

**FAIRFIELD CITY COUNCIL
REGULAR MEETING AGENDA
FAIRFIELD MUNICIPAL BUILDING
5350 PLEASANT AVENUE
FAIRFIELD, OHIO 45014**

MONDAY, AUGUST 13, 2012

7:00 PM

MAYOR.....RONALD A. D'EPIFANIO
COUNCILMEMBER 1ST WARD.....ADAM B. JONES
COUNCILMEMBER 2ND WARD.....JEFFREY L. HOLTEGEL
COUNCILMEMBER 3RD WARD.....DEBBIE PENNINGTON
COUNCILMEMBER 4TH WARD.....TERRY SENGER

COUNCILMEMBER AT-LARGE...TIM ABBOTT
COUNCILMEMBER AT-LARGE...TIMOTHY M. MEYERS
COUNCILMEMBER AT-LARGE...MICHAEL OLER
CITY MANAGER.....ARTHUR E. PIZZANO
CLERK OF COUNCIL.....ALISHA WILSON
LAW DIRECTOR.....JOHN H. CLEMMONS

Guidelines for Citizen Comments: Thank you for your interest and participation in city government. Fairfield City Council's Guidelines for Citizen Comments describe the rules for addressing City Council. The guidelines are posted in the Council Chambers.

ADA Notice: The City of Fairfield is pleased to provide accommodations to disabled individuals or groups and encourage full participation in city government. Should special accommodations be required, please contact the Clerk of Council at 867-5383 at least 48 hours in advance of the meeting.

1. **Call to Order**
2. **Prayer/Pledge of Allegiance**
3. **Roll Call**
4. **Agenda Modifications**
5. **Executive Session Requests**
6. **Public Hearing(s)**
7. **Special Presentations and Citizen Comments**
 - a) Proclamation – Fairfield High School Choraliers and Director Jeff Clark
8. **Mayor/Council Reports**
9. **Approval of Minutes**
 - a) Regular Meeting Minutes of July 9, 2012
10. **OLD BUSINESS**
 - (A) **DEVELOPMENT SERVICES COMMITTEE**
Jeff Holtegel, Chairman; Tim Abbott, Vice Chairman, Tim Meyers, Member
 - (1) Ordinance to approve a modified development plan for a Kroger Gas Fueling Facility and to authorize the City Manager to sign a development agreement with the Kroger Limited Partnership I.
 - Ordinance – Second Reading
 - (2) Ordinance to authorize the City Manager to enter into an easement agreement with the Farhat S. Khan Trust.
 - Ordinance – Second Reading

11. NEW BUSINESS

(A) **PUBLIC SAFETY COMMITTEE**

Mike Oler, Chairman; Debbie Pennington, Vice Chairman, Terry Senger, Member

- (1) Simple Motion: Motion to approve a liquor permit application in the name of Danny Phone Card LLC, 5407 Dixie Highway, Fairfield, OH 45014 (Permit Classes: C1 and C2).

(B) **PARKS & RECREATION COMMITTEE**

Terry Senger, Chairman; Debbie Pennington, Vice Chairman, Adam Jones, Member

- (1) Ordinance to authorize the City Manager to enter into an agreement with The Joe Nuxhall Miracle League Fields, Inc. for the operation of the Field of Dreams recreation complex.

- Motion – Read by Title Only (Optional)
- Ordinance – First Reading

(C) **PUBLIC WORKS COMMITTEE**

Tim Meyers, Chairman; Mike Oler, Vice Chairman, Tim Abbott, Member

- (1) Ordinance to authorize the City Manager to enter into a contract with D.A. Van Dam and Associates for the 2012 Emergency Storm Sewer Repair on South Gilmore Road and declaring an emergency.

- Motion – Read by Title Only (Optional)
- Ordinance – First Reading
- Motion – Suspend Second and Third Readings
- Motion – Adoption

- (2) Ordinance to authorize the City Manager to execute the grant application and enter into an agreement with Ohio Public Works Commission (OPWC) for a grant to fund a portion of the Seward Road Project and declaring an emergency.

- Motion – Read by Title Only (Optional)
- Ordinance – First Reading
- Motion – Suspend Second and Third Readings
- Motion – Adoption

- (3) Ordinance to authorize the City Manager to execute the Local Public Agency Agreement with ODOT for the Route 4 and Holden Improvement Project and declaring an emergency.

- Motion – Read by Title Only (Optional)
- Ordinance – First Reading
- Motion – Suspend Second and Third Readings
- Motion – Adoption

- (4) Ordinance to authorize the City Manager to enter into an agreement with Ohio Public Works Commission for the grant to fund a portion of the 2012 River Road Project and declaring an emergency.

- Motion – Read by Title Only (Optional)
- Ordinance – First Reading
- Motion – Suspend Second and Third Readings
- Motion – Adoption

(D) **FINANCE & BUDGET COMMITTEE**

Tim Abbott, Chairman; Terry Senger, Vice Chairman, Mike Oler, Member

- (1) Ordinance determining to recertify special assessments levied for the purpose of constructing certain improvements and declaring an emergency.
 - Motion – Read by Title Only (Optional)
 - Ordinance – First Reading
 - Motion – Suspend Second and Third Readings
 - Motion – Adoption

- (2) Ordinance to amend subsection 953.01(a) of Ordinance No. 166-84, the Codified Ordinances of Fairfield, Ohio, relative to the service fees for residential garbage and solid waste collection and recycling.
 - Motion – Read by Title Only (Optional)
 - Ordinance – First Reading

- (3) Appropriation Ordinance (Contractual Items) - \$985,000 for the 2012 River Road Project; \$51,491 for the 2012 Emergency Storm Sewer Repair at South Gilmore Road.
 - Motion – Read by Title Only (Optional)
 - Ordinance – First Reading
 - Motion – Suspend Second and Third Readings
 - Motion – Adoption

- (4) Appropriation Ordinance (Non-Contractual Items) - \$21,840 for the Alternate Power for Traffic Signals; \$20,000 for the installation of time and attendance electronic time clocks.
 - Motion – Read by Title Only (Optional)
 - Ordinance – First Reading
 - Motion – Suspend Second and Third Readings
 - Motion – Adoption

12. Meeting Schedule

Monday, September 10	Council-Manager Briefing, 6:00 p.m.; Regular Meeting, 7:00 p.m.
Monday, September 24	Regular Meeting, 7:00 p.m.
Tuesday, October 9	Regular Meeting, 7:00 p.m.

13. Executive Session of Council (if needed)

14. Adjournment

AGENDA

**COUNCIL-MANAGER BRIEFING
FAIRFIELD MUNICIPAL BUILDING
5350 PLEASANT AVENUE**

**MONDAY, AUGUST 13, 2012
6:00 P.M.**

1. NLC Water/Sewer Insurance Program – Dave Crouch
2. Electronic Council Communications – Mary Hopton

**MINUTES
REGULAR MEETING OF COUNCIL
JULY 9, 2012**

Call to Order

Mayor Ronald A. D'Epifanio called the Regular Meeting of Council to order at 7:00 PM at the Fairfield Municipal Building, 5350 Pleasant Avenue.

Prayer/Pledge of Allegiance

Councilmember Oler led in prayer followed by the Pledge of Allegiance.

Roll Call

Clerk Wilson called the roll of Council. Councilmember Holtegel, Councilmember Pennington, Councilmember Senger, Councilmember Abbott, Councilmember Oler, Councilmember Meyers, and Councilmember Jones.

Agenda Modifications

There were no modifications to the Agenda.

Executive Session Requests

Councilmember Pennington, seconded by Councilmember Meyers, moved to approve an Executive Session for employment and compensation of personnel. Clerk Wilson took a roll call vote of Council. Motion carried 7-0.

Public Hearing(s)

2013 Tax Budget

The 2013 Tax Budget Public hearing opened at 7:02 PM. Finance Director Mary Hopton explained the budget and that the income tax revenues are projected to be up approximately 1.75%. That increase is offset by the loss in local government funding and that estate tax elimination in the beginning of 2013. Overall the tax budget shows a similar year projected for 2013 as what was projected for 2012. The 2013 Tax Budget Public Hearing closed at 7:05 PM.

Special Presentations and Citizen Comments

There were no special presentations or citizen comments.

Mayor/Council Reports

Councilmember Jones reported on the storm that passed through the area and the damage that was done to the Public Utilities facility. He noted that with the purchase of some generators and equipment upgrades that Council previously approved, Public Utilities was able to make it through what could have been a very bad situation and customers did not experience any service disruption. He stated that Duke Energy also stepped up to help sustain the water system during the storm.

Councilmember Holtegel reported that with the expansion of Koch Foods and a few other companies coming to the area in the near future, Fairfield will see a job increase over 500.

Councilmember Pennington thanked Dr. Stanley Goodman again, and noted that he had a front-page article in the Echo this week. She also mentioned the Fairfield Historical Society will have Lester Horwitz, author of The Longest Raid, as a free special event on July 24 at the Community Arts Center, as well as

Sunbonnet Days at Gilbert Park, August 4-5, 1:00-5:00 PM, also free and sponsored by the Historic Society, the Four Seasons Club, Friends of Elijah and Fairfield Parks.

Councilmember Senger reported that this is unfortunately the third council meeting in a row that he has had to thank the Fire and Police departments in their efforts in the return of an army veteran killed in Afghanistan two weeks ago. Staff Sgt. Massarelli from Hamilton was flown back to Hamilton airport last Friday morning. He noted that everyone seemed to enjoy the fireworks, and thanked the Parks department and everyone involved. He also mentioned the Veterans We Thank You event at Butler County Regional Airport on June 30 and thanked everyone for their hard work in making it a nice event. Mayor D'Epifanio noted that Councilmember Senger is a retired Marine Corp colonel.

Councilmember Abbott reported that he and Councilmember Jones have had the opportunity to work with Tim Bachman and Greg Kathman on an economic development project with Fischer Park, the old GM Plant. He noted that it is one of the leading site selection and site brokers in the country, out of South Carolina, paid for through grant funding, to do a building assessment and try to get the building back in use. He also noted that the City received a clean financial audit from the independent auditors and will be turning the annual financial report over to the Government Finance Officers Association. He stated that the City has received their prestigious award for many years since the mid-1980s.

Councilmember Oler reported that he has been in Indianapolis for about 17 days, but things seem to be okay. He thanked everyone for their prayers.

Councilmember Meyers reported that the Bypass Project is nearing completion, and the overpass at 275 and Gilmore is progressing.

Mayor D'Epifanio reported that Mr. Ogawa, President and CEO of Pacific Industries, and Mr. Takagi, President and CEO of Takumi Stamping, come to town once a year and like to meet with City officials. That meeting was Thursday evening and went well. There are approximately 800 jobs between the two companies. He also reported on the Veterans We Thank You event that was held on June 30. Mayor D'Epifanio commented that he was very proud of the City of Fairfield and their involvement in the event, and thanked numerous Fairfield representatives that were at the event to help. He noted that another event will be planned for next year, honoring veterans from WWII through the present.

Approval of Minutes

- Regular Meeting Minutes of June 11, 2012
 - The Regular Meeting Minutes of June 11, 2012 were approved as written.

OLD BUSINESS

NEW BUSINESS

COMMUNITY & PUBLIC RELATIONS COMMITTEE

Debbie Pennington, Chairman; Jeff Holtegel, Vice Chairman, Adam Jones, Member

Simple Motion: Motion to appoint the following residents to serve on the Traffic Advisory Committee effective immediately.

Councilmember Pennington, seconded by Councilmember Holtegel moved to appoint Steve Lambert to serve on the Traffic Advisory Committee effective immediately. Motion Carried 7-0. SIMPLE MOTION 18-12. APPROVED 7-0.

PUBLIC WORKS COMMITTEE
Tim Meyers, Chairman; Mike Oler, Vice Chairman, Tim Abbott, Member

Councilmember Meyers, seconded by Councilmember Abbott moved to approve to read the following six (6) ordinances by title only. Motion Carried 7-0.

Ordinance to authorize the City Manager to enter into a contract with Capital Electric Line Builders for Traffic Signal Vehicle Detection Installation.

Background: City Manager Pizzano recommended entering into a contract with Capital Electric Line Builders for Traffic Signal Vehicle Detection Installation. This is a CIP item that was authorized by Council earlier this year. The location is the intersection at Winton and Nilles. Currently, 38 of the existing 61 intersections are covered with Vehicle Detection and this will be number 39. Legislative Action: Councilmember Meyers presented the first reading of this ordinance.

Councilmember Meyers, seconded by Councilmember Pennington moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Holtegel, seconded by Councilmember Abbott moved to adopt . Motion Carried 6-1. Councilmember Mike Oler commented that he has noticed several intersections with timing issues. He noted that some of the busy intersections only allow a few cars to pass through before changing to red again, while some of the less busy intersections change immediately for one car. Councilmember Oler stated he has no faith in Capital Electric Line Builders and will vote no on this ordinance. Councilmember Abbott commented that he has not experienced the same issues as Councilmember Oler, except for one intersection at Holden/Rt. 4/Gilmore. He commented that it might be good to review and make some adjustments, but he has not experienced a lot of issues. ORDINANCE NO. 66-12. ADOPTED 6-1. Councilmember Mike Oler dissented.

Ordinance to authorize the City Manager to enter into a contract with Miller Pipeline Corporation for the 2012 lining of storm sewers.

Background: City Manager Pizzano recommended entering into a contract with Miller Pipeline Coporation for the lining of storm sewers. This is another Capital Improvement item, as a collaboration between Public Works and Public Utilities. This work should extend the life of the storm sewers by about 50 years. The locations are Celadon Avenue, Magie Avenue and Oberlin Drive. Legislative Action: Councilmember Meyers presented the first reading of this ordinance.

Councilmember Meyers, seconded by Councilmember Abbott moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Meyers, seconded by Councilmember Pennington moved to adopt . Motion Carried 7-0. ORDINANCE NO. 67-12. ADOPTED 7-0.

Ordinance to authorize the City Manager to enter into a contract with Ohio Heavy Equipment Leasing, LLC dba Loveland Excavating for the Mackview Street drainage improvement project.

Background: City Manager Pizzano recommended entering into a contract with the Ohio Heavy Equipment Leasing company dba Loveland Excavating for the Mackview Street drainage improvement project. This is another Capital Improvement program, which was anticipated in the budget. This project will replace a number of drywells with catch basins and pipes for drainage. Legislative Action: Councilmember Meyers presented the first reading of this ordinance.

Councilmember Meyers, seconded by Councilmember Abbott moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Meyers, seconded by Councilmember Pennington moved to adopt . Motion Carried 7-0. ORDINANCE NO. 68-12. ADOPTED 7-0.

Ordinance to authorize the City Manager to enter into a contract with Barrett Paving Materials, Inc. for the River Road Improvements Project.

Background: City Manager Pizzano recommended entering into a contract with Barrett Paving Materials for the River Road Improvement Project. This project runs from Southgate Blvd to River Valley Court. The program is funded 65% by the state. The last improvement was 1996; this improvement will widen the shoulders and the roadway, in addition to paving. Legislative Action: Councilmember Meyers presented the first reading of this ordinance.

Councilmember Meyers, seconded by Councilmember Abbott moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Meyers, seconded by Councilmember Abbott moved to adopt . Motion Carried 7-0. ORDINANCE NO. 69-12. ADOPTED 7-0.

Ordinance to authorize the City Manager to enter into a contract with Hirlinger Chevrolet for the purchase of a utility vehicle for use by the Fire Department and declaring an emergency.

Background: City Manager Pizzano recommended a contract with Hirlinger Chevrolet for a utility vehicle for the Fire Department. This was included in the utility askings of the Capital Improvement budget. This is a replacement of an existing vehicle, and the existing vehicle will be removed from the fleet. Legislative Action: Councilmember Meyers presented the first reading of this ordinance.

Councilmember Meyers, seconded by Councilmember Holtegel moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Meyers, seconded by Councilmember Abbott moved to adopt . Motion Carried 7-0. ORDINANCE NO. 70-12. ADOPTED 7-0.

Ordinance to declare twelve (12) city vehicles as surplus and authorize the City Manager to sell the vehicles on GovDeals.com.

Background: City Manager Pizzano recommended a declaration of twelve (12) city vehicles as surplus and selling those vehicles on GovDeals.com. Legislative Action: Councilmember Meyers presented the first reading of this ordinance.

Councilmember Meyers, seconded by Councilmember Pennington moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Meyers, seconded by Councilmember Abbott moved to adopt . Motion Carried 7-0. Councilmember Oler asked if surplus police cars are painted one solid color before being sold. Police Chief Mike Dickey stated that the cars are not repainted, but all seals and decals are removed prior to sale. Mayor D'Epifanio asked if Council and city employees are permitted to bid on the vehicles. Law Director John Clemmons stated that as long as it was anonymous, through the website as the public does, he doesn't see a reason it would not be permitted. ORDINANCE NO. 71-12. ADOPTED 7-0.

PUBLIC UTILITIES COMMITTEE

Adam Jones, Chairman; Tim Meyers, Vice Chairman, Jeff Holtegel, Member

Councilmember Jones, seconded by Councilmember Senger moved to approve to read the following two (2) ordinances by title only. Motion Carried 7-0.

Ordinance to authorize the City Manager to enter into a contract with PCS Technologies for SCADA System Integration Services at the Wastewater Treatment Plant.

Background: City Manager Pizzano recommended a contract with PCS Technologies for SCADA System Integration Services at the Wastewater Treatment Plant. This is a Capital Improvement item that was anticipated. This is a professional services agreement to integrate the SCADA system into the system that is being installed by Adgo, Inc. Legislative Action: Councilmember Jones presented the first reading of this ordinance.

Councilmember Jones, seconded by Councilmember Abbott moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Jones, seconded by Councilmember Meyers moved to adopt . Motion Carried 7-0. ORDINANCE NO. 72-12. ADOPTED 7-0.

Ordinance to authorize the City Manager to enter into a contract with Miller Pipeline Corp. for inversion re-lining of sanitary sewer lines.

Background: City Manager Pizzano recommended a contract with Miller Pipeline Corp. for re-lining of sanitary sewer lines. This is another Capital Improvement item. Legislative Action: Councilmember Jones presented the first reading of this ordinance.

Councilmember Jones, seconded by Councilmember Meyers moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Jones, seconded by Councilmember Holtegel moved to adopt . Motion Carried 7-0. ORDINANCE NO. 73-12. ADOPTED 7-0.

DEVELOPMENT SERVICES COMMITTEE

Jeff Holtegel, Chairman; Tim Abbott, Vice Chairman, Tim Meyers, Member

Councilmember Holtegel, seconded by Councilmember Abbott moved to read the following three (3) ordinances by title only. Motion Carried 7-0.

Ordinance to approve a modified development plan for a Kroger Gas Fueling Facility and to authorize the City Manager to sign a development agreement with the Kroger Limited Partnership I.

Background: City Manager Pizzano recommended a modified development plan for a Kroger Gas Fueling Facility and execution of a development agreement with the Kroger Limited Partnership I. This was brought to Council as an appeal to a determination by the Planning Commission. He stated that modifications were made based on the concerns of the Planning Commission. Legislative Action: Councilmember Holtegel presented the first reading of this ordinance.

Ordinance to authorize the City Manager to enter into an easement agreement with the Farhat S. Khan Trust.

Background: City Manager Pizzano recommended an easement agreement with the Farhat S. Khan Trust to facilitate safe traffic movement. He stated that the easement is anticipated to solve problems of access onto the sight from Pleasant Avenue. Payment from Kroger in the agreement is \$23,500 for a perpetual access easement. Legislative Action: Councilmember Holtegel presented the first reading of this ordinance.

