



1368 Research Park Drive
Beavercreek, Ohio

CITY COUNCIL
Regular Meeting – Monday, January 12, 2026 6:00 p.m.
Council Chambers

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE AND PRAYER/MOMENT OF SILENCE – Council Member Bales
- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES
 - A. December 8, 2025 Regular Meeting Minutes
- VI. PRESCHEDULED SPEAKER – Age Friendly Survey – Elizabeth Pafford. Measurement Resource Co.
- VII. PUD 25-3 SSP #1 7-Brew (Tabled)
- VIII. Appeal A – 26-1, Birch Hill Suites
 - A. Applicant Presentation
 - B. Staff Presentation
 - C. Public Input
 - D. Resolution 26-03
- IX. PUD 541 Major MOD 11/25, McDonald's
 - A. Applicant Input
 - B. Staff Input
 - C. Public Input
 - D. Motion
- X. ORDINANCES, RESOLUTIONS AND PUDS
 - A. Resolution 26-01 Authorizing the Finance Department to Request the Greene County Auditor for Advance of Real Estate of Public Utility Taxes
 - B. Resolution 26-02 Authorizing the Submission of an Application with GCCOA Senior Services
 - C. Resolution 26-04 123911 Stedman Lane Agreement
 - D. Resolution 26-05 121218 Grange Hall Road Pedestrian Improvement Agreement
 - E. Resolution 26-06 119969 Pentagon Blvd. Resurfacing Agreement
 - F. Resolution 26-07 119964 Shakertown Road Widening Agreement
 - G. Resolution 26-08 Lantz Road Sidewalks Agreement
 - H. Resolution 26-09 123909 Kemp Road Widening Agreement
- XI. LIQUOR LICENSE
 - A. New Liquor License Regal Cinemas
 - B. Liquor License Transfer from Mahaganapati LLC to Kubera Drive Thru LLC dba Beverage Express
- XII. DECISION ITEM
 - A. Approval of DC Fly-In May 11-13, 2026, for Council Members
 - B. Motion to Appoint Clerk of Council as Designee for Public Records Training
 - C. Decorative Bench Relocation
 - D. Appointment of One Additional Member of Council to Zoning Code Steering Committee



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CITY COUNCIL
Regular Meeting – Monday, January 12, 2026 6:00 p.m.
Council Chambers

- XIII. CITIZEN COMMENTS**
- XIV. COUNCIL TIME**
- XV. MAYOR'S REPORT**
- XVI. CITY MANAGER'S REPORT**
- XVII. ADJOURNMENT**

BEAVERCREEK CITY COUNCIL
MEETING
REGULAR December 8, 2025

CALL TO ORDER

Mayor Adams called the meeting to order followed by roll call.

PRESENT: Council Member Curran, Council Member Duerr, Council Member Garcia, Council Member Litteral, Council Member Schwartz, Vice Mayor Bales and Mayor Adams

ALSO IN ATTENDANCE: Randy Burkett, Planning and Development Director; Katy Carrico, Communications Director; David Graham, Finance Director; Debbie Haines, Clerk of Council; Monica Jones, Assistant City Manager; Pete Landrum, City Manager; Chad Lindsey, Police Chief; Josh Lounsbury, Legal Counsel; Jeff Moorman, Public Services Director/City Engineer; Zach Wike, Director of Parks, Recreation & Culture

PLEDGE

Council Member Schwartz led the pledge and asked for a moment of silence and a prayer for peace.

APPROVAL OF AGENDA

Council Member Curran MOVED to approve the agenda, seconded by Council Member Duerr. Motion PASSED by majority voice vote.

APPROVAL OF MINUTES

Vice Mayor Bales MOVED to approve the November 17, 2025 Budget Work Session Minutes, seconded by Council Member Garcia. Motion PASSED by majority voice vote.

Council Member Litteral MOVED to approve the November 19, 2025 Budget Work Session Minutes, seconded by Council Member Garcia. Motion PASSED by majority voice vote.

Council Member Curran MOVED to approve the November 24, 2025 Council Regular Meeting Minutes, seconded by Council Member Duerr. Abstentions, Council Member Schwartz. Motion PASSED by majority voice vote.

EXECUTIVE SESSION

Council Member Schwartz moved to enter into Executive Session, pursuant to Section 121.22 of the Ohio Revised Code, for the purpose of consideration of the employment, dismissal, discipline, or compensation of a public employee, seconded by Vice Mayor Bales. Motion PASSED by roll call vote 7-0.

Mayor Adams said the regular meeting would resume following the executive session.

ADJOURN EXECUTIVE SESSION

Council Member Schwartz MOVED to adjourn executive session at 6:41 p.m. seconded by Council Member Duerr. Motion PASSED by roll call vote 7-0.

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RECONVENE REGULAR MEETING

Council Member Schwartz MOVED to reconvene regular meeting at 6:41 p.m. seconded by Council Member Garcia. Motion PASSED by majority voice vote.

STATE OF THE CITY/BUDGET (City Manager)

Mr. Landrum presented the State of the City/Budget Message. He explained the State of the City address is provided annually to update citizens on current fiscal accountability, operational and capital accomplishments of the city and to present the upcoming municipal budget and future plans for city improvements to maintain or enhance infrastructure and service delivery. (State of the City document attached to back of minutes.)

PUD 25-3 SSP #1 7-Brew (Tabled) Mayor Adams stated this will continue to be tabled.

ORDINANCE, RESOLUTIONS AND PUDS

Ordinance 25-25 Mission Point PUD 06-6 Amendment

Clerk Haines read Ordinance 25-25 an ordinance amending Ordinance #07-1 (PUD 06-6, Colonel Glenn Land Development aka Mission Point) to modify the permitted uses and use location to allow for Medium Density Residential on approximately 31 acres.

STAFF INPUT

There was no further staff input.

COUNCIL INPUT

Council Member Duerr asked if there was anything new since the previous meeting. Mr. Burkett said there was not.

Council Member Schwartz asked if this rezoning is increasing the number of potential units from 90 to 160. Mr. Burkett said that was correct.

Vice Mayor Bales said he had received since the last meeting an image of the current land use with a three story apartment building and some feedback. He asked if there was a packet that Planning Board received with what it was before. Mr. Burkett said there was a concept plan showing the apartment. Vice Mayor Bales said he received it from a citizen and had never seen this before. Mr. Burkett said he would have to see what was sent. Vice Mayor Bales said this doubles the land size and the density. Mr. Burkett said it increases the area and doubles the number of units possible.

Council Member Schwartz said this is just the rezoning do they have to come back. Mr. Burkett said yes with a site plan. Council Member Schwartz said the dwelling units per acre would stay the same. Mr. Burkett said this would be the cap. Council Member Schwartz asked what the purpose was of the changes. Mr. Burkett said the changes of Mission Point were to make the property work, justify the expense and this would be a transition between office and retail. Vice

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Mayor Bales said at the last meeting you said this was an administrative change. Mr. Burkett said that was part of it and there was conflicting information or verbiage so it was both.

Council Member Garcia asked if the administrative change accommodates their plan for density. Mr. Burkett said it will reflect 2025, not 2007, proposal not fix solely what was a discrepancy. Council Member Garcia asked if she opposed this can they still build their units only less of them. Mr. Burkett said it would remain as it is now, up to three dwelling units an acre on the 28.

Council Member Litteral asked what the density would be if the original one was correct. Mr. Burkett said that would depend on following the concept plan or the language. Council Member Litteral said the language. Mr. Burkett said three dwelling units an acre. Council Member Garcia said this is where she was at and not in favor of the increased density. She said it almost sounded like in 2007 what council wanted was the description with a concept plan that didn't match that and now we are being asked to make the clerical difference match the concept plan.

Council Member Litteral asked if there was any more discussion on ingress and egress with only one way in and out of this site. Mr. Burkett said currently they can't go through another owner's property to connect so now is just Mission Point Blvd.

Council Member Schwartz asked what the legal implications would be if they didn't approve this change. Mr. Lounsbury said it would maintain status quo. Council Member Schwartz asked if with a rezoning they have conditions to take into consideration, do they need to look at those or is this simply an administrative amendment that we are declining. Mr. Lounsbury said this would be an amendment to a zoning decision, so it is legislative and you would take into consideration all those issues.

There was no further Council input.

Council Member Curran MOVED to approve Ordinance 25-25, seconded by Vice Mayor Bales. Motion FAILED by roll call vote 4-3.

Resolution 25-33 Accepting the 2026 Budget
Clerk Haines read Resolution 25-33 a resolution accepting the 2026 City budget as presented by the City Manager.

STAFF INPUT

The 2026 budget has been presented to Council in two work sessions with public input.

COUNCIL INPUT

Vice Mayor Bales asked about modifications requested being made and wanted to make certain they were included. Mr. Graham said there were several modifications to the golf budget including on the appropriation side as it relates to capital regarding signs and increases in revenue based on Council's concerns

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that the budget was a little too conservative. He said there was also a correction made to the health insurance due to a coding number not related to budget discussions. Vice Mayor Bales asked about a couple recommendations from the Golf Advisory Board regarding passholder fees. Mr. Landrum said they were working through that policy and he had seen a couple drafts and working through some bugs, but it would likely not alter the budget. Vice Mayor Bales asked if he could get an update in January, I would appreciate it and that won't stop him from voting. Mr. Landrum said he wanted it done by that meeting and was not pleased it wasn't done yet.

There was no Council input.

Council Member Curran MOVED to approve Resolution 25-33, seconded by Council Member Duerr. Motion PASSED by majority voice vote.

Ordinance 25-26 2026 Budget Annual Appropriations Certification
Clerk Haines read Ordinance 25-26 an ordinance approving the annual appropriations for the City of Beavercreek, State of Ohio, for the Fiscal Year beginning January 1, 2026 and ending the December 31, 2026 and authorizing the transfer of monies.

STAFF INPUT

Mr. Graham said this legislation was to appropriate the funds for 2026. He said these amounts are based upon the 2026 budget that Council just accepted. He said appropriations must be approved by City Council before January 1, 2026 to allow the City to meet its financial obligations. He highlighted the changes being asked for with police, golf and misc.

Staff recommends approval.

PUBLIC INPUT

There was no public input, public input was closed.

COUNCIL INPUT

There was no Council Input.

Vice Mayor Bales MOVED to approve Ordinance 25-26 in a single reading, seconded by Council Member Schwartz. Motion PASSED by roll call vote.

Ordinance 25-27 2025 Budget Appropriations Certification
Clerk Haines read Ordinance 25-27 an ordinance to approve supplemental appropriations and certify additional revenue and authorize inter-fund transfers for Fiscal Year beginning January 1, 2025 and ending the December 31, 2025 and to amend Ordinances 24-43, 25-04, 25-11, 25-12 and 25-21.

STAFF INPUT

Mr. Graham said this legislation was the final opportunity to seek additional appropriations and certifications for the year. He said as with most years, there are a few items that qualify as clean-up items and others that were not planned

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within the initial budget. He summarized the additional certifications and appropriations being submitted.

Staff recommends approval or Ordinance 25-27.

PUBLIC INPUT

There was no public input, public input was closed.

COUNCIL INPUT

Council Member Duerr said he was very thankful that Council looked ahead. The \$700,000 purchase of the land south of U.S. 35 at the corner of Factory Road secures that land that was looked at for a truck stop and secures the land for future roadway improvements.

There was no Council Input.

Council Member Curran MOVED to approve Ordinance 25-27 in a single reading, seconded by Council Member Litteral. Motion PASSED by roll call vote.

Resolution 25-34 City Manager and Clerk 2026 Wage Adjustments

Clerk Haines read Resolution 24-34 a resolution to set and approve the 2025 wages for the City Manager and Clerk of Council.

Council Member Schwartz MOVED to amend Resolution 25-34, specifically Section One to insert a 1% merit step increase for the City Manager and a 3% merit step increase for the City Clerk, seconded by Council Member Garcia. Motion PASSED by majority voice vote.

Council Member Schwartz MOVED to approve Resolution 25-34 as amended, seconded by Council Member Duerr.

COUNCIL INPUT

Council Member Garcia said the City has a very hardworking staff. She said Pete works very hard as our city manager and take on a lot for the City and has been doing so for nine years and we really appreciate the work he does to keep the City functioning with a limited budget and constraints year in and year out. She said staff does a fantastic job to support that. She said Debbie had done a great job and it had been a pleasure to work with growing into the position and making it your own. She said she appreciates everything we do.

Motion PASSED by majority voice vote.

There was no further Council Input.

Resolution 25-35 Adopting Cyber Security Plan

Clerk Haines read Resolution 25-35 a resolution by City Council adopting a cybersecurity program, pursuant to Ohio Revised Code Section 9.64 that safeguards the City's data and information technology resources to help ensure availability, confidentiality, and integrity of the City's data and technology.

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STAFF INPUT

Mr. Graham stated that House Bill 96 requires each governmental agency to adopt a cybersecurity plan. This plan is exempt from public records requests and as such was presented to Council in executive session on November 24, 2025. He said this plan addresses all the requirements outlined in HB96 and follows NIST standards for best practice.

COUNCIL INPUT

Council Member Curran said I wonder what the cost would be of all of the unfunded mandates forced upon them by the state and federal government. Mr. Graham agreed, but felt this was a good thing to address any weaknesses that unfortunately have to be monitored 24/7

There was no further Council input.

Council Member Litteral MOVED to approve Resolution 26-35, seconded by Council Member Schwartz. Motion PASSED by majority voice vote.

COUNCIL TIME

Council Member Schwartz said I've enjoyed my time on council so tonight is bittersweet. She said she was first appointed to Council when Bob was the first direct elect Mayor and then came COVID, tornado and active shooter, and we've lost a lot of senior employees. However, we've done a lot of great things too with an increase in the police force to maximum capacity, acquire Spring House Park which is an incredible asset and for entrusting her to sit on the Region 14 Board and on Plan Beavercreek, a critical step in the planning process that will produce a great master plan coming forward.

I've met so many incredible people in this position and I've had my perspectives changed on things learning so much. This city is incredible and you have incredible people coming behind me and incredible people still sitting here doing a wonderful job in the leadership coming behind me. There will be challenges ahead with the potential removal of property taxes with no income tax, but I know they are up to the challenge and will do a wonderful job. I thank you for trusting me to help lead the city over the past six years and thank my family for support, but I'm looking forward to having more time with Judson. It's been an honor and privilege.

Mayor Adams said that they appreciate her as well and hated to see her go. He said to stay in touch.

Council Member Garcia welcomed Officer Josh Kowalski, a new member of law enforcement. She thanked Chief Lindsey and the police for coming to our coffee after mass at St. Luke's. She said there was an overwhelming positive reception to our officers and the people were very grateful.

She said this council has become another family and they get along so well. I will miss so much about being on Council. She gave a huge thank you to her husband who supported her in her decision to run and after being elected quickly thereafter adding two children to the family and along the way council

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supporting me through a miscarriage. She added that Mayor Adams was the first on her doorstep after her daughter was born and it was great to have him there. She said her children had attended ribbon cuttings and meetings and had been great for them to experience.

The things I will miss are these meetings and even the annual meeting where I freeze every year and the team lunches where we get to bounce ideas off each other and truly work on the issues. She said she will miss Randy explaining things, and Pete I appreciate your patience in helping me get through some of these challenges. She said Mayor Stone taught her so much and she had learned so much watching all of you and the way you process and question things. It has been an amazing experience and I know we'll stay close. Thank you for all of it.

Mayor Adams said we will miss you as well and you make me think about things I didn't think about.

Council Member Duerr said Chief I'd like to congratulate Officer Pefley on her Respect for Law Enforcement Award and he thanked the Optimist Club for honoring her. He also congratulated Officer Zolar for the 2025 Blue Coad Award. He had known her for years and sometimes you get the opportunity to see what she does in terms of giving back to the community, mentoring young ladies considering a career in law enforcement.

He thanked Mayor Adams for First Thursday and a wonderful swearing in ceremony, which was always a way to learn more about the community and connect, and he thanked Hilton Garden Inn for hosting. Council Members Garcia and Schwartz I will miss you both immensely. Tiffany every council meeting you bring up questions that make me think and your absence will be a significant loss, and I hope you consider running again at some point in the future. Council Member Garcia it has been great getting to know you, and it's remarkable what you've accomplished and the different initiatives, from CFIS to the banner program, and it's an honor to serve with you. He said likewise he hoped she would run again.

Council Member Curran congratulated the officer sworn in this morning and was glad to have been a part of it. He said and the First Thursday was just great and seeing the newly elected officials being sworn in was tremendous and he congratulated Mayor Adams. He appreciated Council Members Schwartz and Garcia's concise comments and felt Council Member Duerr summed them both up very well. He said they both bring up the things many others don't think about and we will miss your observations. I know there will be big things in the future for you both.

Council Member Litteral said Mayor Adams runs a great First Thursday event and congratulated all of those sworn in. I can tell you that both Tiffany and Joanna often bring up things that you didn't think of at all and he had learned a lot from the two of you. You will be missed, but never replaced. I can't imagine you not running in the future.

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He read employee anniversaries.

Vice Mayor Bales congratulated Jacob Kowalski our newest police officer and a great young talent. He was glad he was able to attend his swearing in and looked forward to following his career. Last week I attended the MVRPC and the DDC PDAC scoring for projects that Beavercreek submitted were discussed. The I-675/Grange Hall Road Interchange project received priority ranking and US 35 and Factory received a recommended with both projects being sent to state and federal legislators for funding. He pointed out that priority and recommended were one and two for importance. He said it would be important to advocate that.

Council Member Garcia said that was why they forewarned Bernie Moreno that this request would be coming-thank you for your advocacy. She said that was why she did so much grandstanding at MVRPC and would accept second tier recommendation. Vice Mayor Bales said we will continue our advocacy when we are in DC.

He said MVRPC is asking council and visitors to complete a survey and it's available at MVRPC.org about accessing information.

It had been brought to his attention that a park bench has become a frequent place of loitering and vandalism along the bridge/bike path on Pentagon. He said this was brought up with the City Manager and he thought Council should be aware of the issue. I would like to see it removed and replaced in another location in the city because that area is attracting loitering and vandalism. He said the bike advisory committee to consult with the donor because of the vandalism and to preserve the area and bench.

He thanked Mayor for hosting the First Thursday events they are all great, but December is special. He said he was excited about the new council. He said he would look forward to continuing to serve with Council Member Duerr with his global knowledge and eloquence that he strived for and I admire it and look to emulate it. He said to newly elected Council Member Bills and Vice Mayor Upton you're genuine, kind and bright.

To our outgoing members the legal perspective you've brought is invaluable. He said you're both fiery and opinionated, that he loved. He said Council Member Garcia you introduced legislation that keeps us safe and for that I thank you not only for today but for our future. You have a knack to bring people together to rally around a common cause, all for our best interest-we thank you. You commonly grace us with your beautiful children, which reminds him that we are leading for future generations.

Council Member Schwartz, I appreciate you and your thoughts and have been unwaveringly willing to stand up for your beliefs and you stand your ground, even when outnumbered six to one about chickens. He called that true character and he thanked her for that. You have brought common sense leadership to sometimes convoluted and confusing situations that we have to legislate through, which don't think all of us do, and you don't settle until it makes sense.

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He thanked her for that. He said the Regional Opioid Committee to battle the epidemic that hit close to home and while emotional and challenging for you it was beneficial for us. He said you like Council Member Garcia both brought children into the world while seamlessly serving this community. I'm going to miss both of you.

Merry Christmas.

MAYOR'S REPORT

Mayor Adams said he attended a Nourish the Troops activity at Hope Hotel. They provided food and other necessities to 76 military families with deployed members, to help with their Thanksgiving.

I hope everyone had a great Thanksgiving as we did!

I attended the Dayton Defense December Luncheon along with Council Member Garcia and heard an update on Wright Patterson Air Force Base from Base Commander Colonel Richard's and Command Chief Fontaine.

I stopped by "Coffee with a Cop" at Target and spoke with several people in the short time I was there. Great program to allow the community to interact with our Police Department over coffee and of course, "Donuts"!

The First Thursday was very well attended and we were able to swear in our returning Councilman Duerr, our new Council Member Sarah Bills and Vice Mayor Elect Zach Upton, who will be joining us on January 1, 2026. We also swore in our two new Beavercreek Township Trustees, Bob Stone and Joseph Jenkins. Most of you remember Bob from his service in Beavercreek as our mayor for the 8 years before I assumed the seat. We wish them all great success and encourage them to recognize what their positions are and always work for the betterment of our great city or Township,

I stopped by the Girl Scouts at Angels Pass Park this past Friday evening. As usual, it was cold, but there was fun for all. From cooking hot dogs over an open fire, to craft station where people could make small ornaments for the Holidays, to a hay ride (I did not do the hay ride-too cold), to the Big Guy, Santa Claus. This program has been going on for several years and was a Gold Award project for a Girl Scout several years ago, and they have decided to keep it going. They also dedicated a bench to former Beavercreek Mayor, Candy Prystalowski, who passed away about a year ago. She was very active with the Girl Scouts.

I attended the 7th anniversary of a local business, Bombshell Culture Salon. It is always great to see small business owners succeed.

My wife and I attended the Christmas in the Park at Patterson Park Church last night. Patterson Park has been doing a production every year and this year they did not disappoint. If you have the opportunity next year to see the presentation, you will not be disappointed, it's a great way to get in the

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Holiday Spirit. They usually do the programming on the first Saturday and Sunday of December.

This morning I was honored to swear in our newest police officer, Officer Jacob Kowalski, who you met earlier this evening.

I would like to take this opportunity to thank Council Member Garcia and Council Member Schwartz for their service to our community. They have worked hard for our city and I will miss both of them. Especially, since they are both lawyers and we are losing them. I am not sure how we keep our city attorney on track without having them here. Good luck in whatever you do and know that our community appreciates your service these past several years.

This is our last meeting of the year and I would like to take the opportunity to wish everyone a Happy Holiday and prosperous, safe, and healthy new year! See you in 2026!

CITY MANAGER COMMENTS

Pete said he had spoken to Mr. Wike on the issue with the bench.

Mr. Wike said he caught me up to speed on the bench and with these concerns and if it is Council's desire I would be happy to work with the donor on relocation of the bench or possible other solutions.

Mr. Landrum stated that the City offices will be closed for the holidays December 24th, December 25th and January 1st. He said for non-emergencies contact Beavercreek Police Department at 937-426-1225. He reminded everyone to be safe while traveling.

He said the Summer Job Expo would be held December 19th from 1 to 5 p.m. at Beavercreek Golf Club, 2800 New Germany Trebein Road. He said the city is accepting applications for full-time, part-time, and seasonal positions, as well as paid student internships for various departments. He encouraged those interested to bring their resumes and be prepared for an onsite interview.

He said the Winter Welcome, hosted by Beavercreek Parks, Recreation & Culture and the Greene County Public Library would be Friday, December 13 from 5 to 9 p.m. at Wartinger Park, 3080 Kemp Road. He said Santa Clause and one of his reindeer would be there and you could enjoy decorated cabins, festive crafts, carolers, food and snacks. He said most of the parking would be at the school.

He wished everyone a Merry Christmas, Happy Holidays and Happy New Year.

He told Joanna and Tiffany it had been an honor to serve with both of them.

CITIZEN COMMENTS

Bob Trout, 2187 Bassett Court, he thanked Council for voting down the rezoning as it was close to two airports, not having sufficient egress for incoming and

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outgoing traffic, and it might be worth looking into imminent domain to get that access. To the individuals getting ready to leave, be blessed and thank you for everything, I appreciate it. Merry Christmas.

There were no further citizen comments.

ADJOURNMENT

Council Member Curran MOVED to adjourn the meeting at 8:20 p.m., seconded by Council Member Duerr. Motion PASSED by majority voice vote.

Don Adams, Mayor

ATTEST:

Debbie Haines
Clerk of Council
Cmim12082025

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026	Reference Topic: Appeal of Planning Commission's Decision for Conditional Use Application for Birch Hill Hotel
Agenda Reference No.: VIII	

ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering	<input checked="" type="checkbox"/> Planning & Development
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other

OVERVIEW:

City Council is serving as the appellate authority for an appeal filed by Birch Hill Hotel regarding the Planning Commission's December 3, 2025 decision to deny conditional use approval for operation of an apartment hotel at 3845 Germany Lane.

The enclosed materials consist of the complete Birch Hill Conditional Use portion of the Planning Commission packet, together with the approved minutes from the December 3, 2025 meeting. City Council members were also provided with access to the Planning Commission video so that they could review all the testimony given at the hearing before Planning Commission. City Council's review is limited to determining whether the Planning Commission's decision was supported by substantial, reliable, and probative evidence in the record and whether the applicable procedures and standards were properly applied. These materials are provided to assist Council in conducting its review. No new evidence is submitted as part of this appeal.

PROCEDURAL OPTIONS FOLLOWING ACTION:

Council shall enter into discussion which will result in one of the following:

1. A decision to confirm, reverse, or modify the decision of the board or commission to the extent that the decision was supported by substantial and reliable evidence on the record.
2. A decision to remand the case to the board or commission for further deliberation.
3. A continuance of the hearing which shall require proper notification of such to all parties.

STATEMENT OF FACTS

1. Property Location and Zoning

The subject property, commonly known as the Birch Hill Hotel, is located at 3845 Germany Lane within the City of Beavercreek and is zoned B-3, Community Business. The site consists of a 2.3-acre parcel developed with a three-story, 102-room hotel containing approximately 32,842 square feet of floor area. The site is developed at a high intensity, with approximately 82.5% impervious surface and 17.5% pervious area, and provides 106 off-street parking spaces.

