GAL/SY
- ③ ITEM 448 - ASPHALT CONCRETE - 1" SURFACE COURSE, TYPE 1, PG 64-22 PER ITEM 441.02

**TYPICAL SECTION
(PLANING AND RESURFACING)**

NOTE: ALL PAVEMENT SHALL MATCH EXISTING SLOPES OR IF NECESSARY SLOPE TOWARDS THE RIVER. AT NO TIME SHOULD THE TRAIL BE SLOPED AWAY FROM THE RIVER.

NOTE: ITEMS REFER TO ODOT 2013 CONSTRUCTION AND MATERIAL SPECIFICATIONS

I, THE GRANTEE OR AUTHORIZED REPRESENTATIVE FOR SAID GRANTEE, IN EXCHANGE FOR SUCH USE AS DEFINED WITHIN THIS PERMIT, DO HEREBY ACKNOWLEDGE ACCEPTANCE OF ALL TERMS AND CONDITIONS AS STATED WITHIN THIS PERMIT:

CITY OF MIAMISBURG

Date: _____

By: _____

Print Name: _____

Title: _____

* * * * *

AS AUTHORIZED REPRESENTATIVE FOR MCD I DO HEREBY GRANT APPROVAL, SUBJECT TO THE TERMS AND CONDITIONS OF THIS PERMIT, TO USE MCD PROPERTY FOR SUCH USE AS DEFINED WITHIN THIS PERMIT:

THE MIAMI CONSERVANCY DISTRICT

Date: _____

By: _____

Donald P. O'Connor, Chief Engineer

Any questions concerning this Permit or the use of MCD property shall be directed to the **MCD PROPERTY ADMINISTRATOR** Roxanne Farrier at (937) 223-1278, ext. 3230.

MCD CARETAKER: Scott Wilson at (937) 866-1524 (office) or (937) 824-0978 (cell).

After hours call **Operations & Maintenance Manager** Ben Casper at (937) 414-7043.

GRANTEE'S CONTACT PERSON: Ryan Davis (937) 847-6476

EXHIBIT "A"

**RIVERFRONT PARK
MIAMISBURG, OHIO**



RIVERFRONT PARK
CITY OF MARIAMBERG
MONTGOMERY COUNTY, OHIO

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- PROJECT TEAM:**
- CITY OF MARIAMBERG**
PLANNING DEPARTMENT
300 EAST CENTRAL AVE.
MARIAMBERG, OHIO 45158
CONTACT: JEFF BROWN
513-834-3471
 - THE KLEINGERS GROUP**
2715 CENTURY PARK DRIVE
SUITE 100, SUITE B
MARIAMBERG, OHIO 45158
CONTACT: KELLY PLANNY
513-834-3471
 - ARCHITECT**
CONCEPT ARCHITECTURE
200 EAST FITE ROSE WAY, STE 140
COLUMBUS, OH 43260
CONTACT: WYLE CAMPBELL
614-291-4474
 - LANDSCAPE ARCHITECT**
VLP LANDSCAPE ARCHITECTS
1700 S. COLUMBUS BL, STE 403
COLUMBUS, OH 43260
CONTACT: JIM WHELAN
614-462-3811
 - ENGINEERING**
SITE LAYOUTS & DESIGN
2745 CANTON ROAD, STE 2
1718 WILSON BLVD
MARIAMBERG, OH 45158
CONTACT: JEFF BROWN
513-834-3471
 - STRUCTURAL ENGINEER**
AND CIVIL ENGINEER
2114 HUNTERSBURG, STE 2
MARIAMBERG, OHIO 45158
CONTACT: JILL CAGANIELL
513-834-3471
 - ENVIRONMENTAL ENGINEER**
3015 W. 15TH AVE, SUITE 400
COLUMBUS, OH 43260
CONTACT: JIM WHELAN
614-462-3811
 - PAVING CONTRACTOR**
MIRA INC.
2070 W. 15TH AVE, SUITE 400
COLUMBUS, OH 43260
CONTACT: WYLE CAMPBELL
614-291-4474
 - CONTRACTOR**
2715 CENTURY PARK DRIVE
SUITE 100, SUITE B
MARIAMBERG, OHIO 45158
CONTACT: KELLY PLANNY
513-834-3471
 - REFERENCE PHOTOGRAPH**
2018
 - ENVIRONMENTAL**
2018
 - CONTRACTOR**
2018

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3	PROPOSED UTILITIES
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5	PROPOSED PLANTINGS
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7	PROPOSED SIGNAGE
8	PROPOSED LIGHTING
9	PROPOSED SECURITY
10	PROPOSED ACCESSIBILITY
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12	PROPOSED EROSION CONTROL
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33	PROPOSED CIVIL REVIEW
34	PROPOSED ELECTRICAL REVIEW
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50	PROPOSED PROJECT CLOSURE



RIVERFRONT PARK
CITY OF MARIAMBERG
MONTGOMERY COUNTY, OHIO

DATE: 01/20/22

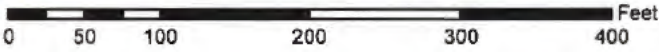
TITLE SHEET

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The Miami Conservancy District makes no warranty or guarantee as to the content, accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained. Use of these materials constitutes acceptance of this disclaimer of liability.

Permit 3895



Scale 1:1,200
May 2023

ORDINANCE NO. 7038

AN ORDINANCE TO AMEND THE OFFICIAL ZONING MAP TO REZONE CERTAIN PROPERTIES FROM FLOODWAY DISTRICT (FW), RESIDENTIAL (R-1), OR INDUSTRIAL (I-1) TO AGRICULTURAL (A), AGRICULTURAL-RESIDENTIAL (AR), NEIGHBORHOOD BUSINESS (NB-1), RESIDENTIAL (R-1, R-2, R-4), OR INDUSTRIAL (I-2).

WHEREAS, from time to time it is necessary to re-evaluate the zoning designation of certain parcels to determine if the existing zoning designation is appropriate for the current and expected future use of the parcels; and,

WHEREAS, many parcels along the Great Miami River were found to be designated with an inappropriate zoning designation given their current and future expected use; and,

WHEREAS, many parcels also hold the zoning designation of Floodway (FW) District on the Official Zoning Map which is no longer listed as an established zoning district in §1240.01 of the City of Miamisburg Code of Ordinances; and

WHEREAS, there is a general desire to appropriately zone these parcels to minimize instances of non-conformity with regards to the land use regulations; and,

WHEREAS, assigning a more appropriate zoning designation for these parcels will promote the health, safety, and general welfare of the community by allowing use of the property in a manner more reflective of its current and future expected use; and

WHEREAS, the City of Miamisburg Planning Commission conducted a Public Hearing on the proposed Ordinance in accordance with the provisions set forth in the City Charter and the Planning and Zoning Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The subject parcels, as illustrated in Exhibit A, shall hereby be rezoned on the Official Zoning Map.

Section 2.

The Official Zoning Map is subsequently amended, attached to and made a part of Ordinance No. 2712, to reflect the foregoing rezoning classification contained herein and the City Manager is authorized and directed to cause said rezoning to be reflected on the Official Zoning Map.

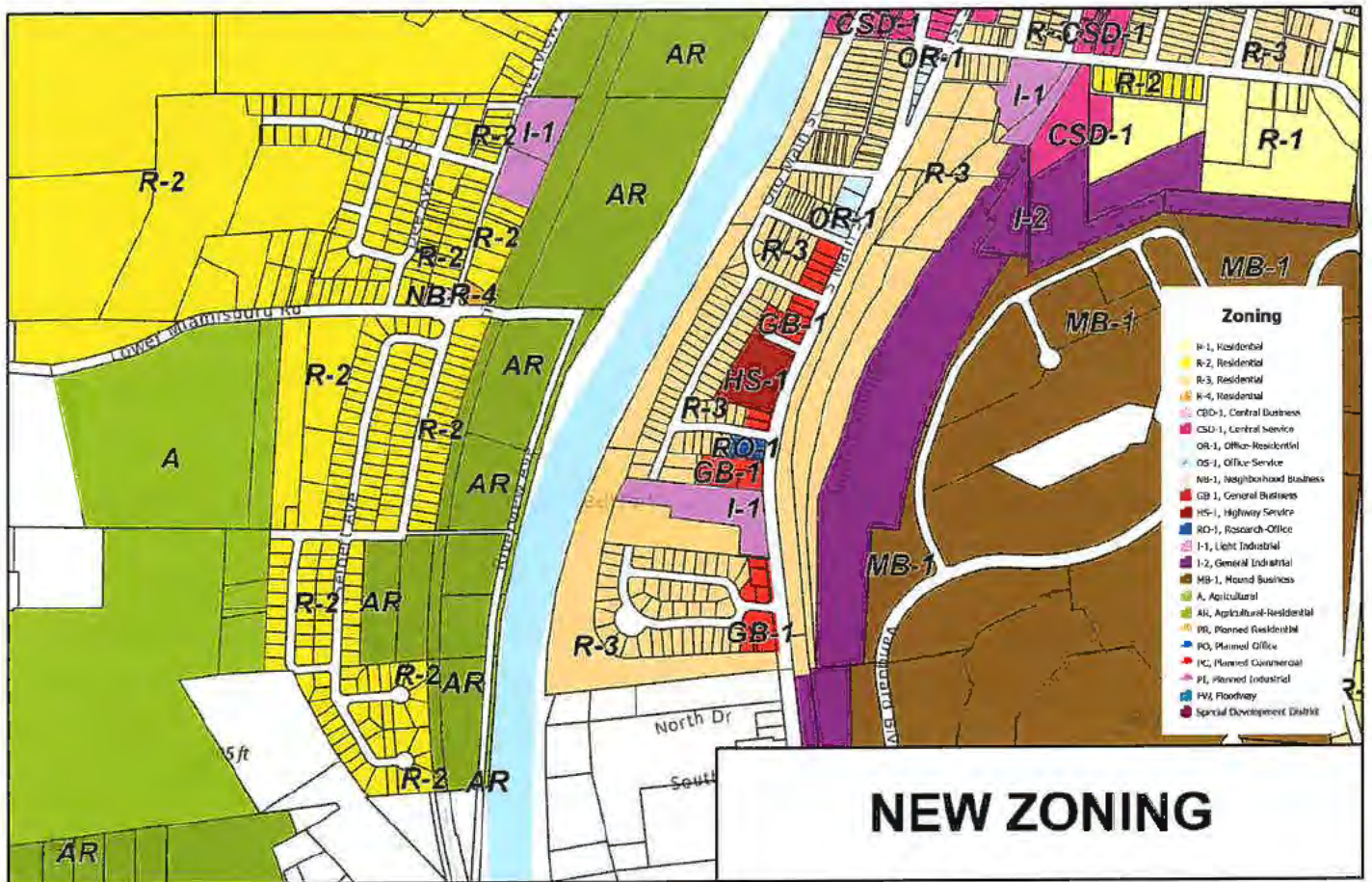
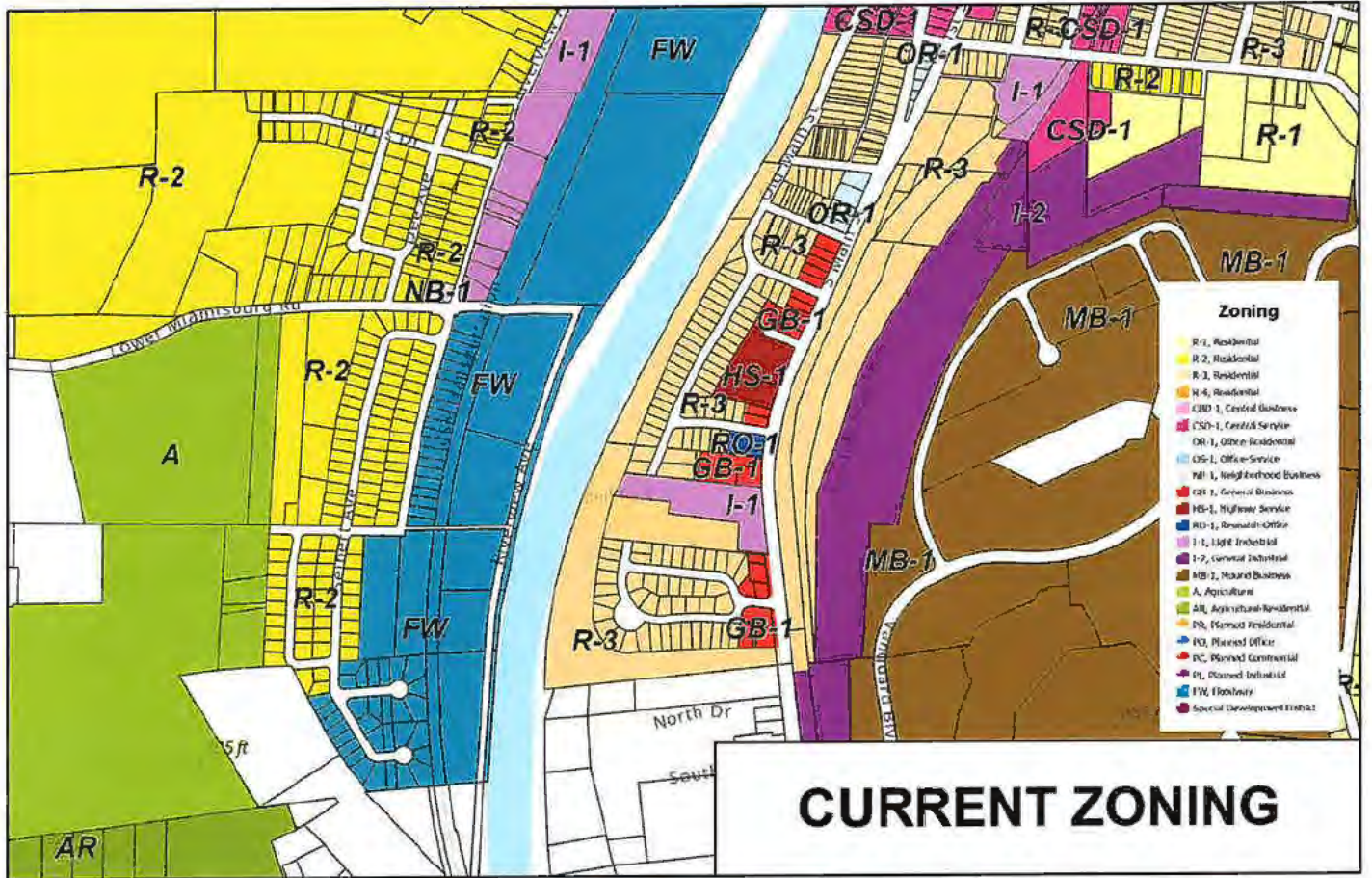
Section 3.

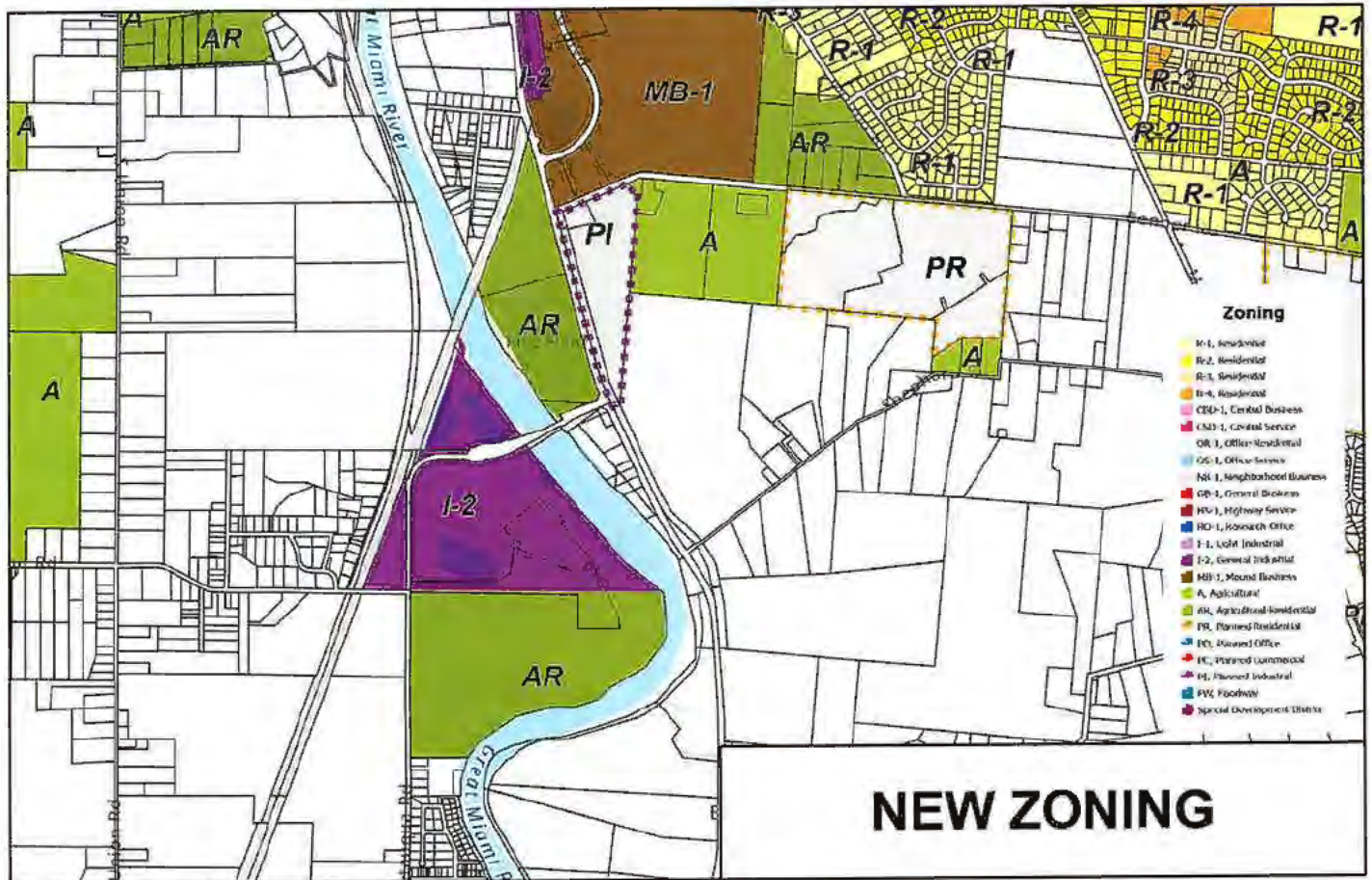
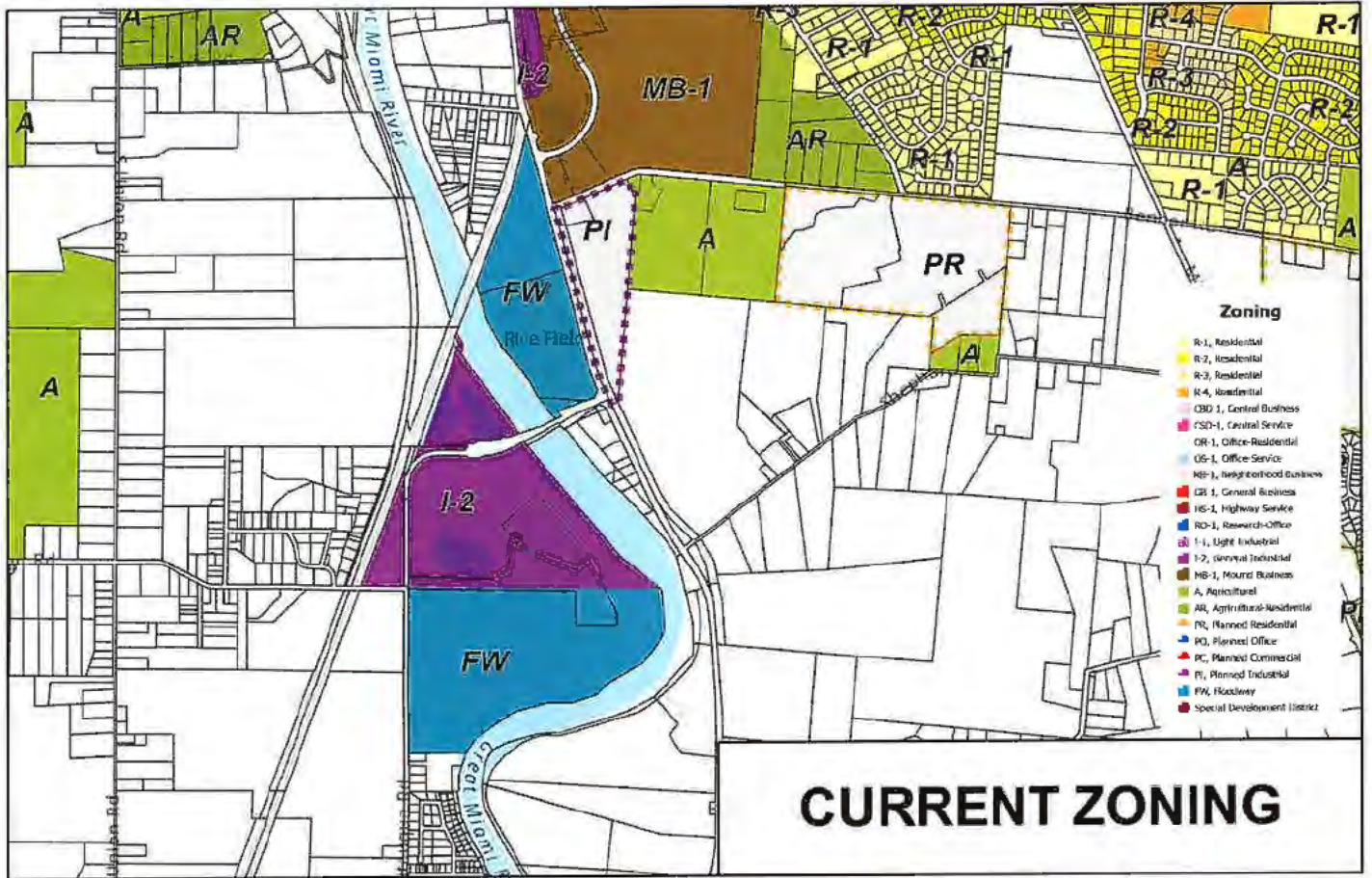
This measure shall take effect and be in full force from and after the earliest period allowed by law.