Jonathan Wocher, a planner from McBride Dale Clarion, 5725 Dragon Way, Suite 220, Cincinnati, Ohio 45227, spoke in favor of the ordinances regarding the Kroger Fueling Center. He asked that Council approve the appeal filed by Kroger and approve the modified development plan and development agreement, as well as the easement agreement with the Khan Trust. He stated that the appeal was filed in December 2011, following presentations to the Design Review Committee and the Planning Commission in late summer and fall of 2011. Mr. Wocher stated that approval of the ordinances will allow Kroger to build a fueling center at the southeast corner of Pleasant Avenue and Nilles Road. He asked for the opportunity to present the details of the project prior to the vote, if Council feels it is necessary. He acknowledged the patience and willingness of the City Manager, Law Director and Development Staff to meet with Kroger. Mr. Wocher stated that the most significant changes are Kroger's agreement to change the size of the store from 178 square feet to 1,000 square foot building, as well as the City's willingness to agree to an easement to allow access from Pleasant Avenue. Mr. Wocher introduced Tony Spaeth, manager of Kroger at Village Green, to address some of the concerns that have been raised regarding the current store.

Mr. Spaeth addressed several concerns that have been brought to his attention during the development discussions. He stated that Kroger has increased lot sweeping to seven (7) nights per week, to try to help

with the litter issues that were brought up, as well as an associate that comes in at 7:00 AM everyday to pick up any stray pieces of litter in the parking lot and bushes. He also stated that the sidewalks in front of the store are pressure-washed at least once per month or more, if necessary, which is typically just a once or twice per year event. Mr. Spaeth explained that the shopping carts have been an issue for Kroger, because they were unable to put the gate-keeper system on the new carts, as it did not work correctly, however, they will retrieve any carts that stray from the parking lot if someone notifies them to do so. He noted that there have been improvements in the landscaping, since the irrigation system issues have been resolved.

Joe Schwartz, 5305 Bibury Road, commented that redevelopment of the property at Nilles and Pleasant is sorely needed. He stated that a Kroger fueling center may not be the ultimate solution, however, with the changes made to the plans, it is probably an acceptable solution. He feels redevelopment is a necessity and will add to the downtown area of the City of Fairfield, and Kroger has been a fine corporate citizen of the city for more than 50 years, so Council should let the redevelopment happen with Kroger.

Leslie Bessel, 10 Brians Lane, stated that she lives and works in Fairfield. She said she works with a diverse group of people, a lot of whom live in Fairfield, and everyone she has spoken to is in favor of the Kroger fueling center. She stated that she has not signed the petition, but she knows thousands of people have, and she would expect to hear legitimate reasons other than trash and stray carts as to why this plan would be rejected. She stated that she is confident that the people she has spoken to will be disenchanted with City Council if they do not move this forward.

Ordinance to authorize the City Manager to enter into a Community Reinvestment Area Agreement, a Community Reinvestment Area Compensation Agreement and a Sanitary Sewer Administrative Fee Rebate Agreement, which will provide economic development incentives related to an expansion project for Koch Foods of Cincinnati LLC and declaring an emergency.

Background: City Manager Pizzano recommended a Community Reinvestment Area Agreement, a Community Reinvestment Area Compensation Agreement and a Sanitary Sewer Administrative Fee Rebate Agreement, as incentives tied to an expansion of Koch Foods of Cincinnati, LLC. He stated that currently Koch Foods is one of the top 10 employers for the City of Fairfield, as well as the largest water user in the city. Mr. Pizzano explained that the expansion is 390 jobs over the next three (3) year, in addition to the 730 jobs already there, which will put them into the top five (5) businesses in the city. He noted that the expansion will double the size of the plant and the monetary investment is \$45 million. Legislative Action: Councilmember Holtegel presented the first reading of this ordinance.

Howard Tallen, Plant Manager of Koch Foods, addressed Council regarding the three agreements proposed for expansion incentives for the company. He stated that the company is one of the largest poultry companies in the country, as well as the largest privately held company. He noted that Koch Foods is very committed to the City of Fairfield and the community, and they have outgrown the current facility. Mr. Tallen explained that Koch Foods is using six (6) other companies across the country to produce product that would normally be here in Cincinnati, in the Fairfield community, and that the products will come back with the expansion. He stated that the Fairfield plant is in the middle of all of the Koch Foods plants across the country, so it is very important to the company logistically.

Chip Englert, Controller of Koch Foods, thanked the Economic Development staff for all of the hard work. He stated that Koch Foods deals with several companies, such as Kroger, Walmart, Ruby Tuesday's, Steak N' Shake, Denny's, Dairy Queen, Burger King, and Sonic; Koch Foods supplies companies throughout the whole country. He noted that there is a lot of competition from other Koch Plants to attract the business, but they are working to keep it in Fairfield, and the expansion will help add jobs to the city.

Councilmember Holtegel commented that government does not create jobs, companies like Koch Foods create jobs, government helps to facilitate. He stated that he is proud of the staff and the company representatives and that they continued to work together to find a solution, given the difficulties they faced trying to make it work. He noted that this is almost 80% of the total job creation in the city over the next three (3) years.

Councilmember Holtegel, seconded by Councilmember Abbott moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Holtegel, seconded by Councilmember Abbott moved to adopt . Motion Carried 7-0. Councilmember Jones commended Koch Foods for what they are doing. He stated that there have been over 1,300 layoffs in the Butler County area. He noted that there were 376 jobs lost at Liz Claiborne when they shut down in September and the Hamilton paper mills closing were also lost jobs. Councilmember Jones thanked Koch Foods for the work they are doing and for keeping it in Fairfield. Councilmember Abbott thanked Koch Foods for being at the Council meeting and for considering Fairfield in their expansion. ORDINANCE NO. 74-12. ADOPTED 7-0.

FINANCE & BUDGET COMMITTEE

Tim Abbott, Chairman; Terry Senger, Vice Chairman, Mike Oler, Member

Councilmember Abbott, seconded by Councilmember Pennington moved to read the following resolution and three (3) ordinances by title only. Motion Carried 7-0.

Resolution to approve the tax budget of the City of Fairfield, Ohio, for the fiscal year beginning January 1, 2013 and submit the same to the Butler County Auditor and declaring an emergency.

Background: City Manager Pizzano recommended approval of the 2013 Tax Budget and submission to the Butler County Auditor. Legislative Action: Councilmember Abbott presented the first reading of this resolution.

Councilmember Abbott, seconded by Councilmember Meyers moved to suspend the rules requiring three (3) readings of this Ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Meyers moved to adopt . Motion Carried 7-0. RESOLUTION 7-12. ADOPTED 7-0.

Ordinance to authorize the City Manager to enter into a contract with MobileTEK for the purchase of mobile data terminals for Police cruisers.

Background: City Manager Pizzano recommended a contract with MobileTEK for purchase of mobile data terminals for Police cruisers. He stated that it is anticipated to replace one half of the MDTs this year and the remaining ones in next year's budget. He explained that these are the in-car computers that connect officers with information quickly. Legislative Action: Councilmember Abbott presented the first reading of this ordinance.

Councilmember Abbott, seconded by Councilmember Meyers moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Meyers moved to adopt . Motion Carried 7-0. ORDINANCE NO. 75-12. ADOPTED 7-0.

Appropriation Ordinance (Contractual Items) - \$55,000 for Traffic Signal Vehicle Detection Installation; \$50,000 for 2012 Storm Sewer Lining; \$48,000 for replacement of drywells on Mackview Street; \$1,615,000 for River Road Improvements; \$139,500 for SCADA System Integration Services; \$135,000 for inversion re-lining of sanitary sewer lines; \$45,000 for purchase of mobile data terminals for Police cruisers; \$46,000 for purchase of a utility vehicle for use by the Fire Department.

Background: City Manager Pizzano recommended the following contractual items: \$55,000 for Traffic Signal Vehicle Detection Installation; \$50,000 for 2012 Storm Sewer Lining; \$48,000 for replacement of drywells on Mackview Street; \$1,615,000 for River Road Improvements; \$139,500 for SCADA System Integration Services; \$135,000 for inversion re-lining of sanitary sewer lines; \$45,000 for purchase of mobile data terminals for Police cruisers; \$46,000 for purchase of a utility vehicle for use by the Fire Department. Legislative Action: Councilmember Abbott presented the first reading of this ordinance.

Councilmember Abbott, seconded by Councilmember Meyers moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Meyers moved to adopt . Motion Carried 7-0. ORDINANCE NO. 76-12. ADOPTED 7-0.

Appropriation Ordinance (Non-Contractual Items) - \$9,800 for manhole rehabilitation materials, \$5,000 for Police Department Explorer's Post expenses, \$15,396 for Public Works Facilities Maintenance Repairs, \$7,000 for parking lot renovations at Fairfield Greens/South Trace and Gilbert Farms Park, \$9,200 for upgrades and maintenance at the Community Arts Center.

Background: City Manager Pizzano recommended \$9,800 for manhole rehabilitation materials, \$5,000 for Police Department Explorer's Post expenses, \$15,396 for Public Works Facilities Maintenance Repairs, \$7,000 for parking lot renovations at Fairfield Greens/South Trace and Gilbert Farms Park, \$9,200 for upgrades and maintenance at the Community Arts Center. Legislative Action: Councilmember Abbott presented the first reading of this ordinance.

Councilmember Abbott, seconded by Councilmember Meyers moved to suspend the rules requiring three (3) readings of this ordinance. Motion Carried 7-0. Councilmember Abbott, seconded by Councilmember Meyers moved to adopt . Motion Carried 7-0. ORDINANCE NO. 77-12. ADOPTED 7-0.

Mayor D'Epifanio commented that the British Car Show is Sunday, July 15, at Harbin Park.

Meeting Schedule

Clerk Wilson read the following meeting schedule:

Summer Schedule:

Monday, August 13 Council-Manager Briefing, 6:00 p.m.; Regular Meeting, 7:00 p.m.

Monday, September 10 Council-Manager Briefing, 6:00 p.m.; Regular Meeting, 7:00 p.m.

Monday, September 24 Council-Manager Briefing, 6:00 p.m.; Regular Meeting, 7:00 p.m.

Executive Session of Council (if needed)

Council recessed into Executive Session at 8:09 PM.

Adjournment

The Regular Meeting of Council adjourned at 9:10 PM.

ATTEST:

Clerk of Council

Mayor's Approval

Date Approved _____

Item No. 1102

City of Fairfield, Ohio
City Council Meeting Communication

Date 7-9-12

Item:

An ordinance approving a modified development plan for a Kroger Gas Fueling Facility proposed at the southeast corner of Pleasant Avenue and Nilles Road and authorizing the City Manager to sign a development agreement with the Kroger Limited Partnership1.

Financial Impact:

This is an appeal of a Planning Commission decision as permitted in the Fairfield Codified Ordinances chapter 1168.12(d).

Synopsis: Kroger Limited Partnership1 has appealed the Planning Commission decision and has made several modifications to the plan to address both the Planning Commission and Design Review concerns. The attached development agreement addresses the construction and on-going operational issues with the Kroger Gas Fueling Facility.

Background: The Design Review Committee reviewed plans for a Kroger Gas Fueling Facility to ensure that the proposed project complied with the Design Guidelines outlined in Chapter 1168 of the Planning and Zoning Code. The Design Review Committee denied the request based on four main concerns: the proposed use did not meet the definition of a "Motor Vehicle Fuel Dispensing Facility;" the proposed square footage of outdoor display was greater than the maximum allowable; the access on Pleasant Avenue posed an increased risk for vehicular accidents; and the architectural intent of the Design Guidelines were not met. Planning Commission supported the Design Review Committee's recommendation to deny the project.

Recommendation:

It is recommended that City Council have first reading on this item at the July 9 meeting.

Legislative Actions: Rules Suspension and Adoption Requested? No.
Emergency Provision Needed? No.

Prepared by: Orin DeWine (Planning Manager)
Approved for Content by: Timothy Bacliger
Financial Review (where applicable): Maya Ayth
Legal Review (where applicable): [Signature]
Accepted for Council Agenda: John Wilson

1102

KROGER GAS FACILITY – 5214 PLEASANT AVE.

DEVELOPMENT AGREEMENT

THIS AGREEMENT entered into this _____ day of _____ 2012, by and between the City of Fairfield, Ohio (hereinafter referred to as "CITY") and Kroger Limited Partnership I (hereinafter referred to as "COMPANY").

WITNESSETH

WHEREAS, COMPANY wishes to construct a gas fueling facility at the southeast corner of Nilles Rd. and Pleasant Ave. hereinafter referred to as the "DEVELOPMENT", and

WHEREAS, the Fairfield City Council through appeal as defined in section 1168.12(d) approved a modified DEVELOPMENT plan which is attached as Exhibits 1 thru 5 enumerated as follows: Exhibit 1 site plan; Exhibit 2 landscape plan; Exhibit 3 ground sign plan; Exhibit 4 canopy elevations and Exhibit 5 store elevations – all dated June 28, 2012, and

NOW, THEREFORE, in consideration of the mutual promises contained in this agreement, CITY and COMPANY agree as follows:

COMPANY or COMPANY'S agent shall solely at its cost:

1. Construct a fueling facility consistent with the drawings depicted in Exhibit 1 thru 5.
2. During the operation of DEVELOPMENT, remove and replace dead plant material and apply appropriate herbicides and pesticides as required. The landscaped beds are to be kept free of weeds and the mulch within the beds is to be maintained. Mulch is to be placed in the areas as illustrated on the landscape plan (Exhibit 2) in the spring and fall of every year. Plant replacement shall occur within 30 days or the next planting season (spring or fall), whichever comes first and must conform with Exhibit 2. An irrigation system is to be installed and used for all grass areas and planting beds on the site.
3. During the operation of DEVELOPMENT, shall not allow incidental or advertising signage with the exception of promotional signage as defined in the Fairfield Codified Ordinances. No posters or similar signage are permitted to be displayed on the brick columns of the canopy, building sides, front and rear, landscape elements and the dumpster screen. Window signage shall be limited to signage that is adhered to the inside glazing.
4. During the operation of the DEVELOPMENT, locate all outdoor display storage and sale areas to those areas shown on the site plan (Exhibit 1). These items are limited to seasonal items, car related items, food and beverages, ice, propane tanks and other similar items.

5. During the operation of the DEVELOPMENT, keep the site clean and free from litter or debris at all times
6. During the operation of DEVELOPMENT, provide lighting which is not to exceed zero foot candle at the street side-edge of the sidewalk. Regular lighting, except for security lighting, will be turned down when the facility is not open.
7. Be responsible for submitting plans if COMPANY chooses to alter the site, building or canopy in the future, including the addition of fire suppression systems, all of which will require approval by the City in accordance with the regulations stated in the D-1 Downtown District.

CITY shall:

1. Review final detailed plans that meet the intent of the Exhibits 1 thru 5 and approve final plans that meet all applicable local and state codes.
2. Take the following measures pertaining to landscape maintenance: if plantings and mulch are not replaced or maintained, per section 2 above, within 60 days of written notice by CITY to COMPANY, CITY will contract for the work and place cost of work plus \$100.00 administrative fee as lien on DEVELOPMENT'S property taxes in accordance with standard property maintenance procedures adopted by the CITY.
3. Review alterations, additions or modifications to DEVELOPMENT to verify they meet appropriate local and state codes.

Witness:

Company:

Kroger Limited Partnership I

By: _____

Date: _____

City of Fairfield, Ohio

By: _____

Arthur E. Pizzano, City Manager

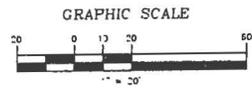
Date: _____

Approved as to form:

 Law Director
 City of Fairfield, Ohio

Approved as to content:

 Development Services Director
 City of Fairfield, Ohio



THOMAS
GRAHAM
ASSOCIATES, INC.
• Engineers
• Surveyors

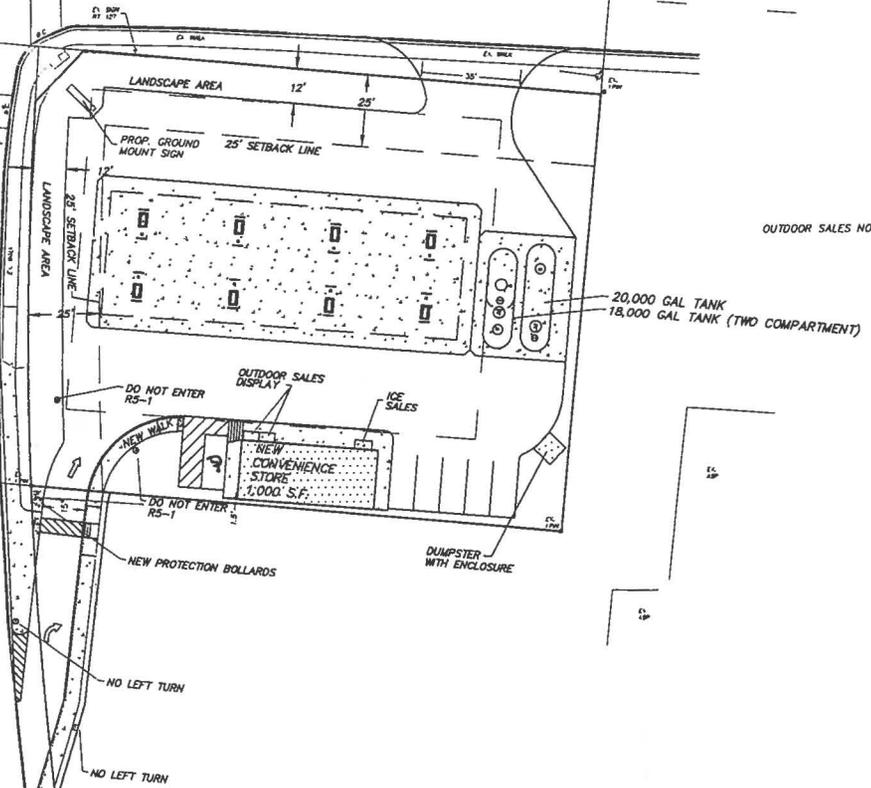
805 Cummins Road
Cincinnati, Ohio 45231
513-521-4760
Fax: 521-2439

Date: JUNE 28, 2012
Scale: 1" = 20'
Job No.: 7716

Revisions	
No	Date

NILLES RD.

PLEASANT AVE.



OUTDOOR SALES NOT TO EXCEED 5% OF CONVENIENCE STORE

The utility information shown on this plan, prepared by Thomas Graham Associates, Inc., was obtained from existing records. It is the contractor's responsibility to verify the existence and location, and to contact the appropriate utility company for field locations.