2. Physical and Operational Characteristics

Most, if not all, guest rooms within the building contain kitchen facilities, including stovetops, microwaves, and refrigerators. Based on these features and observed occupancy patterns, City staff determined that the facility meets the Zoning Code definition of an apartment hotel, which is a distinct land-use category from a traditional hotel or motel.

3. Occupancy Data and Long-Term Residency

During an annual fire inspection, the Fire Marshal requested an occupancy roster, which was subsequently provided to City staff. Review of the roster indicated that of 85 rooms listed, 38 rooms (approximately 45%) were occupied by individuals who had exceeded—or indicated an intent to exceed—182 days of continuous occupancy. Under the City's Hotel/Motel/Short-Term Rental Tax Code, any person residing in a dwelling for more than 51% of a calendar year is considered a permanent occupant, and the dwelling is considered their primary residence.

4. Additional Evidence of Permanent Residency

On August 19, 2025, the Beavercreek Police Department conducted a license-plate review of vehicles parked at the property. Eight vehicles were found to be registered with the Ohio Bureau of Motor Vehicles using 3845 Germany Lane as the owner's permanent address, further supporting staff's determination that the property was being used for long-term residential occupancy.

5. Code Enforcement Actions

On October 10, 2025, City staff initially notified the operator that the property appeared to be operating as an extended-stay hotel. Subsequent research into prior approvals from 2001 and 2004 revealed ambiguity as to whether extended-stay use had ever been explicitly authorized. As a result, staff withdrew the extended-stay determination and instead relied on documented evidence of long-term dwelling units meeting the definition of an apartment hotel.

6. Violation Notice and Compliance Options

On November 14, 2025, the City issued a formal Notice of Violation informing the operator that the property was operating as an apartment hotel without the required conditional use approval. The notice provided two compliance options:

(1) relocation of all permanent occupants by December 16, 2025; or
(2) submission and approval of a conditional use application to allow apartment hotel operation.

7. Conditional Use Application

In response to the violation notice, the applicant, Anup Patel c/o Beavercreek Lodging LLC, submitted an application for conditional use approval (Case No. PC 25-9) seeking authorization to continue operating the building as an apartment hotel. Apartment hotels are conditionally permitted in the B-3 zoning district, subject to Planning Commission review and approval.

8. Parking and Site Constraints

Under the Zoning Code, a traditional hotel requires one parking space per guest room plus additional spaces for staff, while an apartment hotel requires three parking spaces for every two units, plus one space for each employee on the largest shift. For a 102-room apartment hotel, a minimum of 153 parking spaces would be required, exclusive of employee parking. The site contains 106 spaces and lacks sufficient pervious area to reasonably accommodate additional parking.

9. Law Enforcement History

City staff reviewed police call-for-service data for all hotels in Beavercreek from 2022 through July 2025. During that period, Birch Hill Hotel generated 1,127 calls for service, representing approximately 63% of all hotel-related calls citywide. The property also accounted for 84 severe incidents, compared to 59 severe incidents at all other hotels combined. Staff concluded that the volume and severity of incidents associated with the property had a substantial detrimental effect on surrounding properties.

10. Planning Commission Hearing

The Planning Commission held a duly noticed public hearing on **December 3, 2025**, to consider the conditional use request. Notice of the hearing was sent to the applicant by **certified mail on November 11, 2025**, in accordance with the City's notice requirements. No representative of the applicant appeared or provided testimony at the public hearing. The Planning Commission reviewed the application materials, staff report, occupancy data, law enforcement analysis, and public testimony, and evaluated the request against the conditional use standards set forth in the Zoning Code.

11. Planning Commission Decision

Following deliberation, the Planning Commission voted to deny the conditional use application. The denial was based on the Commission's determination that the applicant failed to meet the required findings for approval, including the inability to provide required parking and the determination that the proposed use would have a substantial or material detrimental effect on surrounding properties.

12. Appeal

Pursuant to the City of Beavercreek Zoning Code, the applicant timely filed an

appeal of the Planning Commission's December 3, 2025 decision, requesting review by City Council as the appellate authority.

CITY OF BEAVERCREEK, OH

RESOLUTION NO. 26-_____

A RESOLUTION TO AFFIRM THE DECISION OF THE PLANNING COMMISSION DENYING THE CONDITIONAL USE APPLICATION OF BIRCH HILL (PC 25-9)

WHEREAS, Anup Patel c/o Beavercreek Lodging LLC, 1537 Burberry Ln, Schaumburg, IL 60173, filed an application requesting approval of a Conditional Use to allow for the operation of an apartment hotel, located within an existing hotel at 3845 Germany Lane, further described as Book 1, Page 9, Parcel 63 on the Greene County Property Tax Atlas.

WHEREAS, on December 3, 2025, the Planning Commission of the City of Beavercreek conducted a public hearing on the application requesting approval of a Conditional Use, during which all interested parties were afforded the opportunity to present testimony, evidence, exhibits, and arguments; and

WHEREAS, notice of the December 3, 2025, hearing was sent to the applicant by certified mail on November 11, 2025, in accordance with the City's notice requirements.

WHEREAS, no representative of the applicant appeared or provided testimony at the public hearing; and

WHEREAS, on December 3, 2025, the Planning Commission of the City of Beavercreek denied the Conditional Use application following a duly noticed public hearing; and

WHEREAS, Birch Hill Hotel, LLC appealed the Planning Commission's decision to City Council pursuant to the City's Zoning Code § 158.171 (E); and

WHEREAS, City Council conducted a public hearing on the appeal, during which all interested parties were afforded the opportunity to present arguments based on the evidence in the record;

NOW, THEREFORE, be it resolved by the Council of the City of Beavercreek, State of Ohio, that:

SECTION I

Council finds that the record of the Planning Commission proceedings and the City Council appeal hearing contains all evidence admitted or proffered by the parties.

SECTION II

Council further finds that all parties were afforded due process during the Planning Commission hearing, including the opportunity to:

- Present arguments and evidence;
- Offer and examine witnesses;
- Cross-examine opposing witnesses;
- Submit rebuttal evidence; and
- Proffer evidence into the record if admission was denied.

Council further finds that the appellant was afforded an opportunity to explain their appeal and the reasons for requesting such appeal during the public hearing before City Council. Further, members of the public were also given the opportunity to express their opinion to City Council.

SECTION III

Findings of Fact

After careful review of the statements, testimony, exhibits, staff reports, and evidence presented before the Planning Commission on December 3, 2025, together with the record developed before City Council on appeal, Council, acting in its quasi-judicial capacity, makes the following findings of fact:

- 1. Parking Deficiency.** The subject property does not provide an adequate number of off-street parking spaces to support the proposed conditional use as required by the Zoning Code. The evidence in the record demonstrates that the site is under-parked for the intensity of the proposed use.
- 2. Impervious Surface Coverage.** The property currently exceeds the maximum permitted impervious surface coverage. As a result, additional parking spaces cannot be constructed on the site to address the existing parking deficiency without further zoning relief, which was not requested or approved.
- 3. Police Dispatch Activity.** Evidence in the record demonstrates that the property has generated a disproportionate number of police dispatches when compared to other hotels within the City. This level of documented activity indicates operational impacts inconsistent with similarly situated lodging uses and is relevant to the consideration of public safety and compatibility under the Zoning Code.

SECTION IV

Decision of Council

Based upon the foregoing findings of fact, City Council finds that the Planning Commission applied the correct legal standards and that its decision was supported by substantial and reliable evidence contained in the record.

The decision of the Planning Commission dated December 3, 2025, denying the Conditional Use application of Birch Hill Hotel, LLC, is hereby AFFIRMED. The appeal is DENIED.

ADOPTED by the Council of the City of Beavercreek, Ohio this _____ day of _____ 2026.

Mayor

ATTEST:

Clerk of Council

CITY OF BEAVERCREEK, OH

RESOLUTION NO. 26-_____

A RESOLUTION TO MODIFY THE DECISION OF THE PLANNING COMMISSION DENYING THE CONDITIONAL USE APPLICATION OF BIRCH HILL (PC 25-9)

WHEREAS, Anup Patel c/o Beavercreek Lodging LLC, 1537 Burberry Ln, Schaumburg, IL 60173, filed an application requesting approval of a Conditional Use to allow for the operation of an apartment hotel, located within an existing hotel at 3845 Germany Lane, further described as Book 1, Page 9, Parcel 63 on the Greene County Property Tax Atlas.

WHEREAS, on December 3, 2025, the Planning Commission of the City of Beavercreek conducted a public hearing on the application requesting approval of a Conditional Use, during which all interested parties were afforded the opportunity to present testimony, evidence, exhibits, and arguments; and

WHEREAS, notice of the December 3, 2025, hearing was sent to the applicant by certified mail on November 11, 2025, in accordance with the City's notice requirements.

WHEREAS, no representative of the applicant appeared or provided testimony at the public hearing; and

WHEREAS, on December 3, 2025, the Planning Commission of the City of Beavercreek denied the Conditional Use application following a duly noticed public hearing; and

WHEREAS, Birch Hill Hotel, LLC appealed the Planning Commission's decision to City Council pursuant to the City's Zoning Code § 158.171 (E); and

WHEREAS, City Council conducted a public hearing on the appeal, during which all interested parties were afforded the opportunity to present arguments based on the evidence in the record;

NOW, THEREFORE, be it resolved by the Council of the City of Beavercreek, State of Ohio, that:

SECTION I

Council finds that the record of the Planning Commission proceedings and the City Council appeal hearing contains all evidence admitted or proffered by the parties.

SECTION II

Council further finds that all parties were afforded due process during the Planning Commission hearing, including the opportunity to:

- Present arguments and evidence;
- Offer and examine witnesses;
- Cross-examine opposing witnesses;
- Submit rebuttal evidence; and
- Proffer evidence into the record if admission was denied.

Council further finds that the appellant was afforded an opportunity to explain their appeal and the reasons for requesting such appeal during the public hearing before City Council. Further, members of the public were also given the opportunity to express their opinion to City Council.

SECTION III

Findings of Fact

After careful review of the statements, testimony, exhibits, staff reports, and evidence presented before the Planning Commission on December 3, 2025, together with the record developed before City Council on appeal, Council, acting in its quasi-judicial capacity, considered the following findings of fact made by Planning Commission:

1. **Parking Deficiency.** The subject property does not provide an adequate number of off-street parking spaces to support the proposed conditional use as required by the Zoning Code. The evidence in the record demonstrates that the site is under-parked for the intensity of the proposed use.
2. **Impervious Surface Coverage.** The property currently exceeds the maximum permitted impervious surface coverage. As a result, additional parking spaces cannot be constructed on the site to address the existing parking deficiency without further zoning relief, which was not requested or approved.
3. **Police Dispatch Activity.** Evidence in the record demonstrates that the property has generated a disproportionate number of police dispatches when compared to other hotels within the City. This level of documented activity indicates operational impacts inconsistent with similarly situated lodging uses and is relevant to the consideration of public safety and compatibility under the Zoning Code.

SECTION IV

Decision of Council

After reviewing the record and Planning Commission's findings of fact, City Council finds that the Planning Commission partially applied the correct legal standards and that its decision was partially supported by substantial and reliable evidence contained in the record, but that modification of the decision is warranted.

Accordingly, the decision of the Planning Commission dated December 3, 2025, denying the Conditional Use application of Birch Hill Hotel, LLC, is hereby MODIFIED as follows:

Birch Hill Hotel, located at 3845 Germany Lane, shall be permitted to operate as an apartment hotel, under the following conditions:

1. The approved plans shall be those dated "October 31, 2025" except as modified herein.
2. A responsible on-site manager shall be present and available 24 hours per day, seven days per week. The operator shall maintain and provide the City with current emergency contact information for management staff.
3. The operator shall maintain written "Guest Conduct and Property Rules" addressing noise, outdoor congregation, smoking, trash disposal, and vehicle idling. These rules shall be distributed to all guests at check-in and posted conspicuously in the lobby and common areas.
4. A complaint response log shall be maintained and made available to City staff upon request. The operator shall respond to verified complaints from City departments or neighboring properties within 24 hours.
5. Outdoor congregation and/or recreational activity in parking lots or within 50 feet of any property boundary shall be prohibited.
6. A designated smoking area shall be provided at least 50 feet from any property line, screened from public view, and equipped with a waste receptacle.
7. "No Loitering" signage shall be posted at building entrances, parking lot edges, and other visible locations approved by the Planning and Development Department.
8. The property shall maintain functional security cameras covering parking areas, entrances, and outdoor common spaces. Recordings shall be retained for a minimum of 30 days and made available to the Beavercreek Police Department upon request.
9. Adequate exterior lighting shall be maintained for safety and security purposes. Lighting shall be directed inward to avoid glare on adjoining properties.

10. The site shall comply with all provisions of the City's Property Maintenance Code at all times.
11. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted, within three months, weather permitting.
12. All trash collection containers shall be enclosed within the building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with the same brick used to construct the building.
13. The dumpster enclosure's gate shall be constructed of a vinyl or composite material, or other material, to be approved by the Planning Department. The gate shall be painted to match the adjacent brick.
14. All conditions shall run with the land and shall remain in effect for the duration of the use unless otherwise modified or revoked by the City.
15. Any substantial change to the operation, layout, or management practices shall require review and approval by the Planning Commission.
16. Within 90 days of this approval, the property owners shall construct an aluminum gate, the design of which shall be reviewed and approved by the Planning Department prior to its installation, at southwestern entrance. The gate shall remain closed at all times, only operated as an emergency access point for the emergency personnel. The owners should work with the Beavercreek Police and Fire Departments to ensure said departments have the ability to open this gate if needed at all times.

ADOPTED by the Council of the City of Beavercreek, Ohio this _____ day of
_____ 2026.

Mayor

ATTEST:

Clerk of Council

CITY OF BEAVERCREEK, OH

RESOLUTION NO. 26-_____

A RESOLUTION TO REVERSE THE DECISION OF THE PLANNING COMMISSION DENYING THE CONDITIONAL USE APPLICATION OF BIRCH HILL (PC 25-9)

WHEREAS, Anup Patel c/o Beavercreek Lodging LLC, 1537 Burberry Ln, Schaumburg, IL 60173, filed an application requesting approval of a Conditional Use to allow for the operation of an apartment hotel, located within an existing hotel at 3845 Germany Lane, further described as Book 1, Page 9, Parcel 63 on the Greene County Property Tax Atlas.

WHEREAS, on December 3, 2025, the Planning Commission of the City of Beavercreek conducted a public hearing on the application requesting approval of a Conditional Use, during which all interested parties were afforded the opportunity to present testimony, evidence, exhibits, and arguments; and

WHEREAS, notice of the December 3, 2025, hearing was sent to the applicant by certified mail on November 11, 2025, in accordance with the City's notice requirements.

WHEREAS, no representative of the applicant appeared or provided testimony at the public hearing; and

WHEREAS, on December 3, 2025, the Planning Commission of the City of Beavercreek denied the Conditional Use application following a duly noticed public hearing; and

WHEREAS, Birch Hill Hotel, LLC appealed the Planning Commission's decision to City Council pursuant to the City's Zoning Code § 158.171 (E); and

WHEREAS, City Council conducted a public hearing on the appeal, during which all interested parties were afforded the opportunity to present arguments based on the evidence in the record;

NOW, THEREFORE, be it resolved by the Council of the City of Beavercreek, State of Ohio, that:

SECTION I

Council finds that the record of the Planning Commission proceedings and the City Council appeal hearing contains all evidence admitted or proffered by the parties.

SECTION II

Council further finds that all parties were afforded due process during the Planning Commission hearing, including the opportunity to:

- Present arguments and evidence;
- Offer and examine witnesses;
- Cross-examine opposing witnesses;
- Submit rebuttal evidence; and
- Proffer evidence into the record if admission was denied.

Council further finds that the appellant was afforded an opportunity to explain their appeal and the reasons for requesting such appeal during the public hearing before City Council. Further, members of the public were also given the opportunity to express their opinion to City Council.

SECTION III

Findings of Fact

After careful review of the statements, testimony, exhibits, staff reports, and evidence presented before the Planning Commission on December 3, 2025, together with the record developed before City Council on appeal, Council, acting in its quasi-judicial capacity, considered the following findings of fact made by Planning Commission:

- 1. Parking Deficiency.** The subject property does not provide an adequate number of off-street parking spaces to support the proposed conditional use as required by the Zoning Code. The evidence in the record demonstrates that the site is under-parked for the intensity of the proposed use.
- 2. Impervious Surface Coverage.** The property currently exceeds the maximum permitted impervious surface coverage. As a result, additional parking spaces cannot be constructed on the site to address the existing parking deficiency without further zoning relief, which was not requested or approved.
- 3. Police Dispatch Activity.** Evidence in the record demonstrates that the property has generated a disproportionate number of police dispatches when compared to other hotels within the City. This level of documented activity indicates operational impacts inconsistent with similarly situated lodging uses and is relevant to the consideration of public safety and compatibility under the Zoning Code.

SECTION IV

Decision of Council

After reviewing the record and Planning Commission's findings of fact, City Council finds that the Planning Commission did not apply the correct legal standards and/or that its decision was not supported by substantial and reliable evidence contained in the record.

The decision of the Planning Commission dated December 3, 2025, denying the Conditional Use application of Birch Hill Hotel, LLC, is hereby REVERSED.

ADOPTED by the Council of the City of Beavercreek, Ohio this _____ day of
_____ 2026.

Mayor

ATTEST:

Clerk of Council

CITY OF BEAVERCREEK
PLANNING COMMISSION
AGENDA ITEM REPORT

Meeting Date : December 3, 2025	Reference Topic: PC 25-9 Birch Hill Conditional Use
Agenda Reference No.:	

ACTION REQUESTED		
<input type="checkbox"/> Approval	<input checked="" type="checkbox"/> Disapproval	<input type="checkbox"/> Table
<input type="checkbox"/> Review and Comment	<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Other

OVERVIEW:

The applicant is requesting conditional use approval to continue to occupy the existing building at 3845 Germany Lane, in order to run the business as an apartment hotel.

STAFF RECOMMENDATION:

Staff is recommending denial of this request as outlined in the attached staff report.

PROCEDURAL OPTIONS FOLLOWING ACTION:

The Planning Commission may choose to recommend approval, approval with conditions, disapproval, or tabling of this application.

Burkett

CITY OF BEAVERCREEK

STAFF REPORT



November 25, 2025

PROJECT: Birch Hill Hotel
 CASE NO.: PC 25-9 Conditional Use
 APPLICANT: Anup Patel c/o
 Beavercreek Lodging LLC
 1537 Burberry Ln
 Schaumburg, IL 60173

REQUEST

The applicant is requesting conditional use approval to continue to occupy the existing building at 3845 Germany Lane, to continue to occupy and continuing to run the business as an apartment hotel.

DISCUSSION

Existing Conditions

The subject property is a 102-room, 32,842-square-foot, three-story hotel located on Germany Lane, approximately 225 feet east of the intersection of Zink Road and Germany Lane. The facility sits on a 2.3-acre parcel and is developed at a high intensity, with roughly 82.5% of the site covered by impervious surface—including the building footprint, parking areas, and sidewalks—and only 17.5% remaining as pervious area consisting of turf and landscaping. The site contains 106 off-street parking spaces. Most, if not all the guest rooms in the hotel contain kitchen facilities such as stove tops, microwaves and refrigerators.



After review of operational practices and occupancy data, staff has determined that the property is presently functioning as an apartment hotel, as defined by the Zoning Code. An *APARTMENT HOTEL* is a building designed for or containing both dwelling units and individual guest rooms or suites, and may include

accessory uses accessible only through the lobby. A DWELLING UNIT is any unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. During the annual fire inspection, the fire marshal requested an occupancy roster; the city requested a copy of the Fire Marshal's copy. Based on the roster provided, of the 85 individual rooms listed in the

attached room roster (names redacted), 38, or 45% were occupied by individuals who had already exceeded—or indicated plans to exceed—182 days of continuous occupancy. Under §35.56 (of Hotel/Motel/Short-Term Rental Tax code), any person residing in a dwelling for more than 51% of a calendar year is considered a “permanent occupant,” and the dwelling in which they reside is considered their primary residence.



On August 19, 2025 the Beavercreek Police Department conducted a license plate check on vehicles in the parking lot. During that inspection, it was found that eight vehicles in the parking lot used the hotel's address, 3845 Germany Lane, as their permanent address with the Ohio Bureau of Motor Vehicles. Further supporting staff's research that guests are utilizing the hotel as a permanent residence

On November 14, 2025, the City issued a formal Violation Notice informing the operator that staff had determined the establishment was being used as an apartment hotel without the required approval. The notice gave the operator two compliance options: (1) relocate all permanent occupants by December 16, 2025, or (2) apply *[and receive approval]* for a conditional use to allow the building to operate as an apartment hotel. This followed an earlier notice dated October 10, 2025, in which staff initially identified the use as an extended-stay hotel. However, subsequent detailed research into the 2004 approval revealed ambiguity regarding whether an extended-stay use had ever been specifically authorized. Due to that uncertainty, staff withdrew the extended-stay determination and proceeded based on the documented presence of long-term dwelling units, which meets the definition of an apartment hotel.

Property Case History

The development history of the property begins in 2001, when the Board of Zoning Appeals—then the body responsible for reviewing conditional use applications—approved a hotel on the site. The application submitted that year specifically requested approval for a motel, although the accompanying staff report, the applicant's business model, and handouts presumably given to the BZA (samples are located in the case file) described the project as an extended-stay hotel. Despite

that description, the official Resolution (CU-01-5) approved the project as a motel, consistent with the permitted use category at that time.¹

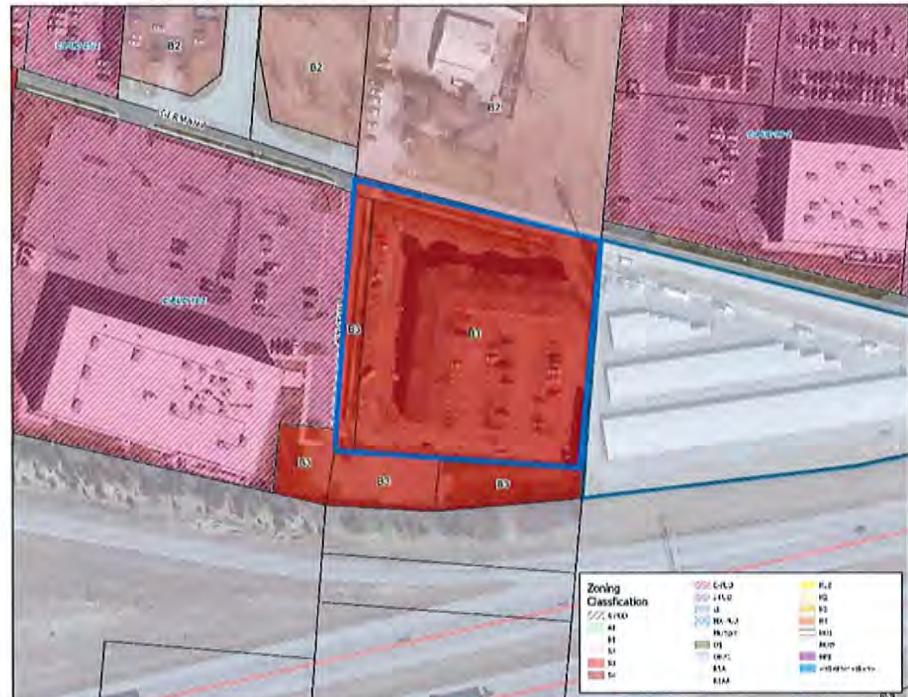
The 2001 approval ultimately expired due to inaction by the applicant who did not start construction within the allowed window, prompting the applicant to resubmit in 2004. The 2004 application again requested approval of an extended-stay hotel. In evaluating the request, staff relied heavily on the 2001 staff report and supplemented it with a memo stating that nothing of substance had changed between the two submissions. Despite the applicant's stated intent to operate an extended-stay facility, the formal Resolution (CU-04-4) once again approved the project as a motel, mirroring the 2001 decision.

Construction of the building was completed in 2006, and the property has operated as a hotel since that time. However, it is unclear when the operator began allowing guests to reside in the building for periods exceeding 182 days. That shift in occupancy practices effectively converts the use from a hotel or motel to an apartment hotel, a separate land-use category that requires specific approval under the Zoning Code and triggers the compliance issues now under review.

Zoning

The property is currently zoned B-3, Community Business. The schedule of permitted uses within the zoning code outlines that within this district, an apartment hotel must apply for conditional use approval from the Planning Commission prior to occupation of the building.

The surrounding zoning and uses are as follows:



Proposed Use

The applicant has requested conditional use approval for an apartment hotel. As stated above an per the Beavercreek Zoning Code apartment hotel is:

APARTMENT HOTEL. A building designed for or containing both dwelling units and individual guest rooms or suites of rooms, which may include accessory uses such as gift shops, coffee shops, and the like, when such accessory uses are accessible only from the lobby.

Apartment Hotels are conditionally permitted in B3 districts, and are permitted in B-4, O-1, ORP-1, and RP-1 Districts.

It should be noted that Apartment Hotels require substantially more off-street parking spaces than a traditional hotel. Traditional hotels require one off-street space for each guest room, plus one off-street space for every 20 guest rooms. An apartment hotel requires three off-street spaces for each two units, plus one off-street space for each employee on the largest shift. For a 102-room hotel, 106 off-street parking spaces are required. For a 102-room apartment hotel, 153 off-street parking spaces + one for each employee on the largest shift. As stated earlier, the site has 106 off-street parking spaces, and only 17.5% pervious surface.