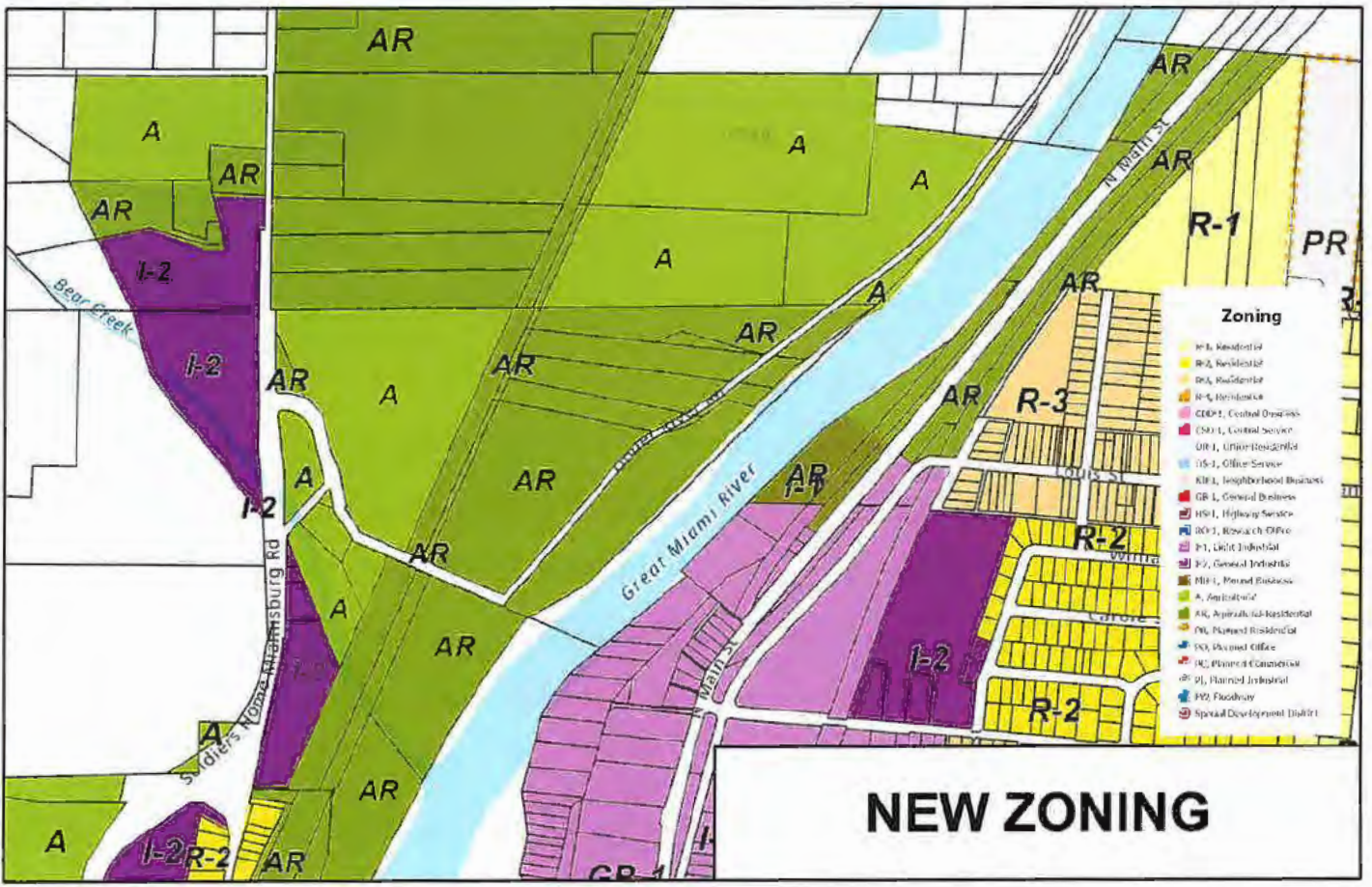
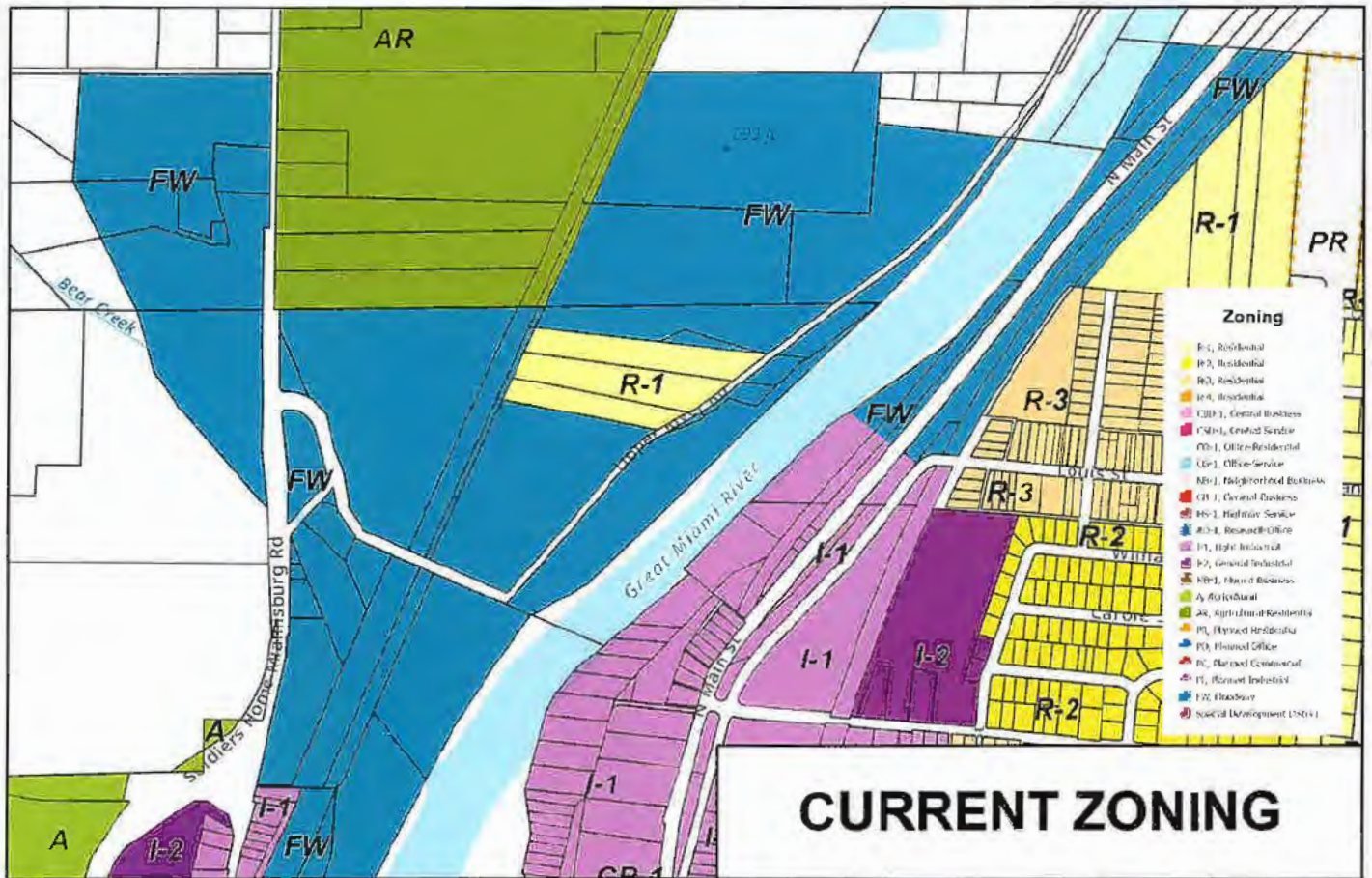
Passed: October 17, 2023 Attested: *Kim Combs*
Kim Combs, Clerk of Council

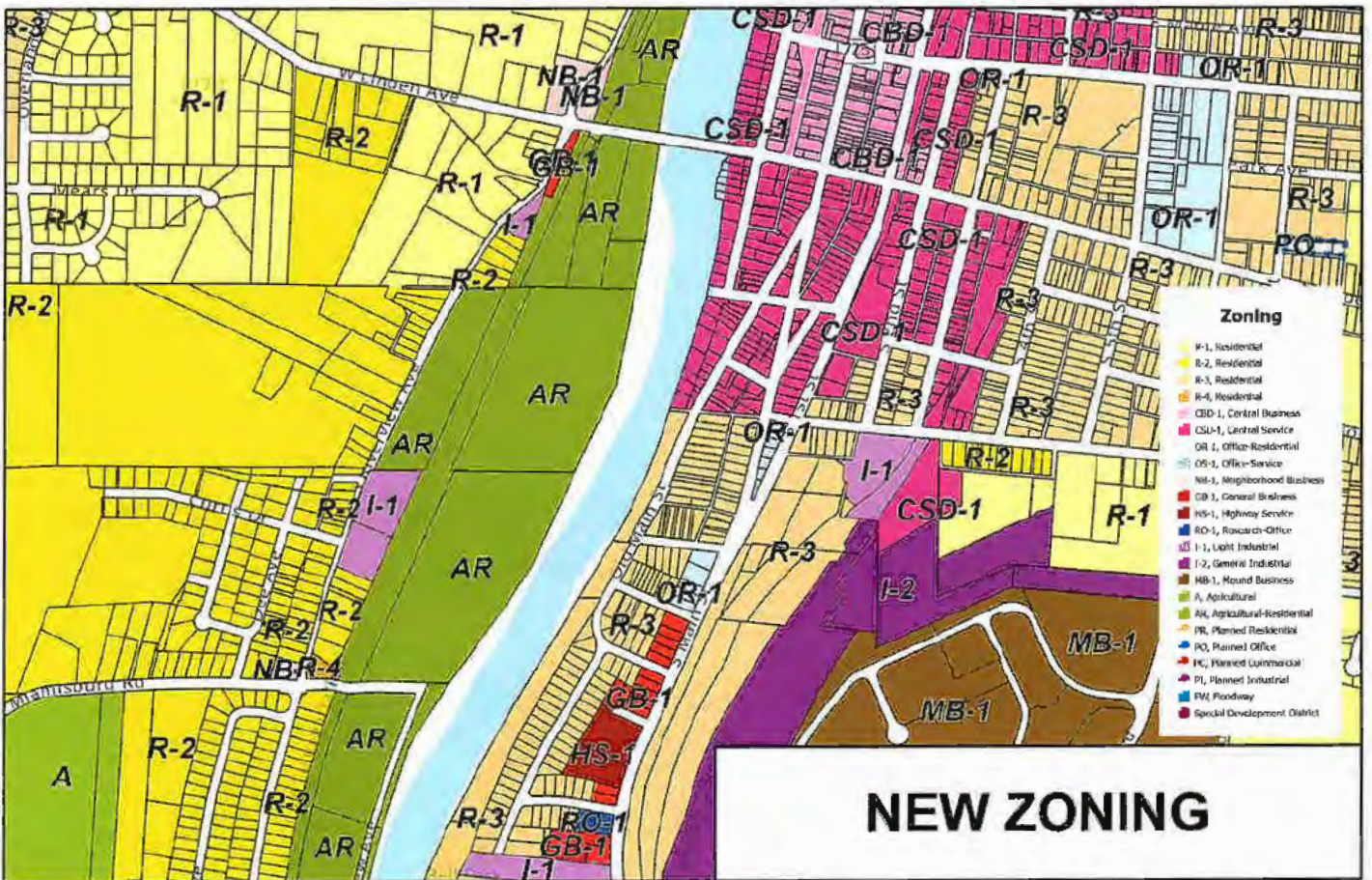
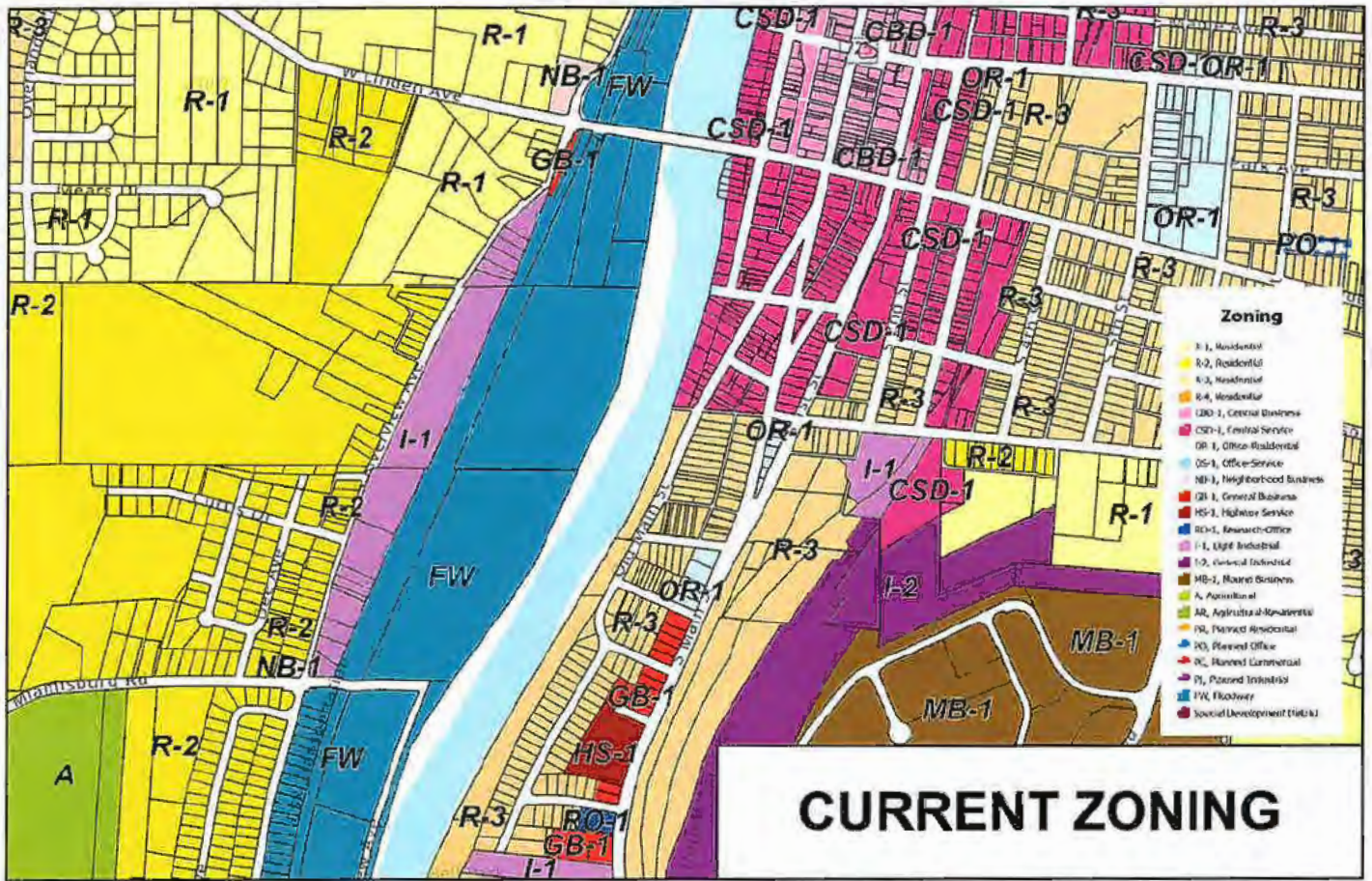
Approved: *Michelle Collins*
Michelle L. Collins, Mayor

EXHIBIT A









ORDINANCE NO. 7039

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR INDEPENDENT AUDITING SERVICES FOR THE 2023 THROUGH 2027 FISCAL YEAR ANNUAL AUDITS OF CITY RECORDS AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into a contract with Plattenburg and Associates for independent auditing services for the City's financial statements for the 2023 through 2027 fiscal years at a cost not to exceed \$147,725 payable as follows:

Fiscal Year	Audit Amount
2023	\$28,500
2024	\$28,975
2025	\$29,450
2026	\$29,925
2027	\$30,875

Section 2.

This Ordinance is hereby declared to be an emergency measure necessary for the public peace, health, safety and welfare and for the further reason to execute this agreement at the earliest possible date, therefore, this measure shall take effect and be in force from and after its passage.

Passed: September 5, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Mayor Michelle Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7040

AN ORDINANCE TO REPLACE ORDINANCE NO. 6962 TO PROVIDE FOR FEES FOR PARKS AND RECREATION OPERATIONS AND SERVICES, AND DECLARING AN EMERGENCY.

WHEREAS, the Parks and Recreation Department operates various public amenities which are funded in whole or in part via user fees; and

WHEREAS, these fees are established and confirmed regularly to ensure high quality services are delivered in a cost-effective manner in alignment with Council and City financial goals and expectations; and

WHEREAS, Council, after careful analysis and review of the financial data concerning the cost of the operation, maintenance, debt services, and capital improvements at PipeStone Golf Course, Mound Golf Course, the Sycamore Trails Aquatic Center and for various public facility uses, has determined that the amendment of the fees and charges are necessary to maintain the financial integrity of these operations and services.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The previously established fee ordinance, Ordinance 6962 updating the Parks & Recreation Comprehensive Fee Schedule and Pricing Policies (2022) is hereby repealed

Section 2.

The comprehensive fee schedule and pricing policy document, attached as Exhibit A, providing for the fees of Parks & Recreation Operations and Services is hereby adopted.


Section 3.

The City Manager or designee is hereby authorized to establish rates and fees for Parks & Recreation programs, classes, events or other offerings not identified in Exhibit A.

Section 4.

This ordinance is declared to be an emergency measure necessary for the public peace, health safety and welfare and for the further reason that these fees need established at the earliest possible date to meet current fiscal expectations and to provide an equitable service delivery to users; therefore, this measure shall take effect and be in full force from and after its passage.

Passed: September 19, 2023 Attested: 
Kim Combs, Clerk of Council

Approved: 
Michelle L. Collins, Mayor



COMPREHENSIVE FEE SCHEDULE & RELATED POLICIES

EFFECTIVE: 1/1/2022
REVIEWED: 12/1/2021
COUNCIL APPROVED: 12/21/2021 ORD. 6939

UPDATED: 4/19/2022
COUNCIL APPROVED: 4/19/2022 ORD 6962

UPDATED: 9/19/2023
COUNCIL APPROVED: TBD



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Introduction

Introduction

The purpose of this policy is to ensure that the City of Miamisburg Parks and Recreation Department applies fees and charges in an objective, fair and non-discriminate manner for use of park and recreation facilities and services. Establishing park and recreation fees and charges is based on sound management practices, direction provided by City Administration, City Council, and general parks and recreation planning principles. This policy defines the department's philosophy, authority, practices, definitions, and procedures.

Mission

The City of Miamisburg Parks and Recreation Department's mission is to provide parks & recreation experiences that positively impact the community.

Vision

We will listen to and respond to the needs and desires of those we serve.
We aim to plant, grow and mature a high-quality of life for our community.
We wish to be the source for places, memories, skills, experiences & opportunities.

Values

Service – we are focused on providing high-quality, dependable and responsive services to the community
Meaningful Work – we are public servants; the work we do matters to those we serve
Inclusive Community – We are a professional team, dedicated to providing opportunities for everyone
Excellence – We do common things, uncommonly well

Revenue Philosophy

To meet our mission, strive for our vision and live out our values, the department's revenue philosophy is to balance the need for fiscal responsibility while meeting the needs of the community to provide a broad range of park and recreation services.

Authority

Parks and Recreation fees and charges for facility admission, membership and facility use are set forth by City Council based on recommendations from City Staff and review by the Parks and Recreation Advisory Board. In addition to these fees, the Parks and Recreation Director or designee is hereby authorized to approve fees for recreation programs, classes, events and miscellaneous services. The Parks and Recreation Department Director or designee is responsible for compliance, enforcement and adherence to this policy.

Notable Changes for 2024

Mound Golf Course

- \$2 increase to greens fees.
- Inclusion of Senior Rate (established at 2023 greens fee rates)

Pipestone Golf Course

- \$4 increase to maximum greens fee rates
- Inclusion of Senior Rate (established at 2023 greens fee rates)
 - 2024 General Rates will be:
 - \$33 weekday walking, \$43 weekend walking
 - \$49 weekday riding, \$59 weekend riding
 - 2024 Senior Rates will be:
 - \$29 weekday walking, \$39 weekend walking
 - \$45 riding weekday, \$55 riding weekend
 - Comparable rates of other local courses
 - Yankee Trace (2024 expected rate)
 - \$42 weekday walking, \$52 weekend walking
 - \$60 weekday riding, \$70 weekend riding
 - Heatherwoode (2024 expected rate)
 - \$44 weekday walking, \$65 weekend walking
 - \$54 weekday riding, \$75 weekend riding
 - Beavercreek (2024 expected rate)
 - \$40 weekday walking, \$50 weekend walking
 - \$57 weekend riding, \$67 weekend riding

Sycamore Trails Aquatic Center

- No Change

Other Memberships

- Removes fee for Canal Run Dog Park – transitions facility to a free, open to the public dog park

Public Facility Reservations

- No Change

Fee Schedule

2024 Fee Schedule

The following represents fees under the purview of City Council authority. These fees are to be in effect beginning 1/1/2024 and will remain in effect until or unless superseded or rescinded by City Council.

Mound Golf Course

Greens Fees and Cart Fees

Traditional Rates, Non-Member

	Walking	Riding
9 Holes	\$14	\$24
18 Holes	\$20	\$33
9 Holes Youth	\$9	n/a
9 Holes Senior	\$12	\$22
18 Holes Senior	\$18	\$31

Youth defined as a person ages 10-17 or in grades 5-12

Member Rates

	Walking	Riding
9 Holes Member	\$3	\$14
18 Holes Member	\$6	\$22
9 Holes Youth on Course Member	\$5	n/a

Youth on Course membership obtained for free at youthoncourse.com

Winter Rates, Non-Member

	Walking	Riding
9 Holes	\$10	\$12
18 Holes	\$14	\$20

Winter rates are in effect, course conditions permitting, December through February

Volunteers

	Walking	Riding
9 Holes (Level A)	Free	\$6
9 Holes (Level B)	Free	Free

Volunteers in level A volunteer 5 hours or less per week

Volunteers in level B volunteer 6 or more hours per week

Employees (Mound Golf Course)

Employees are provided free greens fees and cart fees provided they are active City of Miamisburg employees working at Mound Golf Course.

Fee Schedule

Employees (City of Miamisburg)

Active employees of the City of Miamisburg who are not working at Mound Golf Course may receive the following rates.

	Walking	Riding
9 Holes (Employee)	\$3	\$14
9 Holes (Employee family member)	\$6	\$16

Membership Rates

	Resident Rate	General Rate
Junior (10-17 or in grades 5-12)	\$105	\$255
Adult (18-54)	\$255	\$295
Senior (55+)	\$150	\$200
Couples (2 people)	\$340	\$445
Senior Couples (2 people 55+)	\$225	\$300
Family (4 people)	\$550	\$695

Couples and Family – Defined as a people living within the same household

Miscellaneous Rates & Authority

Residency at Mound Golf Course

For the purposes of membership rates at Mound Golf Course, a resident is defined as a person who lives within the City of Miamisburg corporation limits, or an individual who pays City of Miamisburg property or income tax.

Outings, Special Rates, Leagues or Events

The Parks and Recreation Director or designee is hereby authorized to determine and approve fees for outings, special rates, leagues or events.

Discounts and Complimentary Rounds

Only the Parks and Recreation Director or designee may approve complimentary or donated rounds of golf or the waiving of cart fees. Only the Parks and Recreation Director or designee may approve temporary rate specials or surcharges to the rates provided above.

Fee Schedule

Pipestone Golf Course

Greens Fees and Cart Fees

Traditional Rates, Non-Member

	Walking	Riding
9 Holes Weekday (M-Th)	\$26	\$36
9 Holes Weekend (F-Su)	\$28	\$38
18 Holes Weekday (M-Th)	\$33	\$49
18 Holes Weekend (F-Su)	\$43	\$59

Senior Rates, Non-Member

	Walking	Riding
9 Holes Weekday (M-Th)	\$22	\$32
9 Holes Weekend (F-Su)	\$24	\$34
18 Holes Weekday (M-Th)	\$29	\$45
18 Holes Weekend (F-Su)	\$39	\$55

Volunteers

Volunteers may receive one free round of play for each shift. The City Manager or designee has the discretion to modify shift requirements and corresponding golf privileges as needed.

Employees (Hampton Golf)

Active employees of Hampton Golf may receive the following rates.

	Walking	Riding
Hampton Employee - per round	\$8	???
Guest of Hampton Employee - per round	\$20	???

Employees (City of Miamisburg)

Active employees of the City of Miamisburg may receive the following rates.

	Riding
9 Holes Weekday (M-Th)	\$18
9 Holes Weekend (F-Su)	\$20
18 Holes Weekday (M-Th)	\$27
18 Holes Weekend (F-Su)	\$37

Range Fees

	Fee
Small Bucket (30 balls)	\$5
Medium Bucket (70-75 balls)	\$8
Large Bucket (90-100 balls)	\$11

Range Unlimited Use Rates

	Fee
--	-----

Fee Schedule

Junior (10-17 or in grades 5-12)	\$200
Adult (18+)	\$250

Range Value Pass Rates

Value Pass Cards (VPC) provide 12 buckets for the price of 10 for an individual.

	Fee
Small Bucket (30 balls)	\$40
Medium Bucket (70-75 balls)	\$60
Large Bucket (90-100 balls)	\$70

Membership Rates

The Membership Program at Pipestone Golf Course will be limited to 65 total memberships active at any time. The membership base is limited to at least 35 resident members, and at least 15 non-resident members, any membership over these 50 memberships may be offered based on the receipt order of membership applications.

Memberships may not be used for participation in outings, leagues or special events. Golf carts are required for weekend play (Friday-Sunday) before 2:00 p.m..

Monday-Sunday Membership Format:

	Membership Rate
Membership Fee	\$1,695
Unlimited cart add-on (per person)	\$500

Monday-Sunday Members receive the following benefits:

- Unlimited greens fees
- 10-day preferred tee time requests
- 10% off merchandise
- Preferred guest rate (18 holes): \$36 weekday w/cart, \$46 weekend w/cart
- Unlimited range buckets
- Complimentary GHIN handicap service
- Complimentary membership to Mound Golf Course (member playing fees apply)
- Exclusive access to family upgrade option – provides up to 4 members, living in the same household, including children 17 and under, at a rate of \$750 per person.

Junior Monday-Sunday Membership Format:

Available to those 10-17 years old or in grades 5-12.

	Resident Rate	General Rate
Membership Fee	\$475	\$495
Unlimited cart add-on (per person)	\$495	\$495

Junior Monday-Sunday Members receive the following benefits:

- Unlimited greens fees
 - Monday-Thursday, anytime

Fee Schedule

- Friday-Sunday & Holidays, after 2:00 p.m.
- 10-day preferred tee time requests
- 10% off merchandise
- Preferred guest rate (18 holes): \$36 weekday w/cart, \$46 weekend before 11:00 a.m. w/cart
- Unlimited range buckets
- Complimentary GHIN handicap service
- Complimentary membership to Mound Golf Course (member playing fees apply)

Non-Traditional Cart Membership

The non-traditional cart membership provides members the opportunity to utilize personal golf cars, e-bikes, or other non-traditional modes of transportation on the course. Members must sign liability waiver, follow all golf rules and regulations (such as 90° rule, no vehicles on greens, etc.) and must pay applicable greens fees for each round.

Non-Traditional Cart Membership

	Membership Rate
Non-Traditional Cart Membership	\$500

Pre-paid Tee Time Reservations Program

The pre-paid tee time reservation program designates the first five tee times between 7 a.m. and 10 a.m. on Saturdays and Sundays available to be reserved. This program allows a foursome to reserve the same tee time each week for the 28-week period from April 1 – November 30. The pre-paid tee time program is limited to the first five tee times sold on Saturday and Sunday, based on a first come, first serve basis.

Pre-Paid Tee Time Reservation Fee:

	Service Fee
Reservation Fee	\$50

Reservation fee is non-refundable.

The regular posted greens fee, either resident or general rate including cart fees will be applicable for rounds played under this program.

Pre-paid Golf Packages

The pre-paid golf package allows the pre-payment of rounds and cart fees at a discounted rate. Rounds are not transferrable and may not be redeemed during holidays, outings, events, pre-paid tee time reservations or leagues.

Corporate Pre-Paid Golf Package:

Rounds valid Monday-Sunday, anytime

	Total Fee
100 round package with cart	\$3,900

Fee Schedule

72 round package with cart	\$2,944
48 round package with cart	\$1,996
20 round package with cart	\$865

Rounds valid Monday-Friday, anytime

	Total Fee
100 round package with cart	\$3,200
72 round package with cart	\$2,394
48 round package with cart	\$1,671
20 round package with cart	\$715

Individual Pre-Paid Golf Package:

18 holes of golf with cart fee included

	Total Fee
10 round weekday (M-Th)	\$320
10 round weekend (F-Su)	\$420

Senior Individual Pre-Paid Golf Package:

18 holes of golf with cart fee included. Must be 55 years or older

	Total Fee
10 round weekday (M-Th)	\$270
25 round weekday (M-Th)	\$650

Miscellaneous Rates & Authority

Residency at Pipestone Golf Course

For the purposes of membership rates at Pipestone Golf Course, a resident is defined as a person who lives within the City of Miamisburg corporation limits, or an individual who pays City of Miamisburg property or income tax.