UNDERGROUND UTILITIES
2 WEEKS BEFORE YOU DIG
PHONE: 1-800-362-0764
UTILITY PROTECTION SERVICE
HIGH-MEMBERS MUST BE CALLED DIRECTLY

PRELIMINARY SITE PLAN #5B

SEC. 13, T. 2, R. 2
FAIRFIELD TOWNSHIP
CITY OF FAIRFIELD
BUTLER COUNTY, OHIO

Exhibit 1

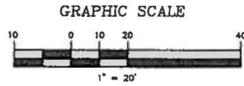
Project No. 939
Drawn By: R.J. TRENKAMP
Sheet: _____ of _____
Job No. 7716_11

ACAD FILENAME: 7716_839_STUDY5B.DWG

LANDSCAPING REQUIREMENTS

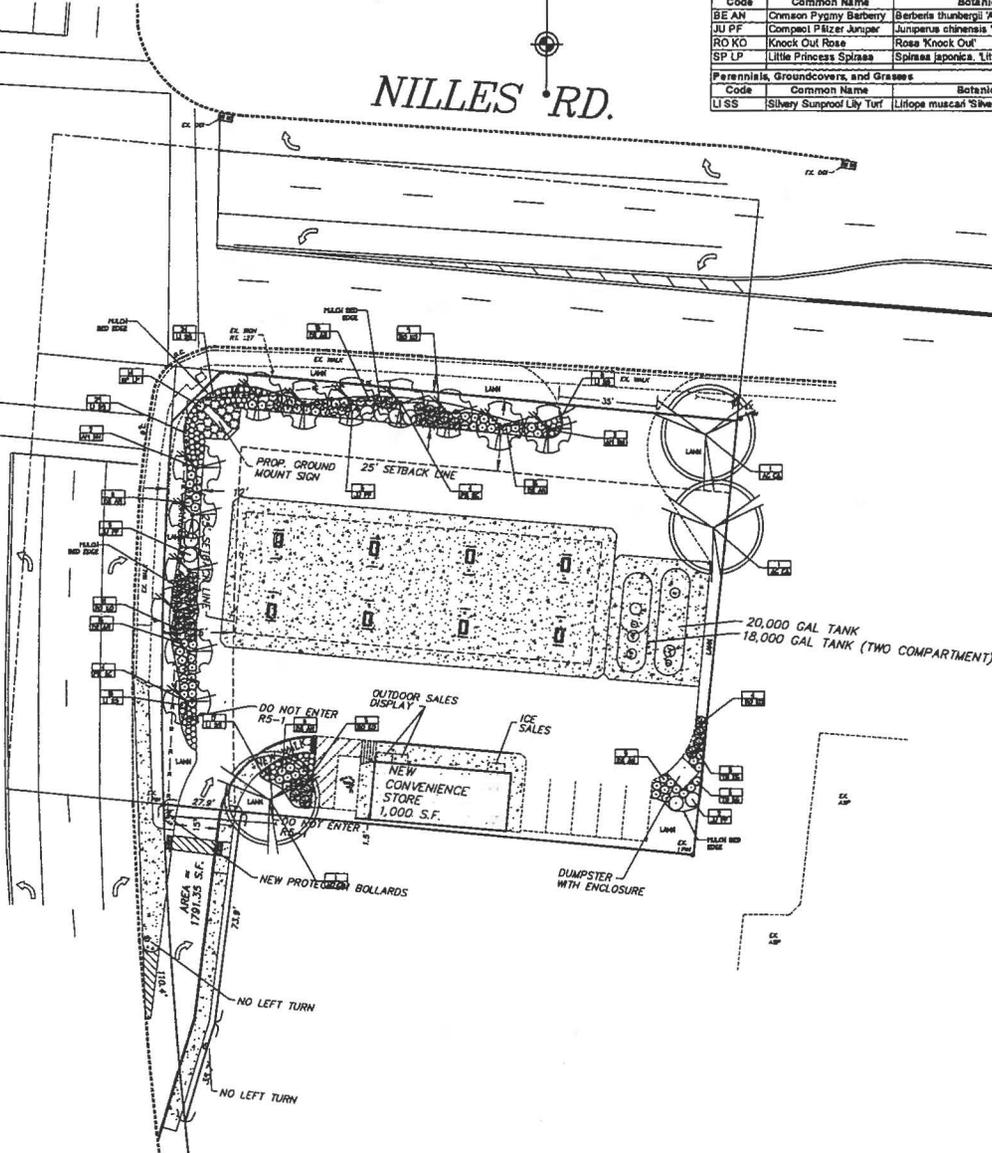
LANDSCAPE FRONTAGE:
 REQUIRED: MINIMUM 5 FEET WIDE IN FRONT YARD
 PROPOSED: 12 FEET WIDE IN FRONT YARD

TREE PLANTING ON STREET FRONTAGE:
 1 SHADE TREE OR 3 ORNAMENTAL TREES PER 50 FEET
 TOTAL FRONTAGE: 273 LINEAR FEET
 REQUIRED: 2 SHADE TREES AND 11(10,38) ORNAMENTAL TREES
 PROPOSED: 2 SHADE TREES AND 13 ORNAMENTAL TREES



NILLES RD.

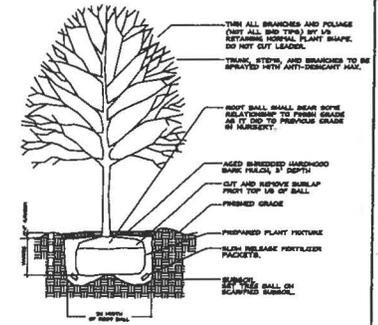
PLEASANT AVE.



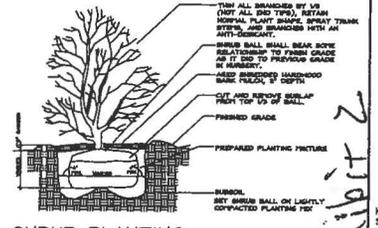
Plant Schedule						
Code	Common Name	Botanical Name	Installation Size	Qty.	Cond.	Remarks
Trees						
AC CA	Hedge Maple	Acer campestre	2 1/2" cal.	3	B&B	
AM RH	Robin Hill Serviceberry	Amelanchier x grandiflora 'Robin Hill'	1 1/2" cal.	5	B&B	
PR SC	Canadian Red Cherry	Prunus virginiana 'Schubert'	1 1/2" cal.	8	B&B	
TH EG	Emerald Green Arborvitae	Thuja occidentalis 'Emerald'	5' ht	8	B&B	
Shrubs						
Code	Common Name	Botanical Name	Size	Qty.	Cond.	Remarks
BE AN	Common Pygmy Barberry	Barbota thunbergii 'Atropurpurea Nana'	15" ht.	59	Cont.	
JU PF	Compact Pflizer Juniper	Juniperus chinensis 'Pflizeriana Compacta'	24" ht.	10	Cont.	
RO KO	Knock Out Rose	Rosa 'Knock Out'	24" ht.	26	Cont.	
SP LP	Little Princess Spirea	Spirea japonica 'Little Princess'	18" ht.	14	Cont.	
Perennials, Groundcovers, and Grasses						
Code	Common Name	Botanical Name	Size	Qty.	Cond.	Remarks
LI SS	Silvery Sunproof Lily Turf	Lilhope muscari 'Silvery Sunproof'	#1	96	Cont.	24" o.c.

PLANTING NOTES

- ALL PLANT MATERIALS SHALL COMPLY WITH FORM AND CHARACTERISTIC REQUIREMENTS AS SPECIFIED. ALL PLANT MATERIAL SHALL COMPLY WITH ANSI Z60.1 "STANDARD FOR NURSERY STOCK" - LATEST EDITION.
- IMMEDIATELY AFTER AWARD OF CONTRACT, NOTIFY THE ENGINEER IF SPECIFIED PLANT MATERIAL IS NOT AVAILABLE FROM COMMERCIAL NURSERIES. IN CASE A PLANT IS NOT AVAILABLE, THE ENGINEER WILL PROVIDE ALTERNATE PLANT MATERIAL SELECTIONS.
- EXCAVATED PLANT PITS SHALL HAVE POSITIVE DRAINAGE. PLANT PITS WHEN FULLY FLOODED WITH WATER SHALL DRAIN WITHIN 2 HOURS OF FILLING. ENSURE ALL PLANT PITS HAVE POSITIVE DRAINAGE.
- REPAIR / REPLACE DAMAGED UTILITIES, TO THE SATISFACTION OF THE OWNER OR GOVERNING AGENCY AT NO EXTRA COST TO THE OWNER.
- TREE LOCATIONS MAY REQUIRE ADJUSTING IN FIELD TO ACCOMMODATE PAVEMENT AND UTILITY STRUCTURES.



TREE PLANTING
NO SCALE



SHRUB PLANTING
NO SCALE

JACOBS
 880 MATCOSS ROAD
 COLUMBUS, OH 43240
 PH 614-881-7515
 FAX 614-881-7898
 WWW.JACOBS.COM

Date: JUNE 28, 2012
 Scale: 1" = 20'
 Job No: 7716

Revisions	
No.	Date

PRELIMINARY LANDSCAPE PLAN
 SEC. 33, T. 2, R. 2
 FAIRFIELD TOWNSHIP
 CITY OF FAIRFIELD
 BUTLER COUNTY, OHIO

Exhibit 2

Kroger
 Store # 939
 Drawn By: M. KIRBY
 Sheet
 of
 Job No: 7716_10

ADD REVISION: 7716-STUDY.DWG

ONE (1) DOUBLE FACED ILLUM. MONUMENT

42.03 sq.ft. = (1.00 x 5.75) + (1.1666 x 9.6666) + (2.50 x 10.00)

ROOF

- 125 alum. painted MP 24510 Deep Green and MP 25829 Taos Sande Beige.

CABINET

- 125 alum. painted MP 25833 Bone White.
- Cabinet interior painted Reflective White.
- Internal high output fluorescent tube illum. (Horiz. Daylights)

FUEL LOGO & KROGER LETTER

- Fuel icon: routed/ backed in Plexiglas® #7328 White acrylic w/ first surface trans. vinyls: 3M #3632-33 Red, 3M #3630-246 Teal Green, 3M #3630-84 Tangerine and, Avery #A9503-T Blue with an 3M #7725-31 Medium Gray opaque vinyl border.
- Kroger letters: routed/backed in Plexiglas® LD#2415 Red acrylic.

REVEALS

- .090 alum. painted MP 25829 Taos Sand Beige.

SKYLINE™ PRICE CABINET

- 2'-6" x 10' x 12" per unit; furnished by Kroger®.
- Model No. PSS-14TPSFITC
- See addtl. drawing for alum. end panel "wraps".

MASONRY

- Masonry, internal chassis, and cap by others.

STEEL SUPPORT

- 4.50" O.D. x .237" thk. wall steel pipes.
- Primed and painted Bright White (cabinet section only).
- Direct burial.
- Subject to engineer's sealed drawing(s).

FOUNDATION

- 3' dia. x 5'-0" deep (1.31 cu yds.) concrete per caisson by Klusty.
- Dig depth 6'-0"; augered holes, excavation and dirt removal by Klusty.
- 12'-6" x 3'-0" x 6" deep (0.69 cu yds.) concrete masonry footer by Klusty.
- Subject to engineer's sealed drawing(s).

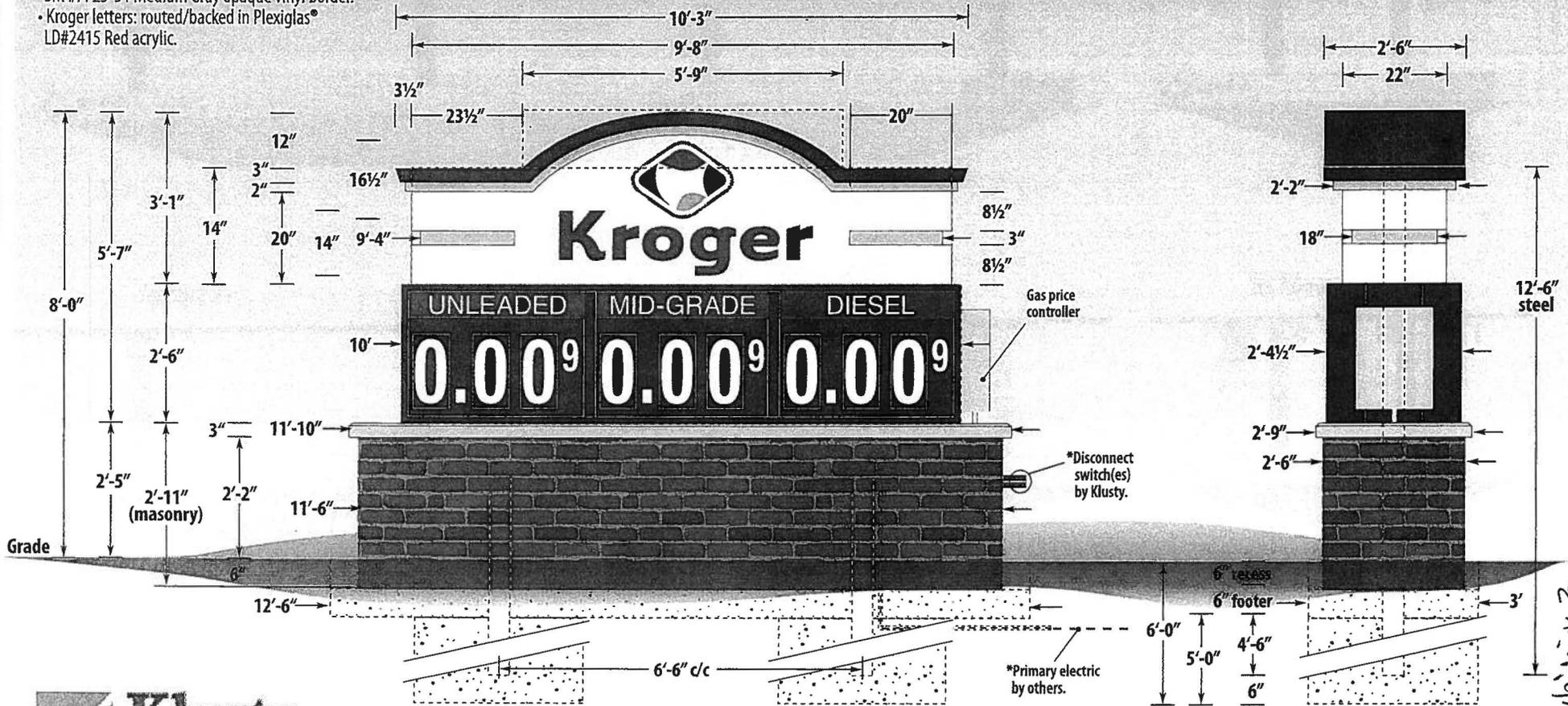
FINISHES

- Matthews® acrylic polyurethane.
- Grip-Gard® acrylic polyurethane.

ELECTRICAL

- U.L. listed and labeled.
- Weatherproof disconnect box/switch(es) by Klusty.
- 3/4" PVC through foundation by Klusty.
- Final connection by Klusty only if in place and to code at time of installation.

***Note: TBD volt**



Klusty Sign Associates
Design | Branding Logistics

3160 East K... Road, Suite B • Cincinnati, OH 45241 1517

*After zoning approval, manufacturing methods may be subject to change.
*Colors may not be exact as shown because of printer limitations. Refer to actual material color charts for true color representation.

CLIENT: Kroger #939
LOC: 560 Wessel Dr.,
Fairfield, OH 45014
DRAWING NO: K.5.198

DATE: 6/28/12
SCALE: 3/8" = 1'-0"
BY: Brian Marco
REP: Vince Klusty

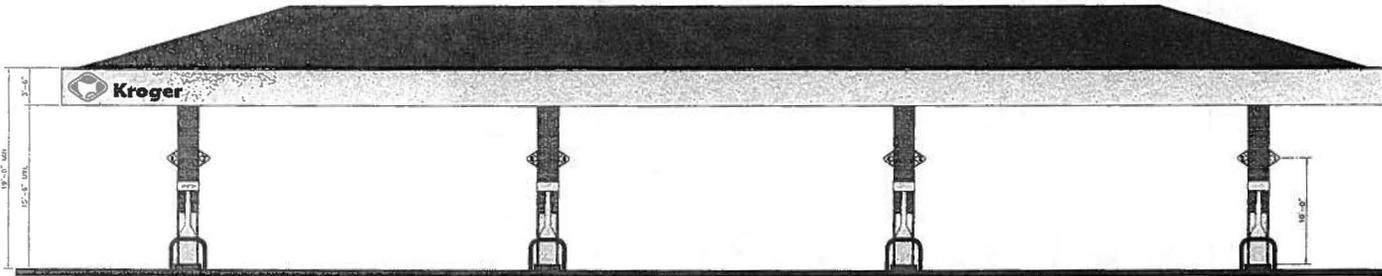
APPROVED BY: _____ DATE: _____
LANDLORD APPROVAL: _____ DATE: _____
All designs and specifications are the sole copyrighted property of Klusty Sign Associates, Inc. Any unauthorized use, copying, or reproduction is a violation of Federal Copyright law and will be prosecuted.

Exhibit 3

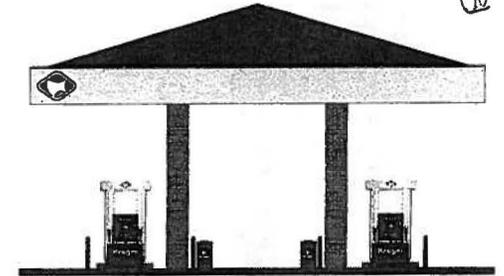
Kroger Fueling Center

FAIRFIELD, OHIO #A939

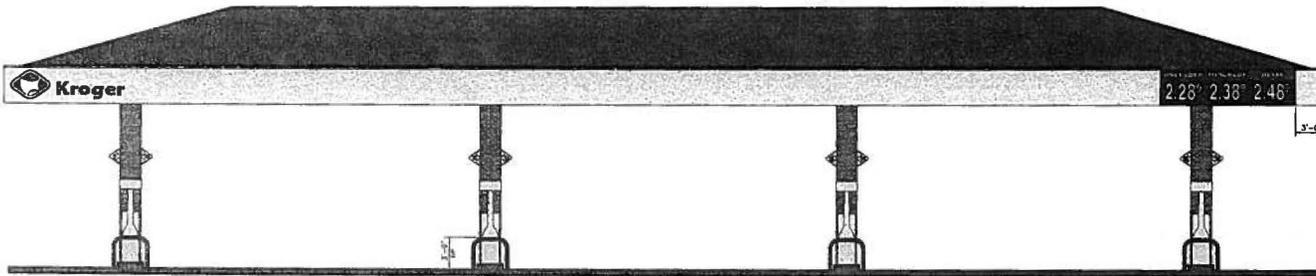
Exhibit 4



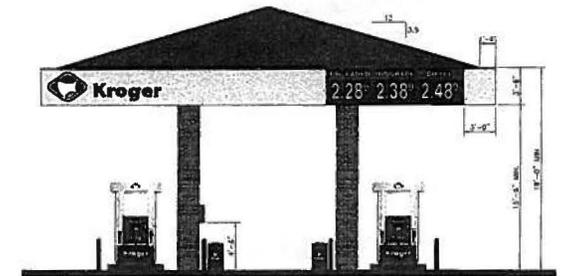
NORTH ELEVATION
SCALE: 3/16"=1'-0"



EAST ELEVATION
SCALE: 3/16"=1'-0"



SOUTH ELEVATION
SCALE: 3/16"=1'-0"



WEST ELEVATION
SCALE: 3/16"=1'-0"

Galloway
ARCHITECTS
PLANNING ARCHITECTURE ENGINEERING
8308 DTC Parkway, Suite 100
Greenwood Village, CO 80111
303.778.8884
303.778.8026

Kroger
The Kroger Co.
Supermarket
Petroleum Group
10000 East 11th Street
Denver, CO 80231
Tel: 303.733.1000