Law Enforcement History with Property

In an effort to determine the need for a licensing program for hotels in the City in general, staff analyzed police data from all hotels in the City from 2022 thru July 2025. The analysis produced several key findings:

Disproportionate Calls for Service

The data shows calls for law enforcement service at Birch Hill Hotel far outweighs the other hotels in the community. Birch Hill Hotel, generated 1,127 calls for service over the past three years. That's roughly 63% of all calls for service at hotels in the city. By comparison, most other hotels reported only 50 to 100 calls over the same timeframe.

Hotel	Total Dispatched Calls January 2023 thru July 2025	Percent of Total
Birch Hill	433	44.9%
Country Inn and Suites	42	4.4%
Courtyard Marriott	45	4.7%
Hilton Garden Inn	116	12.0%
Holiday Inn Express	45	4.7%
Home 2 Suites	46	4.8%
Residence Inn	92	9.5%
Spring Hill Suites	77	8.0%
Tru by Hilton	69	7.2%
Total	965	

Severity of Incidents

Out of the 965 dispatched calls for service at hotels citywide between January 2023 and July 2025, 147 were classified as "Severe." These include Assault, Breaking & entering, Burglary, Child endangering, Dead body, Domestic dispute, Domestic violence, Fight, Harassment, Intoxicated subject, Menacing, Protection order violation, Sex offense, Theft and Weapons/Shots Fired. These situations often require multiple officers, longer response times, and in some cases, EMS support.

Over the course of the three years, Birch Hill Hotel had 84 severe incidents, compared to the 59 severe incidents of all the other hotels combined.

Yearly Trends and Persistent Patterns

The pattern hasn't significantly faded with time. Birch Hill Hotel averaged 131.7 dispatched calls per year between 2022 and 2024 (182 in 2022, 104 in 2023, and 109 in 2024). Despite continued police attention, the numbers remain quite high. While the trend does suggest some improvement, incident rates that are on average, 8 times more than their peers in over the three-year average, shows the problems still exist.

When compared to their peers, Birch Hill Hotel had extensively more total calls for service, more severe incidents, and more incidents per year. Based on this information, the conclusion is that the crime levels at Birch Hill Hotel have a substantial detrimental effect on surrounding properties.

Dispatched Calls Per Year				
Hotel	2022	2023	2024	Annual Average
Birch Hill Extended Stay	182	104	109	131.7
Country Inn and Suites	11	20	7	12.7
Courtyard Marriott	2	15	18	11.7
Hilton Garden Inn	22	32	41	31.7
Holiday Inn Express	12	8	15	11.7
Home 2 Suites	19	12	12	14.3
Residence Inn	22	18	27	22.3
Spring Hill Suites	16	16	33	21.7
Tru by Hilton	31	20	11	20.7
Total	317	245	273	278.3

Conditional Use Approval Standards

When evaluating Conditional Use Applications, the Planning Commission functions as a quasi-judicial body. For land-use matters, a quasi-judicial body (such as the Planning Commission hearing a conditional use case) must remain impartial, avoid ex parte communication, follow established procedures, and base its decision on competent, substantial evidence—just as a judge would in a court of law. Their authority is limited to what the zoning code explicitly allows, and their rulings can typically be appealed to a court if procedural or substantive errors occur.

Based on the Zoning Code, Planning Commission must base their findings on the nature and condition of all adjacent and surrounding uses and buildings and a review of the conditional use application and any administrative reports.

The Planning Commission shall make, by resolution, the following findings in deciding on the conditional use application:

- (a) The proposed conditional use is to be located in a district wherein such use may be conditionally permitted;
- (b) The proposed conditional use will not have a substantial or material detrimental effect on surrounding properties and will not have a substantially negative impact on or substantially conflict with surrounding properties; and
- (c) Taking into account current vehicular traffic volumes and traffic volumes as may be expected to increase with increasing development of the community, and taking into account vehicular turning movements in relation to

routes of traffic flow, street intersections, sight distances and pedestrian traffic, the vehicular traffic to and from the conditional use can be accommodated by the existing street network without significant adverse effect.

The applicant shall have the burden of proving by a preponderance of evidence that all standards set forth in (a) through (c) above have been met and the conditional use may be approved only if the Planning Commission finds the standards have been met by such evidence.

Based on evidence, (inability to have enough parking spaces, and consistently high crime rate as compared to other hotels in the City) an apartment hotel would likely (continue to) harm or conflict with the surrounding area to a degree that's more than minor. Therefore, the request fails the compatibility and welfare criteria [§158.72 (C)(4)(b)] required for approval.

RECOMMENDATION

Based on this analysis, and the fact that the evidence shows the subject property will be unable to construct enough off-street parking, coupled with the fact that the request fails to meet all findings for approval of a conditional use case, staff recommends disapproval of this request. Two resolutions have been included in your packet. Should Planning Commission choose to deny the applicant's request, Resolution A should be used, and clear reasoning as to why the motion is being made should be articulated. Should Planning Commission choose to approve the applicant's request, Resolution B should be used, and again, clear reasoning as to why the motion is being made should be articulated.

If the Conditional Use request is denied, moving forward, the property must immediately revert to a compliant hotel operation, and discontinue operation as an apartment hotel. This means the owner will be required to ensure that no guest (regardless of if they are registered occupant or a guest of a registered occupant) remains on the premises for more than 182 days within any rolling 12-month period. After some discussion with the Zoning and Code Enforcement Supervisor, staff plans to provide an extended compliance window for current long-term occupants. While the standard correction period is typically 30 days, the City will allow all guests exceeding the 182-day limit to vacate no later than January 31, 2026, in recognition of the upcoming holiday season. Failure to meet this requirement would constitute a violation of the Zoning Code and the owners/operators will be subject to enforcement action.

Zoning Code Relevant Sections**§ 158.003 DEFINITIONS.**

APARTMENT HOTEL. A building designed for or containing both dwelling units and individual guest rooms or suites of rooms, which may include accessory uses such as gift shops, coffee shops, and the like, when such accessory uses are accessible only from the lobby.

DWELLING UNIT. A unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

HOTEL. A building occupied as a temporary abiding place for individuals who are lodged with or without meals in which there are ten or more sleeping rooms and no provision made for a cooking facility in any individual room, apartment, or suite. A hotel may include a restaurant or cocktail lounge, public banquet halls, ballrooms and/or meeting rooms.

HOTEL, EXTENDED STAY. A hotel which includes all facilities specified under **HOTEL**, as well as extended stay units which cater to longer-term occupancy and which have kitchen/cooking facilities within each unit.

§ 158.114 OFF-STREET PARKING REGULATIONS.

(S) *Number of parking spaces required.*

(4) *Residential and institutional.*

Type of Use	Parking Spaces Required
Apartment hotel	Three spaces for each two units, plus one space for each employee on the largest shift
Hotel or motel	One space for each guest room, plus one space per 20 rooms (to accommodate hotel staff), plus one space per 250 square feet of public meeting area and/or restaurant space

§ 158.171 PLANNING COMMISSION.

(C) *Conditional uses.* The Planning Commission is authorized to hear and decide all conditional use applications, except for as provided in § 158.172(H)(6).

(4) *Findings.* After consideration of the nature and condition of all adjacent and surrounding uses and buildings and a review of the conditional use application and any administrative reports, the Planning Commission shall make, by resolution, the following findings in deciding on the conditional use application:

(a) The proposed conditional use is to be located in a district wherein such use may be conditionally permitted;

(b) The proposed conditional use will not have a substantial or material detrimental effect on surrounding properties and will not have a substantially negative impact on or substantially conflict with surrounding properties; and

(c) Taking into account current vehicular traffic volumes and traffic volumes as may be expected to increase with increasing development of the community, and taking into account vehicular turning movements in relation to routes of traffic flow, street intersections, sight distances and pedestrian traffic, the vehicular traffic to and from the conditional use can be accommodated by the existing street network without significant adverse effect.

(5) *Performance bond and violation.* In approving a conditional use, the Planning Commission may prescribe appropriate conditions and safeguards in conformity to the provisions of this Zoning Code. The Planning Commission may also require security to assure conformance to such conditions and safeguards. Violation of such conditions and safeguards shall cause the security to be forfeited and shall also be deemed a violation of this code and punishable under § 158.999(A), as well as loss of the right to continue the conditional use until the requirements of these conditions and safeguards are met. An approved conditional use shall maintain the status of a conditional use regardless of the type of zoning district in which it is located.

(6) *Burden of proof.* The applicant shall have the burden of proving by a preponderance of evidence that the standards set forth in subsection (4)(a-c) of this section are met and the conditional use may be approved only if the Planning Commission finds the standards have been met by such evidence.

Hotel/Motel/Short Term Rental Tax Code Relevant Sections**§ 35.56 HOTEL/MOTEL/SHORT-TERM RENTAL TAX.**

(A) *Definitions.* For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DIRECTOR OF FINANCE. The Director of Finance of the City of Beavercreek, Ohio.

HOTEL or MOTEL. Every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered for a consideration to guests, in which five or more rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

OCCUPANCY. The use or possession or the right to the use or possession of any room or rooms or space or portion thereof in any hotel/motel/short-term rental, for dwelling, lodging or sleeping purposes. The use or possession or right to use or possess any room or any suite of connecting rooms as office space, banquet or private dining rooms, or exhibit, sample or display space shall not be considered occupancy within the meaning of this definition unless the person exercising occupancy uses or possesses, or has the right to use or possess all or any portion of such room or suite of rooms for dwelling, lodging or sleeping purposes.

OPERATOR. The person who is the proprietor of the hotel/motel/short-term rental, whether in the capacity of owner, lessee, licensee, mortgagee in possession, or any other capacity. Where the operator performs his or her functions through a managing agent of any type or character, other than an employee, the managing agent shall be deemed an operator for the purposes of this chapter, and shall have the same duties and liabilities as his principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

PERMANENT OCCUPANTS. Any persons who reside in a dwelling more than 51% of a calendar year, and the dwelling in which the persons resides shall be referred to as their primary residence.

PERSON. Any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.

RENT. The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also any amount for which the occupant is liable for the occupancy without any deduction therefrom whatsoever.

SHORT-TERM RENTAL. Any dwelling that is rented wholly or partly for a fee for less than 30 consecutive days by persons other than permanent occupants from which permanent occupants or short-term rental hosts received monetary compensation.

SHORT-TERM RENTAL GUESTS. Any persons renting temporary lodging from a short-term rental host, or through a hosting platform on behalf of the short-term rental host, for less than 30 consecutive days.

SHORT-TERM RENTAL HOST. The owner(s) or permanent occupant(s) of a short-term rental who offer the short-term rental for temporary lodging.

TRANSIENT ACCOMMODATIONS. Every establishment kept, used, maintained, advertised or held out to the public to be a place where sleeping accommodations are offered to guests in which four or less rooms are used for the accommodation of such guests, whether such rooms are in one or several structures.

TRANSIENT GUESTS. Persons occupying a room or rooms for sleeping accommodations for less than 30 consecutive days.

VENDOR. The owner or operator of the hotel or transient accommodations or hosting platform or short-term rental host.



November 14, 2025

Birch Hill Suites Beavercreek
Attn: Anup Patel
3845 Germany Lane
Dayton, Ohio 45431

RE: Code Enforcement Case No: CC-25-556
Location: 3845 Germany Ln, Beavercreek, OH

Parcel ID: B42000100090006300

Dear Mr. Patel,

On October 10, 2025, you were issued a Notice of Violation letter concerning violations at the above referenced property. As noted in the copy of Case No. CU-04-4 you previously received, the resolution states an approval for a "motel" rather than "extended stay hotel". After further investigation into your case, it is unclear whether the Certificate of Use issued in 2004 was intended to authorize a "motel" or an "extended stay hotel". The minutes for Case No. CU-04-4 reference an extended stay hotel and cite a prior conditional use approval (Case No. CU-01-5), which has expired. Staff cannot conclusively determine the veracity of the approved use based upon the documents reviewed.

However, during our additional investigation, staff also determined that individuals are utilizing the facility as a resident housing. This use, apartment hotel, is a separate conditional use within a B-3 zoning district and not authorized under the existing approval for Case No. CU-04-4. This constitutes a violation of Section 158.038 and the previously granted condition use.

Staff has identified two options to bring the property into compliance:

1. Discontinue the residential use by removing all guests who have resided at the facility for more than 182 days and operate solely as an extended stay hotel. Moving forward any guest stay should not exceed 182 days within a year's timeframe (365 days).
2. Apply for conditional use approval from the Planning Commission to operate as an apartment hotel. Since you have already submitted a conditional use application, you may modify your application to request this use.

To remain on the agenda for the December 3, 2025 Planning Commission meeting, staff must receive your desire to modify the application no later than Monday, November 17, 2025. If no modification is submitted, the violation must be corrected by December 16, 2025.

You have the right to appeal staff's determination, that you are operating an apartment hotel, to the Board of Zoning Appeals. The application for appeal must be submitted to the Planning and Development Department within 15 days from the date of this Notice. The appeal shall be based on a claim that the true intent of the Code has been incorrectly interpreted, the provisions of the Code do not fully apply, or the requirements of the Code are adequately satisfied by other means.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact this office at (937) 427-5512.

Sincerely,

Matthew Funk
Zoning & Code Enforcement Supervisor

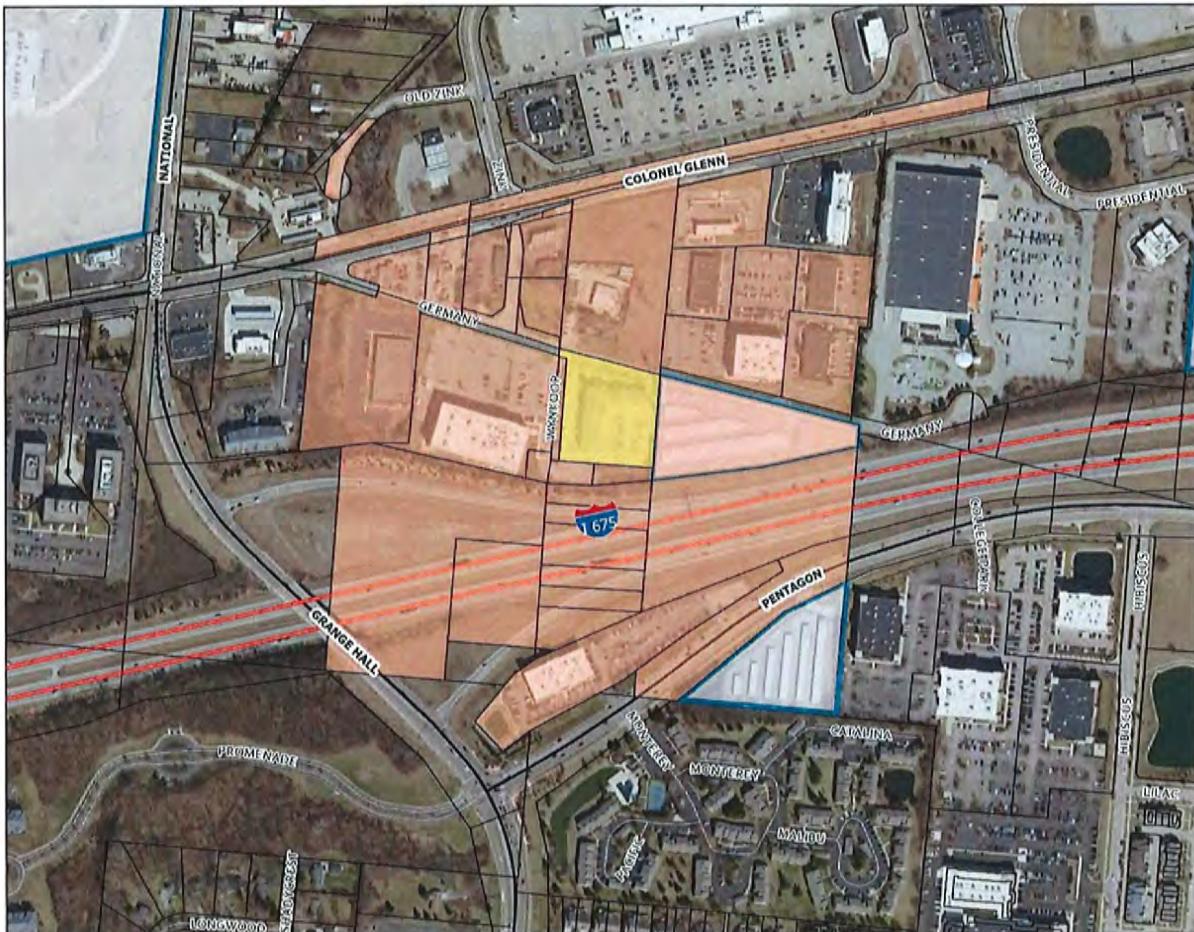
Guest Log 10/8/2025

Arrive	Depart	Guest Name	Status	Room#	Nights
8/24/2022	12/31/2025	X	In-House	100	1225
5/30/2025	11/1/2025	X	In-House	102	155
9/17/2025	10/17/2025	X	In-House	103	30
10/6/2025	11/5/2025	X	In-House	105	30
8/5/2025	10/31/2025	X	In-House	106	87
12/30/2024	10/10/2025	X	In-House	107	284
8/3/2025	10/29/2025	X	In-House	108	87
10/2/2025	10/16/2025	X	In-House	109	14
8/8/2025	10/31/2025	X	In-House	111	84
10/7/2025	10/10/2025	X	In-House	113	3
12/4/2022	12/31/2025	X	In-House	115	1123
11/4/2024	11/30/2025	X	In-House	123	391
12/26/2022	12/31/2025	X	In-House	126	1101
4/4/2022	11/30/2025	X	In-House	127	1336
7/29/2025	10/31/2025	X	In-House	128	94
9/15/2025	12/31/2025	X	In-House	129	107
10/7/2025	10/10/2025	X	In-House	130	3
12/19/2023	12/31/2025	X	In-House	132	743
4/27/2025	1/1/2026	X	In-House	134	249
1/26/2025	12/31/2025	X	In-House	135	339
9/9/2025	12/31/2025	X	In-House	136	113
8/3/2025	10/29/2025	X	In-House	137	87
10/3/2025	10/31/2025	X	In-House	138	28
8/24/2025	10/9/2025	X	In-House	141	46
1/30/2024	12/31/2025	X	In-House	200	701
10/2/2025	10/29/2025	X	In-House	202	27
12/8/2023	12/31/2025	X	In-House	203	754
9/9/2025	10/13/2025	X	In-House	204	34
12/24/2022	12/31/2025	X	In-House	205	1103
4/2/2025	12/31/2025	X	In-House	207	273
10/7/2025	10/8/2025	X	In-House	208	1
9/29/2025	10/13/2025	X	In-House	209	14
10/26/2022	12/31/2025	X	In-House	210	1162
8/16/2024	12/31/2025	X	In-House	212	502
9/30/2025	10/30/2025	X	In-House	213	30
12/4/2024	12/31/2025	X	In-House	214	392
4/4/2022	12/31/2025	X	In-House	215	1367
4/4/2022	12/1/2025	X	In-House	216	1337
3/28/2025	11/1/2025	X	In-House	217	218

Arrive	Depart	Guest Name	Status	Room#	Nights
2/27/2025	12/31/2025	X	In-House	219	307
10/23/2024	12/31/2025	X	In-House	223	434
9/30/2025	10/9/2025	X	In-House	224	9
4/11/2025	10/31/2025	X	In-House	225	203
8/17/2023	12/31/2025	X	In-House	226	867
10/20/2024	11/1/2025	X	In-House	227	377
7/13/2025	10/31/2025	X	In-House	228	110
10/2/2025	10/29/2025	X	In-House	229	27
9/2/2025	12/31/2025	X	In-House	230	120
9/13/2025	10/11/2025	X	In-House	231	28
5/30/2025	12/31/2025	X	In-House	232	215
8/8/2025	12/6/2025	X	In-House	233	120
9/13/2025	10/13/2025	X	In-House	234	30
9/17/2025	10/13/2025	X	In-House	235	26
5/7/2025	11/1/2025	X	In-House	237	178
10/3/2025	10/31/2025	X	In-House	238	28
8/3/2025	10/29/2025	X	In-House	239	87
6/29/2025	10/11/2025	X	In-House	241	104
5/19/2025	12/31/2025	X	In-House	302	226
9/16/2025	12/31/2025	X	In-House	303	106
8/12/2025	10/10/2025	X	In-House	304	59
1/29/2024	12/31/2025	X	In-House	305	702
6/23/2025	10/31/2025	X	In-House	306	130
9/18/2025	10/8/2025	X	In-House	308	20
9/20/2025	10/31/2025	X	In-House	310	41
12/11/2022	12/31/2025	X	In-House	311	1116
8/3/2025	10/29/2025	X	In-House	312	87
6/6/2025	11/28/2025	X	In-House	313	175
1/18/2024	12/31/2025	X	In-House	314	713
9/15/2025	11/14/2025	X	In-House	315	60
11/15/2023	12/31/2025	X	In-House	316	777
7/12/2024	12/31/2025	X	In-House	317	537
12/7/2023	12/31/2025	X	In-House	319	755
7/2/2025	1/1/2026	X	In-House	323	183
8/18/2025	12/31/2025	X	In-House	324	135
9/28/2023	12/31/2025	X	In-House	325	825
7/9/2025	12/1/2025	X	In-House	326	145
5/8/2025	10/31/2025	X	In-House	327	176
3/31/2024	10/31/2025	X	In-House	328	579
10/3/2025	10/10/2025	X	In-House	329	7

Arrive	Depart	Guest Name	Status	Room#	Nights
9/22/2025	10/31/2025	X	In-House	330	39
6/29/2024	11/30/2025	X	In-House	333	519
8/3/2025	10/31/2025	X	In-House	335	89
10/2/2025	10/29/2025	X	In-House	336	27
12/30/2024	12/31/2025	X	In-House	337	366
7/14/2022	12/31/2025	X	In-House	339	1266

Properties within 500 feet of Birch Hill Hotel



Resolution of Denial

RESOLUTION

CITY OF BEAVERCREEK
PLANNING COMMISSION
December 3, 2025

Re: PC 25-9 Conditional Use
Birch Hill Motel

WHEREAS, Anup Patel c/o Beavercreek Lodging LLC, 1537 Burberry Ln, Schaumburg, IL 60173, has filed an application requesting approval of a Conditional Use to allow for the operation of an apartment hotel, located within an existing hotel at 3845 Germany Lane, further described as Book 1, Page 9, Parcel 63 on the Greene County Property Tax Atlas.

WHEREAS, public hearing was held on December 3, 2025 by the Beavercreek Planning Commission at which time all people who wished to testify gave their comments at the public hearing; and

WHEREAS, the Beavercreek Planning Commission finds that the facts submitted with this Conditional Use application and presented at the public hearing do not satisfy the standards and criteria for Conditional Use approval as per §158.171 (C) of the Zoning Code; and

NOW, THEREFORE BE IT RESOLVED THAT, the Beavercreek Planning Commission is taking administrative action in denying this Conditional Use.

ADOPTED: December 3, 2025

VOTING FOR ADOPTION:

AGAINST:

ABSENT:

Attest

Chairman

Resolution of Approval

RESOLUTION

CITY OF BEAVERCREEK
PLANNING COMMISSION
December 3, 2025

Re: PC 25-9 Conditional Use
Birch Hill Motel

WHEREAS, Anup Patel c/o Beavercreek Lodging LLC, 1537 Burberry Ln, Schaumburg, IL 60173, has filed an application requesting approval of a Conditional Use to allow for the operation of an apartment hotel, located within an existing hotel at 3845 Germany Lane, further described as Book 1, Page 9, Parcel 63 on the Greene County Property Tax Atlas.

WHEREAS, public hearing was held on December 3, 2025 by the Beavercreek Planning Commission at which time all people who wished to testify gave their comments at the public hearing; and

WHEREAS, the Beavercreek Planning Commission finds that the facts submitted with this Conditional Use application and presented at the public hearing and any modifications, amendments, or supplementary conditions satisfy the standards and criteria for Conditional Use approval as per §158.171 (C) of the Zoning Code; and

NOW, THEREFORE BE IT RESOLVED THAT, the Beavercreek Planning Commission is taking administrative action in approving this Conditional Use with the following conditions:

1. The approved plans shall be those dated "October 31, 2025" except as modified herein.
2. A responsible on-site manager shall be present and available 24 hours per day, seven days per week. The operator shall maintain and provide the City with current emergency contact information for management staff.
3. The operator shall maintain written "Guest Conduct and Property Rules" addressing noise, outdoor congregation, smoking, trash disposal, and vehicle idling. These rules shall be distributed to all guests at check-in and posted conspicuously in the lobby and common areas.
4. A complaint response log shall be maintained and made available to City staff upon request. The operator shall respond to verified complaints from City departments or neighboring properties within 24 hours.
5. Outdoor congregation and/or recreational activity in parking lots or within 50 feet of any property boundary shall be prohibited.
6. A designated smoking area shall be provided at least 50 feet from any property line, screened from public view, and equipped with a waste receptacle.