Hampton Golf Management Company Special Rate and Surcharge Authority

The City Manager or designee is hereby authorized to approve outing and special rates for leagues, events or promotions, proposed by the current management company of Pipestone Golf Course, Hampton Golf, which are developed to increase rounds during non-peak times, to attached golf play, market the course, or respond to market conditions. Hampton Golf, in coordination with the City Manager or designee may approve complimentary or donated rounds of golf or the waiving cart fee. Hampton Golf is authorized to exceed the above rates for Saturday and Sunday morning during high utilization times at riding fee (greens fee + cart fee) not to exceed \$57 per round.

Fee Schedule

Membership Limit Authority

The City Manager or designee is hereby authorized alter the number of passes sold as the market dictates and to develop and issue any other regulations or program requirements needed to implement the season pass program.

Fee Schedule

Sycamore Trails Aquatic Center

Admissions Rates

Daily Admission Rates

	Resident Rate	General Rate
Toddler (3 and under)	free	free
Youth (4-17)	\$5.00	\$8.00
Adult (18-54)	\$6.00	\$9.00
Senior (55+)	\$5.00	\$8.00

Value Pass Card Rates

	Resident Rate	General Rate
Youth (4-17)	\$50	\$80
Adult (18-54)	\$60	\$90
Senior (55+)	\$50	\$80

Value Pass Cards (VPC) provide 12 daily admissions for an individual. VPC is valid for the season in which it is purchased and will not prorated for prior visits.

Employees (Sycamore Trails Aquatic Center)

Employees are provided free admission provided they are active City of Miamisburg employees working at the Sycamore Trails Aquatic Center.

Employees (City of Miamisburg)

Active employees of the City of Miamisburg who are not working at the Sycamore Trails Aquatic Center may receive the following admission rates.

	Admission Rate
Employee	\$2.00
Employee family member	\$4.00

Season Pass Rates

Season Passes provides unlimited admission to the Sycamore Trails Aquatic Center, exclusive early admission (facility opens 30 minutes early for season pass holders and their guests*) and access to Sunday open swims (reserved for Passholders, Residents and their guests only).

	Resident Rate	General Rate
Youth (4-17)	\$65	\$85
Adult (18-54)	\$75	\$95
Senior (55+)	\$65	\$85
Family (4 persons)	\$170	\$230
Additional family member	\$30/person	\$40/person

Family – Defined as four people living within the same household

Fee Schedule

Employees (City of Miamisburg)

Active employees of the City of Miamisburg who are not working at the Sycamore Trails Aquatic Center may receive the following membership rates:

	Season Pass Rate
Youth (4-17)	\$45
Adult (18-54)	\$55
Senior (55+)	\$45
Family (4 persons)	\$120
Additional family member	\$20

Miscellaneous Rates & Authority

Residency at Sycamore Trails Aquatic Center

For the purposes of membership rates at Sycamore Trails Aquatic Center, a resident is defined as a person who lives within the City of Miamisburg corporation limits, or an individual who pays City of Miamisburg property or income tax or lives in Miami Township.

Twilight Rate

Daily Admission rate is reduced by \$1.00 on all admissions after 5:00 p.m.

Early Admission Rate

Season Pass Holders, or their guests, may purchase early admission to the facility. Early entry fee is \$1.00 in addition to the applicable admission rate, per person, per entry. With the purchase of early admission, guests of passholders may enter the facility during the exclusive early entry period (11:30 a.m.-12pm) when accompanied with a season passholder.

Group Admission Rate

The Parks and Recreation Director or designee is authorized to provide group admission discounts for groups of 20+ individuals.

Discounts and Complimentary Admission & Season Passes

Only the Parks and Recreation Director or designee may approve complimentary or donated admissions or season passes. Only the Parks and Recreation Director or designee may approve temporary rate specials or surcharges to the rates provided above.

Fee Schedule

Other Memberships

Senior Adult Club

Annual Membership to the Senior Adult Club

	Resident Rate	General Rate
Senior Adult Club (55+)	\$15	\$20

Canal Run Dog Park

Annual Membership to the Canal Run Dog Park is hereby withdrawn. Canal Run Dog Park will be transitioned to a free, open to the public dog park.

Miscellaneous Rates & Authority

Discounts and Complimentary Memberships

Only the Parks and Recreation Director or designee may approve complimentary, donated or discounted membership rates. Only the Parks and Recreation Director or designee may approve rate specials or surcharges to the rates provided above.

Employees (City of Miamisburg)

Active employees of the City of Miamisburg may receive the following membership rates.

	Annual Membership
Senior Adult Club	free
Canal Run Dog Park	free

Fee Schedule

Public Facility Use Rates

Indoor Facility Rental Rates

Miamisburg Community Center 305 E. Central Ave.	Hourly Rental Rate	Deposit
Community Hall	\$75	\$100
Community Room	\$75	\$100
Blue Room	\$25	\$50
Kitchen	\$25	\$50

\$50 setup fee applies when requested.

Miamisburg Community Center North 224 Maple Ave.	Hourly Rental Rate	Deposit
Community Center North	\$75	\$100

\$50 setup fee applies when requested.

Community Park Learning Center 550 S. First St.	Hourly Rental Rate	Deposit
Community Park Learning Center	\$50	\$100

\$50 setup fee applies when requested.

Market Square Building 4 N. Main St.	Hourly Rental Rate	Deposit
Miller-Chamberlain Auditorium	\$100	\$100

\$50 setup fee applies when requested.

Outdoor Facility Rental Rates

Sycamore Trails Aquatic Center 400 S. Heincke Rd.	Hourly Rental Rate	Deposit
Less than 100 attendance	\$325	\$100
101-249 attendance	\$375	\$100
250+ attendance	\$450	\$100

Rice Field 9399 Dayton Cincinnati Pike	Hourly Rental Rate
Field	\$20

\$25/hour lighting fee per field applies when requested.

Park Shelters	Hourly Rental Rate
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Fee Schedule

Reservable Shelters	free
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Reservable shelters include Mound Park Large Shelter, Mound Park Rotary Shelter, Sycamore Trails Park Large Shelter and Sycamore Trails Park Nature Center. Reservable shelters are available at a first-come first-serve basis unless formally reserved.

All non-reservable park shelters are available at a first-come first-serve basis.

Miscellaneous Rates & Authority

Damage to facilities

Any damage to facilities resulting from a facility rental will result in the loss of security deposit. Renter will be responsible for charged the value of the cost of repair.

Discounts and Complimentary Rentals

Only the Parks and Recreation Director or designee may approve complimentary, donated or discounted facility reservation rates. Only the Parks and Recreation Director or designee may approve rate specials or surcharges to the rates provided above.

Employees (City of Miamisburg)

Active employees of the City of Miamisburg may receive the following discount to facility rental rates.

Rental Discount	
Hourly Rental Discount	25%

Temporary Rental Rates

Should the Parks and Recreation Department wish to rent a new facility, not identified in this section, the Parks and Recreation Director or designee is hereby authorized to provide a temporary rental structure for said facility, in place only and until a new fee schedule can be authorized. This rental structure is deemed to be temporary in nature and should not be construed as a permanent facility rental structure or location until and unless formally authorized by City Council.

Public Facility Use Policy

Public Facility Use Policy

PURPOSE:

The Miamisburg Parks and Recreation Department is committed to meeting the recreation and leisure needs of the community. This policy has been established to monitor, control, and prioritize facility usage in a fair and non-discriminative manner.

SCHEDULING PRIORITIES:

The scheduling of use by community organizations and other agencies of City facilities are based on the following criteria:

- Level of affiliation to City departments and programs
- City residency*
- Level of broad base benefit for Miamisburg residents

Approval of requests for use will be evaluated based on the organization classification in the following order:

Category A: City Departments and Programs

Category B: Official City Boards and Commissions with an organized governing board and organizational bylaws.

Category C: Non-profit organizations with official mailing located within Miamisburg corporate limits.

Category D: For-profit organizations or residents located within Miamisburg corporate limits* with direct benefit going to a non-profit organization or individual that is located within Miamisburg corporate limits (fundraiser).

Category E: Requests by Miamisburg residents and businesses for private use that are within the Miamisburg corporate limits.

Category F: Other organizations, groups or individuals that do not qualify for Categories A - E status.

* "Resident" is defined as a person who lives within the City of Miamisburg corporation limits or pays City of Miamisburg property or income tax. This is different than a Miamisburg mailing address.

Public Facility Use Policy

Verification of residency, non-profit status and scope of usage (purpose, participants and benefactor) must be submitted with each use request. Non-Profit organizations must have a tax identification number, an organized governing board and organizational bylaws and be willing to provide evidence to the City of Miamisburg on a yearly basis.

FACILITIES AND FEES:

The City of Miamisburg owns and operates the facilities listed below. Note that each facility has different reservation and fee requirements.

Facility	Available Usage	Fee	Contact
Athletic Facilities**	Categories A & B	No	Parks & Recreation Office 866-8999
Athletic Facilities**	Categories C - F	Yes	Parks & Recreation Office 866-8999
Carnegie Center	Categories A & B	No	Parks & Recreation Office 866-8999
Carnegie Center	Categories C - F	Yes	Parks & Recreation Office 866-8999
Community Park Learning Center	Categories A & B	No	Parks & Recreation Office 866-8999
Community Park Learning Center	Categories C - F	Yes	Parks & Recreation Office 866-8999
Gebhart Tavern	Categories A & B	Contact Miamisburg Historical Society	Miamisburg Historical Society 859-5000
Market Square	Categories A & B	No	Parks & Recreation Office 866-8999
Market Square	Categories C-F	Yes	Parks & Recreation Office 866-8999
Mound Clubhouse	Categories A - F	Yes - Food Service	Mound Golf Course 866-2211
Park Shelters**	Categories A - F	No	Parks & Recreation 866-8999

Public Facility Use Policy

Pipestone Clubhouse	Categories A - F	Yes – Food Service	Pipestone Golf Course 866-4653
Senior Adult Center	Categories A & B	No	Senior Adult Center 866-8999
Sycamore Trails Aquatic Center	Categories A & B	No, rentals available at established times	Sycamore Trails Aquatic Center 847-6565
Sycamore Trails Aquatic Center	Categories C - F	Yes, rentals available at established times	Sycamore Trails Aquatic Center 847-6565

** The Parks and Recreation Department accepts reservations for Rice Fields, Sycamore Disc Golf, Beachler Park for the Spring (April 1 – July 31) and Fall (August 1- October 31) seasons. Spring requests are accepted beginning December 1. Fall requests are accepted beginning July 1. Tournament organizers should submit the Athletic Field Use Request Form to reserve a date(s).

** The Parks and Recreation Department accepts reservations for the Sycamore Large, Sycamore Nature, Mound Large and Mound Rotary shelters. All other shelters in City parks are available for drop in use by daily park users on first come, first serve basis.

Parks and other outdoor open City recreation areas (i.e., tennis courts, basketball courts, picnic shelters, etc.) are available on a first come-first-serve basis for general usage. Facility users may not use City facilities to conduct instructional or fee-based programs without Miamisburg Parks and Recreation Department approval.

RESTRICTED ACTIVITIES:

Alcoholic beverages are not permitted in City facilities, other than Mound and PipeStone Golf Courses or facilities within the DORA District marked as such. Smoking is not permitted in any City facility.

Requests for the City of Miamisburg Parks and Recreation Department facilities will be refused when any of the following factors exist, as determined by staff:

1. **Risk and Liability** – Activities involving high risk to participants or high liability to the City of Miamisburg. The City may require an organization to secure liability insurance for programming activities which the group intends to provide at City facilities. Insurance binders must be submitted to the Miamisburg Parks and Recreation Department Administrative Office before any such activities take place.
2. **Duplication of programming** – Activities which duplicate existing Parks and Recreation Department programming will not be scheduled at the same time as existing programs

Public Facility Use Policy

or at any time if they infringe upon or are in any way detrimental to the City's existing programs.

3. **Delinquent user or group** – An individual, group, or organization that has demonstrated the inability to follow the rules and regulations of the facility; respect staff, patrons or the facility and/or the inability to make restitution for damages from previous facility use.

PROCEDURES:

Application for Use

Users 18 years of age and older wishing to rent a Miamisburg Facility must complete a Miamisburg Parks and Recreation Department Event Application or Facility Use Request application and submit it to the Parks and Recreation Department Administrative Office a minimum of four weeks before usage date, unless otherwise noted. Please note that at the time of reservation a deposit via credit card is required. The user's name making the reservation must match the name on the credit card and signature on the facility reservation waiver.

Event Application

Event applications provide information about an event that will be held on City property. Event information provides staff with details of the event that assist in determining the set-up, such as road closures, insurance requirements, electrical needs, etc. and cost. Items distributed at an event and any pre-event promotions (i.e., pamphlets, advertising, etc.) must be pre-approved by the Miamisburg Parks and Recreation Department prior to distribution. Promotional material must be submitted to the Department a minimum of two weeks prior to distribution. Any unauthorized promotion may result in cancellation of facility use. Miamisburg Parks and Recreation Department reserves the right to edit any promotional copy.

Facility Use Request

The Facility Use Request application provides date and location requested for reservation purposes only. Requests for special equipment, electrical, or table and chair set-up needs must be included on the application. The responsible party for each facility use must sign a liability waiver as part of the application process.

The City of Miamisburg reserves the right to amend this policy with City Council approval. The City Manager or designee is authorized to waive policy requirements on a case-by-case basis, and the City Manager or designee is also authorized to develop operational procedures to implement the Public Facility Use Policy.

Special Event Policy

Special Event Application Policy and Fees

General Policy Statement

The City of Miamisburg plans, develops, coordinates, sponsors, co-sponsors and implements as well as encourages its residents and businesses to do the same for special events that enhance the quality of life, provide entertainment and other leisure activities, promote local economic health, attract visitors and contribute to the dynamic atmosphere of the community.

To facilitate the use of City-owned, leased or managed parks or recreation facilities and any public property, the City has established Ordinances, Policies and Procedures to ensure the success of such events. These are designed to ensure the success of such events by providing a system for advanced planning, standard information, basic ground rules and a formalized special event permit process that allow special event organizers to achieve the mutual goals, maximizing the events impact on the community and minimizing the burden of the event on the community.

It is the purpose of this policy and related procedures to regulate Special Events help within the City of Miamisburg so that such events can occur with the health, safety and welfare of the participants in mind, the protection of public property considered, and the impact of non-participating residents and business minimized.

The City of Miamisburg recognizes that the Parks and Recreation department plays the lead role in permitting special events within the community and that there are other governmental and non-governmental agencies whose interests should be considered during the event planning and permitting process. Approval from other entities may be required to complete the City of Miamisburg Special Event Permit approval process. The City of Miamisburg has jurisdiction over public parks, roadways and property. Events utilizing the Great Miami River or the Great Miami River Recreational Trail require additional approval/permits from the Miami Conservancy District and/or the Five Rivers Metroparks. It is the responsibility of the event organizer to ensure that all applicable rules are followed and authorizations of are receive for spaces outside of the City's jurisdiction.

Special Event Policy

What is considered a Special Event?

Any festival, concert, parade, running/walking event, public performance or announced public gathering held on a public street, right-of-way, or property of the City or events that require the closure of a public street require a special event permit. Any activity conducted in a public park, or parades and running/walking events that are conducted within the right-of-way but do not require the closure of a public street also require a special event permit.

A Special Event is defined and a Special Event Permit is required if your event meets **any** of the following criteria:

- Any public gathering (defined as more than 75 in attendance) on a public street or public property within the City limits
- The anticipated number of participants/attendees will limit or impede general public access
- Over five (5) 10ft. x 10ft. pop-up tents or a single tent larger than 200 sq. ft.
- Bounce House, Large Inflatables or other Amusements
- Amplified sound beyond a personal/Bluetooth speaker
- Fireworks, Pyrotechnics, or other Flame affects under ORC 3743.54
- Alcohol Sales under ORC 4303
- Vendors, Sale of Goods or Food Service
- Closure of a public street
- Exclusive or designated use of waterway, trail, or other recreation amenity
- Market/Showcase/Performance within a public park, on public property or in a public street
- Events with City-wide marketing, promotion, social media postings or other communications

Typical special event types:

- Races, Runs & Rides (gathering, starting, finishing or using public property)
- Concerts, Performances & Productions (on public property)
- Festivals or Carnivals
- Markets or Sales
- Fireworks Events
- Parades

Special Event Policy

First Amendment Activity

Special events sometimes attract First Amendment or free speech activity which is the right of persons and groups to peaceably assemble. Persons and groups engaging in First Amendment-related activities have the right to:

- Organize and participate in peaceful assemblies to express their political, social, or religious views in a peaceful manner which can include collecting signatures, demonstrations, or other similar gatherings in public areas.

The City of Miamisburg is responsible for managing First Amendment activities taking place on public property or when a large attendance is anticipated. When an event is designed as a First Amendment activity or is anticipated within or at another event, the City of Miamisburg will discuss the planning and logistics surrounding the activity and may make suggestions to ensure the safety and rights of all are protected. Ultimately, the manner in which the activity will be managed depends on a number of factors including how the special event is organized, the location and venue configuration of the event, the number of people involved, the type of protest activity anticipated, and the city resources available to manage the overall scope of activities.

Special Event Policy

What does it cost to submit an Event Permit Application?

Application Fees for Special Event Permits and event consideration are tiered based on the following criteria:

- Level of affiliation to City, City Departments and/or programs
- City residency
- Level of broad base benefit for Miamisburg residents

Application Fees and Approval of requests for use will be evaluated based on the Event Organizer's classification in the following order:

- Category A: City Departments, Events, Programs and Official City Boards and Commissions with an organized governing board and organizational bylaws.
- Category A-1: Event Organizers with a current, fully executed partnership, facility-use or event coordination agreement.
- Category B: Non-profit organizations with official mailing located within Miamisburg corporate limits.
- Category C: For-profit organizations or residents located within Miamisburg corporate limits with direct benefit going to a non-profit organization that is located within Miamisburg corporate limits (fundraiser).
- Category D: Requests by Miamisburg residents and businesses for private use that are within the Miamisburg corporate limits without direct benefit going to a non-profit organization or with direct benefit going to an individual resident of Miamisburg.
- Category E: Other organizations, groups or individuals that do not qualify for Categories A - E status.

Applicant Category	Application Fee Per Event*
Category A, A1	\$0
Category B	\$50
Category C	\$100
Category D	\$200
Category E	\$300

* Application fees are due for each event application. Recurring events, defined as those requests with the generally same event occurring over multiple days or on multiple occasions (up to 4) per year fall under a single application. If there are multiple events or significant

Special Event Policy

alterations in event design, logistics or support needed, a separate application fee may be required.

Special Event Permit Process

Pre-Permit Phase

- Special Events Guidebook and FAQ
 - Potential event organizers should review these documents which will provide guidance on the application process, planning a successful event and answer common questions in the event permit process.

Permit Phase

- Initial Permit Application
 - The application contains necessary information to perform an initial review of the event. **MUST BE COMPLETED according to timeline below** with the following items:
 - Complete Application
 - Application fee
- Initial Review by Parks & Recreation Department Staff (Conditional Approval)
- Planning and Review Meeting with Event Organizer
- Submission of Event Management Documents by Event Organizer that include:
 - **Communication & Information Plan**
 - **Emergency Action Plan**
 - **Insurance & Hold Harmless Information**
 - **Logistics and Implementation Plan**
 - **Site Plan & Event Layout**
 - **Traffic Control Plan**
 - **Waste Management Plan**

Depending on the event request, the following may be required:

 - **Alcohol Control Plan**
 - **Fireworks Plan**
 - **Food & Beverage Vendor Plan**
 - **Entertainment Plan**
- Parks and Recreation Department Review
- City of Miamisburg Support and Response Services Meeting
 - Police, Miami Valley Fire District, Public Works, Engineering, City Manager's Office
 - City/MMA/Miamisburg Event Committee Review
- Outside Entities Permitting/Authority (if needed)
 - Miami Conservancy District, etc.
- Final Permit Approval

Preparation Phase

- Event Final Planning & Logistics
- Partnership & Cost Sharing Agreements (if needed)
- Communication with Support Partners

Special Event Policy

Event Implementation & Review

- Event Execution
- Review & Evaluation

Criteria for Approval/Disapproval

In issuing a permit for a special event, the City considers whether:

1. The event is reasonably likely to cause injury to persons or property, create a disturbance, cause disorderly conduct or encourage or result in violation of the law, or community standards;
2. The event will unreasonably and substantially interrupt the safe and orderly movement of pedestrians and vehicular traffic in the area;
3. The proposed location is adequate for the size and nature of the event;
4. The event does not unreasonably interfere with the intended use of the area (e.g. athletic fields, picnic areas, etc.);
5. The event does not unreasonably interfere with or substantially limit public access to public property or private businesses;
6. The Applicant's apparent ability to execute the event;
7. The Applicant's ability to obtain the appropriate insurance and outside approval (when necessary);
8. The event unreasonably conflicts with other scheduled programs, special events or gatherings in the community; and
9. All permit requirements, plans and documents have been submitted and criteria met.

Required Approvals/Appeals Process

The application review process begins when the City's Parks and Recreation Department has received a completed application. Applications and related planning efforts and documents for special events must be approved by all appropriate departments, including but not limited to the Parks & Recreation Department, Police Department, Public Works Department, Development Department, City Engineer's Office, Miami Valley Fire District, City Manager's Office and City Council (where required). In the event that an application is denied by the City, the applicant may appeal to the City Manager's Office in writing within five (5) days of denial. The decision of the City Manager is final.

Special Event Policy

Application and Event Planning Timeline Requirements

1. **General events without any of the elements listed below in #2-4**
 - a. Initial Application submitted **30 days** in advance of the event
 - b. Plan and Required Documents must be submitted **21 days** in advance of event
 - c. Final approval will be determined at least **14 days** in advance of the event*

2. **Events with Road Closures**
 - a. Initial Application submitted no less than **90 days** in advance of event
 - b. Plan and Required Documents must be submitted **45 days** in advance of event
 - c. Final approval will be determined at least **30 days** in advance of the event*

3. **Festivals, Carnivals or large-scale events**
 - a. Initial Application submitted no less than **180 days** in advance of event
 - b. Plan and Required Documents must be submitted **90 days** in advance of event
 - c. Final approval will be determined at least **75 days** in advance of the event*

4. **Events with Fireworks, Pyrotechnics or other Flame Elements**
 - a. Initial Application submitted no less than **180 days** in advance of event
 - b. Plan and Required Documents must be submitted **90 days** in advance of event
 - c. Final approval will be determined at least **75 days** in advance of the event*

5. **Events with Alcohol Sales**
 - a. Initial Application submitted no less than **180 days** in advance of event
 - b. Plan and Required Documents must be submitted **90 days** in advance of event
 - c. Final approval will be determined at least **60 days** in advance of the event*

*The City recognizes that in planning and executing Special Events some logistics and preparation elements may not align with the timeline requirements of the permit process, this timeline is designed to allow for proper preparation, review and approval to be done in advance so that the event organizer can be assured in the status of their event, while balancing the effort required to plan and organize an event within final and/or official approval. In addition, these timelines take into consideration the time and planning requirements for City Review, City Council Review (when required) as well as outside entity review and approval.

Special Event Policy

Event calendar, and public outreach efforts

Through the Special Event Process, event organizers, including those who do not meet the requirements of requiring a special event application may be included within the “What’s Happening in Miamisburg”, Event Calendar, or other publications disseminated to the public. Certain Fees for Special Event Marketing are tiered based on the following criteria:

- Level of affiliation to City, City Departments and/or programs
- City residency
- Level of broad base benefit for Miamisburg residents

Application Fees and Approval of requests for use will be evaluated based on the Event Organizer’s classification in the following order:

- Category A: City Departments, Events, Programs and Official City Boards and Commissions with an organized governing board and organizational bylaws.
- Category A-1: Event Organizers with a current, fully executed partnership, facility-use or event coordination agreement.
- Category B: Non-profit organizations with official mailing located within Miamisburg corporate limits.
- Category C: For-profit organizations or residents located within Miamisburg corporate limits with direct benefit going to a non-profit organization that is located within Miamisburg corporate limits (fundraiser).
- Category D: Requests by Miamisburg residents and businesses for private use that are within the Miamisburg corporate limits without direct benefit going to a non-profit organization or with direct benefit going to an individual resident of Miamisburg.
- Category E: Other organizations, groups or individuals that do not qualify for Categories A - E status.

Applicant Category	Advertising Web & Print Fee Per Event*	Advertising Web Only Fee Per Event*
Category A, A1	\$0	\$0
Category B	\$100	\$25
Category C	\$200	\$75
Category D	\$300	\$100
Category E	\$500	\$200

* Application fees are due for each event application. Recurring events, defined as those requests with the generally same event occurring over multiple days or on multiple occasions (up to 4) per year fall under a single application. If there are multiple events or significant

Special Event Policy

alterations in event design, logistics or support needed, a separate application fee may be required.

ORDINANCE NO. 7041

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A PROJECT MANAGEMENT AND FINANCING AGREEMENT WITH THE MONTGOMERY COUNTY TRANSPORTATION DISTRICT, AND DECLARING AN EMERGENCY.

WHEREAS, the City desires to finance and construct improvements known as the Sycamore Trails Improvement Project; and

WHEREAS, the City has utilized the Montgomery County Transportation Improvement District, and the Project Management and Financing Agreement successfully on various projects since 2017; and

WHEREAS, the City desires to engage the TID to manage and construct improvements within the park under the terms of the PMFA; and

WHEREAS, the City desires to proceed with Phase I and Phase II of the project simultaneously.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The PMFA is hereby determined to be necessary for the Sycamore Trails Improvement Project.

Section 2.