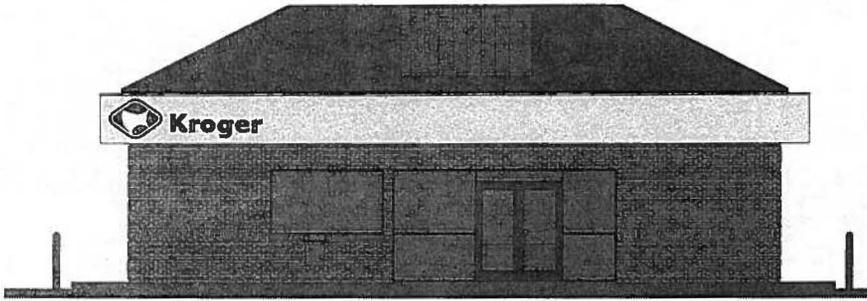
Canopy Color Elevations

06/28/12

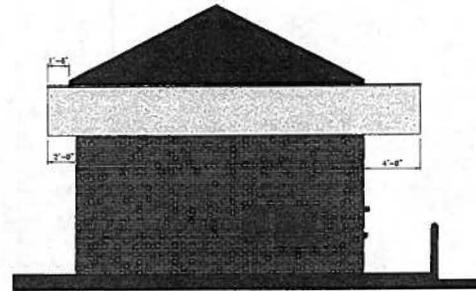
Kroger Fueling Center

FAIRFIELD, OHIO #A939

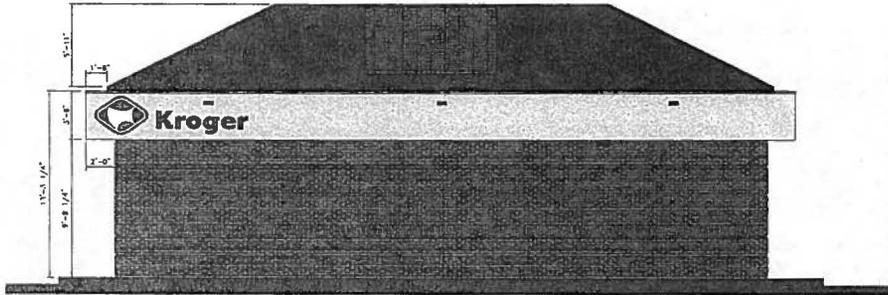
Exhibit 5



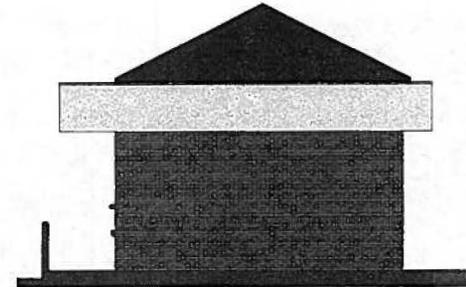
NORTH ELEVATION
SCALE: 1/4"=1'-0"



EAST ELEVATION
SCALE: 1/4"=1'-0"



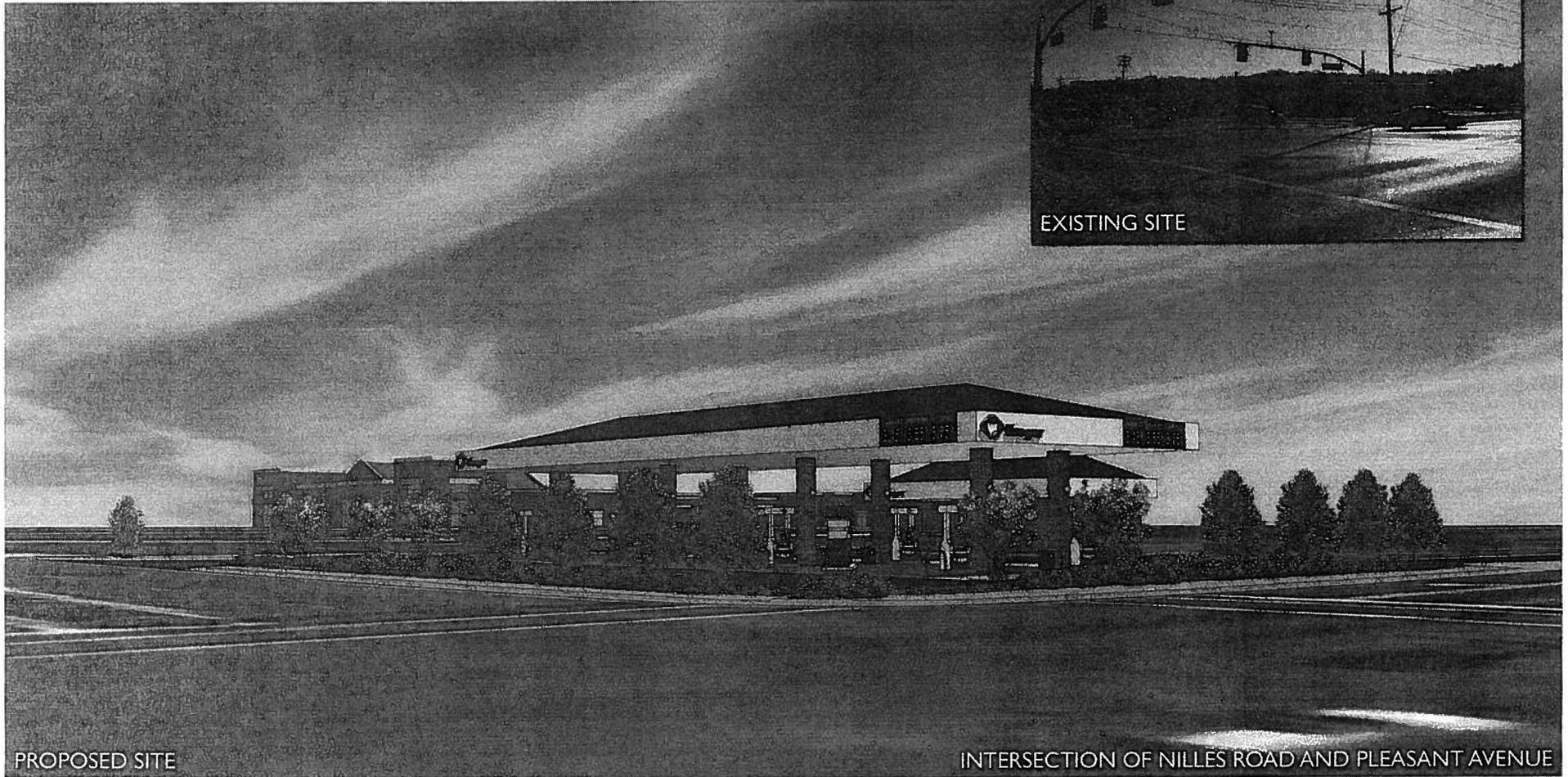
SOUTH ELEVATION
SCALE: 1/4"=1'-0"



WEST ELEVATION
SCALE: 1/4"=1'-0"

Kroger Fueling Center

FAIRFIELD, OH #A939



Galloway
Planning, Architecture, Engineering
8300 DTC Parkway, Suite 100
Channahon, Illinois, IL 61011
301.778.8244
301.778.3026 F

Perspective Rendering

06/28/2012

ORDINANCE NO. _____

ORDINANCE TO APPROVE A MODIFIED DEVELOPMENT PLAN FOR A KROGER GAS FUELING FACILITY AND TO AUTHORIZE THE CITY MANAGER TO SIGN A DEVELOPMENT AGREEMENT WITH THE KROGER LIMITED PARTNERSHIP I.

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. The modified development plan for a Kroger Gas Fueling Facility at the southeast corner of Nilles Road and Pleasant Avenue, a copy of which, including all terms and conditions thereof, is on file in the office of the Clerk of Council, is hereby approved and the City Manager is hereby authorized to sign a Development Agreement with the Kroger Limited Partnership I in accordance with the agreement on file in the office of the City Manager.

Section 2. This Ordinance shall take effect at the earliest period allowed by law.

Passed _____ Mayor's Approval _____

Posted _____

First Reading _____ Rules Suspended _____

Second Reading _____

Third Reading _____

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council

Item No. 11(12)

**City of Fairfield, Ohio
City Council Meeting Communication**

Date 7-9-12

Item:

An ordinance approving an easement agreement between the Farhat S. Khan Trust (Khan) and the City of Fairfield.

Financial Impact:

The City will receive \$22,500 for a perpetual non-exclusive access easement from Kroger.

Synopsis:

The easement agreement is between the City of Fairfield and the property owner (Khan), but will be used by the owner's lessee, Kroger. The easement will allow for a perpetual non-exclusive right for the benefit of the Khan property on, through and across the City of Fairfield's property for pedestrian and vehicular access between the Khan property and Pleasant Avenue. The easement will run with the land, not the use. The easement language and exhibit are attached.

Background:

Kroger is proposing to construct a gas fuel facility on property located at the south east corner of Pleasant Avenue and Nilles Road. In order to construct a right-in only access on Pleasant Avenue to the site, part of the access is required to be constructed on land owned by the City of Fairfield. The proposed easement is 1,790 square feet in area and will contain a sidewalk and roadway pavement.

Recommendation:

It is recommended that City Council have first reading on this item at the July 9 meeting.

Legislative Actions: Rules Suspension and Adoption Requested? No.
Emergency Provision Needed? No.

Prepared by: Erin Donora (Planning Manager)
Approved for Content by: Timothy Bachman
Financial Review (where applicable): Mary Ann
Legal Review (where applicable): John A. Clemons
Accepted for Council Agenda: John Wilson

1102



DRAFT

939-A Fuel

EASEMENT AGREEMENT

This Easement Agreement (this "Agreement") is made and entered into as of the _____ day of _____, 2012, by and between _____, a _____ ("City"), and Imran A. Khan, Successor Trustee of the Farhat S. Khan Trust dated October 25, 1995, ("Khan").

WITNESSETH:

WHEREAS, City is the fee simple owner of certain real estate situated in the City of Fairfield, County of Butler, and State of Ohio, and more particularly described in Exhibit "A" attached hereto and made a part hereof ("City Property");

WHEREAS, Khan is the fee simple owner of certain real estate situated in the City of Fairfield, County of Butler, and State of Ohio, lying contiguous with and adjacent to the City Property, and more particularly described in Exhibit "B" attached hereto and made a part hereof ("Khan Property");

WHEREAS, Khan requires certain easement rights with the respect to the City Property to facilitate the construction, operation and use of the Khan Property, and City wishes to grant Khan such easement rights as hereinafter described in this Agreement.

NOW, THEREFORE, for and in consideration of Twenty Two Thousand Five Hundred Dollars and 00/100 (\$22,500.00) to be paid to City within ten (10) days of the execution of this Agreement and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, City and Khan hereby agree as follows:

1. City hereby grants, bargains, sells and conveys unto Khan the perpetual non-exclusive right, privilege and easement for the benefit of the Khan Property on, over through and across the City Property for purposes of pedestrian and vehicular ingress and egress to and from the Khan Property and to provide for pedestrian and vehicular ingress and egress between the Khan Property and Pleasant Ave., together with the right to establish and maintain paved pedestrian and vehicular access improvements on the City Property, upon and adjacent to the common boundary line between the City Property and the Khan Property ("Access Improvements") in furtherance of the aforesaid easement. The Access Improvements are more particularly described in

Exhibit "C" attached hereto and made a part hereof. Khan's exercise of its rights regarding the Access Improvements set forth in this Paragraph 1 is subject to the following:

A. The Access Improvements shall be constructed in accordance with applicable governmental regulations.

B. Installation of the Access Improvements shall be performed in a good, expeditious and workmanlike manner with first class materials in accordance with the approved or deemed approved plans and all applicable laws, rules, ordinances and regulations.

C. Khan shall maintain the Access Improvements installed pursuant to this easement in a safe and proper condition and repair. All costs for maintaining, repairing or replacing the Access Improvements shall be borne by Khan.

2. In the event of any controversy, claim or dispute related to this Agreement or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorneys' fees and costs actually incurred.

3. This Agreement shall be construed in accordance with the laws of the State of Ohio and any applicable federal laws and regulations.

4. This Agreement may not be modified, amended, terminated or rescinded except in writing signed by both parties hereto.

5. If any term, provision or condition contained in this Agreement shall, to any extent, be held or deemed invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be affected thereby, and each term, provision or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns and shall run with the land comprising the City Property and the Khan Property. This Agreement contains the complete understanding of the parties on the subject matter hereof, and there are no terms, conditions or representations except as provided herein.

(Remainder of page left blank intentionally.)

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

CITY: _____

By: _____

Name: _____

Title: _____

KHAN:

Imran A. Khan, Successor Trustee
of the Farhat S. Khan Trust dated October 25,
1995

By: _____

Name: _____

Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Before me, a Notary Public in and for said County and State, personally appeared _____, _____ of _____, an _____, an _____, who acknowledged the execution of the foregoing Easement Agreement for and on behalf of such limited liability company.

Witness my hand and Notarial Seal, this ___ day of _____, 2012.

My Commission Expires: _____ Signature: _____

My County of Residence: _____ Printed: _____

STATE OF NEW YORK)
)SS.
COUNTY OF NASSAU)

Before me, a Notary Public in and for said County and State, personally appeared Imran A. Khan, Successor Trustee of the Farhat S. Khan Trust, dated October 25, 1995, who acknowledged the execution of the foregoing Easement Agreement and who, having been duly sworn, stated that the representations therein contained are true.

Witness my hand and Notarial Seal, this ___ day of _____, 2012.

My Commission Expires: _____ Signature: _____

My County of Residence: _____ Printed: _____

This instrument was prepared by, and after recording return to: _____
_____ [Insert name and address].

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. [Insert name].

EXHIBIT "A"

City Property Legal Description

EXHIBIT "B"

Khan Property Legal Description

June 28, 2012

Legal Description: Drive Easement Area (0.041 Acres)

Situated in Section 33, Town 2, Range 2, in Fairfield Township, City of Fairfield, Butler County, Ohio and being more particularly described as follows:

Commencing at a point, said point being the northwest corner of Section 33, Town 2, Range 2; thence along the north line of said Section, South 84° 51' 18" East, 250.25 feet; thence South 05° 08' 42" West, 77.00 feet to the southerly right-of-way line of Nilles Road; thence departing the said southerly right-of-way line of Nilles Road, South 05° 08' 42" West, 153.00 feet; thence North 84° 51' 18" West, 160.75 feet to the point of beginning of the easement herein described; thence South 06° 36' 16" West, 73.87 feet; thence South 16° 17' 29" West, 35.70 feet to the easterly right-of-way line of Pleasant Avenue; thence along the said easterly right-of-way line of Pleasant Avenue with the arc of a curve whose radius is 1387.39 feet, clockwise, 110.47 feet, (chord of said arc bears North 04° 31' 15" East, 110.44 feet); thence departing the said easterly right-of-way line of Pleasant Avenue, South 84° 51' 18" East, 27.33 feet to the point of beginning.

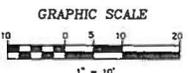
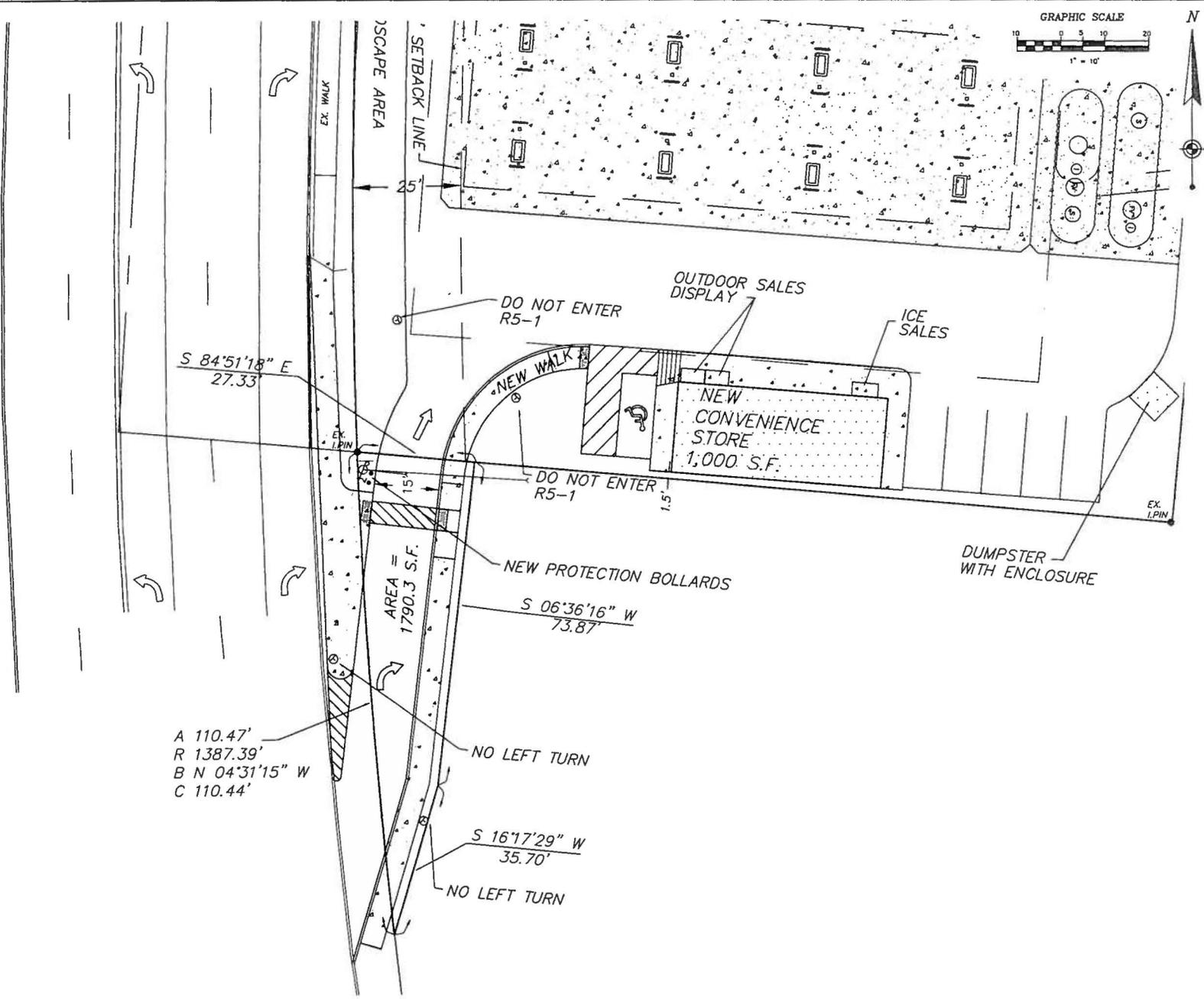
Contains 0.041 Acres.

EXHIBIT "C"
Access Improvements

PLEASANT AVE.

The utility information shown on this plat, prepared by Thomas Graham Associates, Inc., was obtained from existing records. It is the contractor's responsibility to verify their existence and location, and to contact the appropriate utility company for field locations.

UNDERGROUND UTILITIES
 2 WORKING DAYS
BEFORE YOU DIG
 PHONE: 1-800-382-2784
 OHIO UTILITIES PROTECTION SERVICE
 NON-MEMBERS MUST BE CALLED DIRECTLY



tga
 THOMAS GRAHAM ASSOCIATES, INC.
 • Engineers
 • Surveyors
 803 Campton Road
 Cincinnati, Ohio 45231
 513-521-4760
 Fax # 521-2439

Date: JUNE 28, 2012
 Scale: 1" = 10'
 Job No: 7716

Revisions

No.	Date

STUDY PLAT #5B

SEC. 33, T. 2, R. 2
 FAIRFIELD TOWNSHIP
 CITY OF FAIRFIELD
 BUTLER COUNTY, OHIO

Kroger Store # 939
 Drawn By: R.J. TRENKAMP
 Sheet _____ of _____
 Job No: 7716_11

ACID PLENAM: 7716-939-STUDY5B.DWG

ORDINANCE NO. _____

ORDINANCE TO AUTHORIZE THE CITY MANAGER
TO ENTER INTO AN EASEMENT AGREEMENT WITH
THE FARHAT S. KHAN TRUST.