Resolution of Approval

7. "No Loitering" signage shall be posted at building entrances, parking lot edges, and other visible locations approved by the Planning and Development Department.
8. The property shall maintain functional security cameras covering parking areas, entrances, and outdoor common spaces. Recordings shall be retained for a minimum of 30 days and made available to the Beavercreek Police Department upon request.
9. Adequate exterior lighting shall be maintained for safety and security purposes. Lighting shall be directed inward to avoid glare on adjoining properties.
10. The site shall comply with all provisions of the City's Property Maintenance Code at all times.
11. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted, within three months, weather permitting.
12. All trash collection containers shall be enclosed within the building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with the same brick used to construct the building.
13. The dumpster enclosure's gate shall be constructed of a vinyl or composite material, or other material, to be approved by the Planning Department. The gate shall be painted to match the adjacent brick.
14. All conditions shall run with the land and shall remain in effect for the duration of the use unless otherwise modified or revoked by the City.
15. Any substantial change to the operation, layout, or management practices shall require review and approval by the Planning Commission.
16. Within 90 days of this approval, the property owners shall construct an aluminum gate, the design of which shall be reviewed and approved by the Planning Department prior to its installation, at southwestern entrance. The gate shall remain closed at all times, only operated as an emergency access point for the emergency personnel. The owners should work with the Beavercreek Police and Fire Departments to ensure said departments have the ability to open this gate if needed at all times.

ADOPTED: December 3, 2025

VOTING FOR ADOPTION:

AGAINST:

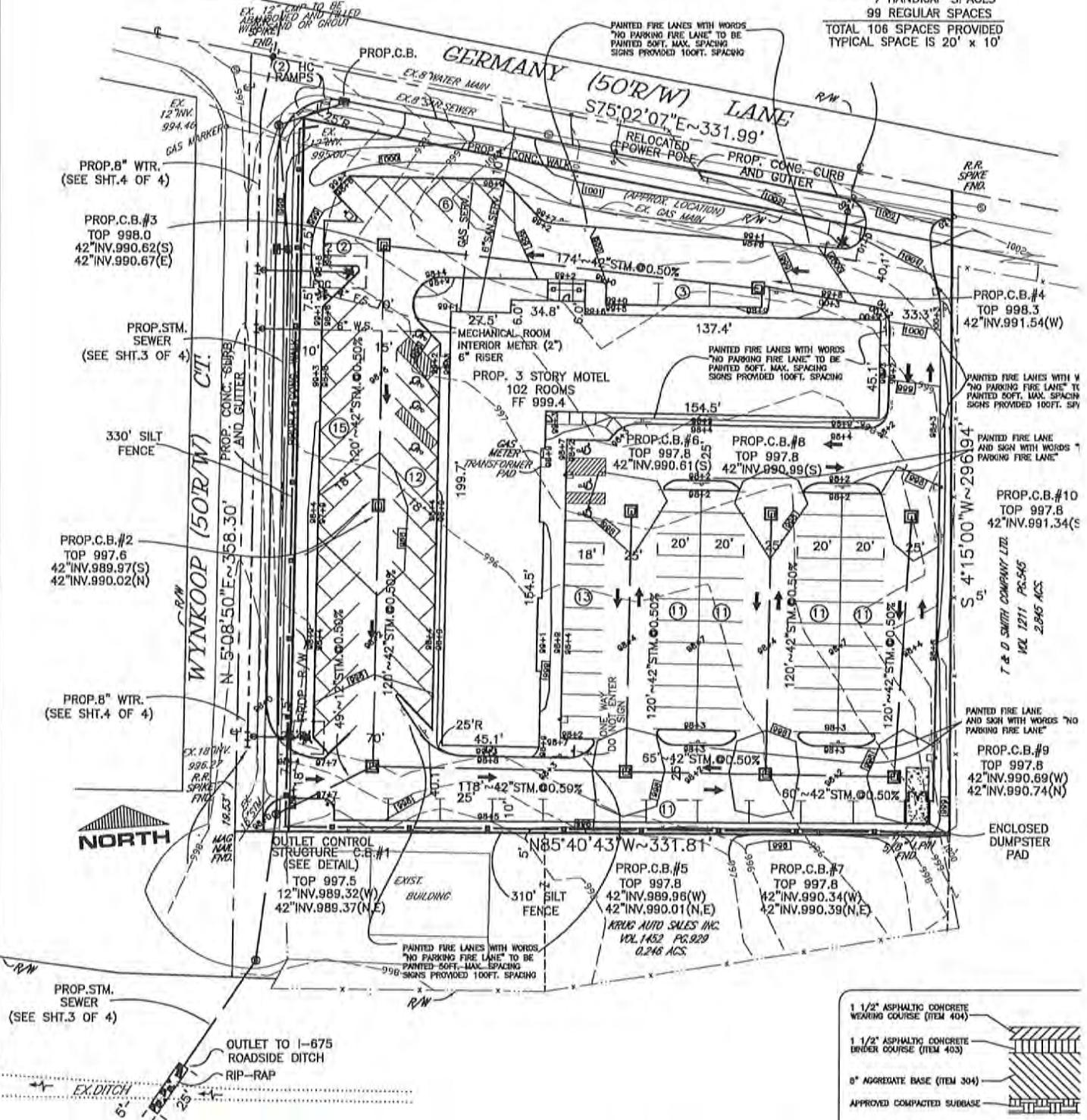
ABSENT:

Resolution of Approval

Attest

Chairman

PARKING DATA:
105 SPACES REQUIRED
7 HANDICAP SPACES
99 REGULAR SPACES
TOTAL 106 SPACES PROVIDED
TYPICAL SPACE IS 20' x 10'

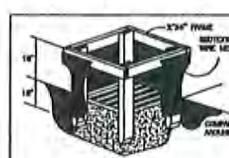


J-675 RAMP

RECEIVED

OCT 31 2025

CITY OF BEAVERCREEK PLANNING DEPARTMENT



INLET PROTECTION IN SWALES DITCH LINES OR YARD INLETS

8.1. **INVENTORY** SHALL HAVE AN INVENTORY OF 30-50 MODELS AND ITS INVENTORY TO BE INCREASED TWENTY PERCENT AND THE FIRM REGULARLY. IT SHALL EXTEND FROM THE TO 100 MODELS AND ITS INVENTORY TO BE INCREASED TWENTY PERCENT EACH MONTH. IT SHALL NOT EXCEED THE INVENTORY LEVELS STATED ABOVE. IT SHALL NOT EXCEED THE CLOTH AND METAL FINISH POOL.

8.2. **SHOWROOM** WILL BE PLACED AROUND COMPUTER & 4-6 LAYER LAMINATE SURFACE, ELEVATOR OR LIFT AND TOP ELEVATOR.

8.3. A COMPUTED SWING AREA OF A CUBE 10' X 10' X 10' WILL BE PROVIDED. IF THE SWING AREA IS NOT IN A DEDICATED ROOM AND IF THE SWING AREA WILL NOT FLOW TO A SEPARATE LAYER OTHER SWING WILL BE AT LEAST 8' X 10' X 10' OF THE FIRM.

ADMINISTRATIVE	AGENCY NAME BEAVERCREEK POLICE DEPARTMENT				INCIDENT NUMBER 2022-00004450					
	CALL NUMBER 2022-00004450		NEOCODE		CLEARANCE					
	<input type="checkbox"/> INCIDENT (NON-CRIMINAL) <input checked="" type="checkbox"/> OFFENSE <input type="checkbox"/> SUPPLEMENT		<input type="checkbox"/> Death of Suspect <input type="checkbox"/> Prosecution Declined <input type="checkbox"/> Extradition Denied <input type="checkbox"/> Victim Refused to Coop. <input type="checkbox"/> Juvenile/No Custody <input type="checkbox"/> Arrest - Adult				<input type="checkbox"/> Arrest - Juvenile <input type="checkbox"/> Warrant Issued <input type="checkbox"/> Invest. Pending <input type="checkbox"/> Closed <input type="checkbox"/> Unfounded <input type="checkbox"/> Unknown			
	OHIO UNIFORM INCIDENT REPORT									
	REPORT DATE TIME MONTH DAY YEAR		INCIDENT OCCURRED FROM MONTH DAY YEAR		INCIDENT OCCURRED TO MONTH DAY YEAR		CLEARANCE DATE MONTH DAY YEAR		CLEARED BY:	
	02/23/2022 08:10		02/22/2022 20:52		02/22/2022 21:22					
	INCIDENT LOCATION (Street, Apt, City, State, Zip) 3875 GERMANY LN BEAVERCREEK, OH									
	OFFENSE					OFFENSE CODE				
	Discharge of Firearm On or Near Prohibited Premises					2923.162 M4 C N				
	Criminal Damaging or Endangering					2909.06 M2 C N				
Criminal Trespass					2911.21 M4 C N					
LOCATION OF OFFENSE (Enter up to 10 locations)										
OFFENSE	1. <u>44</u>	2. _____	12 Jail/Prison	RETAIL	41 Factory/Mill/Plant	SUSPECTED OF USING				
	RESIDENTIAL STRUCTURE		13 Parking Garage	26 Bar	42 Other Building	<input type="checkbox"/> ALCOHOL <input type="checkbox"/> DRUGS <input type="checkbox"/> COMPUTER EQUIPMENT <input type="checkbox"/> NOT APPLICABLE				
	01 Single Family Home		14 Other Public Access Buildings	27 Buy/Sell/Trade Shop	OUTSIDE					
	02 Multiple Dwelling		28 Restaurant	43 Yard						
	03 Residential Facility		29 Gas Station	44 Construction Site						
	04 Other Residential		30 Auto Sales Lot	45 Lake/Waterway						
	05 Garage/Shed		31 Jewelry Store	46 Field/Woods						
	PUBLIC ACCESS BLDGS.		32 Clothing Store	47 Street						
	06 Transl Facility		33 Drugstore	48 Parking Lot						
	07 Government Office		34 Liquor Store	49 Park/Playground						
08 School		35 Shopping Mall	50 Cemetery							
09 College		36 Sporting Goods	51 Public Transit Vehicle							
10 Church		37 Grocery/Supermarket	52 Other Outside Location							
11 Hospital		38 Variety/Convenience	77 Other							
25 Other Commercial Service Lco.		39 Department Store								
		40 Other Retail Store								
METHOD OF ENTRY										
METHOD OF ENTRY - MOTOR VEHICLE THEFT					METHOD OF ENTRY - BURGLARY/BREAK-IN					
<input type="checkbox"/> FORCE <input checked="" type="checkbox"/> NO FORCE		01 <input type="checkbox"/> Motor Running/Keys in Car 02 <input type="checkbox"/> Unlocked 03 <input type="checkbox"/> Duplicate Key Used 04 <input type="checkbox"/> Window Broken 05 <input type="checkbox"/> Towed	06 <input type="checkbox"/> Hot Wre 07 <input type="checkbox"/> Slim Jim/Coat Hanger 08 <input type="checkbox"/> Tumblers Removed 09 <input type="checkbox"/> Column Pealed 10 <input type="checkbox"/> Ignition Pealed	ENTRY 1 <input type="checkbox"/> BASEMENT 2 <input type="checkbox"/> 1 ST FLOOR 3 <input type="checkbox"/> 2 ND FLOOR 4 <input type="checkbox"/> OTHER	EXIT 1 <input type="checkbox"/> DOOR 2 <input type="checkbox"/> WINDOW 3 <input type="checkbox"/> GARAGE 4 <input type="checkbox"/> SKYLIGHT 5 <input type="checkbox"/> OTHER	ENTRY 1 <input type="checkbox"/> DOOR 2 <input type="checkbox"/> WINDOW 3 <input type="checkbox"/> GARAGE 4 <input type="checkbox"/> SKYLIGHT 5 <input type="checkbox"/> OTHER	EXIT 1 <input type="checkbox"/> FRONT 2 <input type="checkbox"/> SIDE 3 <input type="checkbox"/> REAR 4 <input type="checkbox"/> ROOF 5 <input type="checkbox"/> OTHER			
METHODS OF OPERATION										
89-Other										
INCIDENT TOTAL VICTIM INDIVIDUAL FINANCIAL INSTITUTION POLICE OFFICER (IN THE LINE OF DUTY) SOCIETY OTHER										
1 VICTIM TYPE 2 BUSINESS 3 GOVERNMENT 4 RELIGIOUS ORGANIZATION 5 UNKNOWN										
NAME (Last, First, Middle) Synergy Building Systems,										
ADDRESS (Street, Apt, City, State, Zip) 3500 Pentagon BLVD BEAVERCREEK, OH 45431-								PHONE (937)429-3143		
EMPLOYER NAME AND ADDRESS (Street, Apt, City, State, Zip)								PHONE		
VICTIM		AGE	SEX	RACE	B	ETHNICITY	HGT	WGT	HAIR	EYES
						Unkn				
OCCUPATION		SSN		RESIDENT STATUS		1 <input type="checkbox"/> RESIDENT 2 <input type="checkbox"/> TOURIST	3 <input type="checkbox"/> MILITARY 4 <input type="checkbox"/> STUDENT	5 <input type="checkbox"/> OTHER 6 <input type="checkbox"/> UNKNOWN		
VICTIM INJURED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N		IF INJURED, DESCRIBE INJURIES:								
AGG ASSAULT/HOMICIDE CIRC		LEOKA INFORMATION		VICTIM/SUSPECT RELATIONSHIP		VICTIM/OFFENSE LINK				
TYPE OF ACT		ASSIGN TYPE	ORI	OTHER						
My signature verifies that the information on this report is accurate and true										
REPORTING OFFICER Joel Diaz								BADGE NO. B115 DATE 02/23/2022		
APPROVING OFFICER Hummel, Michael 03/25/2022								BADGE NO. DATE 02/23/2022		
FOLLOW UP? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N		Yes, follow up Assignment								
ADDITIONAL SUPPLEMENTS: <input type="checkbox"/> VICTIM/WITNESS <input type="checkbox"/> PROPERTY <input type="checkbox"/> STATEMENTS <input type="checkbox"/> INTELLIGENCE <input type="checkbox"/> SPECIAL COPIES		<input type="checkbox"/> SUSPECT/ARRESTEE <input type="checkbox"/> NARRATIVE <input type="checkbox"/> OTHER		FORM RECEIVED BY: <input type="checkbox"/> INVESTIGATION <input type="checkbox"/> RECORDS						

INCIDENT REPORT – PART 2

INCIDENT NUMBER	2022-00004450
-----------------	---------------

VICTIM Synergy Building Systems,		OFFENSE 2923.162 M4 Discharge of Firearm On or Near Prohibited Premises		INCIDENT DATE 02/23/2022	08:10	
HO. 01 NAME (Last, First, Middle) [REDACTED]		AGE/ D.O.B. [REDACTED]		SSN [REDACTED]		
ADDRESS (Street, Apt., City, State, Zip) 3500 PENTAGON BLVD BEAVERCREEK, OH 45431-		PHONE (937)429-3143		PHONE		
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)				PHONE		
STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> WRITTEN <input type="checkbox"/> ORAL <input type="checkbox"/> TAPE <input type="checkbox"/> OTHER						
CHECK CATEGORIES <input type="checkbox"/> STOLEN <input type="checkbox"/> RECOVERED <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> RECEIVED <input type="checkbox"/> SUSPECT'S VEHICLE <input type="checkbox"/> VICTIM'S VEHICLE <input type="checkbox"/> UNAUTHORIZED USE <input type="checkbox"/> ABANDONED						
NO.	<input type="checkbox"/> DAMAGE TO VEHICLE <input type="checkbox"/> THEFT FROM VEHICLE	UG	US	UY	UT	
YYR	VMA	VMO	VST	VCO TOP BOTTOM	VEHICLE <input type="checkbox"/> Y <input type="checkbox"/> N KEYS IN <input type="checkbox"/> Y <input type="checkbox"/> HOLD LOCKED <input type="checkbox"/> N VEHICLE <input type="checkbox"/> N CONTENTS <input type="checkbox"/> N	
VEHICLE W/ SUSPECT NO.	VEHICLE ASSOC. W/ VICTIM NO.	VEHICLE TOWED? <input type="checkbox"/> Y <input type="checkbox"/> N BY	OWNERSHIP <input type="checkbox"/> TAG RECEIPT <input type="checkbox"/> TITLE VERIFIED BY: <input type="checkbox"/> BILL OF SALE <input type="checkbox"/> OTHER			
VEHICLE ONLY	NO. STOLEN <input type="checkbox"/> BUSINESS	AREA STOLEN <input type="checkbox"/> RURAL	RESID. <input type="checkbox"/> ADDITIONAL DESCRIPTION	PHONE		
AUTO INSURER NAME (Company) ADDRESS (Street, Apt., City, State, Zip)					PHONE	
MOTOR VEHICLE RECOVERY ONLY ITEMS ONLY		NO. RECOVERED	DATE REC.	STOLEN IN YOUR JURISDICTION <input type="checkbox"/> Y <input type="checkbox"/> N WHERE RECOVERED?		
TYPE OF PROPERTY LOST/STOLEN/SEIZED		1. NONE 2. BURNED	3. COUNTERFEITED/FORGED 4. DESTROYED/DAMAGED/VANDALIZED	5. STOLEN/STOLEN 6. SEIZED	7. RECOVERED 8. UNKNOWN 9. EVIDENCE	
LOSS CODE	QUANTITY	DESCRIPTION			PRO ^{1/2} CODE	VAL ^{1/2} UE
	19	9mm bullet casings				
VICT. NO.	VEH. NO.	MAKE/BRAND			MODEL	DATE RECOVERED
LOSS CODE	QUANTITY	DESCRIPTION			PRO ^{1/2} CODE	VAL ^{1/2} UE
	1	Exterior glass window.				\$1000.00
VICT. NO.	VEH. NO.	MAKE/BRAND			MODEL	DATE RECOVERED
LOSS CODE	QUANTITY	DESCRIPTION			PRO ^{1/2} CODE	VAL ^{1/2} UE
		HVAC Duct				
VICT. NO.	VEH. NO.	MAKE/BRAND			MODEL	DATE RECOVERED
LOSS CODE	QUANTITY	DESCRIPTION			PRO ^{1/2} CODE	VAL ^{1/2} UE
	4	metal wall stud supports				
VICT. NO.	VEH. NO.	MAKE/BRAND			MODEL	DATE RECOVERED
PROPERTY CODES:		VALUABLES	EQUIPMENT	CONSUMABLE ITEMS	STRUCTURES	
EXCHANGE MEDIUMS		06 Jewelry/Precious Metals 07 Money 02 Credit/Debit Card 03 Negotiable Instruments 04 Other Exchange Mediums	15 Drug/Narcotic Equip. 09 Art Objects, Antiques 10 Other Valuables PERSONAL EFFECTS 11 Clothing/Furs 12 Purses/Handbags/Wallets 13 Other Personal Effects	27 Vehicle Parts/Accessories 16 Gambling Equipment 17 Computer Hardware/Soft. 18 Office Equipment 19 Stereo/TV Equipment 20 Recording/Audio Visual 21 Sports Equipment 22 Photographic Equipment	26 Tools 27 Vehicle Parts/Accessories 28 School Supplies 29 Other Equipment	35 Aircraft 36 Automobiles 37 Bicycles 38 Buses 39 Trucks 40 Trailers 41 Watercraft
DOCUMENTS		05 Non-Negotiable Instruments 06 Personal Papers 07 Other Documents	14 Household Items	31 Drugs/Narcotics 32 Consumable Goods 23 Farm Equipment 24 Heavy Construction/Industrial 25 Building Supplies-Const.	42 Recreational Vehicle 33 Livestock 34 Household Pets	46 Single Occupancy 47 Other Dwellings 48 Commercial/Business 49 Indus./Mfg. 50 Public/Community 51 Storage 52 Other Structure
					WEAPONS 44 Firearms 45 Other Weapons	OTHER 53 Merchandise 54 Other Property 55 Pending Inventory
On 2-23-22, BPD was dispatched to 3875 Germany Lane Beavercreek Ohio reference to a damaging complaint.						
NARRATIVE						

PROPERTY SUPPLEMENT

SUSPECT/ARREST SUPPLEMENT		ARRESTING AGENCY	Beavercreek Police Department	INCIDENT NUMBER	2022-00004450
VICTIM		OFFENSE		INCIDENT DATE	
Synergy Building Systems, Unknown, Unknown		2923.162 M4 Discharge of Firearm On or Near Prohibited Premises		02/22/2022 20:52	
NO. 01 ADULT JUVENILE UNKNOWN		CHECK APPROPRIATE CATEGORY		CHARGES FILED?	
<input checked="" type="checkbox"/> SUSPECT <input type="checkbox"/> ARRESTEE <input type="checkbox"/> SUSPECT/ARRESTEE		<input type="checkbox"/> RUNAWAY <input type="checkbox"/> MISSING <input type="checkbox"/> OTHER		<input checked="" type="checkbox"/> Y <input type="checkbox"/> N	
NAME (Last, First, Middle) Unknown, Unknown				SSN	
ALIAS				GANG AFFILIATION	
ADDRESS (Street, Apt., City, State, Zip)				PHONE	
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)				PHONE	
PLACE OF BIRTH		DIL#STATE		OCCUPATION/SCHOOL	
NAME/DESCRIPTIVES		SEX	RACE	ETHNICITY	HEIGHT
MARITAL STATUS		SCARS, MARKS, TATTOOS			WEIGHT
ADDITIONAL DESCRIPTIVES					
SUSPECTED OF USING		POTENTIAL INJURIES?			
<input checked="" type="checkbox"/> ALCOHOL <input type="checkbox"/> DRUGS					
RESIDENT/NOT RESIDENT		STUDENT/NOT STUDENT			
<input checked="" type="checkbox"/> RESIDENT <input type="checkbox"/> NOT RESIDENT		<input checked="" type="checkbox"/> STUDENT <input type="checkbox"/> NOT STUDENT			
ARRESTEE ARMED WITH		1. Unk 2. 3.			
99 NONE		13B OTHER FULLY AUTOMATIC FIREARM	16 IMITATION FIREARM	50 POISON	
11 FIREARM		14 SHOTGUN	17 SIMULATED FIREARM	60 EXPLOSIVES	
12 HANDGUN		15 OTHER FIREARM	18 BB/PELLET GUN	65 FIRE/INCENDIARY DEVICE	
12A AUTOMATIC HANDGUN		15A SEMI-AUTOMATIC SPORTING RIFLE	20 KNIFE/CUTTING INSTRUMENT	70 DRUGS/NARC/SLEEPING PILLS	
13 RIFLE		15B SEMI-AUTOMATIC ASSAULT FIREARM	30 BLUNT OBJECT	80 OTHER WEAPON	
13A FULLY AUTOMATIC RIFLE		15C MACHINE PISTOL			
ASSOC. PERSONS		NAME		ADDRESS (Street, Apt., City, State, Zip)	
1.		1.		PHONE	
2.		2.		1.	
2.		2.		2.	
ARREST/INFORMATION		ARREST/OFFENSE DESCRIPTION		ARREST/OFFENSE CODE#	
1.		Bond Type:		FIM & DEGREE	
2.		Bond Type:		1. 2.	
3.		Bond Type:		2. 3.	
4.		Bond Type:		3. 4.	
5.		Bond Type:		4. 5.	
6.		Bond Type:		5. 6.	
7.		Bond Type:		6. 7.	
8.		Bond Type:		7. 8.	
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13.		Bond Type:		12. 13.	
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244.		Bond Type:		243. 244.	
245.					