The City Manager is hereby authorized to make changes to finalize the draft agreement included with this ordinance, in agreement with the Transportation Improvement District, as needed, so long as modifications do not substantially alter the intent, responsibilities of either party, or financial liability for the City.

Section 3.

The City Manager is hereby authorized to execute the Project Management and Financing Agreement for Phase I and Phase II of the Sycamore Trails Improvement Project.

Section 4.

This measure is hereby declared to be an emergency necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date in order to complete the project in a timely manner, therefore, this measure shall be in force from and after its passage.

Passed: October 3, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Mayor Michelle Collins
Michelle L. Collins, Mayor

**SYCAMORE TRAILS
PROJECT MANAGEMENT AND FINANCING AGREEMENT**

THIS SYCAMORE TRAILS PROJECT MANAGEMENT AND FINANCING AGREEMENT (this "**Agreement**") is made and entered into as of the ___ day of _____, 2023 (the "**Effective Date**"), by and between the **CITY OF MIAMISBURG, OHIO**, an Ohio municipal corporation (the "**City**"), and the **MONTGOMERY COUNTY TRANSPORTATION IMPROVEMENT DISTRICT**, a transportation district and body corporate and politic duly organized and validly existing under the laws of the State of Ohio (the "**TID**") (the City and the TID are sometimes referred to herein individually as "**Party**" and collectively as "**Parties**"), under the following circumstances:

- A. The City desires to engage the TID to assist the City in connection with the planning and potential construction of certain pedestrian access, multi-use trail and other pedestrian and recreational improvements to Sycamore Trails Community Park, in order to assure the availability of safe, accessible multi-use transportation corridors (the "**Project**");
- B. The City agrees that the City will receive material transportation and economic benefit from the Project;
- C. The City has engaged a consultant to perform the design and engineering services for the Project;
- D. The Parties acknowledge that the Project may comprise two phases: "**Phase I**", which will include certain planning, pre-construction material acquisition, and preliminary access improvements; and "**Phase II**", if applicable, which may include substantial construction; and
- E. The Parties desire to support the Project by entering into this Agreement to set forth in more detail each of their respective obligations with respect to the Project, and, therefore, the City Council of the City, and the TID, acting pursuant to Resolution No. _____ adopted by its Board of Trustees on _____, 2023, have each authorized the execution of this Agreement.

NOW THEREFORE, in consideration of the above, and based upon the mutual promises contained below, the Parties agree as follows:

1. **The Project Generally.** The Parties hereby agree to cooperate to develop and implement the Project as set forth in this Agreement. A visual depiction of the total scope of the Project as of the Effective Date is attached hereto as Exhibit A.

2. **Phase I Schedule.** The Parties will work to together to develop a schedule for Phase I (the "**Phase I Schedule**"). The Parties agree to use their reasonable commercial efforts to adhere to the Phase I Schedule and to fulfill all their obligations under this Agreement so the Phase I Schedule is met.

3. **Phase I Budget.** The budget for Phase I is set forth in Exhibit B (the "**Phase I Budget**"). Notwithstanding anything in this Agreement to the contrary, the TID will not be obligated to provide for any products or services related to the Project in excess of the funds actually received by the TID from the City, less the TID Management Fees (as defined in Section 4 below).

4. **TID Management Fees.**

A. The City hereby agrees to pay the TID an amount equal to \$50,000 (the "**TID Phase I Management Fee**") as compensation to the TID for the Phase I Tasks and TID Management Services related to Phase I of the Project. The City will pay the TID Phase I Management Fee within thirty (30) days after execution of this Agreement.

B. In addition to the TID Phase I Management Fee, the City hereby acknowledges that to the extent the Parties enter into a Phase II Addendum (as defined in Section 7 below), the City will be required to pay the TID an additional fee for the TID's services related to Phase II. Without limiting the foregoing, to the extent the TID is engaged to manage construction in connection with Phase II, the City will be required to pay the TID an amount equal to 4% of the total cost of the Project (as applicable, the "**TID Phase II Management Fee**", and together with the TID Phase I Management Fee, the "**TID Management Fees**"), upon the earlier of: (i) the closing of a Phase II Borrowing (as defined in Section 6 below), or (ii) the date the TID lets any contract for Phase II.

5. **Specific Phase I Provisions.**

A. *Effective Date and Termination.* Phase I will begin on the Effective Date and will terminate upon the earlier of: (i) the date both Parties have completed their respective obligations under Phase I; provided, however, any obligations not completed by a Party may be waived (in writing) by the other Parties; (ii) the date both Parties agree, in writing, to terminate the Project; and or (iii) immediately upon written notice to a Party in the event the Party breaches its obligations hereunder and fails to cure such breach within fifteen (15) days following written notice from the non-breaching Party.

B. *Phase I Tasks.* During Phase I, the Parties will cooperate to perform the following tasks (the "**Phase I Tasks**"):

(i) The TID will procure the materials set forth in Exhibit C attached hereto.

(ii) The TID will engage a contractor pursuant to the TID's policies and procedures to perform tree-clearing services as necessary to begin trail improvements.

(iii) The TID will engage a contractor pursuant to the TID's policies and procedures to complete certain adjustments of drive access from Mauc Road.

(iv) The TID will assist the City in developing a financing plan for the costs associated with the Project (the "**Phase II Financing Plan**").

(v) The TID will assist the City in identifying other tasks that may comprise Phase II.

C. *Specific TID Management Services.* During Phase I the TID will provide project planning, project coordination, strategy development, and project supervision services for the Phase I Tasks (the "**TID Management Services**"). The TID will pay all invoices for services accomplishing Phase I Tasks (the "**Third Party Services and Costs**") so long as such Third Party Services and Costs are satisfactory to the TID and such invoices are within the Phase I Budget. The TID will keep the City apprised of the progress of Phase I as compared to the Phase

I Budget at Progress Meetings (as described in Section 10 below) and will provide the City such supporting information as reasonably requested on a timely basis.

6. **Funding for the Project.** As a general matter, the City will be obligated to fund the entire cost of the Project, whether via a borrowing or an alternative source of funds. The Phase II Financing Plan may include a borrowing from the ODOT State Infrastructure Bank (the "**SIB**") or an alternative source of financing (a "**Phase II Borrowing**"). The City acknowledges that the TID will not act as the primary borrower in connection with a Phase II Borrowing. To the extent the TID agrees to participate in a Phase II Borrowing as required by the SIB or other lender or otherwise in order to facilitate the administration of the borrowing proceeds, the City will be required to fully guaranty the TID's obligations and hold the TID harmless from any related liability. The City's obligations may include, without limitation, a pledge of available revenue stream(s). The Parties acknowledge that in executing this Agreement, no Party is committing to undertake a Phase II Borrowing. The City will fulfill its payment obligations hereunder and as set forth in the applicable budget by timely depositing the amounts of such obligations (including amounts related to any contingencies) with the TID (the "**Deposit**"). The TID will deposit the Deposit (less fees payable to the TID) in a segregated fund for the benefit of the Project (the "**Deposit Fund**"). Within forty-five (45) days after the termination or conclusion of the Project, the TID will deliver the balance of the Deposit Fund, if any, to the City.

7. **Phase II.** The Parties will only proceed to Phase II upon the negotiation and mutual execution of a subsequent addendum to this Agreement to set forth the Parties' respective rights and obligations with respect to Phase II of the Project, including without limitation the scope, schedule, and budget for Phase II of the Project (the "**Phase II Addendum**").

8. **TID Payment Obligations.** Notwithstanding any provision of this Agreement, it is understood and agreed that the TID will have no pecuniary obligations under this Agreement or any related agreement and no obligation of the TID hereunder or thereunder will constitute a general debt or a pledge of the general credit of the TID.

9. **City Obligations.** The City will throughout the performance of this Agreement perform the activities provided for in this Agreement, cooperate and coordinate with and assist the TID, join with the TID in signing and granting any applications or permits or other documents necessary to complete the Project. The City will perform its responsibilities, obligations, and services, including its reviews and approvals of the TID's submissions and recommendations, in a timely manner so as not to delay or interfere with the TID's performance of its obligations under this Agreement or to have a negative impact on the Phase I Schedule.

10. **Progress Meetings.** During the course of the Project, the Parties agree to meet at least once per month to discuss the progress of the Project (the "**Progress Meetings**"). In addition to the foregoing, the TID may periodically submit information updates to the City detailing progress achieved. The Parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements.

11. **Notices.** All notices hereunder will be in writing and will be deemed to have been duly given if delivered by hand or mailed by certified mail, postage prepaid and addressed as follows:

If to the City:

City of Miamisburg
10 N. First Street
Miamisburg, Ohio 45342
Attention: City Manager

If to the TID:

Montgomery County Transportation
Improvement District
451 W. Third St., 10th Floor
Dayton, Ohio 45422
Attention: Executive Director

The Parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications will be sent.

12. **Delegation of City Powers.** The Parties hereby agree that this Agreement constitutes an agreement for the joint construction of a public work, utility, or improvement as set forth in Section 715.02 of the Revised Code. The City hereby grants the TID the right to exercise the City's powers in connection with the TID's activities in support of the Project pursuant to Section 715.02 of the Revised Code; provided that the TID will only exercise such powers as are necessary to accomplish the specific objectives of the Project. The City agrees to perform all acts and execute all supplementary instruments or documents which may be reasonably necessary to effectuate the foregoing delegation of authority.

13. **Disclaimer of Warranties/Limitation of Liability.** **THE CITY AGREES THAT THE TID DOES NOT GUARANTEE OR WARRANT THE SERVICES PROVIDED BY THE TID HEREUNDER OR THE COMPLETION OF THE PROJECT. ALL TID SERVICES ARE PROVIDED ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE TID DOES NOT MAKE, AND HEREBY DISCLAIMS ANY AND ALL EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IN NO EVENT WILL THE TID BE LIABLE OR RESPONSIBLE TO THE CITY FOR ANY TYPE OF INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST REVENUE AND LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER ARISING UNDER ANY THEORY OR CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. EXCEPT TO THE EXTENT OF INSURANCE PROCEEDS ACTUALLY RECEIVED, IN NO EVENT WILL THE TID'S TOTAL LIABILITY HEREUNDER EXCEED THE FEES (NOT INCLUDING ANY FEES PAID TO THE TID TO REIMBURSE THE TID FOR EXPENSES INCURRED BY THE TID) ACTUALLY COLLECTED BY THE TID FROM THE CITY HEREUNDER.**

14. **Assignment and Binding Nature.** This Agreement may not be assigned without the prior written consent of the non-assigning Parties. The provisions of this Agreement will be binding upon the successors and permitted assigns of the Parties.

15. **Remedies.** Any disputes, controversies or claims arising under or relating to this Agreement or the breach, termination or invalidation thereof or the Services provided pursuant to this Agreement will, upon written notice, be referred to the City Manager and the Executive Director of the TID who will confer in good faith for a period of at least thirty (30) days to attempt to resolve the matter. If the City Manager and the Executive Director of the TID are unable to resolve the matter within this thirty-day period, each Party may take such actions permitted by law or this Agreement in order to resolve such dispute.

16. **Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination will not affect any other provision, covenant, obligation or agreement, each of which will be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability will not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement will be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

17. **Construction and Interpretation.** No Party will be deemed to be the draftsman of this Agreement, and it will not be interpreted or construed in favor of or against any Party. Words in the singular will include the plural, and vice versa, and words in the masculine will include the feminine and/or neuter, and vice versa, where the context so requires for a reasonable interpretation of this Agreement. All Exhibits referred to in and attached to this Agreement are incorporated by reference.

18. **Fiscal Officer Certification.** The Fiscal Officer of the City hereby certifies that the monies required to meet the obligations of the City during the current fiscal year under this Agreement have been appropriated lawfully for that purpose, and are in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. Pursuant to Section 5705.44 of the Ohio Revised Code, the Fiscal Officer of the City covenants that any requirement herein of an expenditure of City monies in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. The certifications in this Section 18 are given in compliance with Sections 5705.41 and 5705.44 of the Ohio Revised Code.

19. **Miscellaneous.** This Agreement and any Exhibit attached hereto may only be amended by written instrument executed by the Parties. All covenants, obligations and agreements of the Parties contained in this Agreement will be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement will be deemed to be a covenant, obligation or agreement of any present or future member, official, officer, agent or employee of any of the Parties other than in their official capacity, and no member of the City Council, or TID Board of Trustees, and no City or TID official executing this Agreement, will be liable personally by reason of the covenants, obligations or agreements of the Parties contained in this Agreement. This Agreement may be signed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument. This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein. The waiver, by any Party hereof of any breach of any provision of this Agreement will not be construed as, or constitute, a continuing waiver or a waiver of any other breach of any provision of this Agreement. The headings contained in this Agreement were included only for convenience or reference and do not define, limit, explain or modify this Agreement or its interpretation, construction or meaning and are in no way to be construed as a part of this Agreement. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio.

[Remainder of Page Intentionally Blank. Signature Page Follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the Effective Date.

CITY OF MIAMISBURG, OHIO

By: _____

Name: _____

Title: _____

CITY OF MIAMISBURG, OHIO FISCAL OFFICER (Section 18 only)

By: _____

Name: _____

**MONTGOMERY COUNTY
TRANSPORTATION IMPROVEMENT
DISTRICT**

By: _____

Crystal Corbin, Executive Director

EXHIBIT A

Project Scope

EXHIBIT B

Phase I Budget

EXHIBIT C

Materials to be Procured

ORDINANCE NO. 7042

AN ORDINANCE TO CERTIFY SPECIAL ASSESSMENTS FOR THE REPAIR OF CURBS, GUTTERS AND SIDEWALKS IN THE CITY OF MIAMISBURG, MONTGOMERY COUNTY, OHIO, TO THE COUNTY AUDITOR OF SAID COUNTY FOR THE COLLECTION THEREOF AND DECLARING AN EMERGENCY.

WHEREAS, the Council of the City of Miamisburg, Montgomery County, Ohio, has heretofore by proper resolution declared the necessity for the repair of certain curbs, gutters and sidewalks in said city, given proper notice thereof and contracted all work necessary for said repair pursuant to Chapter 729 of the Revised Code of Ohio; and

WHEREAS, all the repair of certain curbs, gutters and sidewalks aforesaid has been completed as required by law, and the special assessments therefore have been levied pursuant to Resolution No. 2989 duly adopted by the Council of the City of Miamisburg, and

WHEREAS, the affected property owners have been notified of the assessment and certain assessments remain unpaid and are to be collected over a period of ten (10) years;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

All unpaid assessments in the amounts and for the benefit of the respective properties listed in Exhibit A to this Ordinance, which Exhibit A is hereby expressly made a part of this Ordinance, are to be placed upon the tax duplicate by the County Auditor of Montgomery County, Ohio, and collected as other taxes are collected by the County Treasurer of Montgomery County, Ohio, as provided by law.

Section 2.

Pursuant to Section 319.61 of the Revised Code of Ohio, a copy of this Ordinance with Exhibit A shall be certified to the County Auditor of Montgomery County, Ohio, by the Clerk of Council within twenty (20) days of its adoption together with a copy of the resolution levying said special assessments.

Section 3.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council authorization is needed at the earliest possible date, to meet the assessment deadline of the Montgomery County Auditor's Office; therefore, this measure shall take effect and be in force from and after its passage.

Passed: October 17, 2023

Attested: _____

Kim Combs

Kim Combs, Clerk of Council

Approved: _____

Michelle L. Collins

Michelle L. Collins., Mayor

EXHIBIT A
2022 SIDEWALK, CURB & GUTTER PROGRAM

ADDRESS	PARCEL ID NO./LOT NO.	AMOUNT
1803 Belvo Road	K46 00713 0006, 3591	\$3,480.00
1332 Cherry Hill Drive	K46 01003 0003,4491	\$1,567.00
521 Dunaway Street	K46 00804 0005, 3901	\$2,710.50
606 Dunaway Street	K46 00804 0010, 3906	\$4,921.50
607 Dunaway Street	K46 00804 0004, 3900	\$2,335.00
702 Dunaway Street	K46 00701 0018, 3690	\$1,836.50
722 Dunaway Street	K46 00701 0019, 3691	\$2,279.00
723 Dunaway Street	K46 00701 0017, 3689	\$4,209.00
744 Dunaway Street	K46 00701 0020, 3692	\$872.00
755 Dunaway Street	K46 00701 0008, 3343	\$1,334.50
766 Dunaway Street	K46 00701 0021, 3693	\$5,911.50
802 Dunaway Street	K46 00701 0004, 3339	\$1,708.50
803 Dunaway Street	K46 00701 0007, 3342	\$2,466.50
806 Dunaway Street	K46 00701 0003, 3338	\$2,230.50
807 Dunaway Street	K46 00701 0006, 3341	\$4,344.25
810 Dunaway Street	K46 00701 0002, 3337	\$2,050.50
811 Dunaway Street	K46 00701 0005, 3340	\$836.50
903 Dunaway Street	K46 00713 0004, 3589	\$2,945.50
906 Dunaway Street	K46 00713 0005, 3590	\$5,692.00
911 Dunaway Street	K46 00713 0002, 3587	\$1,930.00
915 Dunaway Street	K46 00713 0001, 3586	\$4,404.00
26 Hoover Avenue	K46 00337 0052, 1776	\$456.00
30 Linden Avenue	K46 00329 0028, PTS 1, 2 3-29-93	\$2,908.10
919 Main Street S.	K46 00337 0040, 1604	\$20,140.00
131 Mall Woods Drive	K46 01315 0042, PT 5686	\$2,664.00
123 Miami Avenue S.	K46 00329 0076, 696 PT	\$1,728.00
132 Miami Avenue S.	K46 00329 0084, 169 PT	\$3,757.00
134 Miami Avenue S.	K46 00329 0023, 170	\$868.00
2859 Miamisburg Centerville Road	K46 01411 0001, 5836	\$11,767.00
705 Old Main Street	K46 00337 0097, 1821	\$1,176.00
708 Old Main Street	K46 00337 0053, 1777	\$384.00
712 Old Main Street	K46 00337 0054, 1778	\$1,804.50
713 Old Main Street	K46 00337 0095, 1819	\$4,796.00
716 Old Main Street	K46 00337 0055, 1779	\$1,080.00

717 Old Main Street	K46 00337 0094, 1818	\$2,040.00
805 Old Main Street	K46 00337 0092, 1816	\$1,858.50
806 Old Main Street	K46 00337 0057, 1781	\$1,152.00
809 Old Main Street	K46 00337 0091, 1815	\$336.00
813 Old Main Street	K46 00337 0090, 1814	\$2,016.00
814 Old Main Street	K46 00337 0059, 1783	\$1,496.75
818 Old Main Street	K46 00337 0060, 1784	\$432.00
821 Old Main Street	K46 00337 0088, 1812	\$4,213.25
822 Old Main Street	K46 00337 0061, 1785	\$1,893.00
901 Old Main Street	K46 00337 0087, 1811	\$3,811.00
902 Old Main Street	K46 00337 0062, 1786	\$2,363.25
905 Old Main Street	K46 00337 0086, 1810	\$2,945.25
906 Old Main Street	K46 00337 0063, 1787	\$1,485.50
909 Old Main Street	K46 00337 0085, 1809	\$1,392.00
914 Old Main Street	K46 00337 0065, 1789	\$2,311.50
917 Old Main Street	K46 00337 0083, 1807	\$3,444.75
918 Old Main Street	K46 00337 0066, 1790	\$240.00
1001 Old Main Street	K46 00337 0079, 1803	\$4,212.50
1002 Old Main Street	K46 00337 0076, 1800	\$5,400.00
1005 Old Main Street	K46 00337 0078, 1802	\$1,073.25
1009 Old Main Street	K46 00337 0077, 1801	\$480.00
19 South Street	K46 00337 0070, 1794	\$2,256.00
20 South Street	K46 00337 0071, 1795	\$144.00
23 South Street	K46 00337 0069, 1793	\$144.00
24 South Street	K46 00337 0072, 1796	\$1,451.25
28 South Street	K46 00337 0073, 1797	\$480.00
31 South Street	K46 00337 0067, 1791	\$432.00
36 South Street	K46 00337 0075, 1799	\$2,288.75
253 Springboro Pike N.	K46 01315 0044, PT 5686	\$5,541.60
	TOTAL	\$170,927.45

ORDINANCE NO. 7043

AN ORDINANCE TO CERTIFY SPECIAL ASSESSMENTS FOR THE DELINQUENT CHARGES FOR THE CUTTING AND REMOVAL OF WEEOS, VEGETATION AND/OR GRASS, IN THE CITY OF MIAMISBURG, MONTGOMERY COUNTY, OHIO, TO THE COUNTY AUDITOR OF SAID COUNTY FOR THE COLLECTION THEREOF, AND DECLARING AN EMERGENCY.

WHEREAS, the owner(s) of properties indexed on the list that is attached (Exhibit A) hereto and made a part of this Ordinance being lots along various streets in the municipality, have been provided with written notice to cut and remove weeds, vegetation and/or grass; and

WHEREAS, the owner(s) of properties indexed on the list that is attached hereto (Exhibit A) and made a part of this Ordinance being lots along various street in the municipality have failed to comply with said notices and the City of Miamisburg then caused said cutting and removal of weeds, vegetation and/or grass; and

WHEREAS, all expenses and costs received were paid out of Municipal funds; and

WHEREAS, these delinquent charges can be recovered by certification to the Montgomery County Auditor's Office for placement on the next property tax duplicate of the owner(s) of said property.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1

All unpaid charges in the amounts and for the benefit of the respective properties listed in Exhibit A to this Ordinance, which Exhibit A is hereby expressly made a part of this Ordinance, are to be placed upon the tax duplicate by the County Auditor of Montgomery County, Ohio, and collected as other taxes are collected by the County Treasurer of Montgomery County, Ohio, as provided by law.

Section 2

Pursuant to Section 319.61 of the Revised Code of Ohio, a copy of this Ordinance with Exhibit A shall be certified to the County Auditor of Montgomery County, Ohio, by the Clerk of Council within twenty (20) days of its adoption.

Section 3

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that Council authorization is needed at the earliest possible date to meet the assessment deadline of the Montgomery County Auditor's Office; therefore, this measure shall take effect and be in force from and after its passage.

Passed: October 17, 2023

Attested:



Kim Combs, Clerk of Council

Approved:



Michelle L. Collins, Mayor

CITY OF MIAMISBURG TAX ASSESSMENT
FROM SEPTEMBER 2, 2022 THROUGH OCTOBER 3, 2023
EXHIBIT A

PARCEL ID	PROJECT CODE NUMBER	TAX YEAR	CHARGE
K46 00719 0005	31-500	2023	\$ 3,543.75
K46 00221 0020	31-500	2023	\$ 4,725.00
K46 00221 0021	31-500	2023	\$ 3,937.50
K46 00222 0068	31-500	2023	\$ 3,937.50
K46 00331 0048	31-500	2023	\$ 6,300.00
K46 00904 0032	31-500	2023	\$ 2,756.25
K46 00112 0153	31-500	2023	\$ 525.00
K46 00111 0015	31-500	2023	\$ 2,493.75
K46 00111 0021	31-500	2023	\$ 2,231.25
K46 00335 0047	31-500	2023	\$ 3,937.50
K46 00217 0045	31-500	2023	\$ 787.50
K46 00112 0117	31-500	2023	\$ 3,543.75
K46 00112 0143	31-500	2023	\$ 1,706.25
K46 00408 0003	31-500	2023	\$ 4,331.25
K46 00220 0079	31-500	2023	\$ 3,937.50
K46 00335 0002	31-500	2023	\$ 1,575.00
K46 00606 0015	31-500	2023	\$ 1,575.00
K46 00338 0040	31-500	2023	\$ 1,575.00
K46 00335 0031	31-500	2023	\$ 1,906.15
K46 00424 0021	31-500	2023	\$ 840.00
K46 00508 0025	31-500	2023	\$ 787.50

\$ 56,952.40

ORDINANCE NO. 7044

AN ORDINANCE APPROVING A SECOND AMENDMENT TO THE 2017 AMENDED AND RESTATED MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT CONTRACT BY AND BETWEEN MIAMI TOWNSHIP AND THE CITY OF MIAMISBURG TO ADD PROPERTY TO THE MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT, AND APPROVING ACTIONS ANCILLARY THERETO AND DECLARING AN EMERGENCY.

WHEREAS, The City of Miamisburg, Ohio (the "City") and Miami Township, Montgomery County, Ohio ("Miami Township") (together, the "Contracting Parties") entered into the 2017 Amended and Restated Miami Crossing Joint Economic Development District Contract dated as of December 19, 2017 (the "JEDD Contract") in accordance with Ohio Revised Code Section 715.72 to provide for the continued operation of the Miami Crossing Joint Economic Development District (the "District") for the benefit of their residents and residents of the State;

WHEREAS, The JEDD Contract provides that the legislative authorities of the Contracting Parties may amend the JEDD Contract to add to or remove from the District any area that was not originally included in the District in accordance with Section 715.72(L) of the Revised Code;

WHEREAS, The Contracting Parties now desire to amend the JEDD Contract to both add to and remove certain areas to the District pursuant to the terms of a Second Amendment to 2017 Amended and Restated Miami Crossing Joint Economic Development District Contract (the "Second Amendment"), and

WHEREAS, The City Council has determined that it is in the best interests of the citizens of the City for the City to approve and enter into the Second Amendment.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

Council hereby finds and determines: (i) that the Council held a public hearing concerning the Second Amendment at 6:00 p.m. on November 7, 2023, in accordance with Section 715.72(L) of the Revised Code; (ii) that 30 days' public notice of the time and place of that public hearing was provided in the *Dayton Daily News*, a newspaper of general circulation in the City; (iii) that during the 30-day period prior to that public hearing, a copy of the Second Amendment, a description of the area to be added to the District, and a map in sufficient detail to denote the specific boundaries of the area and to indicate any zoning restrictions applicable to the area, were on file for public examination in the office of the Clerk of Council; (iv) that public comment and recommendations on the proposed Second Amendment were allowed pursuant to the public hearing; (v) that the Second Amendment is on file with the Clerk of Council; and (vi) that the Council is in receipt of a petition signed

by a majority of the owners of property located within the area to be added to the District, and a petition signed by a majority of the owners of businesses, if any, located within the area to be added to in the District.