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. The City Manager is hereby authorized to enter into an easement agreement with the Farhat S. Khan Trust in accordance with the easement agreement on file in the office of the City Manager.

Section 2. This Ordinance shall take effect at the earliest period allowed by law.

Passed _____ Mayor's Approval _____

Posted _____

First Reading _____ Rules Suspended _____

Second Reading _____

Third Reading _____

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council

**CITY OF FAIRFIELD, OHIO
CITY COUNCIL COMMUNICATION**

ITEM:

August 13, 2012

Liquor permit application in the name of Danny Phone Card, LLC, 5407 Dixie Highway.

FINANCIAL IMPACT:

No financial impact.

SYNOPSIS/BACKGROUND:

The City of Fairfield is in receipt of an application from the Ohio Department of Liquor Control for a C1 and C2 permit for the above establishment.

Background checks from both the Police Department and Building and Zoning Division are attached for Council and staff's review.

RECOMMENDATION:

It is recommended that City Council request, via simple motion, that no hearing be held on the liquor permit application in the name of Danny Phone Card, LLC.

LEGISLATIVE ACTION REQUIRED: Simple Motion of Council

Prepared by: Alisha Wilson

Approved for Content by: Alisha Wilson

Financial Review (where applicable) by: Mary Beth

Legal Review (where applicable) by: John A. Clemmons

Accepted for Council Agenda: Alisha Wilson

DEPARTMENTAL CORRESPONDENCE

City
of
Fairfield



TO Alisha Wilson, Clerk of Council

FROM Timothy Bachman, Development Services Director

SUBJECT Liquor Permit Application

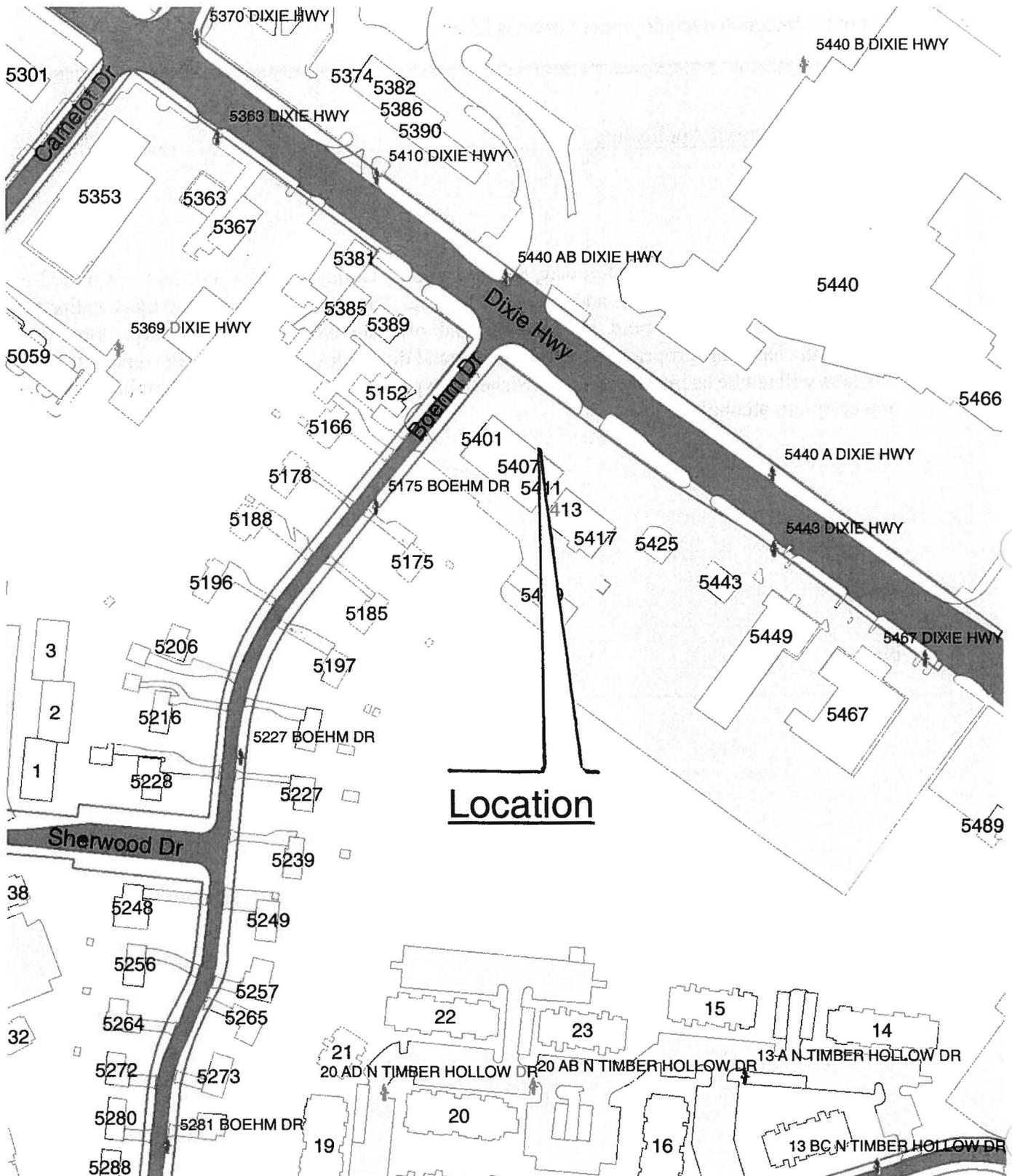
DATE 08/02/12

The business at 5407 Dixie Highway, in the name of Danny Phone Card, LLC, is in a C-3, General Business District zone and is a permitted use. This business has been at this location for several years selling pre-paid phone cards and offering wire transfer services. Sgt. Pete Lagemann visited the proprietor to better understand the request. Sgt. Lagemann reports that the business will not be an internet café but wishes to expand their operation to offer limited groceries and carry-out alcohol.

Timothy Bachman
Timothy Bachman
Development Services Director

plf

Danny's Phone Cards - 5407 Dixie Hy. Liquor Permit Location



**CITY OF FAIRFIELD, OHIO
CITY COUNCIL MEETING COMMUNICATIONS**

ITEM:

DATE: 8/13/12

It is necessary the City Council approve an agreement with the The Joe Nuxhall Miracle League Fields, Inc., for the operation of the Field of Dreams recreation complex on Groh Lane.

FINANCIAL IMPACT:

No financial impact.

SYNOPSIS:

In February 2012 the City Council authorized the City Manager to enter into an agreement with the Therapeutic Recreation for the Disabled, Inc. and the Fairfield Community Foundation, DBA Joe Nuxhall Character Education Fund for the construction and operation of the Field of Dreams recreation complex (Ordinance 10-12). Prior to the execution of the agreement, the Therapeutic Recreation for the Disabled, Inc., and the Fairfield Community Foundation, DBA Joe Nuxhall Character Education Fund made a decision to establish a 501 c 3 organization, The Joe Nuxhall Miracle League Fields, Inc., to operate the facility, therefore authorization is needed since the entities have changed.

BACKGROUND:

In February 2012, the City Council approved an agreement between the City of Fairfield, the Therapeutic Recreation for the Disabled, Inc. and the Fairfield Community Foundation, DBA Joe Nuxhall Character Education Fund for the construction and operation of the programs at the Hatton Park/Joe Nuxhall Miracle League Fields facility (Ordinance 10-12). Prior to the execution of the initial agreement, the Therapeutic Recreation for the Disabled, Inc., and the Fairfield Community Foundation, DBA Joe Nuxhall Character Education Fund established a 501 c 3 organization, The Joe Nuxhall Miracle League Fields, Inc., to provide for the day-to-day operations of the facility. There were no substantive changes from the initial agreement. The agreement is similar to those between the City and the youth baseball association, the youth soccer associations and the youth football associations; which operate youth sports programs on city property.

The Parks and Recreation Board will reviewed this agreement at their August Board meeting.

RECOMMENDATION:

It is recommended that City Council authorize and direct the preparation of legislation authorizing the City Manager to enter into an agreement with The Joe Nuxhall Miracle League Fields, Inc., for the operation of the Field of Dreams recreation complex on Groh Lane.

LEGISLATIVE ACTION:

Suspension of Rules and Adoption Requested? YES [] NO [X] If yes, explain above.

Emergency Provision Needed? YES [] NO [X] If yes, explain above.

Prepared by: Bill
Approved for Content by: Bill
Financial Review (where applicable): Mary Ann
Legal Review (where applicable): John H. Commons
Accepted for Council Agenda: Linda Wilson

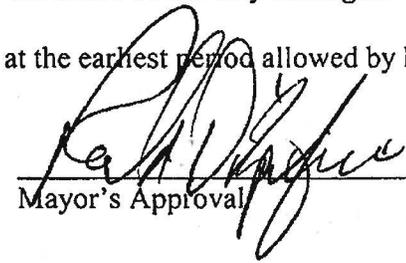
ORDINANCE NO. 10-12

ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE THERAPEUTIC RECREATION FOR THE DISABLED, INC. AND THE FAIRFIELD COMMUNITY FOUNDATION, DBA JOE NUXHALL CHARACTER EDUCATION FUND FOR THE CONSTRUCTION AND OPERATION OF THE FIELD OF DREAMS RECREATION COMPLEX.

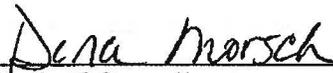
BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. The City Manager is hereby authorized to enter into an agreement with the Therapeutic Recreation for the Disabled, Inc. and the Fairfield Community Foundation dba Joe Nuxhall Character Education Fund for the construction and operation of the Field of Dreams Recreation Complex in accordance with the preliminary agreement on file in the office of the City Manager.

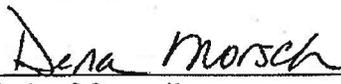
Section 2. This Ordinance shall take effect at the earliest period allowed by law.

Passed	<u>2/13/12</u>	<u></u>	Mayor's Approval
Posted	<u>2/14/12</u>		
First Reading	<u>1/9/12</u>	Rules Suspended	<u>—</u>
Second Reading	<u>1/23/12</u>		
Third Reading	<u>2/13/12</u>		

ATTEST:


Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.


Clerk of Council

FIELD OF DREAMS
AGREEMENT
DRAFT #2

This Agreement made and entered into this ____ day of _____, 2012, by and between the CITY OF FAIRFIELD, OHIO (hereinafter referred to as "City") and THE JOE NUXHALL MIRACLE LEAGUE FIELDS, INC., an Ohio not-for-profit corporation (herein referred to as "Operator").

WITNESSETH

WHEREAS, the parties desire to set forth the intent and understanding of the parties with regard to the construction by Operator of the adapted use baseball/softball fields and related facilities and the Operator's use of the adapted use baseball/softball fields and related facilities all on the Groh Lane property owned by the City of Fairfield, Ohio, and

WHEREAS, the City of Fairfield, Ohio includes the Fairfield Parks and Recreation Board which must approve this Agreement prior to its execution.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The Operator will construct and operate an amateur adapted baseball/softball program for individuals with special needs at the Groh Lane property in the City of Fairfield as shown in the attached Exhibit "A" and the use of the fields under this agreement shall be limited to such amateur baseball/softball programs. Practice and game times will be limited by the following time constraints:

A. While elementary, middle and/or high school are in regular session during a school year, no game shall start after 9:00 PM, weekdays or weekends, for all age divisions. All games will be scheduled to end by 10:00 PM.

B. After school has been dismissed for the summer, no game shall begin after 10:00 PM, weekdays or weekends, for all age divisions. All games will be scheduled to end by 11:00 PM.

C. If field lights are installed during the term of this agreement; field lights will be turned off ten minutes after the completion of the final game on that specific field unless otherwise required for post-game maintenance or clean-up except as limited below in item 2.

2. The Operator will bear all costs necessary for the construction of the adapted use baseball/softball fields. Operator will provide routine maintenance and housekeeping of the baseball/softball fields, related facilities, and immediate surroundings. No field maintenance will be conducted following the completion of evening games, with the exception of during tournament play where it would be necessary to prepare a field that would be used prior to 8:00 AM the following day.

3. Following completion of the initial construction and completion of the planned facilities, the Operator may erect new structures/facilities or expand existing structures/facilities at the Groh Lane property only with the prior approval of the Fairfield Parks and Recreation Board and the City Manager.

4. Operator will have exclusive scheduling control of the baseball/softball fields at the Groh Lane property during the term of this agreement subject to the following additional terms and conditions:

A. Operator will advise the Parks and Recreation Director and the City Manager of extraordinary events such as tournaments so that he/she may advise on crowd control, safety precautions or cleanup as may be required.

B. The Fairfield Parks and Recreation Board shall have the right to use the baseball/softball fields described in this Agreement, so long as the use does not conflict with the purposes of this Agreement and any such use by the Parks and Recreation Board shall be subject to the prior approval of the Operator. The Parks and Recreation Board will be responsible for the necessary repair/maintenance of the fields as a result of any use of the fields scheduled by it.

C. Admission fees for admission to the baseball/softball fields will not be charged except for special events which shall not include any game or contest between teams which are included in the Operator's league. Tournament admission fees may be charged.

5. The Operator will pay for all utility services to the fields including water, electric, sewer, and gas, if any during the term of this agreement. The Operator is permitted to charge a per hour fee, to outside groups using the fields, to cover its costs associated with the operation and maintenance of the facility. The hourly fee will be agreed upon annually by the Operator and the Fairfield Parks and Recreation Board.

6. The term of this Agreement shall automatically renew on January 1 of each succeeding year for that ensuing calendar year unless either party shall terminate this Agreement by written notice to the other delivered on or before November 1 of any calendar year. In the event that the City terminates this Agreement, the City will allow the Operator to remove any structures or facilities installed by the Operator to the extent that such facilities can be removed without damage to the remaining structures or grounds. In the event that the Operator terminates this Agreement, the Operator will be permitted to remove such structures or facilities can be removed without damage to the remaining structures or grounds.

7. The Operator hereby agrees to defend, indemnify and hold the City, its officers, agents and employees harmless against any and all loss, cost, expense, claims or actions arising out of or connected with the use of the facilities described in this Agreement by the Operator, its agents, employees, members, or third parties. The Operator shall provide public liability insurance in the amount of \$1,000,000.00 at all times during this Agreement, with the City being named as an additional insured on said insurance policy. The Operator shall

provide the City with proof of said insurance policy by March 1 of each calendar year.

8. The Operator shall operate without discrimination as to sex, race, creed, or national origin and will comply with the Americans With Disabilities Act.

9. The Operator shall provide the City, within three (3) months of the ending of their fiscal year, a financial report detailing all sources of revenue and all expenditures of the said association. Such reports shall be certified in writing by the Chief Executive Officer or the Chief Financial Officer of said operator.

10. Due to the Park's location within a ground water sensitive area, all turf grass fertilizer and chemical applications by the Operator must receive prior approval by the Director of Public Utilities or his/her designee.

11. This Agreement may be amended, altered, or changed, only by the written consent of all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first stated above.

Signed in the presence of:

City of Fairfield, Ohio

By: _____

Arthur E. Pizzano, City Manager

Signed in the presence of:

The Joe Nuxhall Miracle League Fields, Inc.

By: _____

Kim Nuxhall, President

APPROVED AS TO FORM:

John H. Clemmons, Fairfield City Law Director

APPROVED AS TO CONTENT:

James A. Bell, Fairfield Parks and Recreation Director

ORDINANCE NO. _____

ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE JOE NUXHALL MIRACLE LEAGUE FIELDS, INC. FOR THE OPERATION OF THE FIELD OF DREAMS RECREATION COMPLEX.

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. The City Manager is hereby authorized to enter into an agreement with the Joe Nuxhall Miracle League Fields, Inc. for the operation of the Field of Dreams recreation complex in accordance with the agreement on file in the office of the City Manager.

Section 2. This Ordinance shall take effect at the earliest period allowed by law.

Passed	_____	_____
		Mayor's Approval
Posted	_____	
First Reading	_____	Rules Suspended _____
Second Reading	_____	
Third Reading	_____	

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council

D. A. Van Dam & Associates

MANUFACTURERS REPRESENTATIVES

REPRESENTING PRODUCTS WITH PROVEN TECHNOLOGY & PROVEN RESULTS SINCE 1970

1040 FISHER DRIVE
HUBBARD, OHIO 44425-3303
www.davandam.com

Phone: 888-818-0016
Fax: 877-882-6339
dvandam@davandam.com

July 20, 2012

Ben Mann, P.E.
City Engineer
City of Fairfield
5350 Pleasant Avenue
Fairfield, OH 45014

Re: Culvert Rehabilitation/Lining Installation at South Gilmore & Kolb Drive

All labor, material and equipment shall be provided to prepare and install PolySpray lining on existing culvert as follows.

Scope of work

- Includes preparation and lining installation of interior surface of (1) corrugated metal culvert pipe (approximately 72" x 142' long) located on South Gilmore Road, just North of Kolb Drive. Note: All work limited to 4 o'clock to 8 o'clock position.
- Includes all necessary water diversion and by-passing.
- Includes removal and disposal of existing tar based coating (4 o'clock to 8 o'clock position only).
- Includes all necessary repairs at corroded invert, including concrete installation with steel mesh reinforcement full length of pipe.
- Includes installation of HydraTech PolySpray lining system after concrete installation.
- All traffic control and safety issues are the responsibility of the City of Fairfield, Ohio.

Existing coating removal and disposal

- Existing asphalt based coating will be removed with high pressure water jetting and pneumatic power tools.
- Coating shall be collected and properly disposed of according to applicable regulations.

Invert repairs

- Corroded inverts shall be repaired utilizing 6" x 6" steel reinforcing mesh mechanically attached to pipe surface at approximately 5 o'clock to 7 o'clock position
- ODOT Class C concrete shall be installed full length of culvert to adequately cover reinforcement steel to achieve approximately 3" x 4" of cover.
- Concrete shall cure a minimum of 7 days before lining installation.

Water by-passing/diversion

- Appropriately sized pumps shall be placed as necessary at inlet side of culvert with PVC discharge pipe installed full length of pipe, attached above work area to allow for water discharge at outlet side.
- All necessary plugs/sandbags or dams shall be installed to prevent water infiltration.
- Note: Work will stop at rain fall events deemed to be unsafe.

Surface preparation

- After concrete cure, all surfaces to receive coating shall be abrasive blasted.
- Steel surfaces shall be blasted to achieve SSPC SP-6 commercial blast with 3 mil profile.
- Concrete shall be blasted to achieve ICRI 3-4 profile.

Lining System – 4 – 8 o'clock position only

- Primer – concrete only – HydraTech Polyprime applied at 10 mils D.F.T.
- Lining system – all surfaces – HydraTech PolySpray SS-100 applied at an average 300 mils D.F.T.
- This system meets ODOT Supplemental Specification 834.