VICTIM/WITNESS SUPPLEMENT

INCIDENT NUMBER 2022-00004450

VICTIM Synergy Building Systems,		OFFENSE 2923.162 M4 Discharge of Firearm On or Near Prohibited Premises		INCIDENT DATE 02/23/2022 08:10					
NO. 01 TOTAL VICTIM TYPE		INDIVIDUAL <input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> POLICE OFFICER IN THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER <input type="checkbox"/> BUREAU <input type="checkbox"/> BUSINESS <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> PREVIOUS ORGANIZATION <input type="checkbox"/> UNKNOWN <input type="checkbox"/>							
NAME (Last, First, Middle)									
ADDRESS (Street, Apt., City, State, Zip)						PHONE			
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)						PHONE			
WIFE/SPR. NAME (Last, First, Middle)		SEX	RAOE	BIRTH	ETHNICITY	HOT	WOT	HAIR	EYES
OCCUPATION		SSN		REBIDENTIAL <input type="checkbox"/> RESIDENTIAL <input type="checkbox"/> MILITARY <input type="checkbox"/> OTHER <input type="checkbox"/> STATUS <input type="checkbox"/> TOURIST <input type="checkbox"/> STUDENT <input type="checkbox"/> UNKNOWN <input type="checkbox"/>					
VICTIM <input type="checkbox"/> IF INJURED, DESCRIBE INJURED <input type="checkbox"/> INJURIES:									
MURDER/ABU/ HOMICIDE CRIMES		TYPE OF ACT		VICTIM/SUSPECT RELATIONSHIP		VICTIM/OFFENSE LINK			
ABDUCTION/SEX CRIMES		ABDUCTION TYPE		ORIGIN OTHER					
My signature verifies that the information on this report is accurate and true						DATE			
NO. 02 TOTAL VICTIM TYPE		INDIVIDUAL <input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> POLICE OFFICER IN THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER <input type="checkbox"/> BUREAU <input type="checkbox"/> BUSINESS <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> PREVIOUS ORGANIZATION <input type="checkbox"/> UNKNOWN <input type="checkbox"/>							
NAME (Last, First, Middle)									
ADDRESS (Street, Apt., City, State, Zip)						PHONE			
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)						PHONE			
WIFE/SPR. NAME (Last, First, Middle)		SEX	RAOE	BIRTH	ETHNICITY	HOT	WOT	HAIR	EYES
OCCUPATION		SSN		REBIDENTIAL <input type="checkbox"/> RESIDENTIAL <input type="checkbox"/> MILITARY <input type="checkbox"/> OTHER <input type="checkbox"/> STATUS <input type="checkbox"/> TOURIST <input type="checkbox"/> STUDENT <input type="checkbox"/> UNKNOWN <input type="checkbox"/>					
VICTIM <input type="checkbox"/> IF INJURED, DESCRIBE INJURED <input type="checkbox"/> INJURIES:									
MURDER/ABU/ HOMICIDE CRIMES		TYPE OF ACT		VICTIM/SUSPECT RELATIONSHIP		VICTIM/OFFENSE LINK			
ABDUCTION/SEX CRIMES		ABDUCTION TYPE		ORIGIN OTHER					
My signature verifies that the information on this report is accurate and true						DATE			
NO. 03 TOTAL VICTIM TYPE		INDIVIDUAL <input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> POLICE OFFICER IN THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER <input type="checkbox"/> BUREAU <input type="checkbox"/> BUSINESS <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> PREVIOUS ORGANIZATION <input type="checkbox"/> UNKNOWN <input type="checkbox"/>		AGE/ D.O.B.		SSN			
ADDRESS (Street, Apt., City, State, Zip)								PHONE	
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)								PHONE	
STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N		TYPE: <input type="checkbox"/> WRITTEN <input checked="" type="checkbox"/> ORAL <input type="checkbox"/> TAPED <input type="checkbox"/> OTHER							
NO. 04 TOTAL VICTIM TYPE		INDIVIDUAL <input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> POLICE OFFICER IN THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER <input type="checkbox"/> BUREAU <input type="checkbox"/> BUSINESS <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> PREVIOUS ORGANIZATION <input type="checkbox"/> UNKNOWN <input type="checkbox"/>		AGE/ D.O.B.		SSN			
ADDRESS (Street, Apt., City, State, Zip)								PHONE	
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)								PHONE	
STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N		TYPE: <input type="checkbox"/> WRITTEN <input checked="" type="checkbox"/> ORAL <input type="checkbox"/> TAPED <input type="checkbox"/> OTHER							
NO. 05 TOTAL VICTIM TYPE		INDIVIDUAL <input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> POLICE OFFICER IN THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER <input type="checkbox"/> BUREAU <input type="checkbox"/> BUSINESS <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> PREVIOUS ORGANIZATION <input type="checkbox"/> UNKNOWN <input type="checkbox"/>		AGE/ D.O.B.		SSN			
ADDRESS (Street, Apt., City, State, Zip)								PHONE	
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)								PHONE	
STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N		TYPE: <input type="checkbox"/> WRITTEN <input checked="" type="checkbox"/> ORAL <input type="checkbox"/> TAPED <input type="checkbox"/> OTHER							
REPORTING OFFICER Joel Diaz						BADGE NO. B115		DATE 02/23/2022	
APPROVING OFFICER Hummel, Michael 03/25/2022						BADGE NO.		DATE	

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	2022-00004450
INCIDENT DATE AND TIME	02/23/2022 08:10

AGENCY BEAVERCREEK POLICE DEPARTMENT

On 2-23-22, I was dispatched to the construction site of Promotum, 3875 Germany Lane Beavercreek Ohio reference to a damaging complaint.

I arrived on scene and made contact with the R/P, G. [REDACTED] with Synergy Building Solutions. [REDACTED] advised upon arriving to the construction site, he was informed by his work crew of a damaged window on the third floor. [REDACTED] stated shortly after, fifteen spent 9mm bullet casings were located on the rooftop and brought to his office. [REDACTED] and I responded to the third floor to examine the damaged window. The window appeared shot out and a 9mm bullet casing was located nearby on the staircase landing. [REDACTED] and I then responded to the rooftop were the fifteen bullet casings were collected by staff. Upon checking the rooftop, we were unable to locate any damage. Three additional 9mm spent bullet casings were located which were placed on an air conditioning unit by an unknown employee(s). The four total 9mm spent bullet casings were collected. It should be noted the found bullet casings were either wet from the overnight rain or covered in a layer of frozen ice.

I then reviewed CCTV footage with Security Officer Jarell Davis. Upon reviewing footage, a male subject wearing dark clothing is witnessed walking from the rear of Suburban Extended Stay (3845 Germany Lane) and enters the property at 2052 hours from the rear east side. The suspect then enters the business through a west rear opened door frame. At 2116 hours, it appears the third floor north window is shot out. At 2118 hours, the suspect is then witnessed exiting the business via the rear east door. At 2122 hours, the suspect is witnessed exiting the tree line on the east side of the roadway of Wynkoop Ct. just behind Suburban Extended Stay. The suspect then goes out of camera view as he walks through towards the rear lot of Suburban Extended Stay.

Jarell and I then walked the property for possible evidence left behind by the suspect. While at the rear east door, I noticed a fire extinguisher laying in the mud behind the building. The fire extinguisher was damaged (empty) and should have been located inside on a stand near the rear east door. Additionally, a partial shoe print was found on a wooden board that was laying just outside the door way. The foot print was photographed. The fire extinguisher was checked for prints by Officer Kempf; however, nothing of evidentiary value was found.

Construction Manager [REDACTED] later arrived on scene and was advised of the incident. [REDACTED] advised he would provide BPD with CCTV footage of the incident.

I responded to Foreign Exchange, 3899 Colonel Glenn Hwy., and advised staff of my investigation. I discovered Foreign Exchange CCTV cameras only monitored their property and they had nothing of evidentiary value to assist in this case.

I then responded to Suburban Extended Stay and spoke to Manager Elizabeth Mayberry. Elizabeth was advised of my investigation. Elizabeth advised at 2100 hours, the night staff desk clerk closes their gate, which blocks the view of the front camera entrance. Elizabeth was asked if any tenants reported hearing gun fire overnight and she stated, No. Upon speaking to Elizabeth, I noticed a large amount of mud in front of the front desk leading towards the east hallway. Upon following the trail, it stopped in the area of room [REDACTED] and [REDACTED]. I took a picture of a partial foot print; however, it did not match that of the shoe print found at the scene. Elizabeth advised she would check her other cameras and inform me if she locates anything of evidentiary. I asked Elizabeth, without evidence, if she would suspect any of the occupants in either [REDACTED] or [REDACTED]. Elizabeth stated a young female (student) is staying alone in [REDACTED] and she doesn't suspect her to be involved. Elizabeth stated a family of four, [REDACTED] resided in room [REDACTED]. Elizabeth stated she wouldn't be surprised if the minor children had some involvement with this incident. I also spoke to Front Desk Clerk Michael Gibson, who advised [REDACTED] are suspected to be socializing with unknown gang members associated with a gang called [REDACTED].

On 2-24-22, [REDACTED] provided a written statement via email. Additionally, [REDACTED] advised two bullet fragments were located on the second floor along with multiple damaged structure studs and a HVAC duct that was struck by gunfire. [REDACTED] also stated a second fire extinguisher was also missing.

On 2-25-22, at approximately 0920 hours, Officer Trimboli and I responded to the scene. Officer Trimboli and I were escorted by Security Officer Jarell to examine the additional damage and evidence. While on the second floor, four structure studs were located with bullet holes and one HVAC duct. Jarell was only able to locate one bullet fragment, which was collected. The reported second bullet fragment was not located and Security Officer Jarell stated it must have been accidentally kicked or moved by contract workers on scene. The damaged property was photographed and the bullet fragment was logged into property as evidence.

On 2-28-22, I sent [REDACTED] an email requesting a dollar amount of damage. I later received an email back from [REDACTED] indicating an estimated loss of damage was valued at \$2,500.00.

On 3-8-22, at 1215 hours, I responded to Suburban Extended Stay and attempted to make contact with the [REDACTED] in room [REDACTED]. I was unable to get an answer at the door and I left a business card requesting I be contacted.

At 1340 hours, I received a telephone call from [REDACTED]. I advised [REDACTED] I would like to discuss an incident with her that I was investigating. [REDACTED] agreed to meet with me on 3-9-22, at 0800 hours.

REASON CLEARED	A <input type="checkbox"/> DEATH OF OFFENDER B <input type="checkbox"/> PROSECUTION DECLINED C <input type="checkbox"/> EXTRADITION DENIED	D <input type="checkbox"/> VICTIM REFUSED TO COOP E <input type="checkbox"/> JUVENILE/NO CUSTODY F <input type="checkbox"/> ARREST -ADULT	G <input type="checkbox"/> ARREST - JUVENILE H <input type="checkbox"/> WARRANT ISSUED I <input type="checkbox"/> INVEST. PENDING	J <input type="checkbox"/> CLOSED K <input type="checkbox"/> UNFOUNDED L <input type="checkbox"/> UNKNOWN	DATE CLEARED
REPORTING OFFICER	Joel Diaz			BADGE NO. B116	DATE 02/23/2022
APPROVING OFFICER	Hummel, Michael 03/25/2022			BADGE NO.	DATE

VICTIM/WITNESS SUPPLEMENT

INCIDENT NUMBER: 2022-00004450

VICTIM		OFFENSE		INCIDENT DATE AND TIME		02/23/2022 08:10	
NO.	TOTAL VICTIM	VICTIM TYPE	<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> BUSINESS <input type="checkbox"/> GOVERNMENT	<input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> POLICE OFFICER ON THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER	<input type="checkbox"/> POLICE OFFICER ON THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER	<input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> POLICE OFFICER ON THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER	<input type="checkbox"/> FINANCIAL INSTITUTION <input type="checkbox"/> POLICE OFFICER ON THE LINE OF DUTY <input type="checkbox"/> SOCIETY <input type="checkbox"/> OTHER
NAME (Last, First, Middle)							
ADDRESS (Street, Apt., City, State, Zip)							
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)							
VICTIM		SEX	RACE	BBN	ETHNICITY	HGT	WGT
		<input type="checkbox"/> M <input type="checkbox"/> F	<input type="checkbox"/> W <input type="checkbox"/> B <input type="checkbox"/> A <input type="checkbox"/> H <input type="checkbox"/> U				
OCCUPATION		SSN					
		RESIDENT <input type="checkbox"/> RESIDENT <input type="checkbox"/> MILITARY <input type="checkbox"/> MOTHER <input type="checkbox"/> OTHER <input type="checkbox"/> STATION <input type="checkbox"/> TOURIST <input type="checkbox"/> STUDENT <input type="checkbox"/> UNKNOWN					
VICTIM <input type="checkbox"/> IF INJURED, DESCRIBE INJURIES: <input type="checkbox"/> UNKNOWN							
VICTIM <input type="checkbox"/> IF INJURED, DESCRIBE INJURIES: <input type="checkbox"/> UNKNOWN							
VICTIM		VICTIM INFORMATION		VICTIM/SUSPECT RELATIONSHIP		VICTIM OFFENSE LINK	
My signature verifies that the information on this report is accurate and true							
DATE							
VICTIM		VICTIM		VICTIM		VICTIM	
NAME (Last, First, Middle)		NAME (Last, First, Middle)		NAME (Last, First, Middle)		NAME (Last, First, Middle)	
ADDRESS (Street, Apt., City, State, Zip)		ADDRESS (Street, Apt., City, State, Zip)		ADDRESS (Street, Apt., City, State, Zip)		ADDRESS (Street, Apt., City, State, Zip)	
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OCCUPATION		SSN					
		RESIDENT <input type="checkbox"/> RESIDENT <input type="checkbox"/> MILITARY <input type="checkbox"/> MOTHER <input type="checkbox"/> OTHER <input type="checkbox"/> STATION <input type="checkbox"/> TOURIST <input type="checkbox"/> STUDENT <input type="checkbox"/> UNKNOWN					
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VICTIM		VICTIM INFORMATION		VICTIM/SUSPECT RELATIONSHIP		VICTIM OFFENSE LINK	
My signature verifies that the information on this report is accurate and true							
DATE							
WITNESS		NAME (Last, First, Middle)		AGE/ D.O.B.	SSN		
ADDRESS (Street, Apt., City, State, Zip)							
3		31-					
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)							
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WITNESS		NAME (Last, First, Middle)		AGE/ D.O.B.	SSN		
ADDRESS (Street, Apt., City, State, Zip)							
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)							
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WITNESS		NAME (Last, First, Middle)		AGE/ D.O.B.	SSN		
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REPORTING OFFICER		REPORTING OFFICER		BADGE NO.	DATE		
Joe Diaz				B115	02/23/2022		
APPROVING OFFICER		APPROVING OFFICER		BADGE NO.	DATE		
Hummel, Michael 03/25/2022							

NARRATIVE SUPPLEMENT

INCIDENT NUMBER	2022-00004450	
INCIDENT DATE AND TIME	02/23/2022	08:10

AGENCY BEAVERCREEK POLICE DEPARTMENT

On 3-9-22, I responded to [REDACTED] residence and made contact with her along with her son, [REDACTED]. I advised [REDACTED] and [REDACTED] of my investigation. [REDACTED] stated she is certain [REDACTED] was not involved; however, she wouldn't be shocked if [REDACTED] is a suspect. [REDACTED] stated [REDACTED] is known by her to hang out with gang members [REDACTED] who carry guns. [REDACTED] stated she doesn't allow guns in the residence and doesn't own one. [REDACTED] stated she has had ongoing issues with [REDACTED] however, she doesn't know him to possess a weapon. [REDACTED] stated [REDACTED] was not home and she would turn him into police if she discovered he has any involvement with this case. [REDACTED] stated [REDACTED] doesn't have a cell phone so she was unable to phone him and she didn't know his whereabouts. [REDACTED] stated once she hears from [REDACTED] and or learns of any information she will contact BPD. [REDACTED] did allow me to photograph three pairs of her sons Vans brand shoes. It should be noted that the partial shoe prints photographed from the scene and from the hallway of the hotel had a similar shoe patterned. [REDACTED] and [REDACTED] stated the photographed black size 10.5 men's and white size 10 men's Vans belonged to [REDACTED]. The photographed red size 9 men's Vans belonged to [REDACTED]. It should be noted that neither pair of shoes had a large amount of mud on them. [REDACTED] did state [REDACTED], who was at work, didn't wear Vans brand shoes and primary wears work boots. [REDACTED] was advised to contact me when [REDACTED] returns home for questioning.

On 3-11-22, at 1133 hours, I contacted [REDACTED] via telephone. I received no response and left her a voicemail message advising to contact me.

On 3-18-22, at 0844 hours, I responded to Suburban Extended Stay and made contact with [REDACTED]. Upon knocking at the door, I could hear a number of people inside and it took [REDACTED] a rather long time to answer the door. When [REDACTED] came to the door, she immediately stepped out into the hallway closing the door behind her (locking herself out). It should be noted that it appeared the subjects inside were hiding from my view when [REDACTED] opened the door. I asked [REDACTED] if she had ever spoken to [REDACTED] about the incident I was investigating. [REDACTED] stated she had and stated [REDACTED] indicated he had no involvement. [REDACTED] stated [REDACTED] friend, only known as [REDACTED] doesn't carry a 9mm; however, he carries a 22mm (unknown weapon). [REDACTED] stated [REDACTED] was inside the room; however, she didn't want me to speak to him. [REDACTED] stated [REDACTED] was very hostile at the moment because he had gotten into trouble for sneaking [REDACTED] into the room without her consent earlier this morning. [REDACTED] stated [REDACTED] was told to leave and he left without issue. [REDACTED] stated [REDACTED] drives a silver colored [REDACTED] with unknown Ohio plates. [REDACTED] stated she would allow her children to submit to a polygraph to prove their innocence; however, she didn't want me questioning them. I then left the property.

It should be noted while typing up my report across the lot from Suburban Extended Stay, I witnessed a red [REDACTED] bearing Ohio plate [REDACTED] pull out of the lot and proceed westbound on Germany Lane. I followed the vehicle eastbound on Colonel Glen Hwy. and was unable to obtain probable cause for a traffic stop. The vehicle later turned southbound onto Center Park Blvd. and parked in the parking lot near Tik's Thai Express (2808 Colonel Glenn Hwy.). Three subjects were witnessed quickly exiting the vehicle and walking towards Tik's Thai Express, which they discovered was closed upon pulling on the door. The subjects then circled the building. I noticed one subject wearing a sweater displaying [REDACTED] on the back. It was at that time I suspected the subjects to be [REDACTED] and [REDACTED] pulled alongside the subjects and confirmed the two to be [REDACTED] and [REDACTED]. Due to [REDACTED] request not to question her children, I just advised [REDACTED] to inform [REDACTED] to contact me via telephone. [REDACTED] advised he was not going to tell [REDACTED] anything. I then asked the unknown male subject for his name; however, [REDACTED] advised the male subject not to disclose his information. I then left the area due to being dispatched to a call of service.

I later contact [REDACTED] via telephone and advised her of my interaction with her children. [REDACTED] stated she had recently spoken to her children prior to my call and they did not disclose to her that I had spoken to them. [REDACTED] thanked me for the information and stated she wasn't aware her children had left the residence.

At this time, I have no further leads into this case.

Additional:

As of 3-25-22, [REDACTED] has an entered (8-9-21) warrant through Maryland that is within pick up radius.

REASON CLEARED	A <input type="checkbox"/> DEATH OF OFFENDER B <input type="checkbox"/> PROSECUTION DECLINED C <input type="checkbox"/> EXTRADITION DENIED	D <input type="checkbox"/> VICTIM REFUSED TO COOP E <input type="checkbox"/> JUVENILE/NO CUSTODY F <input type="checkbox"/> ARREST - ADULT	G <input type="checkbox"/> ARREST - JUVENILE H <input type="checkbox"/> WARRANT ISSUED I <input type="checkbox"/> INVEST. PENDING	J <input type="checkbox"/> CLOSED K <input type="checkbox"/> UNFOUNDED L <input type="checkbox"/> UNKNOWN	DATE CLEARED
REPORTING OFFICER	Joel Diaz			BADGE NO. B115	DATE 02/23/2022
APPROVING OFFICER	Hummel, Michael 03/25/2022			BADGE NO.	DATE



INCIDENT/STATEMENT	DISPATCHED	ARRIVED	CLEARED	DATE	NUMBER
LOCATION	BUSINESS			2-23-22	22-4450
3875 GERMANY LANE PROMOTUM				MEMO	
R/C	NAME/LAST	ST	M.	BUS. PHONE	
ADDRESS	3875 GERMANY LANE BENCHCRAFT OF:O 45431			STATE	ZIP
EMAIL ADDRESS	3500 PENTAGON Synergy Building Systems				

ARRIVED AT Site around 7:15AM by 7:20-7:30
 I WAS being notified by workers that we
 HAD A BROKEN WINDOW on 3rd Floor & LOOKED TO BE
 SHOT OUT! I LOOKED for any noticeable holes
 IN DRYWALL ETC. CAME BACK TO THE TRAILER STILL
 NOT SURE IF IT WAS A "GUNSHOT" UNTIL ONE
 OF OUR ROOFERS FOUND 15 EMPTY 9MM CASINGS ON
 THE ROOF AND BROUGHT THEM TO ME. THAT'S WHEN
 I CALLED POLICE, AFTER MEETING WITH THE OFFICER
 WE WALKED THE BUILDING & SECURITY MET US IN THE
 STAIRWELL, THEY FOUND ANOTHER EMPTY CASING, WE THEN
 WALKED ONTO THE ROOF AND FOUND 3 MORE. OUR
 SECURITY TEAM ON SITE REVIEWED THE EXTERIOR CAMERA
 FOOTAGE AND LOOKS LIKE IT HAPPENED AT APPROX. 9:15 PM 9-22

SIGNATURE OF WITNESS			COPY TO	DATE/TIME
OFFICER	115	ASSISTED BY	FOLLOW UP TO	SUPERVISOR

AGENCY NAME BEAVERCREEK POLICE DEPARTMENT		INCIDENT NUMBER 2022-00004685																																																																																																																																																																																																																																																			
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APPROVING OFFICER Spangler, Scott 02/26/2022										BADGE NO.	DATE 02/26/2022																																																																																																																																																																																																																																										
FOLLOW-UP <input type="checkbox"/> Y <input checked="" type="checkbox"/> N		If yes, follow-up Assignment		PROPERTY		STATEMENTS		FORM RECEIVED BY:		INTELLIGENCE RECORDS		SPECIAL COPIES																																																																																																																																																																																																																																									
ADDITIONAL SUPPLEMENTS		<input type="checkbox"/> VICTIM/WITNESS <input type="checkbox"/> SUSPECT/ARRESTEE		<input type="checkbox"/> NARRATIVE <input type="checkbox"/> OTHER		<input type="checkbox"/> INVESTIGATION <input type="checkbox"/> OTHER																																																																																																																																																																																																																																															

INCIDENT REPORT - PART 2

VICTIM Synergy Building Systems,		OFFENSE 2911.13 F5 Breaking and Entering		INCIDENT NUMBER 2022-00004685				
REPORTEREE	NO. 01	NAME (Last, First, Middle) [REDACTED]		AGE/ D.O.B. [REDACTED] SSN [REDACTED]				
	ADDRESS (Street, Apt., City, State, Zip) [REDACTED]		PHONE (937)681-6456					
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)		PHONE						
STATEMENTS OBTAINED <input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> WRITTEN <input checked="" type="checkbox"/> ORAL <input type="checkbox"/> TAPE <input type="checkbox"/> OTHER								
CHECK CATEGORIES <input type="checkbox"/> STOLEN <input type="checkbox"/> RECOVERED <input type="checkbox"/> IMPOUNDED <input type="checkbox"/> RECEIVED <input type="checkbox"/> SUSPECT'S VEHICLE <input type="checkbox"/> VICTIM'S VEHICLE <input type="checkbox"/> UNAUTHORIZED USE <input type="checkbox"/> ABANDONED								
VEHICLE	NO.	DAMAGE TO VEHICLE <input type="checkbox"/> DAMAGE TO VEHICLE <input type="checkbox"/> THEFT FROM VEHICLE	UC	LIS	UY	UT	VIN/JOAN	VALUE
	YVR	VMA	VMO	VST	VCO TOP BOTTOM	VEHICLE <input type="checkbox"/> Y <input type="checkbox"/> LOCKED <input type="checkbox"/> N	KEYS IN <input type="checkbox"/> Y <input type="checkbox"/> II <input type="checkbox"/> N	HOLD <input type="checkbox"/> Y <input type="checkbox"/> VEHICLE <input type="checkbox"/> N
VEHICLE ASSOC. W/ SUSPECT NO W/ VICTIM NO		VEHICLE ASSOC. W/ VICTIM NO		VEHICLE <input type="checkbox"/> Y TCWED? <input type="checkbox"/> II BY		OWNERSHIP <input type="checkbox"/> TAG RECEIPT <input type="checkbox"/> BILL OF SALE <input type="checkbox"/> VERIFIED BY		TITLE <input type="checkbox"/> OTHER
STOLEN MOTOR VEHICLE ONLY		NO. STOLEN	AREA STOLEN <input type="checkbox"/> BUSINESS <input type="checkbox"/> RURAL	RESID. <input type="checkbox"/> ADDITIONAL DESCRIPTION		PHONE		
AUTO INSURER NAME (Company) ADDRESS (Street, Apt., City, State, Zip)					PHONE			
MOTOR VEHICLE RECOVERY ONLY		NO. RECOVERED	DATE REC.	STOLEN IN YOUR JURISDICTION <input type="checkbox"/> Y <input type="checkbox"/> N WHERE RECOVERED?				
TYPE PROPERTY LOSSE (check below) 1. NONE 2. BURNED 3. DESTROYED/DAMAGED/VALOED					STOLEN/FTC 4. STOLEN/FTC 5. DESTROYED/DAMAGED/VALOED 6. SEIZED 7. UNKNOWN 8. EVIDENCE	RECOVERED	PHOTO	VALUE
PROPERTY	LOSS CODE	QUANTITY	DESCRIPTION			MODEL	PROP CODE	DATE RECOVERED
	VICT. NO.	VEH. NO.	MAKE/BRAND			OTHER NUMBER		
LOSS CODE	QUANTITY	DESCRIPTION			MODEL	PROP CODE	DATE RECOVERED	
	VICT. NO.	VEH. NO.	MAKE/BRAND			OTHER NUMBER		
LOSS CODE	QUANTITY	DESCRIPTION			MODEL	PROP CODE	DATE RECOVERED	
	VICT. NO.	VEH. NO.	MAKE/BRAND			OTHER NUMBER		
LOSS CODE	QUANTITY	DESCRIPTION			MODEL	PROP CODE	DATE RECOVERED	
	VICT. NO.	VEH. NO.	MAKE/BRAND			OTHER NUMBER		
PROPERTY CODES:		VALUABLES	EQUIPMENT		VEHICLES	STRUCTURES		
EXCHANGE MEDIUMS		08 Jewelry/Precious Metals 09 Art Objects, Antiques 10 Other Valuables	15 Drug/Narcotic Equip. 16 Gambling Equipment 17 Computer Hardware/Soft.		26 Tools 27 Vehicle Parts/Accessories 28 School Supplies 29 Other Equipment	35 Aircraft 36 Automobiles 37 Bicycles 38 Buses 39 Trucks 40 Trailers 41 Watercraft	46 Single Occupancy 47 Other Dwellings 48 Commercial/Business 49 Indus/Mfg. 50 Public/Community 51 Storage 52 Other Structure	
DOCUMENTS		01 Money 02 Credit/Debit Card 03 Negotiable Instruments 04 Other Exchange Mediums	11 Clothing/Furs 12 Purses/Handbags/Wallets 13 Other Personal Effects		18 Office Equipment 19 Stereo TV Equip. 20 Recordings-Audio Visual 21 Sports Equipment 22 Photography Equipment	31 Drugs/Narcotics 32 Consumable Goods 33 Livestock 34 Household Pets	42 Recreational Vehicle 43 Other Motor Vehicle 44 Firearms 45 Other Weapons	
HOUSEHOLD ITEMS		05 Non-Negotiable Instruments 06 Personal Papers 07 Other Documents	14 Household Items		23 Farm Equipment 24 Heavy Construction/Industrial 25 Building Supplies-Const.	WEAPONS	53 Merchandise 54 Other Property 55 Pending Inventory	
NARRATIVE		Unknown suspect cuts fence and forces entry into building						

SUSPECT/ARREST SUPPLEMENT				ARRESTING AGENCY Beaver Creek Police Department	INCIDENT NUMBER 2022-00004685
VICTIM Synergy Building Systems,		OFFENSE 2911.13 F5 Breaking and Entering		INCIDENT DATE AND TIME 02/26/2022 04:08	
NO. 01 ADULT JUVENILE UNKNOWN		CHECK APPROPRIATE CATEGORY <input checked="" type="checkbox"/> SUSPECT <input type="checkbox"/> ARRESTEE <input type="checkbox"/> SUSPECT/ARRESTEE <input type="checkbox"/> RUNAWAY <input type="checkbox"/> MISSING <input type="checkbox"/> OTHER		CHARGES FILED? <input type="checkbox"/> Y <input type="checkbox"/> N	
NAME (Last, First, Middle) Unknown, Unknown				SSN --	
ALIAS					
ADDRESS (Street, Apt., City, State, Zip)				PHONE	
EMPLOYER NAME AND ADDRESS (Street, Apt., City, State, Zip)				PHONE	
PLACE OF BIRTH		STATE/STATE		OCCUPATION/SCHOOL	
SEX: <input checked="" type="checkbox"/> M <input type="checkbox"/> F		RACE: <input type="checkbox"/> B <input type="checkbox"/> A <input type="checkbox"/> L <input type="checkbox"/> H <input type="checkbox"/> W		ETHNICITY: <input type="checkbox"/> A <input type="checkbox"/> E <input type="checkbox"/> S <input type="checkbox"/> C <input type="checkbox"/> P	
MARITAL STATUS		SCARS, MARKS, TATTOOS		HEIGHT: <input type="checkbox"/> 5'0" <input type="checkbox"/> 5'1" <input type="checkbox"/> 5'2" <input type="checkbox"/> 5'3" <input type="checkbox"/> 5'4" <input type="checkbox"/> 5'5" <input type="checkbox"/> 5'6" <input type="checkbox"/> 5'7" <input type="checkbox"/> 5'8" <input type="checkbox"/> 5'9" <input type="checkbox"/> 5'10" <input type="checkbox"/> 5'11" <input type="checkbox"/> 5'12" <input type="checkbox"/> 5'13" <input type="checkbox"/> 5'14" <input type="checkbox"/> 5'15" <input type="checkbox"/> 5'16" <input type="checkbox"/> 5'17" <input type="checkbox"/> 5'18" <input type="checkbox"/> 5'19" <input type="checkbox"/> 5'20" <input type="checkbox"/> 5'21" <input type="checkbox"/> 5'22" <input type="checkbox"/> 5'23" <input type="checkbox"/> 5'24" <input type="checkbox"/> 5'25" <input type="checkbox"/> 5'26" <input type="checkbox"/> 5'27" <input type="checkbox"/> 5'28" <input type="checkbox"/> 5'29" <input type="checkbox"/> 5'30" 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NARRATIVE SUPPLEMENT

INCIDENT NUMBER	2022-00004685
INCIDENT DATE AND TIME	02/26/2022 09:37

AGENCY BEAVERCREEK POLICE DEPARTMENT

On the listed date and time, I was dispatched to 3875 Germany Ln Beavercreek Greene County OH 45431 in reference to a past occurred Breaking and Entering.