Section 2.

The City Manager is authorized to execute the Second Amendment and to take such actions, or to cause such actions to be taken, on behalf of Council, including signing agreements or other instruments contemplated by the Second Amendment or this Ordinance, including without limitation the Second Amendment as on file with the Clerk of Council, or deemed necessary or appropriate by Council, in order to accomplish the purposes of this Ordinance and the Second Amendment.

Section 3.

That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

Section 4.

This Ordinance hereby declared to be an emergency measure necessary for the immediate preservation of public peace, health, safety, and welfare of the City, and therefore this Ordinance shall be in full force and effect immediately upon its adoption.

Passed: November 7, 2023

Attested

Kim Combs

Kim Combs, Clerk of Council

Approved:

Mayor Michelle Collins
Michelle Collins, Mayor

I hereby certify that the above is a true and correct copy of Ordinance No. 7044 adopted by the Council of the City of Miamisburg, Ohio, on November 7, 2023.

Date:

11/8/2023

Kim Combs

Kim Combs, Clerk of Council

**SECOND AMENDMENT TO 2017 AMENDED AND RESTATED MIAMI CROSSING
JOINT ECONOMIC DEVELOPMENT DISTRICT CONTRACT**

This **SECOND AMENDMENT TO 2017 AMENDED AND RESTATED MIAMI CROSSING JOINT ECONOMIC DEVELOPMENT DISTRICT CONTRACT** (this "**Second Amendment**") is made and entered into as of the ___ day of _____, 2023, by and between the Township of Miami in the County of Montgomery, Ohio ("**Miami Township**") and the City of Miamisburg, Ohio ("**Miamisburg**") under the following circumstances:

A. Miami Township and Miamisburg (the "**Contracting Parties**") are the parties to that certain 2017 Amended and Restated Miami Crossing Joint Economic Development District Contract dated as of December 19, 2017, as subsequently amended by that certain First Amendment to 2017 Amended and Restated Miami Crossing Joint Economic Development District Contract dated as of April 16, 2019 (together, the "**JEDD Contract**"), which governs the Miami Crossing Joint Economic Development District (the "**JEDD**");

B. The JEDD Contract provides that the legislative authorities of the Contracting Parties may amend the JEDD Contract to add to or remove land from the JEDD in accordance with Section 715.72(L) of the Revised Code;

C. The Contracting Parties now desire to amend the JEDD Contract to both add to and remove land from the JEDD; and

D. The legislative authority of each of the Contracting Parties has authorized and directed its respective Contracting Party to make and enter into this Second Amendment by and through its respective officers in accordance with Resolution No. _____ adopted by the Board of Trustees of Miami Township on _____, 2023; and Ordinance No. 7044, passed by the City Council of Miamisburg on November 7, 2023.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Second Amendment, the Contracting Parties agree and bind themselves, their agents, employees and successors, as follows:

1. **Addition to JEDD.** The real property set forth on Exhibit A attached hereto is hereby included within the JEDD, effective as of the date this Second Amendment is executed by the last of the Contracting Parties after approval by all of the legislative authorities of the Contracting Parties in accordance with Section 715.72(L) of the Revised Code (the "**Property Addition**").

2. **Removal from JEDD.** The real property set forth on Exhibit B attached hereto is hereby removed from the JEDD, effective as of the date this Second Amendment is executed by the last of the Contracting Parties after approval by all of the legislative authorities of the Contracting Parties in accordance with Section 715.72(L) of the Revised Code (the "**Property Removal**").

3. **No Change in Allocation; Mixed-Use Development.** Notwithstanding the provisions contained in Section 6.E. of the JEDD Contract, the Contracting Parties hereby agree that the Contracting Party Percentages outlined in the JEDD Contract will not change as a result of the Property Addition or Property Removal contained in this Second Amendment. For purposes of Section 5.B. of the JEDD Contract, the Property Addition is not considered a Mixed Use Development as of the effective date of this Second Amendment.

4. **Ratification of the JEDD Contract.** Except as set forth in this Second Amendment, the JEDD Contract remains in full force and effect and is hereby ratified in its entirety.

5. **Miscellaneous.** This Second Amendment shall be construed under the laws of the State of Ohio. This Second Amendment may be executed in any number of counterparts, each of which shall be deemed an original and together shall constitute a single instrument. The capitalized terms used in this Second Amendment but not otherwise defined herein shall have the meanings assigned to them in the JEDD Contract.

[Remainder of Page Intentionally Blank. Signature Page Follows.]

IN WITNESS WHEREOF, Miami Township and Miamisburg have caused this Second Amendment to be duly signed in their respective names by their duly authorized officers as of the date hereinbefore written.

**TOWNSHIP OF MIAMI
MONTGOMERY COUNTY, OHIO**

Township Administrator

CITY OF MIAMISBURG, OHIO

City Manager

Exhibit A

Property Addition

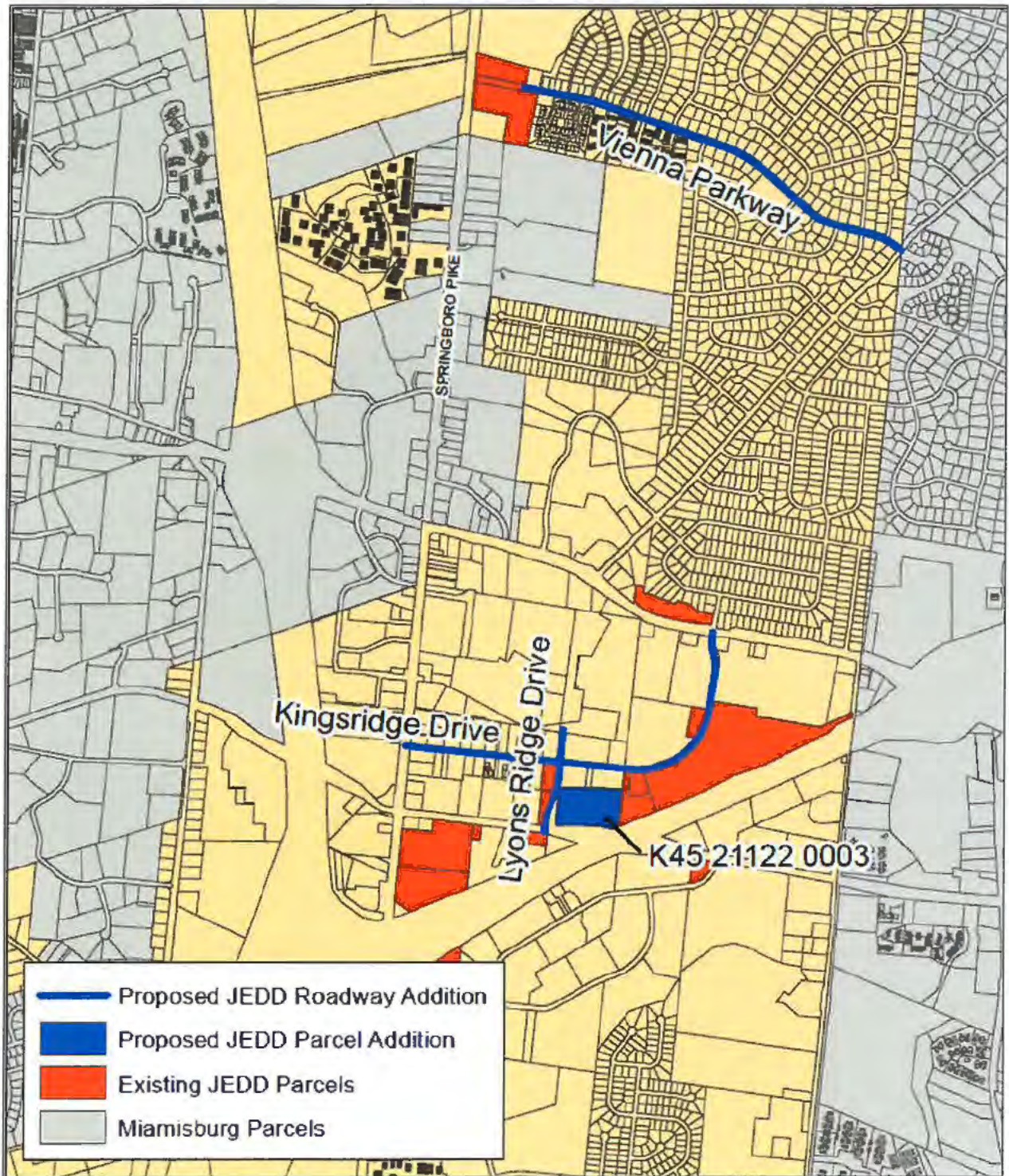
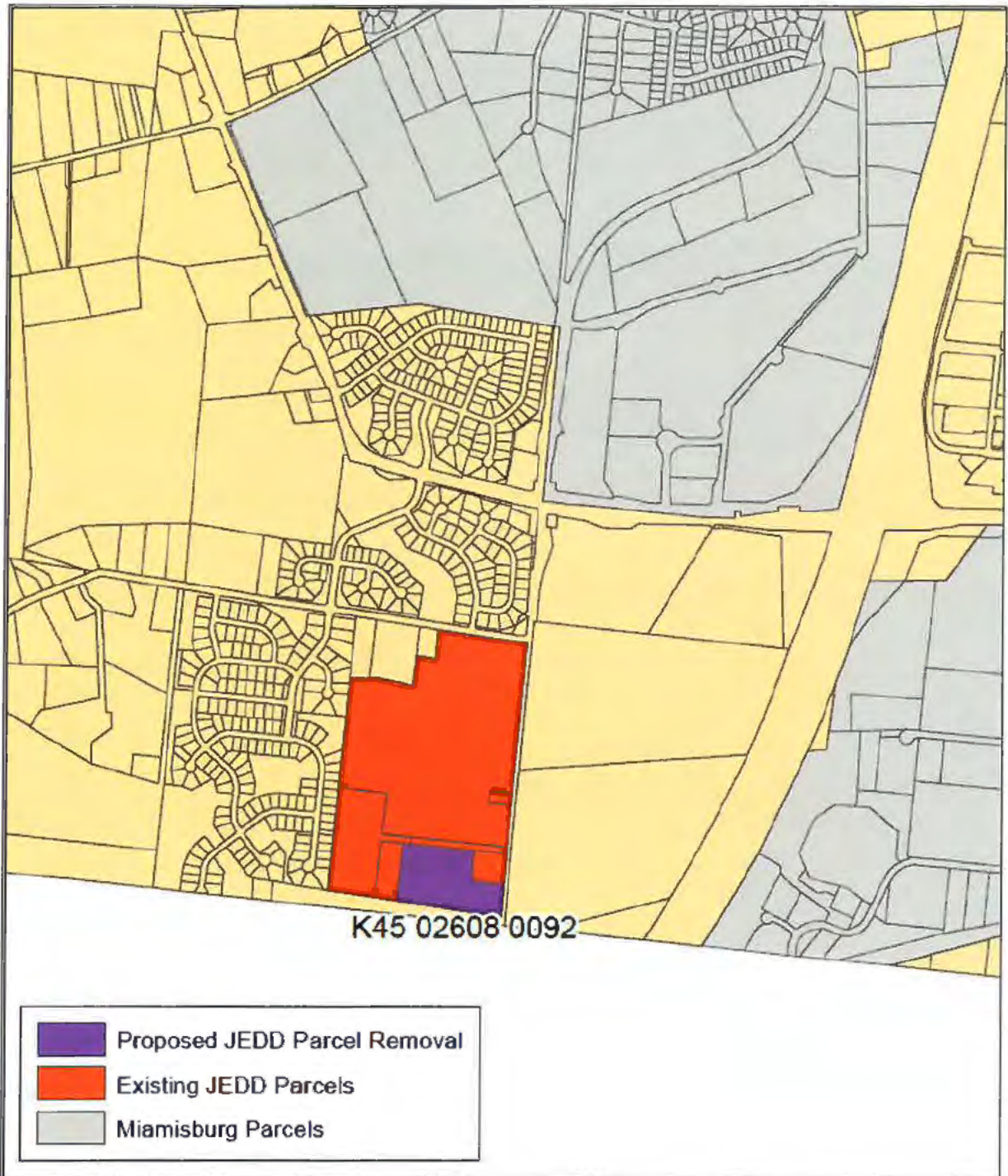


Exhibit B

Property Removal



4308253.2

ORDINANCE NO. 7045

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES AGREEMENT WITH HAMPTON GOLF, INC. FOR THE MANAGEMENT SERVICES OF PIPESTONE GOLF COURSE AND DECLARING AN EMERGENCY.

WHEREAS the City of Miamisburg has utilized a professional golf management firm to maintain and operate Pipestone Golf Course since its opening, and

WHEREAS Hampton Golf, Inc. has successfully managed the course during the entirety of its prior Management Agreement, and

WHEREAS the City of Miamisburg wishes to enter into an agreement with Hampton Golf, Inc. for a period of five years, and at the City's discretion, extend the agreement for additional terms, not to exceed a total of five years.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING, THAT:

Section 1.

The City Manager is hereby authorized to enter into a Professional Services Agreement with Hampton Golf, Inc. for the purposes of operational and maintenance management of Pipestone Golf Course, attached hereto as Exhibit "A".

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to ensure no gap in service exists, this measure shall take effect and be in force from and after its passage.

Passed: November 7, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A

PROFESSIONAL SERVICES AGREEMENT

PIPESTONE GOLF COURSE MANAGEMENT

THIS MANAGEMENT AGREEMENT (hereinafter, this "Agreement") made this _____ day of _____, 2023 (the "Effective Date"), by and between the CITY of Miamisburg, Montgomery County, Ohio, a municipal corporation (hereinafter "CITY") and Hampton Golf, Inc., a Florida corporation (hereinafter "CONTRACTOR").

The Parties to this Agreement have previously executed a Management Agreement dated December 17, 2014. This Agreement supersedes the previously executed Agreement upon execution by both parties.

WITNESSETH:

WHEREAS, CITY is the owner of PipeStone Golf Course that includes an 18-hole municipal golf course, a driving range, maintenance facility, a golf clubhouse with pro shop and restaurant and all properties and amenities known as PipeStone Golf Course (hereinafter referred to as "PipeStone") located adjacent to the residential community of Pipestone (the "Community") in the City of Miamisburg, Ohio, and

WHEREAS, CITY desires to utilize the services of CONTRACTOR for the overall management, maintenance, and operation of Pipestone, and

WHEREAS, CONTRACTOR represents that it has the necessary experience and qualifications to manage, operate and maintain PipeStone Golf Course in accordance with the standards and expectations of the City of Miamisburg.

NOW, THEREFORE, for and in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1.

DEFINITIONS

1.1. Definitions. All capitalized terms referenced or used in this Agreement and not specifically defined herein shall have the meanings set forth on Exhibit A, attached hereto and incorporated herein.

ARTICLE 2.

TERM

2.1. Term. The term of this Agreement shall begin on January 1, 2024 (the "Commencement Date") and shall continue until December 31, 2028 (the "Initial Term"), unless further extended in accordance with Section 2.2 below or terminated according to the provisions hereof.

2.2. Extended Term. This Agreement may be extended for a total of five (5) years by mutual agreement by the parties hereto, provided, however, said extensions may be in one-year increments, or multiple years so long as the total renewals do not exceed five (5) years (the "Extended Term(s)"). CONTRACTOR shall provide unconditional written notice to CITY at least nine (9) months, but not more than twelve (12) months, prior to the expiration of each incremental year of the Extended Term(s) if it desires CITY to consider an extension of the Extended Term(s). Failure to give said notice within the required time period shall be deemed an election by CONTRACTOR not to extend the Extended Term(s). CITY shall respond to CONTRACTOR within ninety (90) days if said extension shall be granted or not, in CITY's sole discretion. The Extended Term(s) shall commence upon the expiration of the Initial Term or the applicable Extended Term and shall be subject to all the same terms and conditions as are contained in this Agreement, except that there shall be no further extension options. The Initial Term and the Extended Term(s) are hereafter known collectively as the "Term."

ARTICLE 3.

APPOINTMENT OF CONTRACTOR

3.1. Management of PipeStone. CITY hereby retains, engages, and appoints CONTRACTOR as CITY's agent to exclusively supervise, manage, direct, and operate Pipestone on behalf of and for the account of CITY during the Term, and CONTRACTOR hereby accepts said appointment upon and subject to the terms and conditions hereof. CITY hereby delegates to CONTRACTOR, subject to (i) the Budgets, (ii) CITY's approval rights specifically described in this Agreement, (iii) the Business Plan, (iv) the Operations Manual, and (v) the other terms and conditions set forth herein, the discretion and authority to implement and recommend reasonable revisions to operating policies and procedures, standards of operation, house rules, standards of service and maintenance, pricing recommendations, and other policies, rules, and regulations affecting Pipestone or the operation thereof, and to perform any act on behalf of CITY deemed by CONTRACTOR to be necessary or desirable for the operation and maintenance of Pipestone.

3.2. Goal of Agreement. It is the intent and goal of CITY that PipeStone be operated in a professional, efficient and productive manner that shall provide for the highest quality of experience for guests of Pipestone as found in the comparable high market municipally owned

golf courses in the region, to achieve the desired results of the Business Plan, and to achieve or exceed the goals described in the Budgets.

3.3. Compliance. CONTRACTOR shall abide by all applicable laws, ordinances, and rules and regulations as may from time to time be promulgated by the United States, State of Ohio, or CITY.

3.4. Use of the Property. This Agreement does not constitute a lease and the right of possession of Pipestone shall at all times remain with CITY. CITY hereby grants to CONTRACTOR the exclusive management of Pipestone during the Term for the purposes set forth herein. CONTRACTOR shall, upon the expiration or prior proper termination of the Term, vacate and surrender PipeStone to CITY.

ARTICLE 4.

CONTRACTOR SERVICES

4.1. Pipestone Operations. During the Term, CONTRACTOR shall use commercially reasonable efforts to perform any act that is necessary to operate and manage Pipestone, subject to the Budgets, the Operations Manual, and other terms and conditions set forth herein, on behalf of and for the account, and at the sole cost and expense of CITY, including, but not limited to, the following:

4.1.1. Business Plan. Within thirty (30) days of the Effective Date, and then as requested throughout the Term, CONTRACTOR shall submit to CITY a proposed business plan for PipeStone ("Business Plan") as part of the CITY's annual budget process. Once approved by the CITY's Parks and Recreation Director ("Director"), the Business Plan is subject to changes by CITY until the Budgets are approved by the City Council. In the event of disapproval of any Business Plan (or any portion thereof), CONTRACTOR shall continue operating PipeStone pursuant to the terms of this Agreement and the prior Business Plan (if one exists) until such time as CITY and CONTRACTOR agree upon a replacement Business Plan. CONTRACTOR shall not be deemed to have made any guarantee or warranty in connection with the results of the operations or performance set forth in the Business Plan since the parties acknowledge that the Business Plan is intended to set forth objectives and goals based upon CONTRACTOR's judgment and the facts and circumstances known by CONTRACTOR at the time of preparation.

4.1.1.1. Contents of the Business Plan. The Business Plan shall include, but is not limited to, the following sections.

4.1.1.1.1. Financial. This section of the Business Plan shall include a statement of Gross Revenues and Operating Expenses with actual

numbers for the previous fiscal year, estimates for current fiscal year (both compared to prior year approved Budgets) and projections for the next year of the Term, and five-year, long-term financial planning for the following items:

a. Gross Revenues & Rounds Summary. As determined by Contractor, Gross Revenues shall be separated, by at least green fees, driving range, cart rental, lessons, club repair/rental, merchandise, outing/tournament, food and beverage, and non-golf events. Contractor shall also include the number of rounds played/projected and categorized by weekday/weekend/holiday, time of day, rate, leagues, and outings/tournaments;

b. Annual Operations Budget. Contractor shall include the Annual Operations Budget showing Operating Expenses, and shall be categorized in a manner that is compliant with CITY's budget line structure;

c. Statement of Gross Revenues and Operating Expenses. CONTRACTOR shall include a statement of Gross Revenues and Operating Expenses for the previous fiscal year, current fiscal year and projected for the next year of the Term, and long-term financial plan. Notwithstanding the foregoing, this portion of the Business Plan shall also include CITY's administrative expenditures, debt service, contributions to reserves based on the current Pipestone long-range financial plan and Management Fees.

4.1.1.1.2. Course Maintenance Plan. CONTRACTOR shall include a report of maintenance activities undertaken during the current year of the Term as well as projections for the next year of the Term, in accordance with the Budgets;

4.1.1.1.3. Annual Staffing Plan. CONTRACTOR shall outline the number of employees, positions and compensation for the previous fiscal year, current fiscal year, next year of the Term, and a five-year, long-term staffing plan;

4.1.1.1.4. Marketing and Promotion Plan. CONTRACTOR shall include a report of marketing and promotional activities undertaken during the current fiscal year of the Term as well as projections for the remaining years of the Term, in accordance with the Budgets. This plan shall include a regional market assessment and results of any customer feedback programs held by CONTRACTOR;

4.1.1.1.5. Capital Expenses. CONTRACTOR shall include for the previous fiscal year, current fiscal year, and budget for proposed Capital Expenses, as well as a proposed five (5) year capital investment plan. CONTRACTOR shall recommend replacement or acquisition of golf course equipment, including but not limited to, maintenance, golf carts, restaurant equipment, operations software and hardware, and other necessary equipment or tools; and facility upgrades or modifications. Such recommendations shall include written justification, cost estimates and except as otherwise provided herein are subject to approval by CITY.

4.1.1.1.6. Fees and Dues. CONTRACTOR shall include a list of current fees and dues (if any) being charged at PipeStone, and any proposed changes for the next year of the Term, including all promotions and specials.

4.1.1.2. Approval of the Business Plan. The Director shall, once the Business Plan is submitted by CONTRACTOR and approved by the Director, make a recommendation to the City Manager.

4.1.1.3. Compliance. CONTRACTOR shall comply with the applicable Business Plan. Any changes to the Business Plan must be approved by the Director.

4.1.1.4. Quarterly Review of Business Plan. The Director and CONTRACTOR's Regional Manager, as designated by CONTRACTOR, shall meet, at least quarterly, and discuss the operating and financial results of Pipestone. The parties shall agree upon any amendments or revisions to the Business Plan, and to take into consideration certain variables or events that did not exist or could not be anticipated by CONTRACTOR or CITY at the time the Business Plan was prepared. Any amendments or revisions to the Business Plan shall require approval of the Director, who in his/her sole and absolute discretion, may require further approval by the City Manager and/or City Council.

4.1.1.4.1. Information Requests. During the Term, the CITY may reasonably request information or reports from CONTRACTOR regarding the operation of Pipestone. CONTRACTOR shall establish a reasonable timeline to produce such information. If such information is not provided within established reasonable time frames by the parties hereto, CITY shall invoke the Liquidated Damages penalty per Section 4.1.4.1.

4.1.2. Pipestone Club and Property. CONTRACTOR shall have the exclusive authority and responsibility for the administration, operation, and management of Pipestone, including, without limitation, course maintenance, food and beverage provision, merchandise service, and financial reporting. At all times during the Term, CITY shall

have the right to inspect during all hours and upon reasonable notice, inventory, petty cash (if any), receipts of the golf course and all facilities therein.

4.1.2.1. Operations Manual. At the onset of this Agreement, the CITY and CONTRACTOR shall work to develop, update or confirm a manual consisting of expectations, standards, policies and procedures for the operations and maintenance of Pipestone ("Operations Manual") based on CITY's expectations and in accordance with first class standards of service equal to or better than comparable municipally owned golf courses in the region. The Operations Manual shall be updated as necessary in order to be current with certain changes to policy, procedures and operating standards of CITY and industry best practices.

4.1.2.2. Quality Standards. The parties acknowledge that Pipestone is a public property which the CITY has a responsibility to ensure is used in a manner which effectively serves the public. Accordingly, the CITY has a greater interest than most owners in ensuring the quality of the maintenance and operation of PipeStone. At all times during the Term, CONTRACTOR shall maintain and operate all aspects of Pipestone, including all services offered in connection therewith, in a manner equal to or better than comparable municipally owned golf courses in the region, and Contractor shall furnish and maintain a standard of service at equal or better than the class of similar businesses in CITY and in adjacent communities during the Term. CONTRACTOR shall keep all fixtures, furnishings, and equipment at Pipestone clean, neat, safe, and sanitary, in good order and in a manner equal to or better than comparable municipally owned golf courses in the region. Furthermore, CONTRACTOR shall maintain and operate PipeStone in accordance with the highest commercial standards of cleanliness and shall keep all facilities clean and free from rubbish. The parties hereto acknowledge cost effective; quality services are of the utmost importance to CITY.

4.1.2.3. Customer Service. CONTRACTOR shall insure customer issues or concerns (including issues with residents of the Community) are resolved and documented when necessary. CITY has the right to view customer complaint documentation at any time upon reasonable notice, and where necessary, to act as an arbitrator in situations where an unresolved complaint or issue arises and the decision of CITY, with respect to the customer complaint or issue, shall be final. (Said determination, by CITY must be reasonable and in good faith.)

4.1.2.3.1. Residential Complaints. CONTRACTOR shall inform Director of any complaints from residents in the Community within twenty-four (24) hours of receiving complaint.