Total Price \$46,810.00

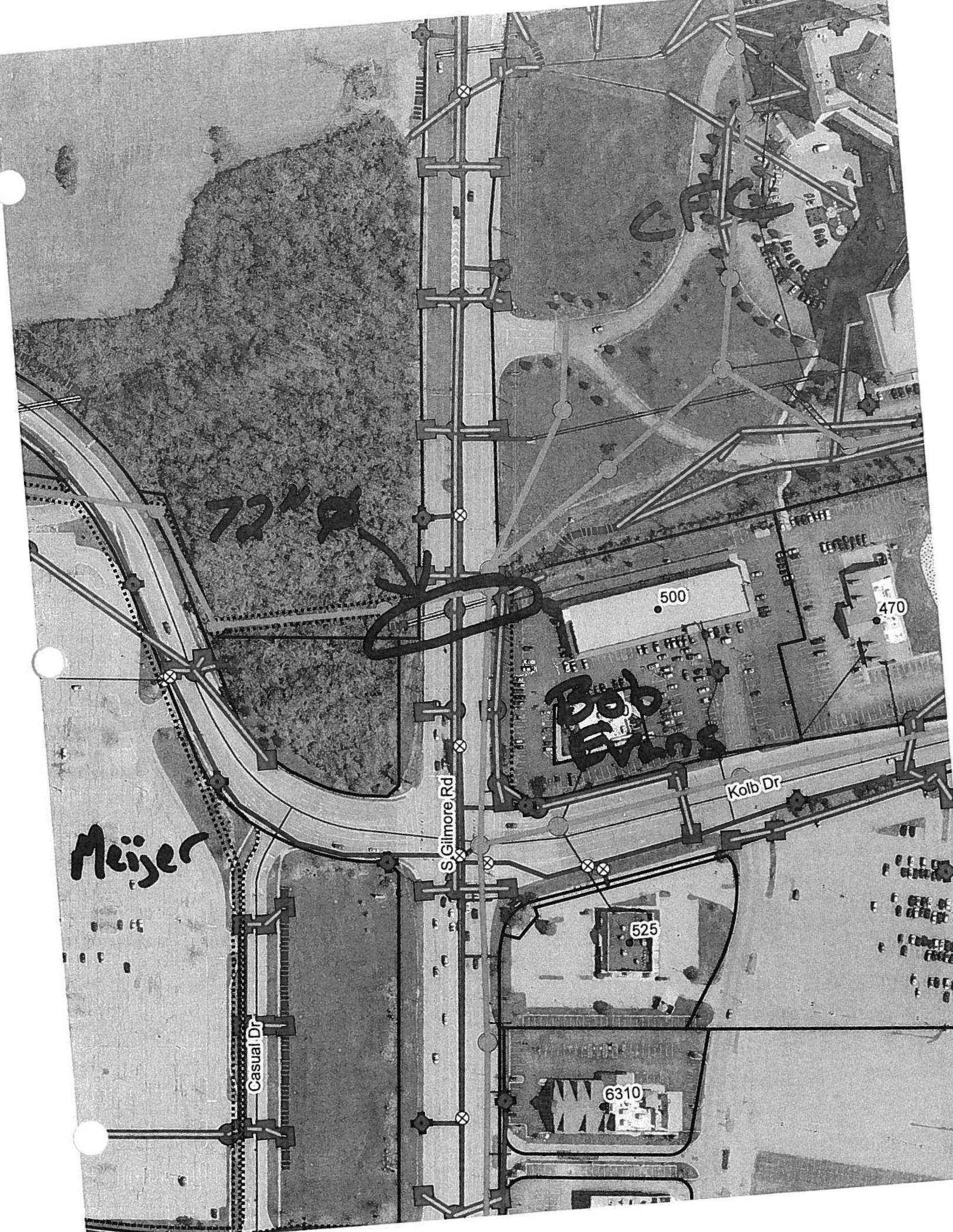


Dan Van Dam
President
D.A. Van Dam & Associates

Notes:

- Price good for 6 months from date of proposal.
- Payment terms are 1% 10 days Net 30 days . 2% fee added after 30 days.

Accepted by City of Fairfield, Ohio



CFC

72'

Meijer

Bob Evans

S Gilmore Rd

Kolb Dr

Casual Dr

500

470

525

6310

ORDINANCE NO. _____

ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A CONTRACT WITH D.A. VAN DAM AND ASSOCIATES FOR THE 2012 EMERGENCY STORM SEWER REPAIR ON SOUTH GILMORE ROAD AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. The City Manager is hereby authorized to enter into a contract with D.A. Van Dam and Associates for the 2012 Emergency Storm Sewer Repair on South Gilmore Road in accordance with the proposal on file in the office of the City Manager. This contract is authorized as an emergency without formal advertising or bidding because of the need to prevent any further deterioration of the storm sewer and/or damage to the roadway.

Section 2. This Ordinance is hereby declared to be an emergency measure necessary for the urgent benefit and protection of the City and its inhabitants for the reason that this work be completed as soon as possible to prevent further deterioration of the storm sewer; wherefore, this ordinance shall take effect immediately upon its passage.

Passed	_____	_____	_____
		Mayor's Approval	
Posted	_____		
First Reading	_____	Rules Suspended	_____
Second Reading	_____	Emergency	_____
Third Reading	_____		

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council

AUTHORIZING LEGISLATION

A RESOLUTION AUTHORIZING [INSERT NAME AND / OR TITLE] TO PREPARE AND SUBMIT AN APPLICATION TO PARTICIPATE IN THE OHIO PUBLIC WORKS COMMISSION STATE CAPITAL IMPROVEMENT AND / OR LOCAL TRANSPORTATION IMPROVEMENT PROGRAM(S) AND TO EXECUTE CONTRACTS AS REQUIRED

WHEREAS, the State Capital Improvement Program and the Local Transportation Improvement Program both provide financial assistance to political subdivisions for capital improvements to public infrastructure, and

WHEREAS, the [Insert Name of Political Subdivision] is planning to make capital improvements to [Insert Project Name], and

WHEREAS, the infrastructure improvement herein above described is considered to be a priority need for the community and is a qualified project under the OPWC programs,

NOW THEREFORE, BE IT RESOLVED by [Insert Name of Political Subdivision]:

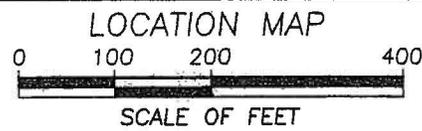
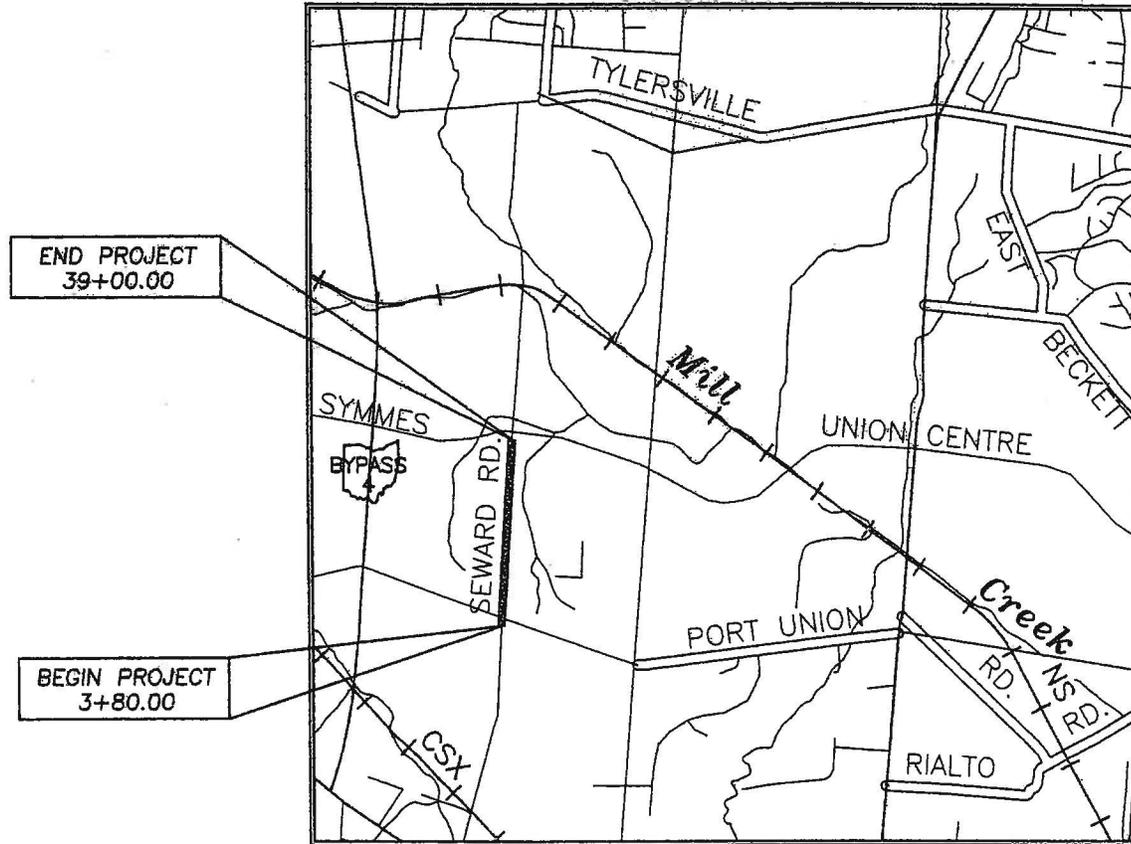
Section 1: The [Insert Name and / or Title] is hereby authorized to apply to the OPWC for funds as described above. *{NOTE: This must be the individual who signs the application.}*

Section 2: The [Insert Name and/or Title] is authorized to enter into any agreements as may be necessary and appropriate for obtaining this financial assistance.

Passed: [Insert Date]

[All Required Signatures Here]

SEWARD ROAD WIDENING— PORT UNION ROAD TO SYMMES ROAD/UNION CENTRE BLV CITY OF FAIRFIELD BUTLER COUNTY, OHIO



- PORTION TO BE IMPROVED
- STATE ROUTE
- OTHER ROADS
- RIVERS

ORDINANCE NO. _____

ORDINANCE TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE GRANT APPLICATION AND ENTER INTO AN AGREEMENT WITH OHIO PUBLIC WORKS COMMISSION (OPWC) FOR A GRANT TO FUND A PORTION OF THE SEWARD ROAD PROJECT AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. The City Manager is hereby authorized to execute the grant application and enter into an agreement with Ohio Public Works Commission (OPWC) for a grant to fund a portion of the Seward Road Project in accordance with the application and agreement on file in the office of the City Manager.

Section 2. This Ordinance is hereby declared to be an emergency measure necessary for the urgent benefit and protection of the City and its inhabitants for the reason that the final application is due September 17, 2012; wherefore, this ordinance shall take effect immediately upon its passage.

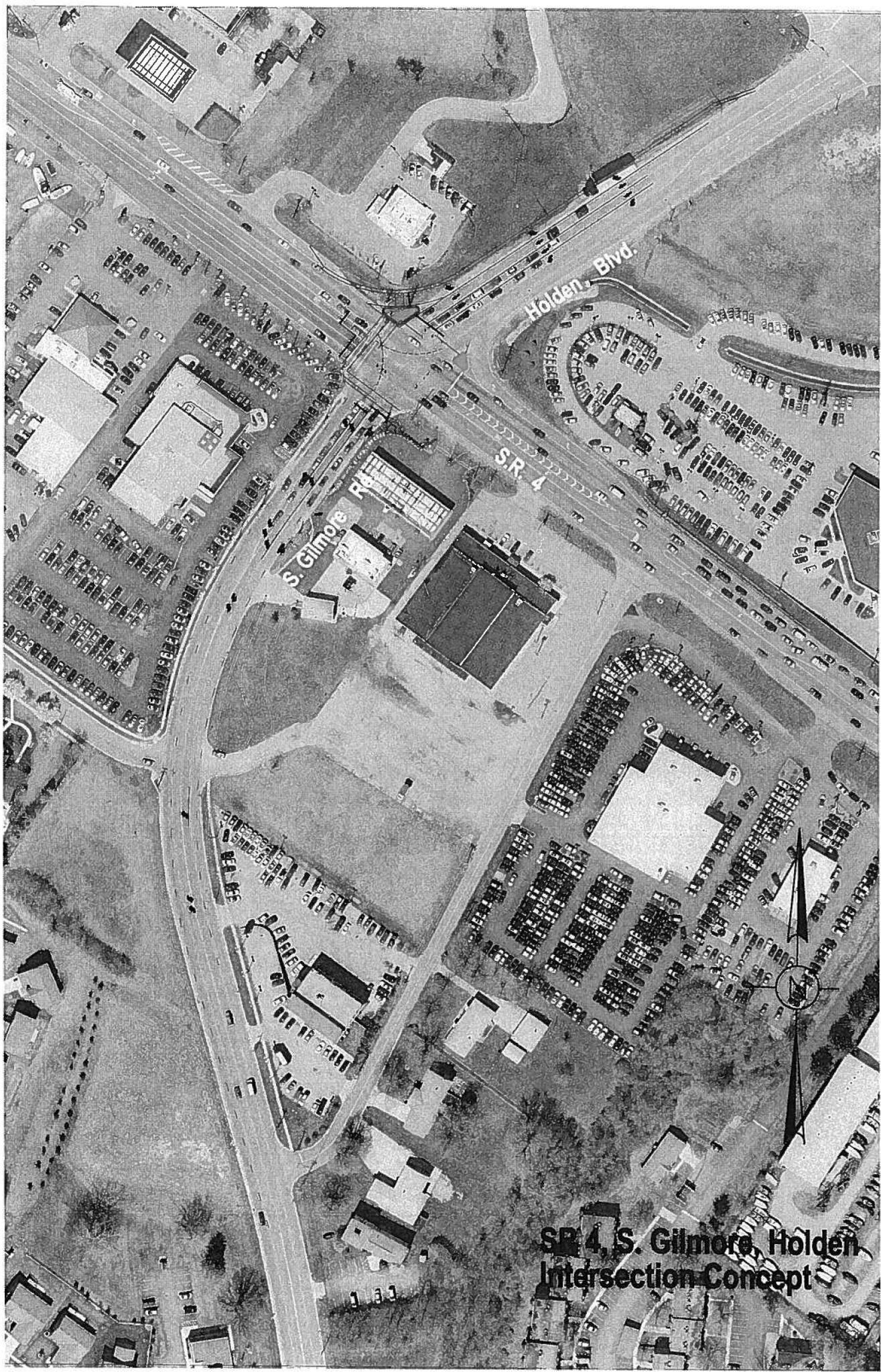
Passed	_____	_____
		Mayor's Approval
Posted	_____	
First Reading	_____	Rules Suspended _____
Second Reading	_____	Emergency _____
Third Reading	_____	

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council



**SR 4, S. Gilmore, Holden
Intersection Concept**



OHIO DEPARTMENT OF TRANSPORTATION

DISTRICT 8 • 505 SOUTH STATE ROUTE 741 • LEBANON, OH 45036
JOHN KASICH, GOVERNOR • JERRY WRAY, DIRECTOR • STEVE MARY, P.E., DISTRICT 8 DEPUTY DIRECTOR

July 9, 2012

Benjamin Mann, P.E.
City Engineer
8870 N. Gilmore Road
Fairfield, OH 45014

Re: BUT-SR 4-3.00
PID # 92552

Dear Mr. Mann:

Attached are two copies of the LPA Agreement for the above referenced project. Please secure the signature of the City Manager and return them to this office, along with legislation that provides the City Manager the authority to enter into the Agreement.

Please note that the City should select one of the methods for "Recovery of Overhead and Fringe Costs" in Section 15.1 of the Agreement.

Should you have any questions or need additional information, please advise.

Respectfully,

A handwritten signature in black ink that reads "Scott A. Brown".

Scott A. Brown, P.E.
Acting District 8 LPA Coordinator

SAB:sab

Attachments

c: Project File (w/ Attachments)

BUT-SR 4-3.00
COUNTY-ROUTE-SECTION
92552
PID NUMBER
25258
AGREEMENT NUMBER

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **City of Fairfield**, hereinafter referred to as the LPA, **5350 Pleasant Avenue, Fairfield, OH 45014**.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The **State Route 4 and Holden/Gilmore Intersection Improvement Project** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES

- 2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:
 - a. Section 5501.03(D) of the Ohio Revised Code;
 - b. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
 - c. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be **\$2,677,251** as set forth in Attachment 1. ODOT shall provide to the LPA **90 percent** of the eligible costs, up to a maximum of **\$2,409,525** in Federal funds (**SAC #4HJ7**). This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with preliminary engineering, detailed design, right of way, actual construction of the transportation project improvements, and construction engineering/inspection activities.
- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.
- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: www.dot.state.oh.us/drrc/Pages/default.aspx.
- 4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the PROJECT Design Engineer and serve as the LPA's principal representative for attending to PROJECT responsibilities, or engage the services of a pre-qualified ODOT consultant who has been chosen using a Qualification-Based Selection (QBS) process as required pursuant to Ohio Revised Code sections 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at www.dot.state.oh.us/CONTRACT. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the project.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.
6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION
- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. As specified in ODOT's Real Estate Policy and Procedures Manual, Section 5202.01-II-(B), any LPA staff who perform any real estate functions shall be prequalified by the ODOT's Office of Real Estate. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work cannot also perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the Ohio Revised Code regarding all activities relating to Railroad-Highway projects.
- 6.9 Consistent with sections 10.1 and 10.4 of this agreement, the LPA shall assure that if any property acquired for this project is subsequently sold for less than fair market value that all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this agreement the LPA shall assure that if the LPA grants a permit or license for the property acquired for this project that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.
7. ADVERTISING, SALE AND AWARD
- 7.1 The LPA shall not advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

- 7.4 The LPA shall incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts, as well as appropriate subcontracts and purchase orders.
- 7.5 The LPA shall require the contractor to be enrolled in, and in good standing with, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP) or a similar program approved by the Bureau of Workers' Compensation, and require the same of any of its subcontractors.
- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force **at the time of bidding, at the time of award, and through the life of the construction contract**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII. and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30 percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with Section 153.54, et. seq. of the Ohio Revised Code, the LPA shall require that the selected contractor provide a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to a finding for recovery under R.C. 9.24, or that the contractor has taken the appropriate remedial steps required under R.C. 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <http://www.auditor.state.oh.us/resources/findings/default.htm/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to suspension or debarment under the Federal Excluded Parties System List (EPLS). Contractors on the EPLS are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and the FHWA codification of the Common Rule for Nonprocurement suspension and debarment. The EPLS can be viewed on the Federal EPLS website at <https://www.epls.gov/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.10 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this agreement, if applicable.
8. **CONSTRUCTION CONTRACT ADMINISTRATION**
- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys,

profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this agreement.

- 8.2 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.3 The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 8.4 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.
- 8.5 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the Ohio Revised Code may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.
- 8.6 Payment or reimbursement to the LPA shall be submitted to:
- Arthur E. Pizzano, City Manager
City of Fairfield
5350 Pleasant Avenue
Fairfield, OH 45014**
- 8.7 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all federal funding commitments.
- 8.8 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and if necessary, unilaterally modify any other term of this Agreement in order to preserve its federal mandate. Upon request, the LPA agrees

to assign all rights, title, and interests in its contract with the Contractor to ODOT in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

- 8.9 Any right, claim, interest, and/or right of action, whether contingent or vested, of the LPA, arising out of or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in and to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.
- 8.10 After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the project, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

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

- 10.2 The LPA agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- 10.3 For any project in which the Engineer's Estimate exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation through the LPA. The Contractor must document the progress and efforts being made in securing the services of DBE subcontractors. In the event the Contractor is unable to meet the DBE Goal placed on this Local Let project, a request for a waiver of all or part of the goal may be made. The written request must indicate a good faith effort was made to meet the goal and be sent to the LPA contracting authority. The LPA forwards the request with recommended action to the ODOT District. The ODOT District then makes recommendation and forwards the request to Office of Contracts, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the Contractor wishes to avail himself of this process. If an item of work subcontracted to a DBE firm is non-performed by LPA or the subject of an approved VECP, the Contractor may request a waiver for the portion of work excluded.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the contractor. The LPA, in turn, must provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

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

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

(2) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

(4) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration (hereinafter "FHWA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the LPA under the contract until the LPA complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

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

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

11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.