Upon my arrival, I met with [REDACTED] who stated the following incident took place. [REDACTED] stated he works for Synergy Building Systems and is the security at the above listed location. [REDACTED] stated the above location is an active construction site in which a chain link fence has been erected to keep unauthorized people out.

[REDACTED] stated when he came to work on today's date, he noticed an unknown suspect had cut the fence on the east side of the construction site. [REDACTED] stated the construction site has security cameras that cover all sides of the building and construction site except for the east side.

After discovering the cut fence, [REDACTED] began to review the security camera footage. While reviewing the security camera footage, it was discovered an unknown suspect walking on the south side of the building at approximately 0409hrs. The unknown suspect makes entry into the building through a door that has been boarded up with plywood at approximately 0410hrs. The unknown suspect is captured leaving the building at approximately 0415 hrs through the same door he had entered. Once the unknown suspect exited the door, he proceeded to the east and his whereabouts is unknown. This incident took place on 2/26/22.

The security camera was unable to get a description of the suspect due to the fact it was dark and there are no lights in or around the rear of the building. [REDACTED] has spoken with employees who are working and they stated at this time, nothing appears to be missing. [REDACTED] stated the location where the unknown suspect gain entry was secured with plywood and there was no damage to the plywood that was used to secure the door. [REDACTED] has contacted his supervisor in regards to video and it will be emailed to me as soon as possible at BPD.

After speaking with [REDACTED] I took several photos of the damaged fence as well as the rear of the building and the entry point. These photos have been placed onto the BPD server.

REASON CLEARED	A <input type="checkbox"/> DEATH OF OFFENDER B <input type="checkbox"/> PROSECUTION DECLINED C <input type="checkbox"/> EXTRADITION DENIED	B <input type="checkbox"/> VICTIM REFUSED TO COOP. E <input type="checkbox"/> JUVENILE/NO CUSTODY F <input type="checkbox"/> ARREST -ADULT	C <input type="checkbox"/> ARREST - JUVENILE H <input type="checkbox"/> WARRANT ISSUED I <input type="checkbox"/> INVEST. PENDING	J <input type="checkbox"/> CLOSED K <input type="checkbox"/> UNFOUNDED L <input type="checkbox"/> UNKNOWN	DATE CLEARED
REPORTING OFFICER	Timothy Lammert			BADGE NO. B73	DATE 02/26/2022
APPROVING OFFICER	Spangler, Scott 02/26/2022			BADGE NO.	DATE

BEAVERCREEK POLICE DEPARTMENT

INCIDENT SUPPLEMENT REPORT

INCIDENT# 2023-00025873

EVENT	INCIDENT DATE/TIME 9/26/2023 08:33	INCIDENT TYPE Trespassing	DISPATCH DATE/TIME 09/26/2023 08:36	ARRIVED DATE/TIME 09/26/2023 08:45
LOCATION	3875 GERMANY LN BEAVERCREEK, OH			

SUBJECT	SUBJECT ROLE Reporting Party	NAME (LAST, FIRST, MIDDLE, SUFFIX) [REDACTED]			SSN [REDACTED]
	DOB [REDACTED]	ADDRESS (STREET, CITY, STATE, ZIP) [REDACTED]	SEX [REDACTED]	HEIGHT OR RANGE 5' 6 -	WEIGHT OR RANGE 140
RACE White		Female			H Brown E Brown
DL NUMBER/STATE [REDACTED]	PRIMARY PHONE [REDACTED]			EMAIL [REDACTED]	
SUBJECT	SUBJECT ROLE Other Involved	NAME (LAST, FIRST, MIDDLE, SUFFIX) [REDACTED]			SSN [REDACTED]
	DOB [REDACTED]	ADDRESS (STREET, CITY, STATE, ZIP) [REDACTED]	SEX Male	HEIGHT OR RANGE 6' 5 -	WEIGHT OR RANGE 176
RACE Black African American					H Black E Brown
DL NUMBER/STATE [REDACTED]	PRIMARY PHONE [REDACTED]			EMAIL [REDACTED]	

INCIDENT - SUPPLEMENTAL NARRATIVE

On 9/26/23 at 0836hrs, I was dispatched to 3875 Germany Ln Beavercreek (Greene County) OH 45431 in reference to a trespassing complaint.

While en-route, BPD dispatch advised they had received a call from [REDACTED] (security) who stated there was a red unknown make and model vehicle parked in the lot and there was unknown persons sleeping in the vehicle.

Upon arrival, Sgt Krall and I located the vehicle, a red [REDACTED] with OH tag [REDACTED]. Inside the vehicle was [REDACTED] and [REDACTED] who stated they are homeless and living out of this vehicle. I ran both parties through LEADS and was advised neither [REDACTED] or [REDACTED] had any wants/warrants.

[REDACTED] requested both [REDACTED] and [REDACTED] be issued criminal trespass warnings. I notified [REDACTED] and [REDACTED] of [REDACTED] wanting them banned from the property and advised both that if they should come back, they could be cited for trespassing.

[REDACTED] both stated they understood the trespassing warning and left without further incident.

ADDITIONAL SUBJECTS, VEHICLES AND PROPERTY MAY BE PRINTED ON FOLLOWING PAGES

REPORTING OFFICER Lammert, Timothy	DATE [REDACTED]	REVIEWED BY [REDACTED]
		OF

BEAVER CREEK POLICE DEPARTMENT
INCIDENT SUPPLEMENT REPORT

INCIDENT# 2023-00025873

VEHICLES as INVOLVED

INVOLVED VEHICLE	VEHICLE ROLE			
	NWS Case Vehicle Role			
VEH YR	TYPE/MAKE/MODEL		STYLE	
2004	Passenger Car		4D	
PLATE / STATE	VIN	TOP COLOR	BOTTOM COLOR	
			Red	
ADDITIONAL DESCRIPTIVE INFORMATION				

INVOLVED VEHICLE	VEHICLE ROLE			
	VEH YR	TYPE/MAKE/MODEL		STYLE
PLATE / STATE	VIN	TOP COLOR	BOTTOM COLOR	
ADDITIONAL DESCRIPTIVE INFORMATION				

VEHICLES as PROPERTY

PROPERTY VEHICLE	VEHICLE PROPERTY CODE				VALUE
	VEH YR	TYPE/MAKE/MODEL		STYLE	
PLATE / STATE	VIN	TOP COLOR	BOTTOM COLOR		
ADDITIONAL DESCRIPTIVE INFORMATION					

PROPERTY VEHICLE	VEHICLE PROPERTY CODE				VALUE
	VEH YR	TYPE/MAKE/MODEL		STYLE	
PLATE / STATE	VIN	TOP COLOR	BOTTOM COLOR		
ADDITIONAL DESCRIPTIVE INFORMATION					

PROPERTY VEHICLE	VEHICLE PROPERTY CODE				VALUE
	VEH YR	TYPE/MAKE/MODEL		STYLE	
PLATE / STATE	VIN	TOP COLOR	BOTTOM COLOR		
ADDITIONAL DESCRIPTIVE INFORMATION					

REPORTING OFFICER Lammert, Timothy	DATE	REVIEWED BY
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BEAVER CREEK POLICE DEPARTMENT
INCIDENT SUPPLEMENT REPORT

INCIDENT# 2023-00025873

ADDITIONAL SUBJECTS

SUBJECT	SUBJECT ROLE Reporting Party	NAME (LAST, FIRST, MIDDLE SUFFIX) [REDACTED]			SSN [REDACTED]	
	DOB [REDACTED]	AGE [REDACTED]	ADDRESS (STREET, CITY, STATE, ZIP) AT LARGE			
	RACE White		SEX Female	HEIGHT or RANGE 5' 2 -	WEIGHT or RANGE 160	HAIR Brown EYE Hazel
	DL NUMBER/STATE [REDACTED]		PRIMARY PHONE [REDACTED]		EMAIL	

SUBJECT	SUBJECT ROLE	NAME (LAST, FIRST, MIDDLE SUFFIX)			SSN	
	DOB	AGE	ADDRESS (STREET, CITY, STATE, ZIP)			
	RACE		SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR EYE
	DL NUMBER/STATE		PRIMARY PHONE		EMAIL	

SUBJECT	SUBJECT ROLE	NAME (LAST, FIRST, MIDDLE SUFFIX)			SSN	
	DOB	AGE	ADDRESS (STREET, CITY, STATE, ZIP)			
	RACE		SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR EYE
	DL NUMBER/STATE		PRIMARY PHONE		EMAIL	

SUBJECT	SUBJECT ROLE	NAME (LAST, FIRST, MIDDLE SUFFIX)			SSN	
	DOB	AGE	ADDRESS (STREET, CITY, STATE, ZIP)			
	RACE		SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR EYE
	DL NUMBER/STATE		PRIMARY PHONE		EMAIL	

SUBJECT	SUBJECT ROLE	NAME (LAST, FIRST, MIDDLE SUFFIX)			SSN	
	DOB	AGE	ADDRESS (STREET, CITY, STATE, ZIP)			
	RACE		SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR EYE
	DL NUMBER/STATE		PRIMARY PHONE		EMAIL	

REPORTING OFFICER Lammert, Timothy	DATE	REVIEWED BY
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BEAVER CREEK POLICE DEPARTMENT
INCIDENT SUPPLEMENT REPORT

INCIDENT# 2023-00025873

INCIDENT - SUPPLEMENTAL NARRATIVE (continuation)

Sgt. Krall provided [REDACTED] with an update and she was provided the report#.

REPORTING OFFICER	DATE	REVIEWED BY
Lammert, Timothy		

OF

BEAVERCREEK POLICE DEPARTMENT

INCIDENT SUPPLEMENT REPORT

INCIDENT# 2024-00022267

EVENT	INCIDENT DATE/TIME 7/26/2024 12:32	INCIDENT TYPE	DISPATCH DATE/TIME 7/26/2024 12:34	ARRIVED DATE/TIME 7/26/2024 12:46
LOCATION	3875 GERMANY LN BEAVERCREEK, OH			

SUBJECT	SUBJECT ROLE Reporting Party	NAME (LAST, FIRST, MIDDLE INITIAL) [REDACTED]	SSN [REDACTED]		
DOB	AGE	ADDRESS (STREET, CITY, STATE, ZIP) [REDACTED] 3875 GERMANY LN BEAVERCREEK, OH 45431-			
RACE	White	SEX Female	HEIGHT or RANGE 5' 3 -	WEIGHT or RANGE 106	HAIR Brown
DL NUMBER/STATE	[REDACTED]	PRIMARY PHONE [REDACTED]	EMAIL [REDACTED]	EYE Blue	
SUBJECT	SUBJECT ROLE	NAME (LAST, FIRST, MIDDLE INITIAL)	SSN		
DOB	AGE	ADDRESS (STREET, CITY, STATE, ZIP)			
RACE		SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR
DL NUMBER/STATE		PRIMARY PHONE	EMAIL	EYE	

INCIDENT - SUPPLEMENTAL NARRATIVE

On 7/26/24 at 1234 hrs, I was dispatched to 3875 Germany Ln Beavercreek (Greene County) OH, 45431, in reference to a suspicious person.

Upon arrival, I made contact with [REDACTED] [REDACTED] employee. [REDACTED] advised me there was a suspicious person walking around the parking lot looking into vehicles for approximately 30 minutes. She described the person as a white male in his early 20's, brown hair and glasses, wearing a gray tank top and tan pants or shorts, and carrying a WWE belt over his shoulder.

It appears the subject did not make entry into any of the vehicles.

[REDACTED] stated he has since left but if he should return, the business wants him trespass from the property.

I searched the area and was unable to locate the subject.

ADDITIONAL SUBJECTS, VEHICLES AND PROPERTY MAY BE PRINTED ON FOLLOWING PAGES

REPORTING OFFICER Brown, Austen	DATE	REVIEWED BY
		OF

BEAVERCREEK POLICE DEPARTMENT

INCIDENT SUPPLEMENT REPORT

INCIDENT# 2024-00022267

EVENT	INCIDENT DATE/TIME 7/26/2024 12:32	INCIDENT TYPE Suspicious Person	DISPATCH DATE/TIME 7/26/2024 12:34	ARRIVED DATE/TIME 7/26/2024 12:46
LOCATION	3875 GERMANY LN BEAVERCREEK, OH			

SUBJECT	SUBJECT ROLE	NAME (LAST, FIRST, MIDDLE SUFFIX)			SSN
	DOB	AGE	ADDRESS (STREET, CITY, STATE, ZIP)		
	RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR
	DL NUMBER/STATE	PRIMARY PHONE	EMAIL		
SUBJECT	SUBJECT ROLE	NAME (LAST, FIRST, MIDDLE SUFFIX)			SSN
	DOB	AGE	ADDRESS (STREET, CITY, STATE, ZIP)		
	RACE	SEX	HEIGHT or RANGE	WEIGHT or RANGE	HAIR
	DL NUMBER/STATE	PRIMARY PHONE	EMAIL		

INCIDENT - SUPPLEMENTAL NARRATIVE

On 08/01/24 I was made aware the incident type was not filled in on the original incident memo. The incident type is a suspicious person and has been updated on this form.

ADDITIONAL SUBJECTS, VEHICLES AND PROPERTY MAY BE PRINTED ON FOLLOWING PAGES

REPORTING OFFICER Brown, Austen	DATE OF	REVIEWED BY
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BEAVERCREEK POLICE DEPARTMENT

INCIDENT SUPPLEMENT REPORT

INCIDENT# 2025-00033311

EVENT	INCIDENT DATE/TIME 8/15/2025 08:03	INCIDENT TYPE Suspicious Person	DISPATCH DATE/TIME 8/15/2025 08:06	ARRIVED DATE/TIME 8/15/2025 08:12
LOCATION	3875 GERMANY LN FAIRBORN, OH			

SUBJECT	SUBJECT ROLE Reporting Party	NAME (LAST, FIRST, MIDDLE SUFFIX) [REDACTED]	SSN [REDACTED]
	DOB [REDACTED]	AGE [REDACTED]	ADDRESS (STREET, CITY, STATE, ZIP) [REDACTED]
	RACE White	SEX Male	HEIGHT or RANGE 5' 10 -
	DL NUMBER/STATE [REDACTED]	PRIMARY PHONE (937)356-9665	WEIGHT or RANGE 220
	EMAIL [REDACTED]		
SUBJECT	SUBJECT ROLE Other Involved	NAME (LAST, FIRST, MIDDLE SUFFIX) [REDACTED]	SSN [REDACTED]
	DOB [REDACTED]	AGE [REDACTED]	ADDRESS (STREET, CITY, STATE, ZIP) [REDACTED]
	RACE White	SEX Male	HEIGHT or RANGE 5' 9 -
	DL NUMBER/STATE [REDACTED]	PRIMARY PHONE (937)929-0212	WEIGHT or RANGE 147
	EMAIL [REDACTED]		

INCIDENT - SUPPLEMENTAL NARRATIVE

On the listed date and time, I responded to the listed address for a subject sleeping on the property near the treeline. Upon my arrival, [REDACTED] was found sleeping in the aforementioned location. [REDACTED] stated he got in a fight with his girlfriend the night before at the Suburban Ext. Stay and left so things wouldn't escalate. [REDACTED] the R/p and security for the property, stated he didn't want [REDACTED] trespass this time, but merely warned for being on the property. [REDACTED] left without further issue.

ADDITIONAL SUBJECTS, VEHICLES AND PROPERTY MAY BE PRINTED ON FOLLOWING PAGES

REPORTING OFFICER Brownlee, Kristopher	DATE [REDACTED]	REVIEWED BY [REDACTED]
OF		

BEAVERCREEK PLANNING COMMISSION
REGULAR MEETING, December 3, 2025

PRESENT: Mr. Fountain, Mr. Meyer, Ms. Palumbo, Mr. Self

ABSENT: Mr. Jones

Chairman Self called the meeting to order followed by roll call.

Mr. Meyer MOVED to excuse Mr. Jones from the meeting. Motion was seconded by Mr. Fountain and PASSED by majority voice vote.

APPROVAL OF AGENDA

Mr. Fountain MOVED approval of the agenda. Motion was seconded by Ms. Palumbo and PASSED by majority voice vote.

APPROVAL OF MINUTES

Mr. Fountain MOVED approval of the November 5, 2025 minutes. Motion was seconded by Mr. Meyer and PASSED by majority voice vote.

PUBLIC HEARINGS

PC 25-9 CU, Birch Hill

Clerk Gillaugh read the public hearing on an application filed by Beavercreek Lodging, LLC, 1537 Burberry Lane, Schaumburg, Illinois 60173. The applicant requests conditional use approval to allow for an apartment hotel to be operated out of the existing building located at 3845 Germany Lane. The property is further described as Book 1, Page 9, Parcel 63 on the Greene County Property Tax Atlas.

Mr. Burkett summarized the staff report dated November 25, 2025, which stated the applicant is requesting conditional use approval to continue to occupy the existing building at 3845 Germany Lane and to continue to run the business as an apartment hotel. He discussed the location of the property, the surrounding businesses, the existing conditions on the site, the property approval history, the code enforcement action done in October 2025, the conditional use approval standards, the substantial detrimental effect this use has had, and the property limitations in terms of parking space requirements and the impervious surface requirements. Staff recommended denial of the case given the fact it currently has detrimental effects because of the higher crime rates compared to their peer hotels and the fact they cannot meet the minimum parking standards for the proposed use. Mr. Burkett explained if the case was denied, staff plans on giving anyone who has been there longer than 182 days until the end of January 2026 to find alternate accommodations.

In public input, Stewart Smith, Vice President of the self-storage facility next door, stated there was constant police activity on their site looking over at the hotel and monitoring what they are doing. He explained they have set up for drug raids on their property to go in there, there is constant loitering in the back parking lot, tenants are uncomfortable because people are using drugs in the parking lot, and they are already using it as an extended stay. Mr. Smith believed it needed to end as soon as possible.

BEAVERCREEK PLANNING COMMISSION, 12/3/25

In written input, an email was received from Deborah Smith, Managing Member/Owner of the self-storage facility, that was opposed to the conditional use case.

There being no further public input, the public hearing was closed.

Counsel Lounsbury explained the Commission normally sees legislative cases, when zoning is being change, or administrative cases, when they review administrative site plans. He stated the BZA sits as a quasi-judicial board all the time, but this was the one time Planning Commission does since this case is a conditional use. Counsel Lounsbury said they have to think of themselves as a judge in a bench trial. He explained they are making findings of fact and the ultimate decision. Counsel Lounsbury stated that is why they need to make findings on the record based on the evidence that has been submitted, the staff report, the application, and the testimony that was give. He believed staff has done a great job of putting forth the zoning code provisions that need to be met. He said all three provisions need to be met in order to get approval for the conditional use and the applicant has the burden of proof of proofing they have met all of those conditions. Counsel Lounsbury discussed traffic, and stated zoning decisions cannot be based on traffic. He did not believe traffic was an issue here, and the City's main focus is they don't believe they meet Criteria B.

Mr. Burkett stated that was correct, and the reasoning for the recommendation of denial was Criteria B. He explained the Commissioners' questions should come from the evidence presented and not questions outside of what the evidence shows or what they make their determination based on.

Mr. Fountain said the conditional use approval tonight means they do not have permission to operate the way they have been already. Mr. Burkett said from a technical standpoint if the code was being followed the business would not operate until a conditional use was approved. Mr. Fountain stated they don't exactly know when the facility started operating with patrons who have been there past the 182 day limit, but questioned if staff thought it had been for a period of time. Mr. Burkett stated it had been a while based on the number of days some of the patrons have stayed.

Mr. Fountain referenced the Zoning Code and said regardless what the Code was when it was constructed or current code, they do not meet the impervious surface requirements. He said they were already in noncompliance with whatever approval they could get because the building and parking lot are over the allowable impervious surface requirements. Mr. Burkett explained we limit 75% now, but he was not sure what was in 2004. He stated his reasoning for bringing that up was because they are grandfathered in with the 82% they have currently, which means they do not have room to expand their impervious surface under the current zoning code.

BEAVERCREEK PLANNING COMMISSION, 12/3/25

Mr. Fountain referred the fire marshal survey from October, and said it was found that a significant number of residents exceeded the 182 day limit and assumed that was validation that they were clearly not in compliance. Mr. Burkett explained the 182 day requirement was the City's limit with a hotel/motel, and what the City was saying is anything more than 51% of a calendar year is deemed their permanent residence. Mr. Fountain stated if they had not gotten approval for the apartment hotel use, he questioned if they were still held to the 182 days limit. Mr. Burkett stated from a zoning perspective, they are not allowed to have people there for longer than 182 days unless they have conditional use approval for an apartment hotel. Mr. Fountain said if that use was allowed it would then impact the parking requirements, and they would be 47 spaces short. Mr. Burkett said yes for the apartment hotel use they would be 47 spaces short.

Mr. Fountain questioned how the police reports were requested, and wanted to make sure it was based on the use and not because of the location or the properties contiguous to it. Mr. Burkett explained the report was based off calls for service for everything that has been operating as a hotel or hotel-like property.

Mr. Fountain believed they have been operating as a non-compliance use for an extended period of time. He stated the parking requirements have not and could not be met, patrons have stayed longer than the allowed 182 day limit, and they have had a disproportionate amount of dispatch calls compared to the other hotels in Beavercreek.

Mr. Meyer asked if the number of service calls included fire or if it was just police. Mr. Burkett explained it was just police only. Mr. Meyer stated normally they hear conditional use cases where the business was not in use yet, and questioned if anything changed since the business was already in use. Counsel Lounsbury said no, and the decision being made tonight was about future use. He explained prior use may result in a zoning code violation being issued, which would go to the Board of Zoning Appeals if it was appealed. Counsel Lounsbury stated they are only looking at if they could operate as an apartment hotel moving forward.