4.1.2.4. Grounds. CONTRACTOR shall establish, implement and monitor safe, and reasonable programs for mowing, top dressing, watering, seeding,

fertilization, aerification, disease infection, weed control and application of fungicides, herbicides, and insecticides for tees, fairways, greens, rough, range and other turf, trees and landscaped areas located at Pipestone, including the public entrance frontage of Pipestone and at CITY owned properties adjacent to Pipestone as detailed in the Operations Manual and illustrated with a map (as provided by CITY). The implementation of such standards shall be documented and retained on-site and shall be subject to review by CITY during normal business hours.

4.1.2.5. Aquatic. CONTRACTOR shall establish, implement, and monitor safe and reasonable programs for all lakes, ponds and streams within Pipestone and the Community through the application of appropriate aquatic vegetative controls. Responsibilities include water quality, weed and algae control, mowing, turf management, animal control, bank stabilization and restoration, debris removal from pond area including storm water drains which all assist in maintaining pond water quality. CONTRACTOR may utilize vendors to perform duties, as necessary. Implementation of such standards shall be documented and retained on-site and shall be subject to review by CITY during normal business hours.

4.1.2.6. Preventative Maintenance. CONTRACTOR shall establish and administer a preventive maintenance program for all golf maintenance equipment, golf carts, restaurant equipment, computer hardware and other equipment under its care that insures it remains in good operating condition for its useful life, provided, however, CITY acknowledges that said preventative maintenance program cannot guarantee such equipment remains in good operating condition for its useful life, and therefore, CONTRACTOR shall not be responsible for any equipment maintenance or performance issues that may arise during the Term or thereafter. Such maintenance shall be performed no less frequently than manufacturer recommendations by CONTRACTOR or by approved contracted vendors. Preventative maintenance and repairs shall be documented and retained on-site and shall be subject to review by CITY during normal business hours.

4.1.2.7. Environment Remediation. If CONTRACTOR becomes aware of the presence of any Hazardous Material in a quantity sufficient to require remediation or reporting under any Environmental Law in, on or under PipeStone, or if CONTRACTOR or CITY become subject to any order of any federal, state or local agency to investigate, remove, remediate, repair, close, detoxify, decontaminate or otherwise clean up PipeStone, CONTRACTOR shall, at CITY's sole expense and approval, use all commercially reasonable efforts to carry out and complete any required investigation, removal, remediation, repair, closure, detoxification, decontamination or other cleanup of PipeStone; provided that such remediation activities shall be at CONTRACTOR's expense if such activities are

required as a direct consequence of Hazardous Material being present in, on or under PipeStone as a result of negligent actions undertaken by CONTRACTOR. Notwithstanding the foregoing, CITY has not performed and has no actual knowledge of any excavation, dumping or burial of any Hazardous Material or debris of any nature whatsoever on Pipestone or the surrounding areas. CITY indemnifies, defends, and holds CONTRACTOR harmless from all liabilities and obligations arising from presence of Hazardous Material prior to the Effective Date, if any,

4.1.2.8. Notification to CITY of Defect or Illegal Activity. CONTRACTOR shall immediately notify CITY upon discovering a possible workmanship or material defect in any structure or improvement on Pipestone or upon discovery of any unauthorized dumping, disposal or illegal use or activity on PipeStone.

4.1.3. Repairs. CONTRACTOR shall, at the sole expense of CITY, make, or cause to be made, all necessary and proper repairs in and to PipeStone in order to keep and maintain the same in good repair, working order and condition (normal wear and tear excepted), and outfitted and equipped for the proper operation thereof.

4.1.4. Inspections. Each quarter during the Term, the Director and CONTRACTOR's Regional Manager or designee shall inspect Pipestone for purposes of CONTRACTOR's compliance with the terms of this Agreement and the Operations Manual. Such inspections may be scheduled or unscheduled, so long as they do not interfere with normal operations of Pipestone. CITY agrees that the Director shall act reasonably and in good faith in making the determination whether CONTRACTOR'S compliance with this Agreement and the Operations Manual have been satisfied. The Director and/or the Regional Manager or designee shall prepare a detailed list of all areas that the Director considers in need of correction, improvement, or repair ("Corrective Action Item(s)"). This list shall include the steps CONTRACTOR intends to take to correct, improve or repair the Corrective Action Items and a reasonable time schedule for doing so.

4.1.4.1. Liquidated Damages. Except as provided below, if a particular Corrective Action Item has not been corrected, improved or repaired by the date indicated as set forth in Section 4.1.4., then CONTRACTOR shall pay as liquidated damages to CITY the amount of One Thousand Dollars (\$1,000) per month, or prorated for partial months based on a 30-day month, for each such uncorrected Corrective Action Item. These liquidated damages shall not apply to: (a) any outstanding Corrective Action Item that CONTRACTOR is diligently and timely correcting in accordance with the time schedule prepared in Section 4.1.4., and (b) any Corrective Action Item that CONTRACTOR is unable to correct, improve or repair because of the occurrence of a circumstances as agreed by CITY.

The parties hereto agree that the \$1,000 per month, prorated for partial month as needed, are charges referenced above which constitute a reasonable approximation of the actual damages that CITY would suffer due to a failure by CONTRACTOR to adhere to the required performance level, considering all of the circumstances existing as of the Commencement Date, including the relationship of the charges to the range of harm to CITY that reasonably could be anticipated and the anticipation that proof of actual damages would be costly or inconvenient.

4.1.5. Employees. CONTRACTOR shall (i) determine personnel requirements, recruitment schedules, and compensation levels, (ii) furnish job descriptions, performance appraisal procedures, employee benefit programs, and operational and procedural manuals for all personnel, and (iii) establish forms and procedures for employee compensation and incentive programs. CONTRACTOR shall hire, promote, train, discharge, and supervise all employees performing services in and about PipeStone. All of the employees of Pipestone shall be employees of CONTRACTOR. It is understood that periodically independent service providers may be utilized to perform operation, maintenance, and administrative services with prior approval by CITY.

4.1.5.1. Key Personnel. CONTRACTOR shall hire Key Personnel for the management and operations of PipeStone. CITY shall approve, said approval not to be unreasonably withheld, any Key Personnel before hire. Prior to making a recommendation to CITY to hire a Key Personnel, CONTRACTOR shall present to CITY the compensation and incentive package for said Key Personnel, and prior to offering the position to said Key Personnel and as part of the hiring process, said Key Personnel must be approved by CITY, which such approval shall not be unreasonably withheld. Any modifications to a Key Personnel's compensation or incentive package shall be approved by the CITY prior to offering such package and shall be included in the annual Budget process. CONTRACTOR agrees to ensure Key Personnel will not be relocated to other CONTRACTOR properties without direct approval of CITY and that such relocation request shall not occur during peak season. Contact information (name, cell phone number and e-mail address) for all Key Personnel shall be provided, in writing, to CITY and shall be current at all times. For purposes of this Agreement, the term "Key Personnel" shall be defined as any individual holding a management or leadership position at PipeStone at any time during the Term, including without limitation, General Manager, Head Superintendent, Assistant Superintendent, Head Golf Professional, Food and Beverage Manager, Pro Shop Manager or Sales/Marketing Director.

4.1.5.1.1. Relocation Expenses. Upon approval from the CITY, CONTRACTOR may negotiate relocation expenses in the hiring of the General Manager of Pipestone. Such expenses shall be limited to Five

Thousand Dollars (\$5,000.00) per calendar year, unless otherwise approved by CITY in advance.

4.1.5.2. Replacement and Retention. CONTRACTOR shall work in cooperation with CITY concerning performance of CONTRACTOR's employees at Pipestone. CONTRACTOR will consult with CITY concerning CONTRACTOR's termination of employees at Pipestone. At the written request of the CITY, CONTRACTOR shall replace any Key Personnel or employee at Pipestone who, in the opinion of the CITY, is not performing satisfactorily, provided, however, CITY's decision to replace such Key Personnel or employee at Pipestone must be reasonable and shall not expose CONTRACTOR to any liability associated therewith.

4.1.5.2.1. Severance. In the event the CONTRACTOR terminates the employment of an employee at PipeStone, CONTRACTOR may, in CONTRACTOR' s sole discretion, offer a severance package to said employee, provided, however, CITY shall have no obligation for payment of such severance package unless CITY otherwise agrees to do so.

4.1.5.3. Employee Privileges. CONTRACTOR may provide discounts on food at a rate as approved by the CITY for Pipestone employees during their working hours and may allow them to play golf at Pipestone facilities in compliance with the CITY's Fee Ordinances.

4.1.5.4. Volunteers. CONTRACTOR has the responsibility for recruiting, selecting, training, scheduling, supervising, evaluating and dismissing volunteers in accordance with CITY volunteer program. Written guidelines and requirements regarding the CITY volunteer program shall be provided by CITY and in compliance with wage and hour regulations. CITY and CONTRACTOR shall provide liability coverage for volunteers utilized at Pipestone. CONTRACTOR shall provide the CITY Volunteer Coordinator with a total of hours worked by each volunteer within ten (10) business days from the last day of each month.

4.1.5.5. Professional Certifications. CONTRACTOR shall ensure all employees at Pipestone are qualified to perform his/her assigned responsibilities.

4.1.5.5.1. Head Golf Professional. CONTRACTOR shall assign a full- time, "PGA Class A Professional" to PipeStone as part of its on-site management team at PipeStone.

4.1.5.5.2. Head Superintendent. CONTRACTOR shall assign a full-time, Golf Course Superintendent who has a GCSAA "Class A" membership to PipeStone as part of its on-site management team at Pipestone.

4.1.5.5.3. Chemical Application. CONTRACTOR shall require all employees at PipeStone who work with or apply fungicides, herbicides, and insecticides to maintain a current certification and operator's license as required by the Ohio Department of Agriculture and shall comply with all EPA and OSHA safety standards in its maintenance operations.

4.1.5.6. Chain of Command. CONTRACTOR agrees to provide written notice to CITY regarding its chain of command for implementation of this Agreement and any subsequent changes therein, as the same may apply. Notice shall be given to CITY within thirty (30) days of any change to CONTRACTOR's chain of command. CITY shall abide by the same if there is a change of any official or department responsible for the operation of PipeStone.

4.1.5.7. Employee Safety. CONTRACTOR shall comply with all safety regulations of Federal, State, and local governmental agencies, including without limitation any requirements imposed by OSHA and regulations promulgated with respect thereto, and applicable Federal occupational, health and safety laws and regulations. CONTRACTOR shall take all reasonable actions to protect the safety of all employees and customers of PipeStone.

4.1.5.7.1. Workplace Environment. CONTRACTOR shall comply with CITY workplace policies and guidelines for Drug-Free Workplace, Workplace Harassment, Sexual Harassment, Smoke-Free Workplace and any additional policies and guidelines currently in place, added or modified during the Term. CITY will provide CONTRACTOR copies of such policies and guidelines prior to the Effective Date.

4.1.5.8. Payroll. CONTRACTOR (or through a third-party contractual relationship) shall establish, administer, and maintain appropriate payroll documentation for employees at Pipestone, the same complying with those reasonable requirements of CITY. Subject to the Budgets, CONTRACTOR agrees to provide reasonable wage and benefit packages to the employees of PipeStone consistent with comparable facilities so as to provide a properly compensated staff for carrying out the functions provided for hereunder. All expenses related to employees of Pipestone, including without limitation, payroll expenses and burden, wages, benefits, vacation pay, processing fees, and taxes, shall be funded by the operation of Pipestone or by CITY in the event of a deficit. The Budgets shall reflect such expenses being incurred and shall be funded in advance by CITY at least one (1) payroll period at a time. Furthermore, CONTRACTOR shall draw from Pipestone's operating account for the payment of personnel salaries, wages, associated benefits, and employment taxes related to Pipestone. CONTRACTOR shall notify CITY each month during the Term of any deficits required to be funded

by CITY, and CITY shall provide such amounts to CONTRACTOR within five (5) business days after receipt of such notification,

4.1.5.9. Employment Taxes. CONTRACTOR shall be responsible for the filing of any tax returns including, but not limited to, personal income taxes with specific emphasis on municipal tax liability and other taxes related directly to the operation of PipeStone not herein assumed by CITY.

4.1.6. Marketing/Promotions. CONTRACTOR shall develop ongoing marketing and advertising programs for Pipestone and define a schedule of marketing and advertising activities. CONTRACTOR shall indicate in its marketing material that Pipestone is owned by CITY and operated by CONTRACTOR. All names, logos and designs of PipeStone shall be the exclusive property of CITY, and CONTRACTOR shall acquire no rights to such names, logos, and designs under this Agreement, except as provided for herein. Notwithstanding the foregoing, CONTRACTOR may: (i) use the name, logo, and other marks and designs of Pipestone in connection with the operation of PipeStone; (ii) combine Pipestone and Pipestone's likeness with other golf club facilities managed and/or owned by CONTRACTOR in marketing and promotion efforts and use; and (iii) use its name and likeness in conjunction with Pipestone, and is authorized to use the name and mark "Managed by Hampton Golf." All Pipestone green fees, cart rental fees, and special promotions must be approved by CITY as stated in the Pipestone Fee Ordinance or approved by the Director and enforced by the employees of Pipestone.

4.1.6.1. Approval of Promotions, Advertisements and Publications. CONTRACTOR shall create promotions, advertisements, and publications to build business at PipeStone. CONTRACTOR shall use its best efforts to obtain the Director's prior verbal or written approval of advertisements and documents, which approval shall not be unreasonably withheld. If CONTRACTOR uses such best efforts but does not receive a response from the Director within two (2) business days, CONTRACTOR may proceed without the Director's approval. CONTRACTOR and the Director may also agree upon general parameters within which advertisements may be released without Director's approval.

4.1.7. Leases and Contracts. CONTRACTOR shall negotiate, consummate, enter into, and perform, on behalf of and in the name of CITY and as approved by CITY, such agreements as CONTRACTOR may deem necessary or advisable for the management and operation of Pipestone, including without limitation, furnishing of all food, beverages, utilities, concessions, operating supplies, equipment, payroll and staff services, and other materials and services as CONTRACTOR determines are needed from time to time for the management and operation of the Pipestone, provided, however, CITY shall remain liable for the performance of said agreements. CONTRACTOR shall follow CITY procedures for entering and processing agreements.

4.1.8. Licenses, Permits, and Accreditations. CONTRACTOR shall apply for, obtain, and maintain, on behalf of and in CITY's name (or, if otherwise required by applicable law, in CONTRACTOR's name) all licenses, permits, and accreditations required in connection with the management and operation of Pipestone. CITY will reasonably cooperate with CONTRACTOR in applying for, obtaining, and maintaining such licenses (including liquor licenses), permits, and accreditations.

4.1.8.1. Liquor Laws. CONTRACTOR shall conduct necessary training of employees at PipeStone to insure full knowledge of State of Ohio liquor laws as they apply to the operation of PipeStone. Training shall be documented, and CITY shall, on an annual basis, be provided a copy of the training materials and a list of employees at PipeStone who are trained to serve liquor.

4.1.9. Legal Action. CONTRACTOR may not institute any legal action by or on behalf of CITY without the prior written consent of CITY.

4.1.10. Food and Beverage. CONTRACTOR will develop food and beverage operating concepts (including operational plans, menus, wine lists, food and beverage control systems and prices) to be presented for approval by CITY.

4.1.11. Emergency Expenditures. In the event, at any time during the Term, a condition should exist in, on, or about PipeStone of an emergency nature which, in CONTRACTOR's sole and absolute discretion, requires immediate action to preserve and protect the Property, to better assure Pipestone's continued operation, or to protect CITY's customers, residents, guests, or employees, CONTRACTOR is authorized to take all steps and to make all reasonable expenditures necessary to repair and collect any such condition, whether or not provisions have been made in the applicable Budgets for any such expenditures. CITY shall be notified of the need for and estimated amount of any such emergency expenditures as soon as reasonably practical.

4.1.12. Compliance with Law; Expenditures Required for Compliance with Laws. CONTRACTOR shall (i) comply with all laws, ordinances, rules, or governmental regulations now or hereafter in force, or by order of any governmental or municipal power, department, agency, authority, or officer (collectively "Laws") in respect of the use, operation, maintenance, repair and restoration of Pipestone, whether or not compliance therewith shall interfere with the use and enjoyment of PipeStone; and (ii), except for those specifically deemed the obligation of CITY, to procure, maintain and comply with all licenses and other authorizations required for any use of PipeStone then being made, and for the proper erection, installation, operation and maintenance of PipeStone or any part thereof. In the event, at any time during the Term, repairs, additions, changes, or collections to PipeStone of any nature shall be required by reason of any Laws, and as authorized by CITY, CONTRACTOR may take all reasonable steps and to make, on behalf of CITY, all reasonable expenditures necessary to repair and collect any such repairs, additions,

changes, or collections whether or not provisions have been made in the applicable Budgets for any such expenditures.

4.1.13. Purchases by CONTRACTOR. In connection with any purchases made by CONTRACTOR for the account of CITY, it is understood that CONTRACTOR may utilize its group buying techniques involving other affiliated businesses and golf clubs as long as the cost thereof shall be competitive with that which would be charged by non-affiliated third party vendors in an arms-length transaction, and in such event, CONTRACTOR may receive and retain a fee, rebate, refund or other compensation from vendors and service providers in exchange for CONTRACTOR's volume purchases. Notwithstanding the foregoing, any fees, rebates, refunds, or other compensation received by CONTRACTOR applicable to the direct purchases for PipeStone shall belong solely to CITY and shall be paid to CITY.

4.1.14. Purchase Orders. It is understood and agreed upon by CITY and CONTRACTOR that all expenditures made by CONTRACTOR for PipeStone shall be initiated by CITY's purchase order process and submitted to the Director to process through CITY's Finance Department for encumbering and approval by the CITY's Finance Director and CITY's Manager (or his designee) prior to the actual purchase of any goods or services.

4.1.14.1. Invoices. CONTRACTOR shall submit all invoices for payment to CITY Finance Department with proper approval and funding source. CONTRACTOR shall be prompt in payment to keep CITY in good standing with vendors. In the event late fees are incurred, the CITY will deduct such fees from the Management Fee, unless CONTRACTOR experiences extenuating circumstances or the cause of said late fees were due to any action or inaction of CITY.

4.1.15. CONTRACTOR shall operate Pipestone within the Budgets and subject to the expense limits established in the Budgets for categories assigned to "Maintenance, Pro Shop, Food and Beverage, Carts, Range, and Capital Improvements." CONTRACTOR agrees that if it appears that a category expense shall be exceeded, CONTRACTOR shall notify CITY, in writing, of this potential overage of the Budgets and explanation of the cause. CONTRACTOR and CITY shall work in cooperation to solve the potential overage of the Budgets.

4.1.16. CONTRACTOR shall, at the expense of CITY, be responsible for the completion or coordination with City Staff for the completion of all Capital Improvements related to the operation of Pipestone as approved by CITY in the Annual Operating Budget and Capital Budget. In the course of its operating and managing of PipeStone under this Agreement, CONTRACTOR shall have the authority to negotiate and contract with third parties on behalf of CITY provided such negotiations and contracts are contemplated by and in accordance with the Annual Operating Budget and Capital Budget approved by

CITY. All Operating Expenses and Capital Expenses related to the operation of Pipestone shall be invoiced directly to CITY, and CITY agrees to pay such invoices in a timely manner. It is understood that for any request by CONTRACTOR for a single purchase/purpose of Fifty Thousand Dollars (\$50,000.00) and higher for items pursuant to this Agreement, CONTRACTOR shall advise CITY, and the public bidding procedures of CITY shall be followed to procure such item or items.

4.1.17. CONTRACTOR agrees that with respect to all purchasing procedures and suppliers and purveyors utilized that there shall be no conflict of interest or self-dealing with respect to the PipeStone operations except as otherwise approved herein.

4.1.18. CONTRACTOR and CITY agree that there shall be an inventory taken, together by both parties, of all equipment, materials, products and merchandise of PipeStone prior to the Commencement Date and that on the Commencement Date, CITY and CONTRACTOR shall execute a document of inventory and CONTRACTOR shall accept the same with understanding that all property on Pipestone is that of the CITY and shall remain so and shall remain the responsibility of CONTRACTOR while said property is in its possession during the Term, Furthermore, CONTRACTOR shall participate in and cooperate with CITY's year-end inventory of supplies and materials.

4.1.19. CONTRACTOR shall follow CITY's Fixed Asset Process, as prescribed by CITY Finance Department. As provided by CITY, CONTRACTOR shall prepare appropriate fixed asset forms to accompany CITY purchase orders to purchase CITY-defined capital items, In addition, to CITY's Fixed Asset Process, CONTRACTOR shall, in conjunction with CITY's Finance Department, track all deletions and transfers of CITY-defined fixed assets,

4.2. Financial Management and Budgets. During the Term, CONTRACTOR is responsible for preparing all operating budgets, cash flow budgets, other budget projections and forecasts, as well as the day-to-day financial affairs of PipeStone.

4.2.1. Budgets. All budgets, as hereinafter set forth (collectively, the "Budgets"), shall be prepared with the advice and counsel of CITY, based on what CONTRACTOR believes to be reasonable assumptions and projections, and delivered to CITY for its review and written approval as part of the Business Plan. All Budgets shall be presented in detail as reasonably defined by CITY.

4.2.1.1. Annual Operations Budget. In accordance with the Business Plan, CONTRACTOR shall submit to CITY a budget setting forth the projected income and the projected costs associated with the operation of Pipestone for the next fiscal year for CITY's review and approval for the upcoming calendar year or part thereof within the Term (the "Annual Operations Budget").

4.2.1.2. Capital Expense Budget. In accordance with the Business Plan, CONTRACTOR shall submit for CITY's review and written approval, a budget setting forth the projected costs of proposed Capital Improvements (including equipment purchases and leases) to the Property for the upcoming calendar year and following four years or part thereof within the Term (the "Capital Expense Budget"). Capital Expense Budget shall include an equipment replacement schedule for all PipeStone equipment.

4.2.2. CITY's Review and Approval of Budgets. The Budgets shall be for CITY's review and written approval, subject to the terms of this Agreement. CITY shall give its written comments within sixty (60) days after receiving the Budgets from CONTRACTOR; approval of the Budgets will be subject to the CITY's annual budget process and timeline. In the event of disapproval of any Budgets, CONTRACTOR shall continue operating Pipestone pursuant to the Budgets then in effect, subject to increases in Operating Expenses required due to (i) increases in Gross Revenue or (ii) other matters beyond the control of CONTRACTOR, until such time as CITY and CONTRACTOR agree upon the appropriate replacement Budgets. The City Council shall review and provide final approval of all proposed Budgets.

4.2.3. Unanticipated Expenditures and Reallocation of Funds. CITY agrees that the Budgets are intended to be reasonable estimates, and, accordingly, CONTRACTOR shall be entitled from time to time to revise the Budgets to cover any expenditures that were unanticipated at the time of preparation of the Budgets but are reasonable and necessary to carry out the provisions of this Agreement; provided, however, that except as otherwise set forth in this Agreement, CONTRACTOR shall be required to obtain CITY's prior written approval of any expenditures which would result in the total expenditures exceeding the total annual budget appropriation for operating PipeStone. CITY acknowledges that CONTRACTOR has not made any guarantee, warranty, or representation of any nature whatsoever concerning or relating to (i) the Budgets, or (ii) the amounts of Gross Revenue or Operating Expenses to be generated or incurred from the operation of PipeStone.

4.2.4. Accounting Records and Reporting. CONTRACTOR shall, during the Term, maintain accounting records in a format consistent (in all material respects) with generally accepted accounting practices. CONTRACTOR may utilize CITY's point of sale and other software, as provided by CITY, such as Golf Trac through Vermont Systems for revenue transactions and tee time reservations.

4.2.4.1. CONTRACTOR shall prepare and deliver to CITY the next business day a summary of the daily receipts and point-of-sale detail documents. CONTRACTOR shall prepare reports in accord with the established CITY procedures with respect to financial accounting. All funds received by

CONTRACTOR shall be deposited to the appropriate CITY depository account on a daily basis.

4.2.4.2. CONTRACTOR shall maintain good and accurate records of cash receipts on which all fees charged are entered. Such formats of records shall be mutually developed and/or modified by the CITY Finance Department and CONTRACTOR.

4.2.4.3. CONTRACTOR agrees to comply with the depository accounting functions as required by CITY according to CITY depository and accounting requirements and shall familiarize itself and become amenable to any other state/or federal requirements directly related to the operation of Pipestone which CONTRACTOR is notified by CITY to which it must conform.

4.2.4.4. CONTRACTOR shall deposit in a bank so designated by CITY all Gross Revenue from the Pipestone operation within a 24-hour period; and shall be responsible for the safekeeping, storage, and transposition of said Gross Revenue until they are delivered to the bank. CONTRACTOR will also prepare a CITY-issued daily pay-in that indicates each daily deposit and shall deliver the same to CITY on a daily basis.

4.2.4.5. CONTRACTOR agrees to reasonably comply with and cooperate in the annual audit of Pipestone operation when called upon to do so by CITY. CONTRACTOR will also reasonably cooperate with CITY in event of unscheduled audits of cash drawers and inventory review conducted by CITY.

4.2.4.6. CONTRACTOR shall provide Director the monthly outing/event schedules via a virtual shared calendar, including any pertinent information regarding the outing/event and identify the employee that will oversee the function.

4.2.4.7. Monthly Reporting. During the Term, CONTRACTOR shall submit to CITY, within fourteen (14) business days after the close of each calendar month, a financial report showing in reasonably accurate detail the financial and operational activities of Pipestone for the preceding calendar month and the calendar year to date, which shall include (i) cash management and forecasting; (ii) variance reports; and (iii) budget forecasting and reporting; provided, that CITY shall continue to allow access by CONTRACTOR to the financial information for the operation of Pipestone needed in order to complete and provide such financial reports in a timely manner. Financial reports shall be provided by CITY to CONTRACTOR's Regional Manager on a minimum of a monthly basis. CONTRACTOR shall have access to CITY reports upon request and during CITY's normal business day.