12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

Arthur E. Pizzano
City of Fairfield, City Manager
5350 Pleasant Avenue
Fairfield, OH 45014

If to ODOT:

Steve Mary, P.E.
District 8 Deputy Director
505 South State Route 741
Lebanon, OH 45036

15. GENERAL PROVISIONS

15.1 Recovery of Overhead and Fringe Costs:

The LPA shall select which of the following methods it will use for recovering indirect expenses associated with LPA labor on this project:

- Safe Harbor Rates (30% Fringe, 38% Overhead)
- Actual Costs (Fringe only)
- Current Cost Allocation Plan rate approved by ODOT Office of Audits
- LPA will not seek recovery of costs associated with Fringe and Overhead

The LPA shall meet all timekeeping requirements outlined in OMB Circular A-87 and the LATP Manual for any labor costs to be eligible for reimbursement with Federal aid funds.

Should the LPA exercise its option to recover indirect costs, it must follow the LATP Manual of Procedures.

15.2 *Audit Requirements:* The LPA shall comply with the audit requirements of 49 CFR Part 18.26 (Federal Single Audit Act) for any and all projects with a total cost of \$500,000 or more.

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

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

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

- 15.4 **Ohio Ethics Laws:** LPA agrees that if they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 15.5 **[Conditional] State Property Drug-Free Workplace Compliance:** In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.6 **Governing Law:** This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.7 **Assignment:** Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.8 **Merger and Modification:** This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.9 **Severability:** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.10 **Signatures:** Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

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

LPA: CITY OF FAIRFIELD

**STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION**

By: _____
Arthur E. Pizzano
Title: City Manager

By: _____
Jerry Wray
Director

Date: _____

Date: _____

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

SOURCES USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT	\$26,550	10	LNTF	\$238,938	90	4HJ7				\$265,488
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS	\$13,076	10	LNTF	\$117,687	90	4HJ7				\$130,763
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION	\$69,600	10	LNTF	\$626,400	90	4HJ7				\$696,000
PROJECT CONSTRUCTION COSTS	\$144,091	10	LNTF	\$1,296,818	90	4HJ7				\$1,440,909
INSPECTION	\$14,409	10	LNTF	\$129,682	90	4HJ7				\$144,091
TOTALS	\$267,726	10		\$2,409,525	90					\$2,677,251

BUT-SR 4-3.00
COUNTY-ROUTE-SECTION
92552
PID NUMBER
25258
AGREEMENT NUMBER

Attachment 2

DIRECT PAYMENT OF CONTRACTOR

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

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

Contractor Name:
Oaks Vendor ID:
Mailing Address:

LPA signature

LPA Name:
Oaks Vendor ID:
Mailing Address:

Approved, ODOT signature

BUT-SR 4-3.00

COUNTY-ROUTE-SECTION

92552

PID NUMBER

25258

AGREEMENT NUMBER

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **City of Fairfield**, hereinafter referred to as the LPA, **5350 Pleasant Avenue, Fairfield, OH 45014**.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the Ohio Revised Code provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The **State Route 4 and Holden/Gilmore Intersection Improvement Project** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES

- 2.1 This Agreement is authorized by the following statutes and/or policies, which are incorporated in their entirety:
 - a. Section 5501.03(D) of the Ohio Revised Code;
 - b. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
 - c. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105.
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be **\$2,677,251** as set forth in Attachment 1. ODOT shall provide to the LPA **90 percent** of the eligible costs, up to a maximum of **\$2,409,525** in Federal funds (**SAC #4HJ7**). This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with preliminary engineering, detailed design, right of way, actual construction of the transportation project improvements, and construction engineering/inspection activities.
- 3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all cost overruns and contractor claims.

4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.
- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: www.dot.state.oh.us/drrc/Pages/default.aspx.
- 4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the PROJECT Design Engineer and serve as the LPA's principal representative for attending to PROJECT responsibilities, or engage the services of a pre-qualified ODOT consultant who has been chosen using a Qualification-Based Selection (QBS) process as required pursuant to Ohio Revised Code sections 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at www.dot.state.oh.us/CONTRACT. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports, and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the project.
- 5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.
6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION
- 6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.
- 6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. As specified in ODOT's Real Estate Policy and Procedures Manual, Section 5202.01-II-(B), any LPA staff who perform any real estate functions shall be prequalified by the ODOT's Office of Real Estate. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work cannot also perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.

- 6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with PROJECT construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the PROJECT real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.
- 6.8 The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the Ohio Revised Code regarding all activities relating to Railroad-Highway projects.
- 6.9 Consistent with sections 10.1 and 10.4 of this agreement, the LPA shall assure that if any property acquired for this project is subsequently sold for less than fair market value that all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this agreement the LPA shall assure that if the LPA grants a permit or license for the property acquired for this project that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.
7. ADVERTISING, SALE AND AWARD
- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Advertisements shall be in accordance with local bidding requirements. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The PROJECT shall be advertised for three (3) consecutive weeks. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

- 7.4 The LPA shall incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts, as well as appropriate subcontracts and purchase orders.
- 7.5 The LPA shall require the contractor to be enrolled in, and in good standing with, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP) or a similar program approved by the Bureau of Workers' Compensation, and require the same of any of its subcontractors.
- 7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in force **at the time of bidding, at the time of award, and through the life of the construction contract**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII. and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30 percent prime requirement does not apply to design-build contracts.
- 7.7 In accordance with Section 153.54, et. seq. of the Ohio Revised Code, the LPA shall require that the selected contractor provide a performance and payment bond in an amount at least equal to 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to a finding for recovery under R.C. 9.24, or that the contractor has taken the appropriate remedial steps required under R.C. 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <http://www.auditor.state.oh.us/resources/findings/default.htm/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify either that the contractor is not subject to suspension or debarment under the Federal Excluded Parties System List (EPLS). Contractors on the EPLS are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits, pursuant to the provisions of 31 U.S.C. 6101, note, E.O. 12549, E.O. 12689, 48 CFR 9.404, and the FHWA codification of the Common Rule for Nonprocurement suspension and debarment. The EPLS can be viewed on the Federal EPLS website at <https://www.epls.gov/>. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.
- 7.10 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this agreement, if applicable.

8. CONSTRUCTION CONTRACT ADMINISTRATION

- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys,

profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this agreement.

- 8.2 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.3 The Federal-aid Highway Program operates on a reimbursement basis. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 8.4 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.
- 8.5 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the Ohio Revised Code may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.
- 8.6 Payment or reimbursement to the LPA shall be submitted to:

**Arthur E. Pizzano, City Manager
City of Fairfield
5350 Pleasant Avenue
Fairfield, OH 45014**

- 8.7 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all federal funding commitments.
- 8.8 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and if necessary, unilaterally modify any other term of this Agreement in order to preserve its federal mandate. Upon request, the LPA agrees

to assign all rights, title, and interests in its contract with the Contractor to ODOT in order to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

- 8.9 Any right, claim, interest, and/or right of action, whether contingent or vested, of the LPA, arising out of or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in and to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.
- 8.10 After completion of the PROJECT and in accordance with Title 23 United States Code 116 and applicable provisions of the Ohio Revised Code, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years, unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by Ohio Revised Code section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it had received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the project, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

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

- 10.2 The LPA agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex, national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such PROJECT work.
- 10.3 For any project in which the Engineer's Estimate exceeds \$500,000, the LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

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

WAIVER PROCESS FOR DBE GOALS

In the event the Contractor is unable to meet the DBE Goal placed on this project, a request for waiver of all or part of the goal may be made to the Ohio Department of Transportation through the LPA. The Contractor must document the progress and efforts being made in securing the services of DBE subcontractors. In the event the Contractor is unable to meet the DBE Goal placed on this Local Let project, a request for a waiver of all or part of the goal may be made. The written request must indicate a good faith effort was made to meet the goal and be sent to the LPA contracting authority. The LPA forwards the request with recommended action to the ODOT District. The ODOT District then makes recommendation and forwards the request to Office of Contracts, 1980 West Broad Street, Columbus, Ohio, 43223. There will be no extension of time for the project granted if the Contractor wishes to avail himself of this process. If an item of work subcontracted to a DBE firm is non-performed by LPA or the subject of an approved VECP, the Contractor may request a waiver for the portion of work excluded.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. The LPA must obtain written, signed documentation from the contractor that the DBE goal has been satisfied prior to executing the contract with the contractor. The LPA, in turn, must provide such documentation to ODOT in order for ODOT to encumber the Federal/State funds.

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

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

(2) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(3) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.

(4) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or the Federal Highway Administration (hereinafter "FHWA") to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

- (a) withholding of payments to the LPA under the contract until the LPA complies, and/or
- (b) cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

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

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

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

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.
- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the Revised Code.

13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

**Arthur E. Pizzano
City of Fairfield, City Manager
5350 Pleasant Avenue
Fairfield, OH 45014**

If to ODOT:

**Steve Mary, P.E.
District 8 Deputy Director
505 South State Route 741
Lebanon, OH 45036**

15. GENERAL PROVISIONS

15.1 Recovery of Overhead and Fringe Costs:

The LPA shall select which of the following methods it will use for recovering indirect expenses associated with LPA labor on this project:

- Safe Harbor Rates (30% Fringe, 38% Overhead)
- Actual Costs (Fringe only)
- Current Cost Allocation Plan rate approved by ODOT Office of Audits
- LPA will not seek recovery of costs associated with Fringe and Overhead

The LPA shall meet all timekeeping requirements outlined in OMB Circular A-87 and the LATP Manual for any labor costs to be eligible for reimbursement with Federal aid funds.

Should the LPA exercise its option to recover indirect costs, it must follow the LATP Manual of Procedures.

15.2 *Audit Requirements:* The LPA shall comply with the audit requirements of 49 CFR Part 18.26 (Federal Single Audit Act) for any and all projects with a total cost of \$500,000 or more.

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

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

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

- 15.4 *Ohio Ethics Laws:* LPA agrees that it they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.
- 15.5 [Conditional] *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.6 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.7 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.8 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.9 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.10 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

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

LPA: CITY OF FAIRFIELD

**STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION**

By: _____
Arthur E. Pizzano
Title: City Manager

By: _____
Jerry Wray
Director

Date: _____

Date: _____

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT	\$26,550	10	LNTP	\$238,938	90	4HJ7				\$265,488
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS	\$13,076	10	LNTP	\$117,687	90	4HJ7				\$130,763
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION	\$69,600	10	LNTP	\$626,400	90	4HJ7				\$696,000
PROJECT CONSTRUCTION COSTS	\$144,091	10	LNTP	\$1,296,818	90	4HJ7				\$1,440,909
INSPECTION	\$14,409	10	LNTP	\$129,682	90	4HJ7				\$144,091
TOTALS	\$267,726	10		\$2,409,525	90					\$2,677,251

Attachment 2

DIRECT PAYMENT OF CONTRACTOR

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

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

Contractor Name:
Oaks Vendor ID:
Mailing Address:

LPA signature

LPA Name:
Oaks Vendor ID:
Mailing Address:

Approved, ODOT signature

ORDINANCE NO. _____

ORDINANCE TO AUTHORIZE THE CITY MANAGER TO EXECUTE THE LOCAL PUBLIC AGENCY AGREEMENT WITH ODOT FOR THE ROUTE 4 AND HOLDEN IMPROVEMENT PROJECT AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. The City Manager is hereby authorized to execute the Local Public Agency Agreement with ODOT for the Route 4 and Holden Improvement Project in accordance with the agreement on file in the office of the City Manager.

Section 2. This Ordinance is hereby declared to be an emergency measure necessary for the urgent benefit and protection of the City and its inhabitants for the reason that the design of the project can proceed as soon as possible; wherefore, this ordinance shall take effect immediately upon its passage.

Passed	_____	_____	_____
		Mayor's Approval	
Posted	_____		
First Reading	_____	Rules Suspended	_____
Second Reading	_____	Emergency	_____
Third Reading	_____		

ATTEST:

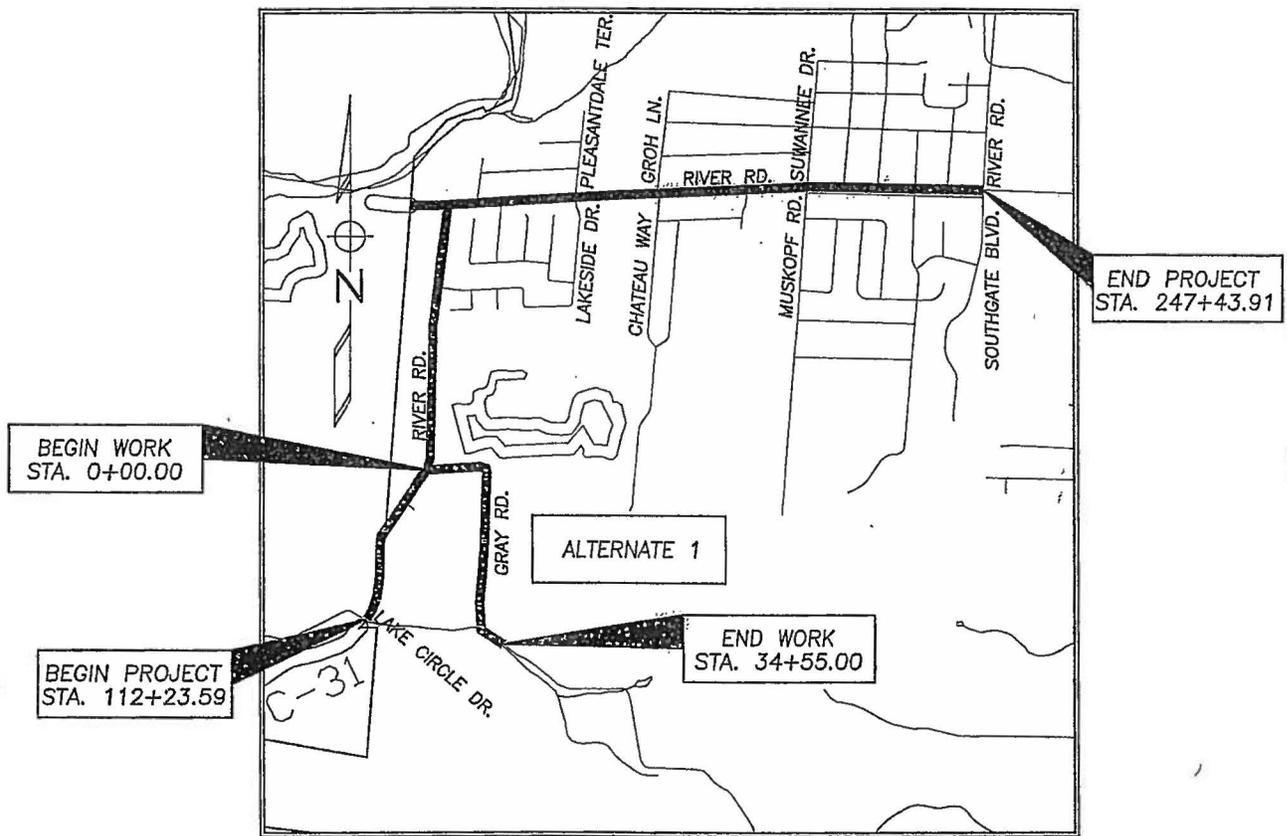
Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council

2012 RIVER ROAD IMPROVEMENTS

LAKE CIRCLE DRIVE TO SOUTHGATE BOULEVARD CITY OF FAIRFIELD BUTLER COUNTY, OHIO



LOCATION MAP



SCALE OF MILES

- PORTION TO BE IMPROVED ————
- STATE ROUTE ————
- OTHER ROADS ————
- RIVERS ————

ORDINANCE NO. _____

ORDINANCE TO AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH OHIO PUBLIC WORKS COMMISSION (OPWC) FOR A GRANT TO FUND A PORTION OF THE 2012 RIVER ROAD PROJECT AND DECLARING AN EMERGENCY.

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. The City Manager is hereby authorized to enter into an agreement with Ohio Public Works Commission (OPWC) for a grant to fund a portion of the 2012 River Road Project in accordance with the agreement on file in the office of the City Manager.

Section 2. This Ordinance is hereby declared to be an emergency measure necessary for the urgent benefit and protection of the City and its inhabitants for the reason that this project be completed during the construction season; wherefore, this ordinance shall take effect immediately upon its passage.

Passed	_____	_____	_____
		Mayor's Approval	
Posted	_____		
First Reading	_____	Rules Suspended	_____
Second Reading	_____	Emergency	_____
Third Reading	_____		

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council

CITY OF FAIRFIELD, OHIO
CITY COUNCIL COMMUNICATION

August 13, 2012

ITEM

It is necessary for the City Council to pass an ordinance to reduce special assessments levied for the purpose of constructing improvements at the Cincinnati Mills Mall.

FINANCIAL IMPACT

The reduction in the assessment will be certified to the County Auditor for collection in order to pay debt service on bonds issued for the construction of improvements.

SYNOPSIS

The cooperative agreement entered into by the City and the Port Authority of Greater Cincinnati dated February 1, 2004 requires the assessments to be reduced by the amount of debt service payments in lieu of taxes and other funds made available during 2012 and 2013.

BACKGROUND

The City has received the report of the Administrator of the cooperative agreement detailing the amount of the debt service payments in lieu of taxes and other funds being made available and it has been determined that the amount of assessments needed to be certified to cover the debt service payment of \$317,124.95 is per **Exhibit B**.

STAFF RECOMMENDATION

It is recommended that Council authorize and direct the preparation of legislation to reduce the special assessments levied for the purpose of constructing certain improvements at the Cincinnati Mills Mall.

LEGISLATIVE ACTIONS:

Suspension of Rules & Adoption Requested?
Emergency Provision Needed?

Yes
Yes

Prepared by: Mary Hays
Approved for Content by: Mary Hays
Financial Review (where applicable) by: Mary Hays
Legal Review (where applicable) by: John D. Clemmons
Accepted by Council Agenda: Lisa Wilson

CITY OF FAIRFIELD, OHIO

ORDINANCE NO. _____

AN ORDINANCE DETERMINING TO RECERTIFY SPECIAL
ASSESSMENTS LEVIED FOR THE PURPOSE OF
CONSTRUCTING CERTAIN IMPROVEMENTS AND
DECLARING AN EMERGENCY.