Ms. Palumbo said if they were not to approve the apartment hotel, she questioned if an extended stay hotel use would be legal under the zoning code. Mr. Burkett said no because the extended stay hotel does not have a defined number of days so they default back to anything over 182 days which is then considered a permanent residence. Ms. Palumbo asked if the parking requirements could be considered as part of the conditional use standards in the code. Mr. Burkett explained it could be considered as part of Criteria C, but since all three standards have to be met, staff primarily focused on Criteria B. Counsel Lounsbury believed the amount of parking available would be covered under Criteria B. He said if there was not enough parking on their site and the patrons were parking on other properties nearby, he questioned if it had substantial or material detrimental effect on the surrounding properties then.

Mr. Burkett stated when the chairman called for the applicant's presentation, there was no one present. He said the applicant was mailed a certified letter on

BEAVERCREEK PLANNING COMMISSION, 12/3/25

November 18, 2025, stating the public hearing was tonight, and the applicant did receive it.

Mr. Self questioned in 2001 and in 2004 if there was a separate category in the Zoning Code for extended stay motel. Mr. Burkett said no, and the current Code does not have extended stay motel listed either. Mr. Self asked if in 2004 if this was approved as a motel by BZA. Mr. Burkett said yes. Mr. Self said according to our current code and code back then, it was not compliant with the requirements for a motel. Mr. Burkett said that was correct. Mr. Self stated if they were to approve this conditionally as an apartment hotel there was no way the parking requirements could be met. He explained if this was a rezoning or a specific site plan case, that would be a valid reason to turn down the application. Mr. Burkett agreed, and said it would be a reason for staff to recommend disapproval. Mr. Self stated they have a facility that is non complying with what they were originally approved for, and there was no way they could be compliant with what they are asking as a conditional use.

Mr. Fountain asked how Stewart Smith, public speaker, was linked to the letter the Commissioners received. Mr. Smith stated the letter referenced his middle name which is what he goes by.

Mr. Fountain MOVED to deny PC 25-9 CU for not meeting the criteria of Chapter 158.171(C)(4)(b) specific to not having adequate parking spaces, exceeding the impervious surface site coverage, and the disproportional increase of police dispatches to this specific site versus the other hotels in the City. Motion was seconded by Mr. Meyer. Motion PASSED by a roll call vote of 4-0.

PUD 541 MOD 11/25, Major, McDonald's

Clerk Gillaugh read the public hearing on an application filed by Vanessa Stickel, 3595 Albrecht Avenue, Akron, OH 44312. The applicant requests a major modification to allow for the construction of a 4,192 sq. ft. restaurant on 0.9 acres. The property is located at 4380 Indian Ripple Road further described as Book 3, Page 7, Parcel 174 on the Greene County Property Tax Atlas.

Vanessa Stickel stated they are requesting approval of a McDonald's located on an outlet within the Greene Crossing on Indian Ripple Road. She gave the history of McDonald's, and reviewed the site plan and elevation drawings of the building. She discussed the signage, and the trash enclosure. Ms. Stickel stated McDonald's was in agreement with all the conditions listed in the resolution, and showed the changes they have already made to four of the conditions.

Colin Wisniewski, McDonald's, introduced himself.

Mr. Carville summarized the staff report dated November 24, 2025, which stated the applicant is requesting approval of a major modification to allow for the construction of a 4,192 square foot McDonald's on 0.895 acres. He discussed the location of the site, the existing conditions, the surrounding properties' zoning districts, the site plan, the building design, the elevation drawings, the parking

requirements, the proposed landscaping plan, and the proposed signage. Staff recommended approval of the case with conditions.

There being no public input, the public hearing was closed.

Mr. Meyer asked if staff felt the pressure treated wood as the gate on the dumpster enclosure was sufficient. Mr. Carville said they are ok with it. Mr. Meyer questioned if there should be a condition limiting the amount of window signage. Mr. Carville said the Code states they are not allowed to go over 50% coverage, and no permits are required for window signs.

Mr. Meyer questioned what the room was next to the dumpster. Ms. Stickel stated is a storage location for extra items that don't fit within the footprint of the restaurant. Mr. Meyer asked what the height was. Mr. Wisniewski believed it matched the height of the trash enclosure. He looked at the plan and said it was nine feet four inches. Mr. Meyer questioned what the use was of the second pick up window. Mr. Wisniewski explained the first window was the pay booth, the second window is where they serve the food, and if someone's order is taking longer than they can have them pull forward to be served at the third window. Mr. Meyer said there are three service doors on the street side of the building, and asked if there was a way to reduce the number of doors. Mr. Wisniewski explained the one door was used for dry stock, the second door was the CO2 closet, and the third was the freezer cooler. Mr. Meyer thought anything that could be done to help screen those would be good.

Ms. Palumbo said since McDonald's was such a popular restaurant, she questioned if there were any guidelines to make sure there was not an oversaturation of McDonald's within a certain area. Mr. Wisniewski explained they do extensive research to determine where their new restaurants should be located.

Mr. Fountain questioned if they looked at the other McDonald's site in the Beavercreek Towne Centre where the stacking was similar. Mr. Wisniewski explained the layouts are done on a case by case basis based on the specific site. He said with the third pick up window and the two designated parking spaces for waiting drive through patrons, he believed the stacking concern beyond the front corner of the building would not be an issue. Mr. Fountain was concerned about the stacking of the drive through and the handicap parking spaces. Mr. Wisniewski explained per ADA requirements, the crosswalk needs to be to the closest point of entry. Mr. Fountain questioned if they don't anticipate the stacking impacting the handicap entrance area during peak times. Mr. Wisniewski said he did not foresee it happening. Mr. Fountain explained he had seen the stacking issues at the Beavercreek Towne Centre location, and that was why he was questioning if they had looked at any other stacking configurations on the site. Mr. Wisniewski explained they are limited with the size of the lot to add a lane and maintain the bypass lane around the building. Mr. Fountain asked where the ground sign was going to be located. Mr. Wisniewski stated it would be located in the southeast corner of the lot.

Mr. Self suggested if the stacking starts to flow outside of the property, they could put an arrow towards the front of the stack line and let cars back up into the adjacent parking lot rather than out onto the driveway. Mr. Wisniewski said they could do that with some pavement markings. Mr. Self thought the building was very attractive.

Mr. Meyer said if there was a stacking issue, he questioned if staff was able to address it. Mr. Carville said yes, the Code does have requirements listed.

Mr. Self asked if they were good on the pervious surface requirement. Mr. Carville confirmed they conform to the requirement.

Mr. Fountain MOVED to approve PUD 541 MOD 11/25 with 20 conditions:

1. All conditions contained in PUD 541, SSP #1 and all subsequent modifications to PUD 541 are incorporated herein by reference to the extent they are not specifically amended or altered by any plans and conditions with this Major Modification.
2. The approved site, grading and utility plans shall be those plans dated "Received November 24, 2025" except as modified herein.
3. The approved architectural elevations and signage plans shall be those plans dated "Received November 24, 2025" except as modified herein.
4. All building mechanical equipment is to be screened from all directions with architectural features (roof forms or parapet walls) on the building. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.
5. A PUD Agreement must be signed by the owner/occupant and a bond or letter of credit for the required site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
6. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted within three months, weather permitting.
7. All trash collection containers shall be enclosed within the building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with the same materials used to construct the building, the final design of which shall be reviewed and approved by the Planning Department prior to the release of a zoning permit.
8. The dumpster enclosure's gate shall be constructed of a vinyl or composite

BEAVERCREEK PLANNING COMMISSION, 12/3/25

material, or other material, to be approved by the Planning Department. The gate shall be painted to match the adjacent material.

9. Temporary signs shall not be permitted within this development.
10. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of a zoning permit.
11. All man doors and service doors shall be painted to match the color of the building as to blend in with the proposed facade.
12. No portion of the building may be occupied for the first time or reoccupied later until and unless an application of a Certificate of Use Compliance has been submitted to the City by the property owner or by the prospective occupant. No such occupancy may occur until the application of Certificate of Use Compliance has been approved and issued by the City.
13. The façade shall not be painted or altered without the express permission of the Planning Department and/or the Planning Commission.
14. A final landscape plan and final photometric plan shall be reviewed and approved by the Planning Department prior to the execution of the required PUD Agreement and the release of a zoning permit for the building.
15. All wall signs shall be consistent with size and location of the proposed signs shown on the approved architectural elevations.
16. The ground sign shall be situated on a brick base, and have brick sides, the material of which shall match the principal building. The final design shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the sign.
17. The ground sign shall have no more than 50% electronic copy on each of the two faces.
18. All wall signs shall be individually mounted channel letters, the use of raceways or painting of letters on the wall shall be prohibited.
19. Downspouts shall be internally mounted and shall not be visible on the exterior of the structure or on any structure within this development except as specifically approved by the Planning Commission and/or Planning Department.
20. EIFS parapet walls must extend 3 feet above the roofline.

Motion was seconded by Mr. Meyer. Motion PASSED by a roll call vote of 4-0.

ADJOURNMENT

Mr. Meyer MOVED adjournment at 7:11 p.m., seconded by Mr. Fountain. Motion PASSED by majority voice vote.

Melissa Gillaugh
Deputy Clerk

DPAYT

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026 Agenda Reference No.: IX.	Reference Topic: PUD 541 Major Mod 11/25 McDonald's
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ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input checked="" type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering	<input checked="" type="checkbox"/> Planning & Development
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other

OVERVIEW:

The applicant is requesting approval of a major modification to the existing site plan to allow for the construction of a new 4,192 square foot McDonald's restaurant on .895 acres, to be located at 4380 Indian Ripple Road.

STAFF RECOMMENDATION:

Staff recommends City Council approve the attached Motion.

PROCEDURAL OPTIONS FOLLOWING ACTION:

City Council may choose to approve, disapprove, modify or table the action for further review.

Carville

CITY OF BEAVERCREEK

STAFF REPORT



January 6, 2026

CASE NUMBER: PUD 541 MOD 11/25 - Major

APPLICANT: Vanessa Stickel
3595 Albrecht Avenue
Akron, OH 44312

REQUEST

The applicant is requesting approval of a major modification to the existing site plan to allow for the construction of a new 4,192 square foot McDonald's restaurant on .895 acres, to be located at 4380 Indian Ripple Road.

Existing Conditions, Zoning, & Land Use

The site was previously occupied by a Burger King and is accessed from the private drive serving the Greene Crossings Shopping Center. The existing building will be demolished to allow for construction of a new McDonald's. The property is within PUD 541, which permits restaurant uses. The Greene Mixed-Use development is located directly to the south.

ANALYSIS

Building Design

As shown on the architectural elevations, the applicant is proposing to construct a 4,192 square foot, single-story restaurant. The proposed building will be approximately 90 feet long, 40 feet wide, and approximately 22.75 feet to the top of the parapet roof. The proposed building shows similar architectural features on all four elevations.

The building incorporates a straightforward, mix of materials that creates a clean appearance consistent with the surrounding developments. Silverado face brick forms the main wall surfaces, while cedar-tone battens

introduce a contrasting vertical element. Fiber cement siding in Gauntlet Gray and EIFS in Iron Ore outline the parapet and entry features, giving the structure defined edges. Prefinished metal components, including white aluminum canopies, gold underscoring, and RAL 7022 aluminum trellises, provide additional detailing. Weathered zinc coping, along with coordinated doors, frames, mullions, and large storefront glazing, completes the overall architectural composition.

Overall, staff is pleased with the look of the building.

Access and Transportation Improvements

Primary access to the McDonald's site will remain the same as the former Burger King, utilizing the two existing access points from the private roadway that connects to Indian Ripple Road within the PUD.

Parking

For restaurants, the Zoning Code requires one parking space per 100 square feet of customer floor area, plus one space for each employee on the largest shift. After subtracting non-customer areas (kitchen, storage, offices, and hallways), the proposed building has 1,036 square feet of customer area, requiring 11 spaces, plus 10 spaces for employees to account for the largest shift, for a total of 21 required spaces. The applicant is proposing 31 parking spaces, including three ADA-accessible spaces, as well as accommodations for drive-thru overflow and mobile ordering. Given that approximately 70% of their business is expected to occur through the drive-thru, staff has no concerns with the proposed parking count.

Screening, Landscaping and Open Space

The proposed landscape plan, shows a mixture of trees, decorative grasses, shrubs and evergreen bushes. The shade trees along the southern and western corners of the property will help soften the site from the intersection. The variety of shrubs along the western and southern parking lot will help with the headlights of cars parking in those spaces. In general, staff is pleased with the landscaping in this highly visible development. A landscape plan will be finalized and approved by the department director prior to the release of a zoning permit.

Signage

McDonald's is proposing a new signage package consistent with neighboring developments in the same shopping center. The wall and monument signs are designed to match the scale and overall design intent of surrounding development, maintaining McDonald's brand identity. McDonald's will incorporate a wordmark sign to provide comparable architectural interest.

The wall signage includes a 42-inch Arch logo on the front elevation, a 42-inch Arch logo and “McDonald’s” wordmark on the Indian Ripple frontage, and a 42-inch Arch logo on the rear elevation, totaling approximately 44.75 square feet of wall signage. The proposed monument sign includes a 5 ft x 5 ft sign face on a 1 ft base, for a total height of 6.5 ft (including a 5-inch top band), with a copy area of 35 square feet. This scale is nearly identical to the Raising Cane’s monument sign, which is 6 ft 3 in tall.

Storm Water Detention

All concerns of the Engineering Department will need to be addressed prior to the release of any permits.

RECOMMENDATION

Based on this analysis, Planning Commission and staff recommend approval of this request subject to the conditions outlined in the attached motion.

January 8, 2026

MOTION TO APPROVE
McDonald's
PUD 541 Major Modification
11/25

"I move, for the purpose of taking administrative action, approval of a Major Modification to PUD 541, McDonald's, on the basis that City Council finds the facts submitted with the application and accompanying materials satisfy the standards and criteria set forth in section 158.070 Modifications to Approved Specific Site Plans of the Beavercreek Zoning Code. I further move that this motion with all conditions be fully recorded in the minutes of this Council meeting."

1. All conditions contained in PUD 541, SSP #1 and all subsequent modifications to PUD 541 are incorporated herein by reference to the extent they are not specifically amended or altered by any plans and conditions with this Major Modification.
2. The approved site, grading and utility plans shall be those plans dated "Received November 24, 2025" except as modified herein.
3. The approved architectural elevations and signage plans shall be those plans dated "Received November 24, 2025" except as modified herein.
4. All building mechanical equipment is to be screened from all directions with architectural features (roof forms or parapet walls) on the building. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.
5. A PUD Agreement must be signed by the owner/occupant and a bond or letter of credit for the required site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
6. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted within three months, weather permitting.
7. All trash collection containers shall be enclosed within the building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with the same materials used to construct the

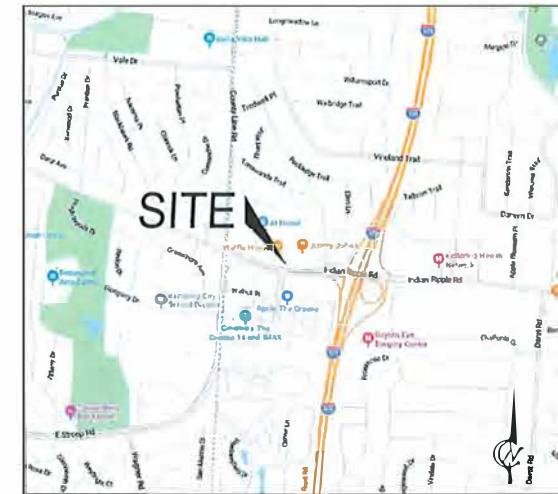
building, the final design of which shall be reviewed and approved by the Planning Department prior to the release of a zoning permit.

8. The dumpster enclosure's gate shall be constructed of a vinyl or composite material, or other material, to be approved by the Planning Department. The gate shall be painted to match the adjacent material.
9. Temporary signs shall not be permitted within this development.
10. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of a zoning permit.
11. All man doors and service doors shall be painted to match the color of the building as to blend in with the proposed facade.
12. No portion of the building may be occupied for the first time or reoccupied later until and unless an application of a Certificate of Use Compliance has been submitted to the City by the property owner or by the prospective occupant. No such occupancy may occur until the application of Certificate of Use Compliance has been approved and issued by the City.
13. The façade shall not be painted or altered without the express permission of the Planning Department and/or the Planning Commission.
14. A final landscape plan and final photometric plan shall be reviewed and approved by the Planning Department prior to the execution of the required PUD Agreement and the release of a zoning permit for the building.
15. All wall signs shall be consistent with size and location of the proposed signs shown on the approved architectural elevations.
16. The ground sign shall be situated on a brick base, and have brick sides, the material of which shall match the principal building. The final design shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the sign.
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18. All wall signs shall be individually mounted channel letters, the use of raceways or painting of letters on the wall shall be prohibited.
19. Downspouts shall be internally mounted and shall not be visible on the exterior of the structure or on any structure within this

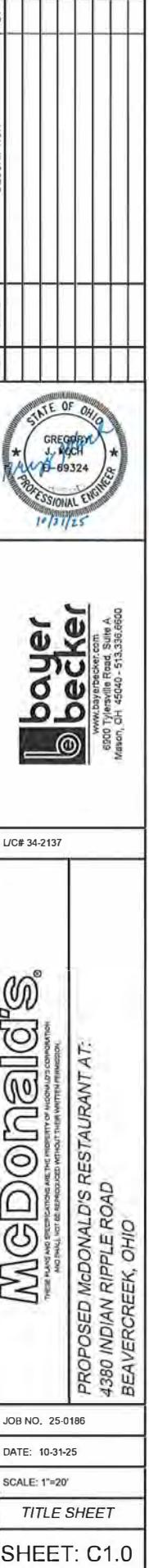
development except as specifically approved by the Planning Commission and/or Planning Department.

20. EIFS parapet walls must extend 3 feet above the roofline.

**McDONALD'S USA, LLC
L/C# 34-2137
4380 INDIAN RIPPLE ROAD
BEAVERCREEK, GREENE COUNTY, OHIO**



VICINITY MAP - NTS



UTILITY COMPANIES

SANITARY SEWER & WATER
PUBLIC - GREENE COUNTY SANITARY ENGINEERING
(937) 562-7450
PRIVATE - GREENE COUNTY PUBLIC HEALTH
ENVIRONMENTAL HEALTH
ATTN: SHADICK ADAMS
(937) 374-5682

STORM
GREENE COUNTY ENGINEER'S
OFFICE - STORMWATER
(937) 562-7500
GCStormwater@greenecountyohio.gov

ELECTRIC
AES OHIO
CUSTOMER SERVICE
(800) 433-8500

GAS
VECTREN (CENTERPOINT ENERGY)
CUSTOMER SERVICE
(800) 227-1376

TELEPHONE
AT&T

TELEPHO
AT&T

BENCHMARK #1

A 5/8" IRON PIN LOCATED IN THE NORTHWEST
CORNER OF THE PROPERTY
N=621962.397
E=1517724.932
ELEV=1009.09

BENCHMARK #2

→ A 5/8" IRON PIN LOCATED IN THE SOUTHEAST CORNER OF THE PROPERTY
N=621819.631
E=1517961.118
ELEV=997.53

SITE SUMMARY

LOT SIZE 0.895 ACRES

ZONING C-PUD B-541 (B3)
NO RESTRICTION ON HOURS OF OPERATION

A 24-HOUR DRIVE-THRU IS PERMISSIBLE	
PROPOSED USE	PROPOSED FAST-FOOD RESTAURANT
FLOOR AREA	4,287 SF
CUSTOMER AREA	1,034 SF
PARKING REQUIRED	11 SPACES (1 SP PER 100 SF CUSTOMER AREA)
PARKING PROVIDED	31 SPACES (INCLUDES 3 ACCESSIBLE SPACES)

OWNER

OWNER
McDONALD'S CORPORATION
2 EASTON OVAL, SUITE 200
COLUMBUS, OHIO 43219

CIVIL ENGINEER, SURVEYOR
& LANDSCAPE ARCHITECTURE

BAYER BECKER
6900 TYLERSVILLE ROAD, SUITE A
MASON, OHIO 45040
CONTACT: GREG KOCH
513-492-9835
gkoch@bayerbecker.com

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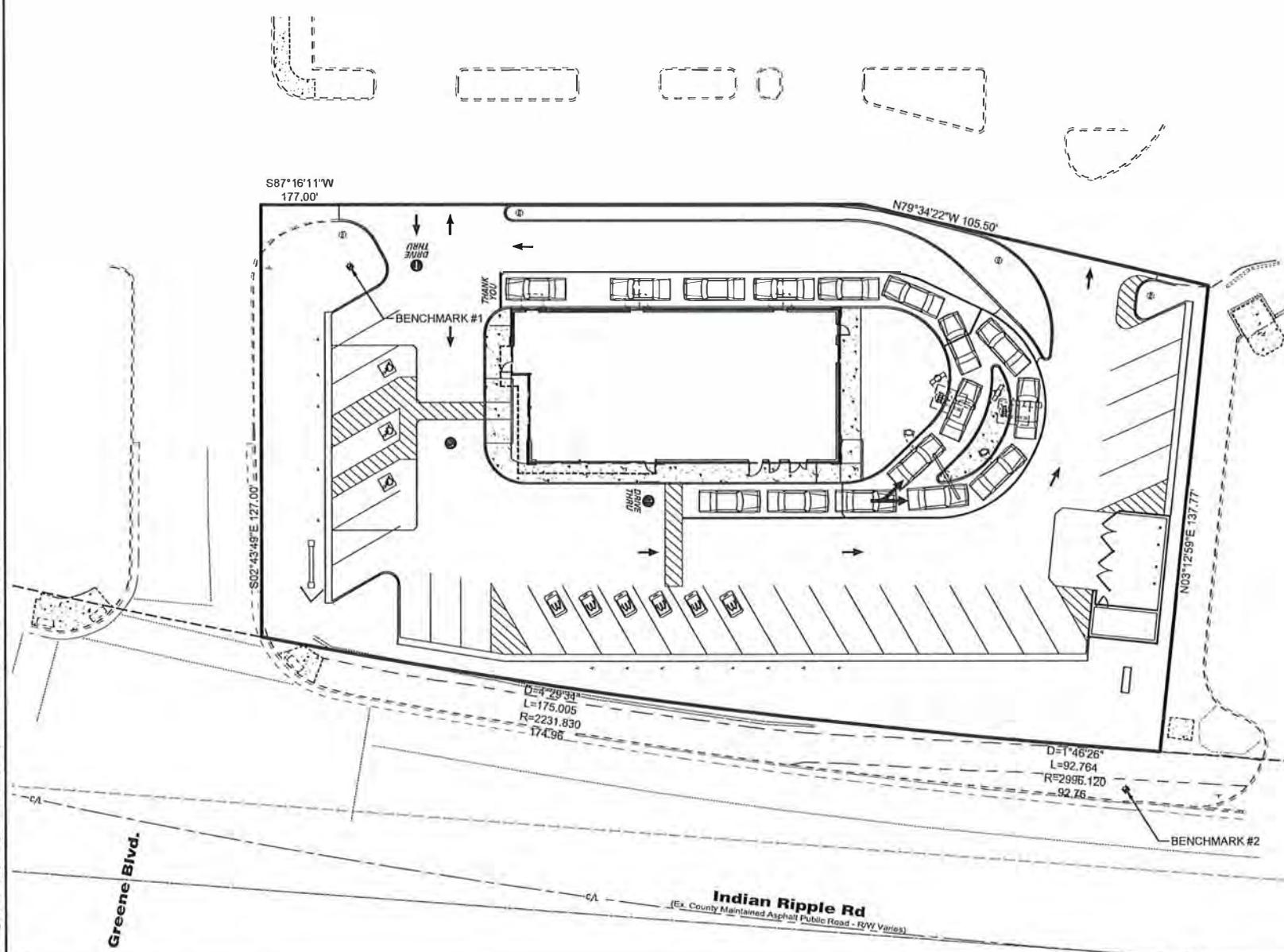
NOV 24 2025

CITY OF BEAVERCREEK
PLANNING DEPARTMENT



CAUTION!!!
ACTUAL LOCATIONS AND DEPTHS OF UTILITIES MUST BE VERIFIED BY THE
CONTRACTOR PRIOR TO CONSTRUCTION. ANY DAMAGE TO EXISTING UTILITIES
SHALL BE REPAIRED BY THE CONTRACTOR AT HIS EXPENSE.