4.2.4.8. Records. CONTRACTOR shall maintain a complete set of books and records, in a form and manner approved by the CITY, showing all revenue collected and all expenditures made in collection with the operation of Pipestone, along with such supporting data and documents as prescribed by the CITY. Such books and records shall be kept in such a manner as to make them easily reconcilable with the reports and forms to be submitted to the CITY by CONTRACTOR. The CITY shall have the right at any time to examine the records, books, data, and documents kept by CONTRACTOR regarding the operation and maintenance of Pipestone. CONTRACTOR shall provide its annual audited financial statement, if once exists, to the CITY by September 15th of each year during the Term.

4.2.5. Internal Control. CONTRACTOR agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects PipeStone, such controls to be consistent with generally accepted accounting practices utilized by CITY. In addition, CONTRACTOR shall agree to implement any reasonable internal control recommendation that may develop from future audits if determined by CITY to be in CITY's best interest.

4.2.6. Inspection. At any time during the Term and for ninety (90) days after the termination of the Term, CITY shall have the right, after three (3) days prior written notice to CONTRACTOR, to inspect the books, records, invoices, deposits, canceled checks, or other financial data or transactions of PipeStone at reasonable times and during normal business hours. Such right shall not extend to any inspection of records at CONTRACTOR corporate offices.

4.3. Other Duties and Prerogatives. CONTRACTOR shall use commercially reasonable effort to perform any act that is necessary to operate and manage PipeStone during the Term, subject to the terms and conditions hereof. In fulfilling its operational and managerial responsibilities hereunder, CONTRACTOR shall have all rights ordinarily accorded to a manager in the ordinary course of business, including, without limitation, the collection of proceeds from the operation of Pipestone. CONTRACTOR shall not be obligated to advance any of its own funds to or for the account of CITY or to incur any liability unless CITY shall have furnished CONTRACTOR with funds necessary for the full discharge thereof. However, if for any reason CONTRACTOR shall have advanced funds in payment of any reasonable expense in connection with the maintenance and operation of the Pipestone, CITY shall immediately reimburse CONTRACTOR on demand for the full amount of such payments,

4.3.1. Deficit Funding. CONTRACTOR shall not have any responsibility for satisfying any expense, debt, or monetary obligation of CITY with respect to PipeStone except for the revenue and income of Pipestone. CONTRACTOR shall not be obligated to advance or otherwise use any monies of CONTRACTOR to satisfy CITY's or Pipestone's

expenses, debts, or monetary obligations. CITY shall be solely and exclusively responsible for all costs and expenses required to operate Pipestone.

4.4. Public Records. Records and information generated as a result of CONTRACTOR'S operation of PipeStone, including financial reports, audits, management reviews, and the like, may be subject to public inspection and/or reproduction as public records. Both parties recognize and acknowledge that CITY is subject to the Ohio Public Records Act and that records submitted to it, or generated pursuant to a contract with the CITY, are generally subject to disclosure.

4.4.1. Trade Secrets. Any trade secrets contained in documents provided to the CITY should be clearly marked "TRADE SECRET" should CONTRACTOR wish to protect the trade secrets. The CITY will also reasonably attempt to provide notice to CONTRACTOR should a public records request be made for CONTRACTOR'S records that contain trade secret material, so that CONTRACTOR can raise its objections to the release of such records.

ARTICLE 5.

RESPONSIBILITIES OF CITY

5.1. Expenditures/Certificates of Occupancy. CITY shall, at its sole cost and expense, obtain and/or maintain all certificates of occupancy or other permits required for CONTRACTOR's occupancy of Pipestone. CITY acknowledges that it is solely responsible for all Operating Expenses, Capital Expenses, and other costs and expenses associated with the operation of PipeStone and required for or on behalf of PipeStone provided that such Operating Expenses and Capital Expenses are made in accordance with the terms of this Agreement.

5.2. Inspections. CITY, along with the General Manager of Pipestone when requested, shall inspect the condition of the golf course, pro shop, restaurant, maintenance buildings, equipment, grounds, as it deems necessary. Results of the inspection documentation shall be provided to CONTRACTOR by CITY.

5.3. Financial Information. CITY shall make available to CONTRACTOR access to all financial data related to PipeStone, including without limitation, Golf Trac for daily sales and tee sheets, transaction and revenue history, expense details and summaries, in order for CONTRACTOR's fiscal reporting and management.

ARTICLE 6.

FEEs, EXPENSES AND RECEIPTS

6.1. Management Fee and Compensation. CITY shall pay compensation to CONTRACTOR as follows:

6.1.1. Management Fee. Four percent (4%) of Gross Revenue per month ("Management Fee"), payable within fourteen (14) business days from end of the preceding month for the management of Pipestone in accordance with the terms set forth hereinabove. CITY will deliver to CONTRACTOR, at the time of each such distribution, a written report indicating the basis for CITY's payment of the Management Fee. A late fee of two percent (2%) of Management Fee will be charged to CITY if payment is not received by CONTRACTOR within twenty (20) business days of the end of the preceding month, unless delayed due to reconciliation of deposits is delayed by CONTRACTOR staff. Should the CONTRACTOR achieve its annual financial performance goals, outlined in Exhibit B, the CITY shall compensate CONTRACTOR 0.5% of Gross Revenue for the year. This annual incentive will be paid within the first fourteen (14) days in February for the prior year.

6.1.2. Corporate Travel. CITY shall reimburse CONTRACTOR for travel expenses for visits to PipeStone for management oversight, planning, inspection of operations and/or to perform other reasonable tasks for the operation of Pipestone. Expenses will be actual expenses with detailed documentation provided. Travel expenses shall not exceed one thousand dollars (\$1,000) per month or twelve thousand dollars (\$12,000) annually, The one thousand dollars (\$1,000) per month amount may be modified by CITY and such modifications shall not increase the twelve thousand dollars (\$12,000) annual reimbursement limit.

6.1.3. Reimbursable Expenses. From time to time during the Term, certain miscellaneous expenses, as detailed in the Budget or pre-approved by Director, such as postage, office supplies and other hard costs incurred by CONTRACTOR in its management and operation of Pipestone (collectively, "Reimbursable Expenses"), will occur that are impossible to predict at the time of execution of this Agreement, and as a result, CITY shall reimburse CONTRACTOR for the Reimbursable Expenses, provided, however, CONTRACTOR shall provide CITY a monthly report evidencing the Reimbursable Expenses with supporting itemized invoices attached.

6.2. Revenue.

6.2.1. Fees. CITY hereby reserves the right to establish the fee schedule for greens, driving range, golf cart rental, lesson, outing, tournament, membership, and all other golf-related fees for Pipestone which shall be in compliance with CITY's Fee Ordinance. The CITY's Fee Ordinance establishes the top level for any and all fees. No changes in the maximum fees may be made by CONTRACTOR without City Council's approval, in its sole and absolute discretion. CONTRACTOR and Director may establish a fee schedule within CITY's Fee Ordinance and regional golf market rates. From time to time, CONTRACTOR may discount fees as a promotion to build business, provided that CONTRACTOR shall use its best efforts to obtain the Director's prior verbal or written

approval, which approval shall not be unreasonably withheld. If CONTRACTOR uses such best efforts but does not receive a response from the Director within twenty-four (24) hours, CONTRACTOR may proceed to offer the discount without the Director's approval. CONTRACTOR and the Director may also agree upon general parameters within which discounts may be offered without Director's approval.

6.2.2. Golf Lessons. CONTRACTOR shall be responsible for developing a golf lesson program for PipeStone ("Golf Lesson Program") that meets the expectations and approval of CITY. CITY will assist CONTRACTOR in promoting the Golf Lesson Program through development and distribution of promotional materials in CITY publications at CITY-owned facilities. All income generated from the Golf Lesson Program shall be recorded as daily income through the pro shop cash register and submitted as part of CITY's pay-in process. The General Manager of PipeStone shall maintain supporting documentation on-site that verifies lesson rosters, receipts of payment, and daily reports, and may be reviewed by CITY upon request. CONTRACTOR shall be responsible for the reporting of taxes as a result of golf professionals teaching lessons at PipeStone, and for filing of any tax returns, including but not limited to personal income taxes.

6.3. Expenses. All Operating Expenses shall be the sole responsibility of CITY.

6.4. Bank Deposits. CITY shall maintain during the Term banking arrangements with a bank in the Miamisburg area for the deposit of receipts, maintenance of accounts and such other banking activities necessary for the operation of PipeStone in accordance with the established practices of CITY's dealing with municipal funds.

6.5. Sales Tax Reporting. CITY shall file based on State and CITY established timelines, any and all sales tax reports as a result of sales made at PipeStone. Such information will be reflected in CITY's financial report. CONTRACTOR shall be required to provide sales tax information on its financial reports that are submitted to CITY. CONTRACTOR shall be responsible for any inaccuracies contained herein.

ARTICLE 7.

CITY'S COVENANTS AND REPRESENTATIONS

7.1. CITY makes the following covenants and representations to CONTRACTOR, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

7.1.1. Corporate Status. CITY is a municipal corporation duly organized, validly existing, and in good standing under the laws of Ohio, with full corporate power and authority to enter into this Agreement.

7.1.2. Authorization. The making, execution, delivery, and performance of this Agreement by CITY has been duly authorized and approved by requisite corporate action, and this Agreement has been duly executed and delivered by CITY and constitutes a valid and binding obligation of CITY, enforceable in accordance with its terms.

7.1.3. Effect of Agreement. Neither the execution and delivery of this Agreement by CITY nor CITY's performance of any obligation hereunder (a) will constitute a violation of any law, ruling, regulation, or order to which CITY is subject, or (b) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document (i) to which CITY is a party or is otherwise bound or (ii) to which Pipestone or any part thereof is subject.

7.1.4. Documentation. If necessary to carry out the intent of this Agreement, CITY agrees to execute and provide to CONTRACTOR, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which CONTRACTOR may reasonably request in connection with the operation of Pipestone.

ARTICLE 8.

CONTRACTOR COVENANTS AND REPRESENTATIONS

8.1. CONTRACTOR makes the following covenants and representations to CITY, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

8.1.1. Corporate Status. CONTRACTOR is a corporation duly organized, validly existing, and in good standing under the laws of Florida, and authorized to transact business in State of Ohio with full corporate power to enter into this Agreement and execute all documents required hereunder.

8.1.2. Authorization. The making, execution, delivery, and performance of this Agreement by CONTRACTOR has been duly authorized and approved by requisite corporate action, and this Agreement has been duly executed and delivered by CONTRACTOR and constitutes a valid and binding obligation of CONTRACTOR, enforceable in accordance with its terms.

8.1.3. Effect of Agreement. Neither the execution and delivery of this Agreement by CONTRACTOR nor CONTRACTOR's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which CONTRACTOR is subject, or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which CONTRACTOR is a party or is otherwise bound.

ARTICLE 9.

INSURANCE

9.1. CITY's Insurance Required. On the Commencement Date and continuing throughout the Term, CITY shall procure and maintain, at CITY's sole cost insurance on Pipestone and operation thereof, liquor liability insurance and general liability insurance of \$1,000,000 in the aggregate and shall name CONTRACTOR as an additional insured. CITY shall provide its insurance pursuant to its agreement through Miami Valley Risk Management Association (MVRMA), and the parties herein agree to be bound by the terms and conditions of CITY's agreement with said MVRMA with respect to insurance interests.

9.2. Upon written request by CONTRACTOR, CITY shall deliver to CONTRACTOR certificates of insurance and/or certificates of coverage with respect to all policies so procured, including existing, additional, and renewal policies. All policies of insurance shall, have attached thereto an endorsement that such policy shall not be canceled or materially changed without prior written notice to both CITY and CONTRACTOR

9.3. On the Commencement Date and continuing throughout the Term, CONTRACTOR shall procure and maintain, at CONTRACTOR's sole cost, insurance against claims for injuries to persons and damages to property which may arise from or in connection with the performance of work hereunder and the results of that work by CONTRACTOR, its agents, representatives, employees, and subcontractors. Coverage shall conform to the following specifications:

9.3.1. Commercial General Liability (CGL) with coverage at least as broad as Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$5,000,000 per occurrence.

9.3.2. Liquor Liability insurance policy or a Liquor Liability endorsement to the General Liability policy, on an occurrence basis, with \$5,000,000 per occurrence /aggregate limits to cover the restaurant and bar operations of Pipestone.

9.3.3. Automobile Liability: with limit no less than \$1,000,000 per accident for bodily injury and property damage.

9.3.4. Workers' Compensation: as required by the State of Ohio, with Statutory Limits; and Employer's Liability Insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

9.3.5. Subject to insurance regulations that may restrict the naming of certain "additional insureds." CONTRACTOR shall name CITY, its elected and appointed officials, and all of its employees, agents, and volunteers thereof as Additional Insureds on all liability policies required above, except Workers Compensation. Coverage shall be primary to the Additional Insureds and not contributing with any other insurance or similar

protection available to the Additional Insureds whether such coverage is primary, contributing, or excess.

9.3.6. CONTRACTOR may satisfy the minimum liability limits required in this Section for Commercial General Liability, Liquor Liability or Automobile Liability under an Umbrella or Excess Liability policy and/or CONTRACTOR's "hired and non-owned" automobile policy. CONTRACTOR agrees to endorse the CITY as an Additional Insured on the Umbrella or Excess policy unless the Certificate of Insurance states the Umbrella or Excess policy provides coverage on a "Follow Form" basis.

9.3.7. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII, unless otherwise acceptable to the CITY.

9.3.8. The CITY reserves the right to reasonably modify these requirements based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

9.3.9. CONTRACTOR shall secure and maintain during the Term, at CONTRACTOR's sole cost, insurance protection against the loss of such receipts by reason of burglary, larceny, embezzlement, robbery, or other causes, including employee dishonesty, with limit not less than \$250,000 per occurrence.

9.3.10. All CONTRACTOR's insurance policies required herein shall contain a clause against cancellation without thirty (30) days advanced written notice to CITY. Further, if the CONTRACTOR receives a non-renewal or cancellation notice from an insurance carrier providing coverage required herein, or receives notice that coverage no longer complies with the requirements herein, CONTRACTOR agrees to notify the CITY by fax or email within five (5) business days with a copy of the non-renewal or cancellation notice, or written explanation of how coverage is no longer in compliance. CONTRACTOR shall cease operations of Pipestone on the occurrence of any such non-renewal, cancellation, or material change and shall not resume operations until insurance is in force that complies with these requirements.

9.3.11. CONTRACTOR shall provide CITY with Certificates of Insurance evidencing coverages required herein before the Commencement Date, and updated Certificates of Insurance no less than annually. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any reasonable time.

9.4 CONTRACTOR is NOT responsible in any way for the amount owed, coverage requirements or payment regarding Property Insurance. As the property and all structures, equipment and items within are Owned by the CITY, the CITY shall maintain all records, payments and liability coverage in this regard.

ARTICLE 10.

DAMAGE AND CONDEMNATION

10.1. Substantial Destruction. In the event Pipestone is damaged or destroyed by fire or other casualty to the extent that the damage cannot be materially restored with due diligence within two hundred seventy (270) days following such event, plus any additional period caused by Unavoidable Delay, either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the date of such destruction. In the event of termination of this Agreement pursuant to this Section, the Term shall cease and come to an end as of the date of such damage or destruction as though such date were the date originally fixed for the expiration of the Term, and neither party shall have any obligation to the other arising out of or in any way connected with the provisions of this Agreement, other than the payment of any monetary sums owed for periods prior to the date of termination. Should a terminable event occur, the CITY shall reasonably compensate CONTRACTOR for services rendered during said time period.

10.2. Partial Destruction. In the event Pipestone or any portion thereof, is damaged or destroyed by fire or other casualty and such damage can be materially restored with due diligence within two hundred seventy (270) days following such event, plus any period caused by Unavoidable Delay, CITY shall have the obligation to repair the damage to PipeStone as nearly as practicable to the condition the same were in prior to such damage, CITY shall cause such repair to be made with all reasonable dispatch so as to complete the same at the earliest possible date.

10.3. Substantial Condemnation. In the event (i) all or substantially all of Pipestone is taken in any eminent domain, condemnation, compulsory acquisition, or similar proceeding by any competent authority for any public or quasi-public use or purpose, (ii) a substantial portion of Pipestone is so taken, but the result is that it is unreasonable to continue to operate Pipestone for the purposes contemplated by this Agreement, or (iii) an arms-length third party sale of PipeStone takes place and is successfully completed in lieu of (i) or (ii) preceding, then either party hereto may terminate this Agreement upon written notice to the other party given within ninety (90) days following the conclusion of the condemnation proceedings.

10.4. Partial Condemnation. In the event a portion of PipeStone shall be taken by any of the events described in Section 10.3 above, or is affected but on a temporary basis, and the result is not to make it unreasonable to continue to operate Pipestone for the purposes contemplated by this Agreement, this Agreement shall not terminate, It is further agreed that any portion of any award, damages or other compensation paid to CITY on account of such partial taking, condemnation, or sale as is necessary to render PipeStone equivalent to its condition prior to such event shall be used for such purpose.

ARTICLE 11.

INDEMNIFICATION

11.1. Release; Indemnification. CONTRACTOR hereby agrees to indemnify and hold CITY, its officers, employees, agents and volunteers, harmless from and against any and all liability, cost, damage or expense (including reasonable attorneys' fees) arising from or related to the acts or omissions of CONTRACTOR, its agents, servants or employees, in the execution, performance, or failure to adequately perform CONTRACTOR's obligations pursuant to this Agreement, unless CITY has knowingly or willfully violated the law or CITY's actions or omissions constitute willful misconduct, gross negligence or recklessness. Notwithstanding anything else contained herein, CITY acknowledges that CONTRACTOR shall not be responsible for any damage to property under its care custody and control, except such damage caused by the negligence of CONTRACTOR, and that CITY shall ensure that all such damage is covered by appropriate insurance coverage.

11.2. Survival. The obligations contained in this Article 11 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 12.

RIGHT TO CURE

12.1. Performance. If, after the expiration of any permitted grace period or notice and cure period, a party hereto shall have failed to cure any default in the performance of any representation, covenant, or obligation on its part to be performed, then the other party may, at any time thereafter, without further notice, perform the same for the account and at the expense of the other party. Notwithstanding the above, in the case of an emergency, either party may, after notice to the other party, so reasonably perform in the other party's stead prior to the expiration of any applicable grace period; provided, however, the other party shall not be deemed in default under this Agreement.

12.2. Reimbursement. If, pursuant to this Article, either party at any time is compelled or elects (as permitted by the immediately preceding Section) (i) to pay any sum of money, (ii) to do any act which will require the payment of any sum of money, or (iii) to incur any expense (including reasonable attorneys' fees) in instituting, prosecuting, and/or defending any action or proceeding instituted by reason of the other party's failure to perform, as described in the immediately preceding Section, the sum or sums paid or payable by such party, with all interest, cost, and damages, shall be immediately due from the other upon receipt of a statement and reasonable documentation therefor.

ARTICLE 13.

EVENTS OF DEFAULT

13.1. The occurrence of any one or more of the following events which is not cured in any applicable grace period shall constitute a default under this Agreement (hereinafter referred to as an "Event of Default"):

13.1.1. Failure to Pay Sums Due. Either party's failure to pay any sums payable under this Agreement when and as the same shall become due and payable and such failure shall continue for a period of three (3) days after written notice (specifying the item not paid) thereof from the other party to the defaulting party.

13.1.2. Failure to Comply. Either party's failure to comply with any of the covenants, agreements, terms, or conditions contained in this Agreement and such failure shall continue for a period of thirty (30) days after written notice thereof from the other party to the defaulting party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any failure cannot with due diligence be cured within such 30-day period, if the defaulting party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting party to cure the failure.

13.1.3. Bankruptcy. If either party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing.

13.1.4. Reorganization, Receiver. An order, judgment, or decree is entered without the application, approval, or consent of either party by any court of competent jurisdiction approving a petition seeking reorganization of said party or appointing a receiver, trustee, or liquidator of said party, or of all or a substantial part of any of the assets of said party, and such order, judgment, or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

ARTICLE 14.

REMEDIES

14.1 CITY's Remedies. Upon the occurrence of an Event of Default by CONTRACTOR, CITY may:

14.1.1. Seek specific performance of CONTRACTOR obligations or injunctive relief, as applicable;

14.1.2. Demand payment of all amounts due CITY under the terms of this Agreement and demand the payment of all costs, damages, expenses, and reasonable attorneys' fees of CITY arising due to CONTRACTOR Event of Default;

14.1.3. Proceed to remedy the Event of Default, and in connection with such remedy, CITY may pay all expenses and employ counsel. All sums so expended or obligations incurred by CITY in connection therewith shall be paid by CONTRACTOR to CITY, upon demand by CITY, and on failure of such reimbursement, CITY may, at CITY's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to CONTRACTOR from CITY under the terms of this Agreement;

14.1.4. Terminate this Agreement by written notice of termination to CONTRACTOR. Upon proper termination of this Agreement and CONTRACTOR shall surrender possession of PipeStone to CITY and transfer all contracts, licenses, unearned accounts receivable, furniture, fixtures, and equipment to CITY and assist in an orderly transfer of the operation to another management entity or CITY;

14.1.5. No remedy granted to CITY is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder, now, or hereafter existing at law, in equity, or by statute. No delay or omission by CITY to exercise any right accruing upon an Event of Default shall impair CITY's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

14.2. CONTRACTOR Remedies. Upon the occurrence of an Event of Default by CITY, CONTRACTOR may:

14.2.1. Seek specific performance of CITY's obligations or injunctive relief, as applicable;

14.2.2. Demand payment of all amounts due CONTRACTOR under the terms of this Agreement and demand the payment of all costs, damages, expenses, and reasonable attorneys' fees of CONTRACTOR due to CITY's Event of Default;

14.2.3. Proceed to remedy the Event of Default, and in connection with such remedy, CONTRACTOR may pay all expenses and employ counsel. All sums so expended or obligations incurred by CONTRACTOR in connection therewith shall be paid by CITY to CONTRACTOR, upon demand by CONTRACTOR, and on failure of such

reimbursement, CONTRACTOR may, at CONTRACTOR option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to CITY from CONTRACTOR under the terms of this Agreement;

14.2.4. Terminate this Agreement by CONTRACTOR written notice of termination to CITY.

14.2.5. No remedy granted to CONTRACTOR is intended to be exclusive of any other

remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder, now, or hereafter existing at law, in equity, or by statute. No delay or omission by CONTRACTOR to exercise any right accruing upon an Event of Default shall impair CONTRACTOR exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

ARTICLE 15.

TERMINATION

15.1. Events of Termination. This Agreement shall terminate on the occurrence of any of the events set forth below:

15.1.1. An Event of Default by CONTRACTOR, and CITY sends to CONTRACTOR a notice of termination for cause; (after expiration of the applicable cure period);

15.1.2. An Event of Default by CITY, and CONTRACTOR sends to CITY a notice of termination for cause (after expiration of the applicable cure period);

15.1.3. Both parties agree in writing to terminate this Agreement; or

15.1.4. Upon the expiration or termination of this Agreement according to its terms.

15.2. Payment of Sums Owed. Upon termination, all sums owed by either party to the other shall be paid within thirty (30) days of the effective date of such termination.

ARTICLE 16.

CONTRACT ENDING TRANSITION PROCEDURES

16.1. Contract Ending Transition Period. The "Contract Ending Transition Period" shall mean: (i) the six (6) month period immediately prior to expiration of the Term; (ii) the period from the date CITY or CONTRACTOR gives notice of default under Section 15.1. until the date of termination;

16.1.1. Contract Ending Transition Procedures. Duling the Contract Ending Transition Period:

16.1.1.1. CONTRACTOR shall cooperate in all manner as required and demanded by the CITY in the transfer of any and all licenses, including but not limited to state liquor licenses, necessary for the operation of the golf operations.

16.1.1.2. CONTRACTOR shall allow CITY and others to interview and discuss employment opportunities with CONTRACTOR's on-site employees.

16.1.1.3. CONTRACTOR shall not transfer any Key Personnel without the consent of Director, said approval not to be unreasonably withheld.

16.1.1.4. CONTRACTOR and CITY shall refrain from coercing, threatening, or harassing any employee who expresses interest in being employed by CITY, CONTRACTOR or other party after the Agreement has expired, or has been terminated or cancelled.

16.1.1.5. CONTRACTOR and CITY shall cooperate in good faith on post-contract support services, data management, inventory control, transfer of employees at Pipestone and other issues necessary and appropriate to ensure smooth transition of operating responsibilities from one party to another. Nothing in this paragraph shall be construed to require CITY or CONTRACTOR to hire additional personnel or spend additional money.

16.1.1.6. CONTRACTOR shall deliver to CITY all books and records related to the operation of Pipestone.

16.1.1.7. CONTRACTOR shall deliver to CITY all records and information related to tournaments, outings and other events booked at Pipestone for the Contract Transition Period or any time thereafter.

16.1.1.8. CONTRACTOR shall deliver to CITY current copies of all contracts, permits and licenses affecting the operation of PipeStone, including without limitation, equipment at Pipestone.

16.1.1.9. All real and personal property that is currently located at Pipestone, together with any real or personal property purchased or leased in accordance with the Budgets or otherwise with CITY funds is and shall remain the propety of CITY. CONTRACTOR shall transfer possession of Pipestone, facilities, furnishings and equipment, supplies, software, databases, books, records, and materials purchased, prepared, or maintained under this Agreement to the new operator or CITY, as CITY shall direct. If CITY determines that Pipestone, any facilities, furnishings and equipment or other item is not in an acceptable condition accounting for normal wear and tear and Budget(s) constraints, if any,

CONTRACTOR shall have the burden of demonstrating that the item was properly maintained or that the item is useable and in good condition. CONTRACTOR shall reimburse CITY for the cost of repair or replacement of any item that is not in usable and good condition, normal wear and tear and Budget(s) constraints expected. CONTRACTOR shall surrender PipeStone in broom-clean condition.