WHEREAS, pursuant to a petition filed by the owners of benefited properties dated December 30, 2003, (the "Petition") this City Council ("Council") of the City of Fairfield, Butler County, Ohio (herein the "City") by Resolution No. 2-04 adopted January 12, 2004, has declared the necessity of acquiring and constructing the improvements described in such Resolution and has adopted the assessments with respect to such improvements prepared and filed with the Clerk of Council and by Ordinance No. 5-04 adopted on January 12, 2004, determined to proceed with said improvements; and

WHEREAS, in accordance with the Petition, the improvements identified in such Resolution and Ordinance (hereinafter called the "Improvements") were acquired and constructed on behalf of the City and the City of Forest Park, Hamilton County, Ohio (herein, "Forest Park"), acting jointly and in cooperation with the Port of Greater Cincinnati Development Authority (the "Port Authority"); and

WHEREAS, this Council by Ordinance No. 6-04 adopted January 12, 2004 levied special assessments for the Improvements against benefited properties in the City and certified said assessments to the Butler County Auditor for collection; and

WHEREAS, pursuant to the Petition, the assessments to be certified for collection in each year are to be adjusted in accordance with the Tax Increment Service and Cooperative Agreement (the "Cooperative Agreement") entered into by and among the City, Forest Park, the property owner and the Port Authority, dated February 1, 2004, the Trust Indenture (the "Trust Indenture") by and between the Port Authority and U.S. Bank National Association, dated February 1, 2004 and an annual report to be prepared and provided to the City and others by the Administrator, as defined in the Cooperative Agreement; and

WHEREAS, the Cooperative Agreement and Trust Indenture require the Administrator to determine and include in its annual report: (A) the Fairfield City Gross Annual Assessments and Forest Park Gross Annual Assessments for the following collection year, (B) the Aggregate Annual Required Assessments for the applicable year, as reduced by (i) the amount of service payments in lieu of taxes collected and estimated to be collected pursuant to section 5709.42 of the Ohio Revised Code and the Cooperative Agreement and (ii) other available amounts, as set forth in the Trust Indenture, and (C) the net amounts of the special assessments to be certified for collection that year by the City (the "Fairfield City Net Annual Assessments" referred to therein) and by Forest Park (the "Forest Park Net Annual Assessments" referred to therein); and

WHEREAS, original tax parcel A0700017000078 (including both Part 1 and Part 2) has been subdivided and new tax parcel A0700017000103 has been created with a portion of the

acreage originally included in the original tax parcel A0700017000078, and the Petition and the Cooperative Agreement provide that the Special Assessments shall be apportioned and charged on a proportionate basis (based on a formula included in the Petition) to any new tax parcels and the remaining parcels as determined by the Administrator; and

WHEREAS, the City has previously received and accepted the report of the Administrator on the reapportionment of the Special Assessment to and between tax parcels A0700017000078 and A0700017000103; and

WHEREAS, the City has received the 2012 annual report of the Administrator, detailing calculations of the amounts identified in the several preceding recitals to this ordinance, including the allocations of the special assessments among affected tax parcels, estimates of the amount of service payments in lieu of taxes and other funds to be available during 2012 and 2013 for the purpose of making debt service and related payments, and indicating the reduction percentages and amounts to be applied in order to reduce the Fairfield City Gross Annual Assessments to the Fairfield City Net Annual Assessments to be collected for the 2013 collection year (with the related Forest Park determinations made on the same basis); and

WHEREAS, this Council determines that the assessments previously levied shall not be reduced for collection year 2013, shall be allocated pursuant to and in accordance with the Administrator's report and shall be re-certified in accordance herewith;

NOW, THEREFORE, the Council of the City of Fairfield, County of Butler, Ohio hereby ordains:

SECTION 1. That the assessments of the cost and expense of the Improvements plus Administrative Expenses, which were previously certified by this Council to the Butler County Auditor's Office for parcel numbers and in the amounts as set forth in Exhibit A attached hereto, and which were thereafter reapportioned to and between tax parcels A0700017000078 and A0700017000103 in the amounts identified in Exhibit B attached hereto and certified to the County Auditor, shall, pursuant to and in accordance with the Administrator's report, not be reduced for collection year 2013 and shall be allocated and levied and re-certified for collection year 2013 in the amounts set forth on Exhibit B attached hereto.

SECTION 2. The Clerk of Council is hereby directed to deliver a certified copy of this Ordinance to the County Auditor within twenty (20) days after its adoption.

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 of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

SECTION 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of this City, and for the further reason that the immediate adoption of said Ordinance is necessary for the orderly certification of the assessments; therefore, this Ordinance shall be in full force and effect from and immediately after its adoption.

ADOPTED _____, 2012.

Presiding Officer

Attest:

Clerk of Council

CERTIFICATE

The undersigned hereby certifies that the foregoing is a true and correct copy of an Ordinance adopted on the ____ day of _____, 2012, and that on the ____ day of _____, 2012, a date within twenty (20) days of the adoption of the foregoing Ordinance, a true and correct copy of such Ordinance was filed with the County Auditor.

Clerk of Council

RECEIPT

The undersigned hereby acknowledges receipt of the foregoing Ordinance.

County Auditor

Dated: _____

**Cincinnati Mills
Allocation of Assessments to Parcels**

Tax Parcel Butler County	Acreage	Property Use	Assessable Acreage	Assessable SF	Principal Portion of Special Assessment	Total Special Assessment
A0700017000078 (Part 1)	14.872	Kohls, mall, parking and garage	14.872	283,144	\$3,483,923	\$7,905,748
A0700017000078 (Part 2)	0.415	Residual parcel	0.415		\$14,802	\$33,590
A0700017000097 Exempt	5.711	Garage				\$0
A0700017000098 Exempt	0.729	Ring road				\$0
A0700017000087 Exempt	1.054	Detention pond				\$0
	22.781	Total	15.287	283,144	\$3,498,725	\$7,939,338

EXHIBIT A

EXHIBIT B

**Port of Greater Cincinnati Development Authority
Cooperative Public Parking and Infrastructure Project**

Special Assessments

Parcel Number	Principal Portion of the Special Assessment	Total Special Assessment	Gross Annual Assessments	Reduction Amount	Net Annual Assessments to be Collected
Butler County					
A0700017000078	\$1,977,344.79	4,487,008.04	\$179,226.81	\$0	\$179,226.81
A0700017000103	\$1,521,380.52	3,452,329.95	\$137,898.14	\$0	\$137,898.14
<i>Subtotal:</i>	\$3,498,725.31	\$7,939,337.99	\$317,124.95	\$0	\$317,124.95

ORDINANCE NO. _____

ORDINANCE TO AMEND SUBSECTION 953.01(a) OF ORDINANCE NO. 166-84, THE CODIFIED ORDINANCES OF FAIRFIELD, OHIO, RELATIVE TO THE SERVICE FEES FOR RESIDENTIAL GARBAGE AND SOLID WASTE COLLECTION AND RECYCLING.

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. Subsection 953.01(a) of Ordinance No. 166-84, the Codified Ordinances of Fairfield, Ohio, is hereby amended to read as follows:

953.01 Service Fee For Residential Garbage and Solid Waste Collection and Recycling.

(a) In order to provide necessary funds for costs incurred in connection with the collection, disposal and recycling of residential garbage and solid waste in the City of Fairfield, a monthly service fee is hereby charged to every residential unit in the City, whether single family or multi-family or mobile home, based upon whether curbside or dumpster (including compactors) service is provided, as follows:

Type of Service	Effective 1/1/11	Effective 2/1/2012	EFFECTIVE 10/1/2012	EFFECTIVE 9/3/13	EFFECTIVE 9/3/14	EFFECTIVE 9/3/15
Dumpster	[\$7.11]	\$7.90	\$6.50	\$6.65	\$6.80	\$6.95
Curbside	[\$12.60]	\$14.00	\$11.45	\$11.65	\$11.85	\$12.05

Type of Service	EFFECTIVE 9/3/16
Dumpster	\$7.10
Curbside	\$12.25

[NOTE: NO CHANGES TO BALANCE OF THIS SECTION.]

Section 2. This Ordinance shall take effect at the earliest period allowed by law.

Passed _____
Posted _____
First Reading _____
Second Reading _____
Third Reading _____

Mayor's Approval _____
Rules Suspended _____

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council

City of Fairfield\Ordinances\2012\Amending Section 953.01(a) - Ord

CITY OF FAIRFIELD, OHIO
CITY COUNCIL COMMUNICATION

ITEM:

August 13, 2012

Request for appropriation for **contractual** agenda items.

FINANCIAL IMPACT:

\$1,036,491 from noted funding source.

SYNOPSIS:

The following appropriations have been requested to fund the contracts appearing under New Business on Council's meeting agenda dated August 13, 2012:

\$51,491 2012 Emergency Storm Sewer Repair
\$985,000 2012 River Road Project

BACKGROUND:

Please refer to specific Council Communications dated August 13, 2012 for a description of these items.

RECOMMENDATIONS:

It is recommended that City Council suspend the rules requiring a second and third reading of this Ordinance and adopt the appropriations listed above.

LEGISLATIVE ACTIONS:

Suspension of Rules & Adoption Requested?	<input checked="" type="checkbox"/>	<input type="checkbox"/> If yes, explain
	yes	no above
Emergency Provision Needed?	<input type="checkbox"/>	<input checked="" type="checkbox"/> If yes, explain
	yes	no above

Prepared by: Alisa Wilson

Approved for Content by: Alisa Wilson

Financial Review (where applicable) by: Mary Hoff

Legal Review (where applicable) by: John W. Clemmons

Accepted by Council Agenda: Alisa Wilson

ORDINANCE NO. _____

ORDINANCE TO AMEND ORDINANCE NO. 127-11 ENTITLED "AN ORDINANCE TO MAKE ESTIMATED APPROPRIATIONS FOR THE EXPENSES AND OTHER EXPENDITURES OF THE CITY OF FAIRFIELD, OHIO, DURING A PERIOD BEGINNING JANUARY 1, 2012, AND ENDING DECEMBER 31, 2012."

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. Ordinance No. 127-11, the 2012 Appropriation Ordinance, is hereby amended in the following respects:

From:	Unappropriated State Issue II Fund	\$985,000
To:	41016025-252000 Improvements Other Than Building (2012 River Road Repair Project)	\$985,000

From:	Unappropriated .2% Capital Improvement Fund	\$51,491
To:	40216025-252500 Drainage Improvements (Emergency Storm Sewer Repair at Gilmore Road)	\$51,491

Section 2. This Ordinance shall take effect at the earliest period allowed by law.

Passed _____ Mayor's Approval

Posted _____

First Reading _____ Rules Suspended _____

Second Reading _____

Third Reading _____

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council

**CITY OF FAIRFIELD, OHIO
CITY COUNCIL COMMUNICATION**

ITEM:

August 13, 2012

Requests for appropriations for **non-contractual** agenda items.**FINANCIAL IMPACT:**

\$ 41,840 from noted funding sources.

SYNOPSIS:

The following requests have been submitted for the August 13, 2012 meeting:

\$21,840	Alternate Power for Traffic Signals
\$20,000	Time and Attendance Electronic Time Clocks

BACKGROUND:

Please refer to the attached Council Communications dated August 13, 2012 for a description of these items.

RECOMMENDATIONS:

It is recommended City Council suspend the rules requiring a second and third reading of this Ordinance and adopt the appropriation listed above.

LEGISLATIVE ACTIONS:	Suspension of Rules & Adoption Requested?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	If yes, explain above
		yes	no	
	Emergency Provision Needed?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If yes, explain above
		yes	no	

Prepared by: Alisha WilsonApproved for Content by: Alisha WilsonFinancial Review (where applicable) by: Mary HaganLegal Review (where applicable) by: John H. ClemmonsCouncil Agenda: Alisha Wilson

CITY OF FAIRFIELD, OHIO
CITY COUNCIL MEETING COMMUNICATION

ITEM NO. 11084

DATE: 08/13/2012

ITEM:

Alternate Power for Traffic Signals.

FINANCIAL IMPACT:

\$21,840.00 (\$18,200.00 plus a contingency of \$3,640.00) from the County Motor Vehicle Fund.

SYNOPSIS:

This project is to install generator adapters and battery back-ups at various traffic signals to protect the City in the event of power failure. The traffic signals at Seward Road /Tylersville Road and at Muhlhauser Road /LeSaint Drive will require a battery back-up and a generator adaptor.

This project is in the proposed Capital Improvements Program for 2012-2016 CIP as PWA-12-203 in the amount of \$25,000.

BACKGROUND:

The City has been installing battery back-ups and generator adapters for several years as signals are upgraded. After the 2008 wind event, a separate program was started to install battery back-ups and generator hook-ups.

With this year's work, 37 of 61 (61%) of the signalized intersections maintained by the City will have battery back-up and generator hook-ups. Elex Inc. and Capital Electric have provided quotations to perform the work for \$18,600.00 and \$18,200.00 respectively. Capital Electric will perform the work as having submitted the lowest and best bid.

STAFF RECOMMENDATION:

It is recommended that City Council authorize an appropriation of \$21,840.00 (\$18,200.00 plus a contingency of \$3,640.00) from the County Motor Vehicle Fund for the alternate power for traffic signals.

LEGISLATIVE ACTION: Suspension of Rules and Adoption Requested? **If yes, explain above.**
yes no

Emergency Provision Needed? **If yes, explain above.**
yes no

Prepared by: *Be...*
Approved for Content by: *...*
Financial Review (where applicable): *...*
Legal Review (where applicable): *...*
Accepted for Council Agenda: *...*

PROJ: Add UPS and Generator Kits
LOC: Various / Fairfield
EST: Kenny Pennington
P.O. Box 1353, Dayton, OH 45401
Tel: 937-424-2550 Fax: 937-297-1365

REF #	ITEM DESCRIPTION	QUANTITY	UNIT	BID PRICE	
				UNIT	TOTAL
1	Tylersville and Seward (Generator and UPS)	1.00	Each	8,244.35	8,244.35
2	Mulhauser and LeSaint (Generator and UPS)	1.00	Each	8,244.35	8,244.35
3	Port Union and N.Gilmore (Generator Only)	1.00	Each	568.10	568.10
4	Winton and Resor (Generator Only)	1.00	Each	568.10	568.10
5	Maintenance of Traffic	1.00	Each	575.14	575.14
GRAND TOTAL					\$18,200.00

Ben Mann

Subject: FW: 2012 Traffic Signal Back-UP Power Source

From: Steve Powers [<mailto:steve@elexinc.com>]

Sent: Friday, August 03, 2012 10:18 AM

To: Nick Castellini

Subject: 2012 Traffic Signal Back-UP Power Source

Nick:

Elex Inc is pleased to offer the following proposal for your consideration:

Labor, Material & Equipment to Provide Back-Up Power Sources, as Requested

**Tylersville & Seward
Muhlhauser & LeSaint**

UPS with Generator Hook-Up in a Base Mount Enclosure
Unit Cost.....\$8590.00 Total Cost.....\$17,180.00

**Port Union & North Gilmore
Winton & Resor**

Generator Adaptor Panel
Unit Cost.....\$710.00 Total Cost.....\$1420.00

We look forward to having the opportunity to be of service.

Sincerely,
ELEX INC

Steve Powers

CITY OF FAIRFIELD, OHIO
CITY COUNCIL COMMUNICATION

August 13th, 2012

ITEM

City Council is requested to appropriate the amount of \$20,000.00 from the .2% Capitol Improvement Fund for 2012.

FINANCIAL IMPACT

An appropriation in the amount of \$20,000.00 from the .2% Capital Improvement Fund for project FIN-12-005 from the 2012 Capital Improvement Program.

BACKGROUND

In an effort to automate the task of time and attendance electronic time clocks are employed. These devices save a great deal of time in the processing of employee time and offer a far greater accuracy than processing punched cards or cards written by hand. This process has been tested and had been implemented at the Public works Department. As the software for time tracking had already been purchased and in place, this project will provide only electronic time clocks, support, and the required licensing to add several locations throughout the City. This project involves the material and labor for installation from an additional vendor.

STAFF RECOMMENDATION

It recommended City Council authorize and direct the preparation of legislation for the appropriation of \$20,000.00 from the .2% Capital Improvement Fund and suspend the rules requiring the second and third reading.

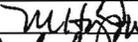
LEGISLATIVE ACTIONS:

Suspension of Rules & Adoption Requested?	Yes
Emergency Provision Needed?	No

Prepared by:

Joseph Waldmann 

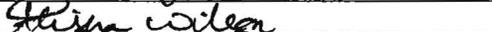
Financial Review (where applicable) by:

Mary Hopton 

Legal Review (where applicable) by:



Accepted by Council Agenda:



TimeClock Plus
 by Data Management, Inc.
 3322 West Loop 306, San Angelo, TX 76904
 325 223-9500 800 749-8463
 sales@timeclockplus.com

Quote	Customer	Quote Date
276190	156144	07/30/2012

CUSTOMER
City of Fairfield Joseph Waldmann (513) 896-8134 550 Pleasant Ave Fairfield, OH 45014-3567

Rep	Entry	Method of Shipment	Method of Payment
GEUBANK	GEUBANK	UPS Ground	Pre-Paid

Stock No.	Ordered	Description	Unit Cost	Total
44-112	1	200 Series Ethernet Proximity	2,456.00	2,456.00
99-208	1	Systems Support Contract Product Addition	268.88	268.88
Valid for 30 days. Expires 08/29/2012. DO NOT PAY. THIS IS NOT AN INVOICE.				



Subtotal: 2,724.88
 S & H: 37.00
 Total: 2,761.88

TimeClock Plus
 by Data Management, Inc.
 3322 West Loop 306, San Angelo, TX 76904
 325 223-9500 800 749-8463
 sales@timeclockplus.com

Quote	Customer	Quote Date
276191	156144	07/30/2012

CUSTOMER
City of Fairfield eph Waldmann (513) 896-8134 .50 Pleasant Ave Fairfield, OH 45014-3567

Rep	Entry	Method of Shipment	Method of Payment
GEUBANK	GEUBANK	N/A	Pre-Paid

Stock No.	Ordered	Description	Unit Cost	Total
22-800	10	6.0 Professional Employee Licenses	15.00	150.00
<p>Valid for 30 days. Expires 08/29/2012. DO NOT PAY. THIS IS NOT AN INVOICE.</p>				



Subtotal: 150.00
 S & H: 0.00
 Total: 150.00



TimeClock Plus™

The absolute easiest way to track and report employee hours sm

To Whom It May Concern:

We hereby certify that the following TimeClock Plus™ Versions, Hybrid Edition, Web Edition, 6.0 Professional Edition, and Small Business Edition Software along with the proprietary RDT 100/200 Series terminals are manufactured only by Data Management Inc. All primary repair and support services are performed by Data Management Inc. from our corporate offices in San Angelo, TX.

RDT 100/200 Series terminals interact in *real-time* with the TimeClock Plus software, making the terminals completely interactive with the database.

The TimeClock Plus time and attendance software and the RDT 100/200 Series terminals are designed to help control labor costs in today's fast paced and sometimes hectic work environment. The *real-time* aspect of TimeClock Plus allows for supervisors to more effectively manage their employees.

Sincerely,

Ernie R. Nabors
Data Management Inc.
Vice President of Operations

Data Management Inc.

3322 West Loop 306, San Angelo, TX 76904
Tel: (325) 223-9500 Sales: 1-800-749-8463 Fax: (325) 223-9104
www.timeclockplus.com

ORDINANCE NO. _____

ORDINANCE TO AMEND ORDINANCE NO. 127-11 ENTITLED "AN ORDINANCE TO MAKE ESTIMATED APPROPRIATIONS FOR THE EXPENSES AND OTHER EXPENDITURES OF THE CITY OF FAIRFIELD, OHIO, DURING A PERIOD BEGINNING JANUARY 1, 2012, AND ENDING DECEMBER 31, 2012."

BE IT ORDAINED by the Council of the City of Fairfield, Ohio, that:

Section 1. Ordinance No. 127-11, the 2012 Appropriation Ordinance, is hereby amended in the following respects:

From:	Unappropriated County Motor Vehicle Fund	\$21,840
To:	20516025-252000 Improvements Other Than Building <i>(Alternate Power for Traffic Signals)</i>	\$21,840

From:	Unappropriated .2% Capital Improvement Fund	\$20,000
To:	40216025-253200 Captial Equipment <i>(Electronic Time Clocks for Parks Department)</i>	\$20,000

Section 2. This Ordinance shall take effect at the earliest period allowed by law.

Passed _____ Mayor's Approval _____

Posted _____

First Reading _____ Rules Suspended _____

Second Reading _____

Third Reading _____

ATTEST:

Clerk of Council

This is to certify that this Ordinance has been duly published by posting and summary publication as provided by Charter.

Clerk of Council