16.1.1.10. CONTRACTOR shall transfer all keys, convey all alarm codes, and vacate PipeStone.

16.1.1.11. CONTRACTOR agrees that all records, specifications, data, maps, designs, graphics, writings, recordings, and other tangible materials regardless of form or format, including, without limitation, electronically transmitted documents and files, and other collateral materials collected, compiled, drafted, prepared, produced and/or generated in the performance of this Agreement shall be the property of CITY. CONTRACTOR shall regularly provide such documents to CITY upon CITY's request. In the event that this Agreement is terminated prior to completion of the scope of work, CONTRACTOR shall provide all such data and documents to CITY forthwith.

ARTICLE 17

NOTICES

17.1. Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, or (ii) sent by certified mail, return receipt requested, postage prepaid, or (iii) sent by email, addressed as shown below, or to such other address as the party concerned may substitute by written notice to the other, All notices personally delivered shall be deemed received on the date of delivery, All notices forwarded by mail shall be deemed received on a date seven (7) days (excluding Sundays and legal holidays when the U.S. mail is not delivered) immediately following date of deposit in the U.S. mail. Provided, however, the return receipt indicating the date upon which all notices were received shall be prima facie evidence that such notices were received on the date on the return receipt. All email notices shall be deemed received on the date sent for general correspondence, email correspondence for official notifications the received receipt notification shall be deemed indication of receipt.

If to CITY: City of Miamisburg 10 North First Street
Miamisburg, Ohio 45342
Attention: Ryan Davis, Parks & Recreation Director

Ryan.Davis@cityofmiamisburg.com

With a copy to:

City of Miamisburg 10 North First Street

Miamisburg, Ohio 45342

Attention: Mr. Keith D. Johnson, City Manager

Keith.Johnson@cityofmiamisburg.com

and

City of Miamisburg 10 North First Street

Miamisburg, Ohio 45342

Attention: Mr. Philip Callahan, Law Director Coolahanlaw@yahoo.com

If to CONTRACTOR:

Hampton Golf, Inc.

7845 Baymeadows Way

Jacksonville, Florida 32256

Attn: Mr, MG Orender Morender54@gmail.com

With a copy to:

Hampton Golf, Inc.

7845 Baymeadows Way

Jacksonville, Florida 32256

Attn: Mr. Silva Gazarova, J.D.

SGazarova@Hampton.golf

The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes. No notice to

either CITY or CONTRACTOR shall be deemed given or received unless the entity noted "With a copy to" is simultaneously delivered notice in the same manner as any notice given to either CITY or CONTRACTOR.

ARTICLE 18.

MISCELLANEOUS

18.1. Exhibits. All Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein; provided, however, in the event that at the time of the execution of this Agreement any of the Exhibits to be attached are incomplete, the parties shall use their best efforts to complete such Exhibits at the earliest possible date. To the extent this Agreement may be rendered unenforceable by the lack of completion of any of the Exhibits, such defect shall be cured as such incomplete Exhibits are made complete in accordance with this Section, except to the extent that such Exhibits are deemed and stipulated by the parties to be complete on the execution of this Agreement by the parties hereto. If any Exhibits are subsequently changed by the mutual written agreement of the parties, the Exhibits shall be modified to reflect such change or changes and initialed by the parties.

18.2. Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement and understanding of the parties relating to the subject matter hereof and supersede all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

18.3. Amendment and Waiver. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all parties hereto; provided, however, either party may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the party so waiving of any of its obligations under this Agreement.

18.4. No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the parties hereto; it being understood and agreed that neither any provisions contained herein nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of CITY and CONTRACTOR.

18.5. Restrictions as to Other Clubs. CONTRACTOR agrees that it shall not lease, manage, operate, or otherwise commit any of its personnel to any golf facilities within twenty-five (25) miles of the PipeStone, unless approved and authorized by CITY in writing.

18.6. Assignment; Successors and Assigns. This Agreement may not be assigned by either party hereto without the express written consent of the other party, except that CONTRACTOR may assign this Agreement to any of its affiliates.

18.6.1. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and assigns, where permitted herein.

18.7. Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.

18.8. Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of (i) this Agreement, and (ii) all other documents and instruments to be executed and delivered in accordance herewith and shall continue in full force and effect.

18.9 Approvals. Any consent or approval referred to herein (by whatever words used) of either party shall not be unreasonably withheld or delayed, and neither party shall seek or obtain any payment in connection therewith as a condition therefor. Such consent must be obtained in writing.

18.9.1. For the purposes of the Agreement, (in all cases except where specifically stated otherwise herein) the consent, approval or decision of City Manager and Director may be treated by CONTRACTOR as the consent, approval or decision of CITY, unless approval is required by City Council under the charter, resolutions or ordinances of CITY, wherein City Manager and/or Director must gain authority to execute such documents from such legislative body.

18.10. Construction and Interpretation of Agreement. This Agreement shall be governed by and construed under the laws of the State of Ohio. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each party before the execution of this Agreement.

18.11. Captions. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.

18.12. Governing Document. This Agreement shall govern in the event of any inconsistency between this Agreement and any of the Exhibits attached hereto or any other document or instrument executed or delivered pursuant hereto or in connection herewith.

18.13. Outside Businesses. Nothing contained in this Agreement shall be construed to restrict or prevent, in any manner, any party or any party's affiliates, parent corporations, or representatives or principals from engaging in any other businesses or investments. Furthermore, in promoting, operating, managing, and maintaining PipeStone, CONTRACTOR may purchase goods, supplies and services from and through any of its affiliates, so long as the price and terms thereof are equal to or less than the prices and terms of goods and services of equal quality available to non-affiliates.

18.14. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same agreement.

18.15. Time. Time is of the essence in this Agreement and each and all of its provisions. Any extension of time granted for the performance of any duty or obligation under this Agreement shall not be considered an extension of time for the performance of any other duty or obligation under this Agreement.

18.16. Unavoidable Delays. The provisions of this Section shall be applicable if there shall occur during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain labor or materials, or reasonable substitutes therefor, (iii) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions similar to those enumerated in this Section beyond the reasonable control of the party obligated to perform. If either party shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Agreement, then, upon written notice to the other, within ten (10) days of such event, such failure shall be excused and not be a breach of this Agreement by the party claiming an unavoidable delay (an "Unavoidable Delay"), but only to the extent occasioned by such event. If any right or option of either party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this Section shall not be applicable to either party's obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

18.17. No Third-Party Beneficiaries. Nothing herein contained shall be deemed to **establish** any rights of third parties against the parties hereto; it being the intent that the rights and obligations set forth herein are those of the parties hereto alone, with no third party beneficiary rights intended.

18.18. Certain Services Excluded. Notwithstanding anything else contained in this Agreement to the contrary, CONTRACTOR's services are limited to those specifically noted in the Agreement and do not include, amongst others and without limitation, architectural, engineering, design or general contracting services, facility planning services, accounting or tax-related assistance or advice, legal advice or services, expert witness services, cost report preparation, data processing or information services, or feasibility studies. CONTRACTOR's services will not constitute an audit, review or compilation or any other type of financial statement reporting, or consulting engagement subject to the rules of the American Institute of Certified Public Accountants or other similar bodies. CONTRACTOR will not be expressing any professional opinions on and makes no representations or warranties in conjunction with this engagement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

HAMPTON GOLF, INC.,

CITY OF MIAMISBURG,

a Florida corporation

a municipal corporation

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A
DEFINITIONS

All capitalized terms referenced or used in the Management Agreement (the "Agreement") and not specifically defined therein shall have the meaning set forth below in this Exhibit A, which is attached to and made a part of the Agreement for all purposes.

1.1. Capital Expense. The term "Capital Expense" shall be defined as a capital expense incurred by CITY during the Term for equipment and facility improvements that exceed Five Thousand Dollars (\$5,000.00) and with a useful life of more than one (1) year.

1.2. Capital Improvements. The term "Capital Improvements" shall be defined as all investments by CITY involving items and improvements (including repair and replacement) that are a result of CITY incurring a Capital Expense.

1.3. Environmental Laws. The term "Environmental Laws" shall mean all current and future federal, state, and local statutes, regulations, ordinances, and rules relating to (i) the emission, discharge, release, or threatened release of a Hazardous Material into the air, surface water, groundwater, or land; (ii) the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a Hazardous Material; or (iii) the protection of human health, safety, or the indoor or outdoor environment, including, without limitation, the Clean Air Act, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Occupational Safety and Health Act, all amendments thereto, all regulations promulgated thereunder, and their state or local statutory and regulatory counterparts.

1.4. Gross Revenue. The term "Gross Revenue" shall mean all monies received as a result of the operation of PipeStone and the sales of goods and services at PipeStone, determined on a cash basis. Gross Revenues shall include, without limitation, all greens fees; rental fees for golf carts, golf clubs and other rental items; range balls; food, beverages, goods, wares or merchandise sales on, at, or from the PipeStone; facility rental from meetings, parties, tournaments, and other group gatherings; instruction fees; vending sales (or, if applicable, receipts from vending companies); or for services of any nature performed on, at, or from the Pipestone.

Gross Revenue shall not include:

1.4.1. Any refunds, rebates, discounts, and credits of a similar nature given, paid, or returned by CONTRACTOR or CITY in the course of obtaining such Gross Revenue;

1.4.2. Applicable gross receipts taxes, admission, cabaret, excise, sales, and use taxes, or similar governmental charges now or later imposed upon the sales or rental price of any goods or services paid to the appropriate taxing authority, whether added to or included in the selling price;

1.4.3. Income and revenues of licensees, concessionaires, or independent contractors of CONTRACTOR or CITY from Pipestone or any part thereof; provided, however, that all commissions, percentages, or other payments received or earned by CONTRACTOR or CITY from any licensee, concessionaire or contract shall be included in Gross Revenue;

1.4.4. Gratuities or commissions paid or given by customers to employees of the Club;

1.4.5. Proceeds of borrowings by CITY;

1.4.6. Proceeds paid as a result of an insurable loss, unless paid for the loss or interruption of business, provided such sums are used exclusively to remedy said loss;

1.4.7. Interest or investment income earned on distributed Positive Net Cash Flow to CITY or CONTRACTOR pursuant to the terms of the Agreement; or

1.4.8. CITY's advances;

Any of the above provisions resulting in a double exclusion from Gross Revenue shall be allowed as an exclusion only once.

1.5 Hazardous Materials. The term "Hazardous Materials" shall mean any solid, liquid, or gaseous substance, chemical, compound, product, byproduct, waste, or material that is or becomes regulated, defined, or designated by any applicable federal, state, or local governmental authority or by any Environmental Law as hazardous, extremely hazardous, imminently hazardous, dangerous, or toxic, or as a pollutant or contaminant, and shall include, without limitation, asbestos, polychlorinated biphenyls, and oil, petroleum, petroleum products and petroleum byproducts.

1.6. Operating Expenses. The term "Operating Expenses" shall mean all operating expenses of Pipestone incurred or paid on behalf of CITY during the Term, including, but not limited to, the following items:

1.6.1. Salaries, wages, employee benefits, and payroll expenses, including payroll taxes, and insurance, and training and travel for all employees employed on-site in the direct operation of PipeStone, excluding CONTRACTOR corporate management personnel and any of the personnel of the CITY and service charges, which are defined as percentage gratuities added to billings and paid to employees;

1.6.2. Management Fees and corporate travel expenses paid to CONTRACTOR as stated in Article 6, Section 6.1;

1.6.3. Marketing, advertising, and promotional expenses;

1.6.4. Replacement of inventories of maintenance parts and supplies, food stores and bar supplies and costs of merchandise held for retail sale;

1.6.5. Costs of equipment, materials, supplies, and licenses approved in the Budgets;

1.6.6. Lease fees, if any, for golf carts or other machinery or equipment used in connection with the operation of PipeStone;

1.6.7. Replacement of broken, lost, or damaged silver, chinaware, glassware, cooking utensils, and other similar items of equipment;

1.6.8. Office supplies, postage, printing, routine office expenses, incurred in the on-site operation of PipeStone;

1.6.9. The costs of entertainment at PipeStone, including vocalists and bands;

1.6.10. Auditing, accounting costs, computer fees, and legal fees incurred in respect of the operation of PipeStone, including any reasonable financial management and reasonable accounting fees paid to third party accounting firms, if included in the Budgets;

1.6.11. Costs incurred for utilities, including, but not limited to, all electric, gas, and water costs, and any other private utility charges incurred in connection with the operation of PipeStone;

1.6.12. Ordinary maintenance and repairs, exclusive of any capital improvements or capital replacements, which are hereby excluded;

1.6.13. Operating Expenses shall not include principal or interest payments on indebtedness, depreciation and amortization, non-cash expenses, and Capital Improvements.

1.18. Working Capital. The term "Working Capital" shall mean an amount sufficient to pay Operating Expenses for any given month.

EXHIBIT B

MANAGEMENT FEE INCENTIVE

The CITY agrees to pay the Management Fee to the CONTRACTOR based on achieving performance metrics for the operations according to the chart below. Because this management fee incentive is based on annual financial performance for total gross revenue and net gain for a given operating year (calendar year), the Management Fee will be paid within the first fourteen (14) days of February, allowing the Finance Department to close the prior year. Should the performance metrics be met sooner or reasonably believed to be met sooner, the CITY, at its sole discretion, may issue the additional 0.5% management fee on a monthly basis, with a catch-up of prior months.

Performance targets are intended to be reasonably achieved by CONTRACTOR. The chart below is for Fiscal Year 2024, and will be adjusted, with agreement by both CITY and CONTRACTOR based on the financial outlook of the course changing. For example, as a result of a fee increase, or substantial operating budget adjustment, such as the issuance of debt. If the PARTIES are unable to agree on adjusted performance metrics, the previously accepted goals shall apply.

The additional 0.5% of Gross Revenue is intended to be applied to all revenue collected for a calendar year, and will be paid through either monthly increment, once targets have been met, or through a single payment, at conclusion of a fiscal year, and done so in this fashion at the CITY's discretion.

2024 Performance Goals

Gross Revenue - \$1,700,000

Net Gain (Gross Revenue – Total Expenses) - \$150,000

For the purposes of this incentive, Net Gain is defined as Gross Revenue minus Total Expense, less any prior management fees paid. The purpose of the net gain is to ensure that both gross revenue and financial position are both considered as performance metrics for this Enterprise funded operation within the City.

Should the performance metrics not be met, the Incentive will not be awarded. Should only one of the performance metrics be met, the CITY, at its sole discretion, may choose to award the incentive.

ORDINANCE NO. 7046

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT TO PURCHASE A RAPIDVIEW IBAK CAMERA THROUGH SOURCEWELL COOPERATIVE PURCHASING PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio Revised Code (O.R.C.) Section 9.48 authorizes the City to enter into cooperative purchasing agreements with one or more other states, groups of states, the federal government, other purchasing consortia, institutes of higher education, or any political subdivision of this state described in division (B) (2) of Section 9.48 of the O.R.C. for the purpose of purchasing services or supplies; and

WHEREAS, Sourcewell, formerly NPJA, is a Non-profit Cooperative Purchasing Consortium that can expand the purchasing base for the City and thereby create leverage and economies of scale that the City cannot create independently; and

WHEREAS, Sourcewell has entered into a Professional Services Agreement with RapidView LLC to provide sewer inspection and rehabilitation systems equipment to members of Sourcewell; and

WHEREAS, the replacement of the existing mainline camera is budgeted in the 2023 Sewer Capital Improvement Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to execute a contract to purchase an IBAK mainline camera with lateral launch from RapidView LLC through Sourcewell at a total cost not to exceed \$340,000.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to preserve and maintain public utilities, therefore, this measure shall take effect and be in force from and after its passage.

Passed: November 7, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved: Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7047

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT TO PURCHASE SNOW REMOVAL EQUIPMENT THROUGH NPP GOV COOPERATIVE PURCHASING PROGRAM, AND DECLARING AN EMERGENCY.

WHEREAS, the Ohio Revised Code (O.R.C.) Section 9.48 authorizes the City to enter into cooperative purchasing agreements with one or more other states, groups of states, the federal government, other purchasing consortia, institutes of higher education, or any political subdivision of this state described in division (B) (2) of Section 9.48 of the O.R.C. for the purpose of purchasing services or supplies; and

WHEREAS, NPPGov, National Purchasing Partners Government, is a National Cooperative Procurement Organization that can expand the purchasing base for the City and thereby create leverage and economies of scale that the City cannot create independently; and

WHEREAS, NPPGov has entered into a Professional Services Agreement with Henderson Products Inc. to provide snow removal equipment to members of NPPGov; and

WHEREAS, the replacement of the equipment is budgeted in the 2023 Capital Improvement Plan.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

The City Manager is hereby authorized to execute a contract to purchase snow removal equipment from Henderson Products through NPPGov at a total cost not to exceed \$111,600.00.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to preserve and maintain public streets, therefore, this measure shall take effect and be in force from and after its passage.

Passed: November 7, 2023

Attested: Kim Combs
Kim Combs, Clerk of Council

Approved:

Michelle L. Collins
Michelle L. Collins, Mayor

ORDINANCE NO. 7048

AN ORDINANCE TO ACCEPT CERTAIN REAL PROPERTY LOCATED ON HOLLYHILL DRIVE FOR THE PURPOSE OF MAINTAINING PUBLIC UTILITIES, AND DECLARING AN EMERGENCY.

WHEREAS, Floyd Chrisman, Advance Adventure Investments, Inc. is the owner of certain real property located on Holly Hill Drive in Miamisburg; and

WHEREAS, the owner desires to donate said property to the City of Miamisburg for the purpose of maintaining public utilities; and

WHEREAS, the City of Miamisburg has agreed to accept the properties.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MIAMISBURG, STATE OF OHIO, TWO-THIRDS OF THE ELECTED MEMBERS THERETO CONCURRING THAT:

Section 1.

City Council hereby accepts parcels 5 and 6 as identified in the Exhibit A, attached hercto and made a part hereof.

Section 2.

This measure is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare and for the further reason that this agreement is needed at the earliest possible date to preserve and maintain public utilities therefore, this measure shall take effect and be in force from and after its passage.

Passed: November 7, 2023

Attested: _____

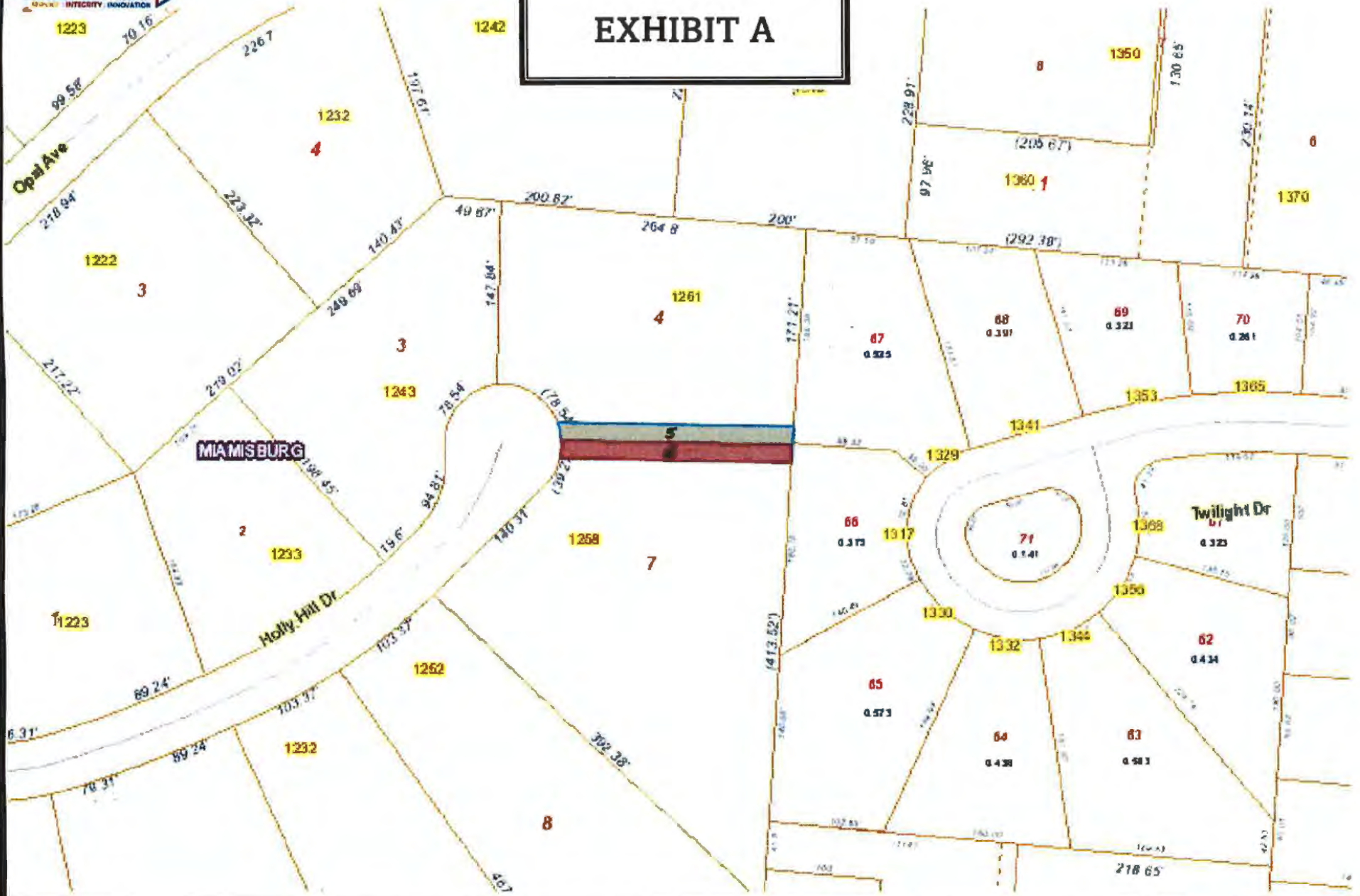
Kim Combs

Kim Combs, Clerk of Council

Approved _____

Michelle L. Collins
Michelle L. Collins, Mayor

EXHIBIT A



****DISCLAIMER**

This map is a visual presentation of data to be used as a public resource of general information and is provided strictly as a courtesy. The Montgomery County Auditors Office makes no warranty, representation, or guaranty as to the content, accuracy, timeliness, or completeness of any information presented herein.

Furthermore The Montgomery County Auditors Office shall assume no liability for

1. Any errors, omissions, or inaccuracies in the information provided regardless of how caused or
2. Any decision made or action taken or not taken by the reader in reliance upon any information furnished hereunder



1 inch = 100 ft

ORDINANCE NO. 7049

AN ORDINANCE APPROVING PROJECT CONSENT LEGISLATION WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) FOR PLACING EPOXY WEARING SURFACE ON BRIDGE DECKS INCLUDING SFN 5706483 ON INTERSTATE ROUTE 75 AT MILE MARKER 3.726 IN THE CITY OF MIAMISBURG, AND DECLARING AN EMERGENCY.

PRELIMINARY CONSENT LEGISLATION

Rev. 6/26/00

PID No. 114955
MOT - 70/75-11.30/3.73L

The following is an Ordinance enacted by the City of Miamisburg, Montgomery County, Ohio, hereinafter referred to as the Local Public Agency (LPA), in the matter of the stated described project.

SECTION I – Project Description

WHEREAS, the State has determined the need for the described project:

This project will place epoxy wearing surface on bridge decks including SFN 5706483 on Interstate Route 75 at mile marker 3.726 in the City of Miamisburg

NOW THEREFORE, be it ordained by the City of Miamisburg of Montgomery County, Ohio.
LPA

SECTION II – Consent Statement

Being in the public interest, the LPA gives consent to the Director of Transportation to complete the above described project.

SECTION III – 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 costs of the improvement.

The LPA 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.

SECTION IV – Utilities and Right-of-Way Statement

The LPA agrees that all right-of-way required for the described project will be made available in accordance with current State and Federal regulations. The LPA also understands that right-of-way costs include eligible utility costs.

The LPA agrees that all utility accommodation, relocation and reimbursement will comply with the current provisions of 23 CFR 645 and the ODOT Utilities Manual.

SECTION V – 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 VI – Authority to Sign

I, Keith Johnson, City Manager, of said City of Miamisburg, is hereby empowered on behalf of the City of Miamisburg to enter into contracts with the Director of Transportation which is necessary to complete the above described project.

Passed: November 7, 2023.
(Date)

Attested: Kim Combs
(Clerk)



City Manager

Attested: Kim Combs
(Clerk)



Mayor

The Ordinance is hereby declared to be an emergency measure to expedite the highway project and to promote highway safety. Following appropriate legislative action, 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.

**CERTIFICATE OF COPY
STATE OF OHIO**

City of Miamisburg of Montgomery County, Ohio

I, Kim Combs as Clerk of the City of Miamisburg, of Montgomery County, Ohio, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 7049 adopted by the legislative Authority of the said City of Miamisburg on the 7th day of November, 2023.

That the publication of such Ordinance has been made and certified of record according to law; that no proceedings looking to a referendum upon such Ordinance have been taken; and that such Ordinance and certificate of publication thereof are of record in Ordinance No. 7049

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal, if applicable, this 8th day of November 2023.

Kim Combs

(Clerk)

(CITY SEAL)

City of Miamisburg, Montgomery County, Ohio
(LPA)

(If the LPA is designated as a City then the "City Seal" is required. If no Seal, then a letter stating "No Seal is required to accompany the executed legislation.")

The foregoing is accepted as a basis for proceeding with the project herein described for the City of Miamisburg, Montgomery County, Ohio.
(LPA)

Attested: Kim Combs [Signature] Date 11.8.23
(Contractual Agent)



For the State of Ohio

Attested: _____ Date _____
(Director, Ohio Department of Transportation)