Plot time: Oct 30, 2025 - 3:03pm - Login Name: gregkoch
drawing name: \2025\25-0186\CV\DWG\25-0186.DWG - Layout Tab: Layout1



RECEIVED

NOV 24 2025

CITY OF BEAVERCREEK PLANNING DEPARTMENT



Mason, OH 45040 - 513.3336.6600

1/25

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McDONALD'S RESTAURANT AT:

RIPPLE ROAD
EEK CH'U

EER, UHIC

WEEK, OHIO

LEGEND

EX. TREE TO BE REMOVED

EXISTING CONCRETE CURB, CONCRETE WALK, CONCRETE PAVEMENT, AND ASPHALT PAVEMENT TO BE REMOVED

 EXISTING BUILDING, TRASH ENCLOSURE, AND FOUNDATIONS

**EXISTING SANITARY LATERAL, STORM SEWER
AND STORM STRUCTURES TO BE REMOVED**

AND STORM STRUCTURES TO BE REMOVED

GENERAL NOTES

1. CONTRACTOR SHALL BE RESPONSIBLE FOR INSURING THAT ALL NECESSARY PERMITS/APPROVALS ARE IN PLACE BEFORE BEGINNING CONSTRUCTION.
2. LOCATION AND DEPTH OF EXISTING UTILITIES SHOWN HEREON ARE APPROXIMATE ONLY, ACTUAL LOCATIONS AND DEPTHS MUST BE VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES, WHETHER SHOWN ON THE PLANS OR NOT, THROUGHOUT ALL PHASES OF CONSTRUCTION.
3. SITE CONTRACTOR IS RESPONSIBLE FOR REMOVING FROM THE SITE ALL ITEMS SHOWN TO BE DEMOLISHED UNLESS OTHERWISE INDICATED OR NOTED. ALL MATERIALS SHALL BE REMOVED FROM SITE IN ACCORDANCE WITH ALL APPLICABLE FEDERAL, STATE, AND LOCAL REGULATIONS.
4. ALL EXISTING ITEMS NOT SPECIFICALLY NOTED TO BE DEMOLISHED SHALL REMAIN. CONTRACTOR IS RESPONSIBLE FOR REPLACING EXISTING ITEMS REMOVED DURING DEMOLITION THAT WERE TO REMAIN.
5. THE CONTRACTOR SHALL SAW CUT EXISTING PAVEMENT, CURBS, AND SIDEWALKS AT NEW PAVEMENT, CURB, AND SIDEWALK JUNCTURES, NO JAGGED OR IRREGULAR CUTS WILL BE ACCEPTED.
6. ALL NECESSARY EROSION CONTROL MEASURES ARE TO BE IN PLACE PRIOR TO CONSTRUCTION/DEMOLITION. EROSION CONTROL MEASURES ARE TO BE MAINTAINED DURING CONSTRUCTION/THE JOB.



811.

now what's below.
Call before you dig.

CAUTION!!!
ACTUAL LOCATIONS AND DEPTHS OF UTILITIES MUST BE VERIFIED BY THE CONTRACTOR PRIOR TO CONSTRUCTION. ANY DAMAGE TO EXISTING UTILITIES SHALL BE REPAIRED BY THE CONTRACTOR AT HIS EXPENSE.

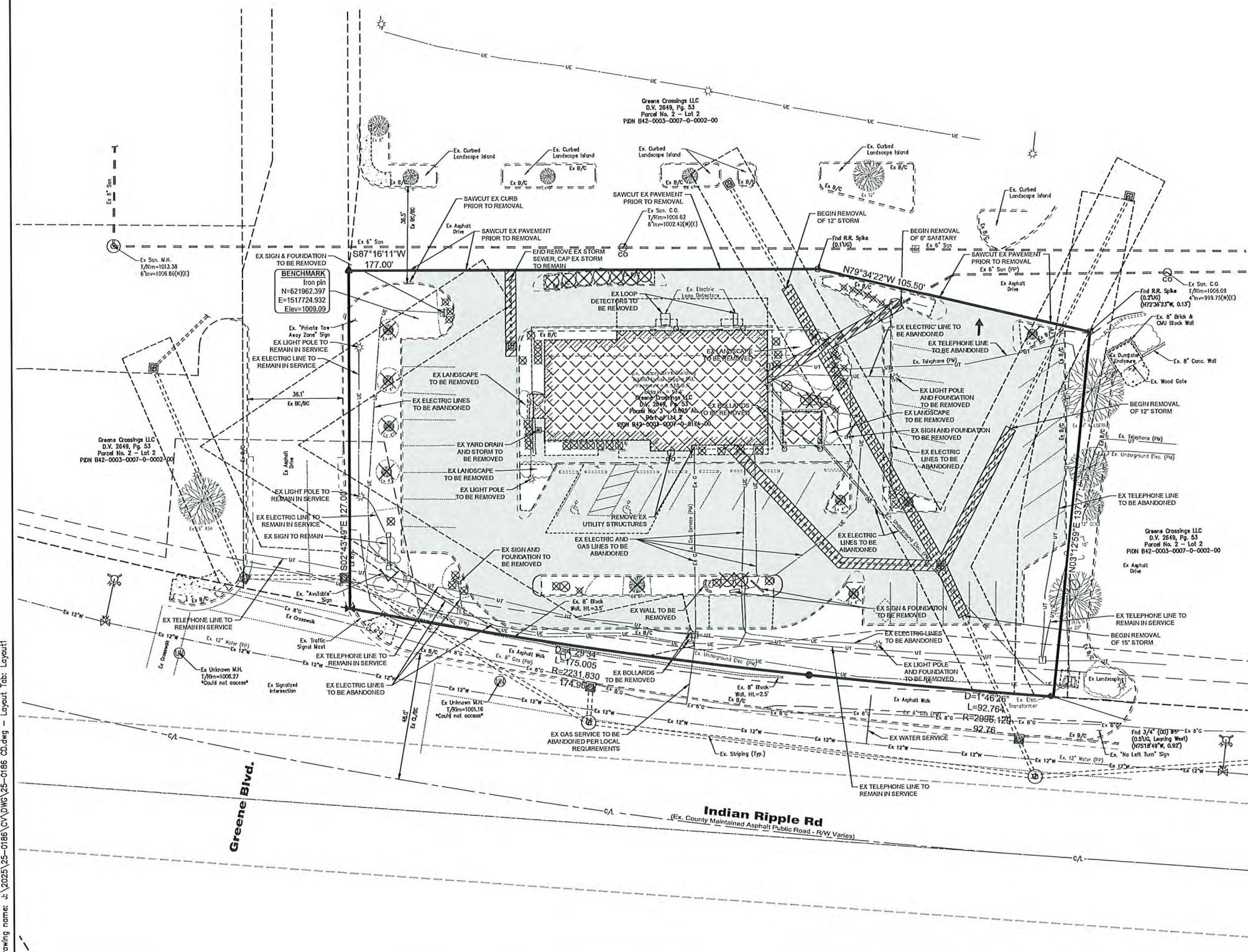
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第4章第1节

SCALE: 1"=20'

DEMOLITION PLAN

SHEET: C2.0

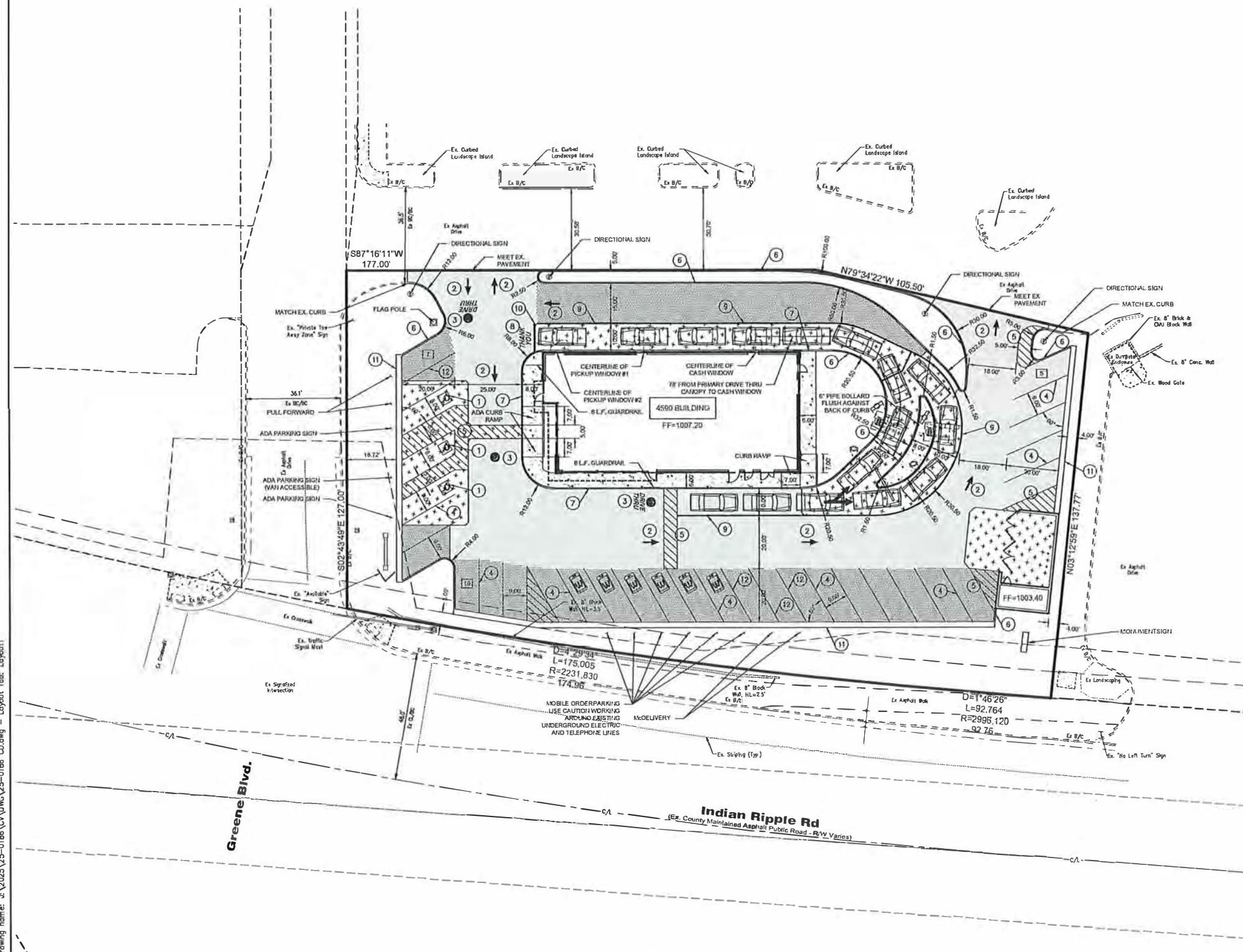


at time: Nov 21, 2025 - 2:42pm - Login Name: gregkoch
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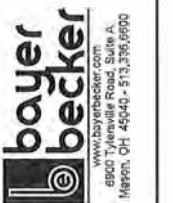
NOV 24 2025

CITY OF BEAVERCREEK
PLANNING DEPARTMENT



SITE SUMMARY

LOT SIZE	0.895 ACRES
ZONING	C-PUD B-541 (B3) NO RESTRICTION ON HOURS OF OPERATION AND A 24-HOUR DRIVE-THRU IS PERMISSIBLE
PROPOSED USE	PROPOSED FAST FOOD RESTAURANT
GROSS BUILDING AREA	4,298 SF
NET FLOOR AREA	4,001 SF
CUSTOMER AREA	1,036 SF
PARKING REQUIRED	21 SPACES (1 SP PER 100 SF CUSTOMER FLOOR AREA, PLUS 1 SP FOR EACH EMPLOYEE ON THE LARGEST SHIFT)
PROVIDED	31 SPACES (INCLUDES 3 ACCESSIBLE SPACES)



KEY NOTES

- ① PROPOSED ADA PARKING (PAINTED HANDICAP SYMBOL)
- ② DIRECTIONAL ARROW (WHITE)
- ③ DRIVE THRU PAVEMENT MARKINGS (YELLOW)
- ④ PROPOSED PARKING, 4" WIDE SOLID WHITE STRIPE, TYP.
- ⑤ 4" PAINTED WHITE STRIPE
- ⑥ PROPOSED 6" CONCRETE CURB
- ⑦ PROPOSED 6" CURB & SIDEWALK
- ⑧ "THANK YOU" (YELLOW)
- ⑨ 6" PAINTED YELLOW STRIPE
- ⑩ 8" PAINTED YELLOW STRIPE
- ⑪ 2" CONCRETE CURB
- ⑫ PROPOSED PARKING, 4" WIDE SOLID YELLOW STRIPE

LEGEND

	LIGHT DUTY ASPHALT PAVEMENT SEE SHEET C3.2 FOR PAVEMENT SECTION
	HEAVY DUTY ASPHALT PAVEMENT SEE SHEET C3.2 FOR PAVEMENT SECTION
	CONCRETE PAVEMENT SEE SHEET C3.2 FOR PAVEMENT SECTION
	CONCRETE SIDEWALK SEE SHEET C3.2 FOR SECTION
	REMOVE AND REPLACE WALK, CURB, AND PAVEMENT

PARKING COUNT

SITE LAYOUT NOTES

1. ALL DIMENSIONS ARE TO THE EDGE OF PAVEMENT UNLESS OTHERWISE NOTED.
2. WHERE CONNECTING TO EXISTING ASPHALT PAVEMENT, THE CONTRACTOR SHALL SAW CUT THE EXISTING EDGE OF PAVEMENT TO PROVIDE A CLEAN EDGE. ITEM 407 TACK COAT SHALL BE APPLIED TO THE ENTIRE CUT FACE OF THE EXISTING PAVEMENT PRIOR TO THE PLACEMENT OF THE PROPOSED PAVEMENT.
3. ALL CURB RAMPS TO HAVE DETECTABLE WARNING SURFACE THAT MEETS ODOT'S APPROVED PRODUCTS LIST (APL). SURFACE APPLIED, STAMPED AND BRICK PRODUCTS ARE NOT PERMITTED.
4. SEE SHEET C3.2 FOR PAVEMENT SECTIONS.



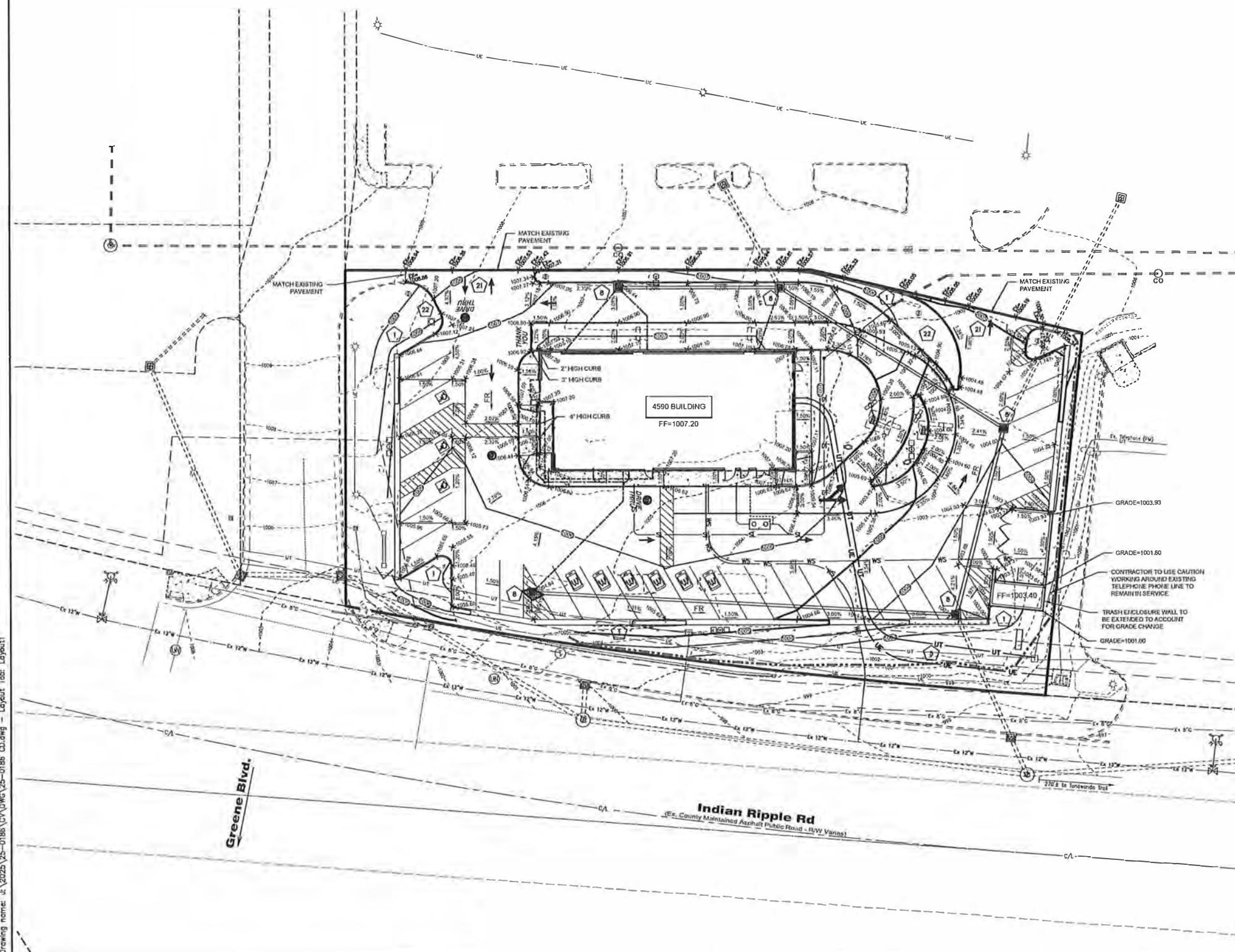
CAUTION!!!
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JOB NO.	25-0186
DATE:	10-31-25
SCALE:	1" = 20'
SITE PLAN	
SHEET: C3.0	

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CITY OF BEAVERCREEK PLANNING DEPARTMENT



GRADING NOTES

1. LOCATION OF EXISTING UTILITIES TO BE DETERMINED IN THE FIELD PRIOR TO BEGINNING WORK.
2. THE GRADING PLAN IS TO BE USED FOR GRADING PURPOSES ONLY.
3. OWNER WILL RECEIVE A COPY OF THE COMPLETE GEOTECHNICAL REPORT AND ALL ADDENDUMS PRIOR TO BIDDING THE PROJECT.
4. CONTRACTORS SHALL SET UP AN ORGANIC PRE-CONSTRUCTION MEETING WITH THE OWNER, EARTHWORK CONTRACTOR, AND SITE CIVIL ENGINEER PRIOR TO BEGINNING CONSTRUCTION.
5. CONTRACTORS SHALL NOT LEAVE THE SITE UNLESS APPROVED BY OWNER. IN CONTRACT, PAY QUANTITIES ARE FURNISHED FOR DOCUMENTED WORK UNDERGOING APPROVAL BY DEVELOPER PRIOR TO COMPLETION OF THE EXTRA WORK. UPON REQUEST, CONTRACTORS MAY HAVE ACCESS TO THE SITE TO FIELD CHECK TOPOGRAPHY.
6. ALL PROPOSED CONTOURS & SPOT ELEVATIONS ARE INTENDED TO BE FINAL GRADES AND REFLECT PAVEMENT, THICK FLOORING, TOP SOIL PLACEMENT, IF USELESS, OR OTHER SPECIFIED. ALL SPOT ELEVATIONS IN PAVEMENT ARE REFERRED TO THE EDGE OF PAVEMENT AND DIFFERENT MATERIAL.
7. ALL EARTHMOVING AND CONSTRUCTION ACTIVITY SHALL BE PERFORMED PER THE RECOMMENDATIONS OF THE PROJECT GEOTECHNICAL ENGINEER AS DESCRIBED IN THE GEOTECHNICAL EXPLORATION REPORT AND ALL ADDENDUMS.

EROSION CONTROL NOTES

1. EROSION CONTROL MEASURES SHALL BE IMPLEMENTED PRIOR TO CONSTRUCTION AND MAINTAINED DURING CONSTRUCTION.
2. BEST MANAGEMENT PRACTICES (BMPs) SHOWN ON PLANS SHALL BE REVISED OR IMPLEMENTED AS REQUIRED. CONTRACTOR SHALL MONITOR CONSTRUCTION BMPs AND PROVIDE ADDITIONAL BMPs AS REQUIRED TO PREVENT SEDIMENT RUNOFF FROM CONSTRUCTION SITE ONTO PAVERED AND Hardscape AREAS.
3. AT A MINIMUM, ALL EROSION AND SEDIMENT CONTROLS ON THE SITE SHALL BE INSPECTED AT LEAST ONE EVERY SEVEN CALENDAR DAYS AND WITHIN 24 HOURS AFTER A STORM EVENT GREATER THAN ONE-HALF INCH OF RAIN PER 24 HOUR PERIOD. QUALIFIED INSPECTION PERSONNEL (THOSE WITH KNOWLEDGE OF THE CONSTRUCTION ACTIVITIES AND THE EROSION AND SEDIMENT CONTROL PRACTICES AND CONTROLS) SHALL CONDUCT THESE INSPECTIONS TO ENSURE THAT THE CONTROL PRACTICES ARE FUNCTIONAL AND TO EVALUATE WHETHER THE EROSION CONTROL IS ADEQUATE AND PROPERLY IMPLEMENTED OR WHETHER ADDITIONAL CONTROL MEASURES ARE REQUIRED. DISTURBED AREAS AND AREAS WHERE THE REMOVAL OF MATERIALS THAT ARE EXPONENTIAL TO THE CONSTRUCTION ACTIVITIES ARE IDENTIFIED, THE CONTRACTOR SHALL CONDUCT AN ADDITIONAL INSPECTION FOR EVIDENCE OF THE EROSION AND SEDIMENT POLLUTANT SOURCE. IF EROSION AND SEDIMENT CONTROL MEASURES SHALL BE OBSERVED TO ENSURE THAT THEY ARE OPERATING CORRECTLY, DISCHARGE LOCATIONS SHALL BE INSPECTED TO ASCERTAIN WHETHER EROSION AND SEDIMENT CONTROL MEASURES ARE EFFECTIVE IN PREVENTING SIGNIFICANT IMPACTS TO THE RECEIVING WATERS. LOCATIONS WHERE VEHICLES ENTER OR EXIT THE SITE SHALL BE INSPECTED FOR EVIDENCE OF POLLUTION FROM CONSTRUCTION ACTIVITIES.
4. SITE STABILIZATION SHALL BEGIN WITHIN 7 DAYS OF ACQUISITION OF THE SITE WHERE CONSTRUCTION ACTIVITIES HAVE PERMANENTLY OR TEMPORARILY CEASED FOR 14 DAYS.
5. ALL MUD OR DEBRIS DROPPED ON EXISTING STREETS AND PARKING LOT SURFACES SHALL BE CLEANED AT THE END OF EACH DAY. CLEANUP SHALL BE CONDUCTED BY THE OWNER. PERIODIC MUD SWEEPINGS SHALL BE REQUIRED.
6. IN MAINTAINING TEMPORARY EROSION AND SEDIMENT CONTROL MEASURES AND NOTING CHANGES IN THE PLANS, THE CONTRACTOR SHOULD PLACE TEMPORARY OR PERMANENT SEEDING, MULCHING OR MUCH MULCHING OR ANY OTHER GENERALLY ACCEPTED METHODS TO PREVENT EROSION, MUD, AND DEBRIS FROM BEING DEPOSITED ON OTHER PROPERTY, ON NEARLY CONSTRUCTED OR EXISTING ROADS, OR INTO EXISTING SEWERS OR NEW SEWERS WITHIN THE DEVELOPMENT. THE CONTRACTOR SHOULD CONDUCT A DAILY INSPECTION OF THE PROGRESS AND MAKE ANY NECESSARY TEMPORARY ADJUSTMENTS TO MAINTAIN THIS CONTROL.
7. AFTER THE VEGETATION HAS BECOME WELL ESTABLISHED, TEMPORARY EROSION AND SEDIMENT CONTROLS CAN BE REMOVED.
8. DISCHARGE FROM DEWATERING OF FLOODED FOOTER OR FOUNDATION AND UTILITY TRENCHES CONSTRUCTION SITES MUST BE DIRECTED TO A SEDIMENT CONTROL PRACTICE PRIOR TO DISCHARGE FROM THE SITE. A DEWATERING PLAN SHALL BE DEVELOPED PRIOR TO THE COMMENCEMENT OF ANY PUMPING ACTIVITIES.
9. NON-SEDIMENT POLLUTANT SOURCES, WHICH MAY BE PRESENT ON A CONSTRUCTION SITE, INCLUDE PAVING OPERATIONS, CONCRETE WASHOUT, STRUCTURE PAINTING, STRUCTURE CLEANING, DEMOLITION DEBRIS, AND OTHER CONSTRUCTION ACTIVITIES. CONSTRUCTION ACTIVITIES INVOLVING HAZARDOUS WASTES, CONTAMINATED SOILS, ASARTE AND SEPFIC WASTES, VEHICLE FUELING AND MAINTENANCE ACTIVITIES, AND LANDSCAPING OPERATIONS, NOISEDIMENT POLLUTANT SOURCES SHALL NOT BE DISCHARGED TO STORM SEWERS OR NATURAL STREAM/DRAGAGE WAYS. SEE PLAN FOR CONCRETE WASHOUT LOCATION.

SWPPP NOTES

2. THE CONSTRUCTION ACTIVITY WILL CONSIST OF DEMOLITION OF EXISTING SITE (BUILDING, PAVEMENT, CURB, WALK AND UNDERGROUND UTILITIES; MASS EARTHWORK; UTILITY INSTALLATION, CURB AND PAVEMENT CONSTRUCTION, AND THE PROPOSED BUILDING CONSTRUCTION.

2. ACREAGE:

LOT	0.90 ACRES
DISTURBED AREA	0.84 ACRES

3. PRIOR LAND USE: FAST FOOD RESTAURANT

4. IMPERVIOUS CALCULATIONS:

PRE-DEVELOPED	0.64 ACRES
POST-DEVELOPED	0.69 ACRES
IMPERVIOUS PERCENTAGE	
PRE-DEVELOPED	71.1 %
POST-DEVELOPED	76.7 %

5. EXISTING SOIL DATA:

SYMBOL	SOIL NAME	HSG
M1B	MANHATTAN BURLAND COMPLEX, UNDULATING	C

6. POSSIBLE PREVIOUS CONTAMINATIONS: FERTILIZER AND CHEMICALS TO CONTROL WEEDS.

7. THE DEVELOPMENT DRAINS SOUTHEAST INTO STORM SEWER FOR THE OVERALL DEVELOPMENT.

8. RUNOFF COEFFICIENT:

PRECONSTRUCTION	0.90
POSTCONSTRUCTION	0.90

LEGEND

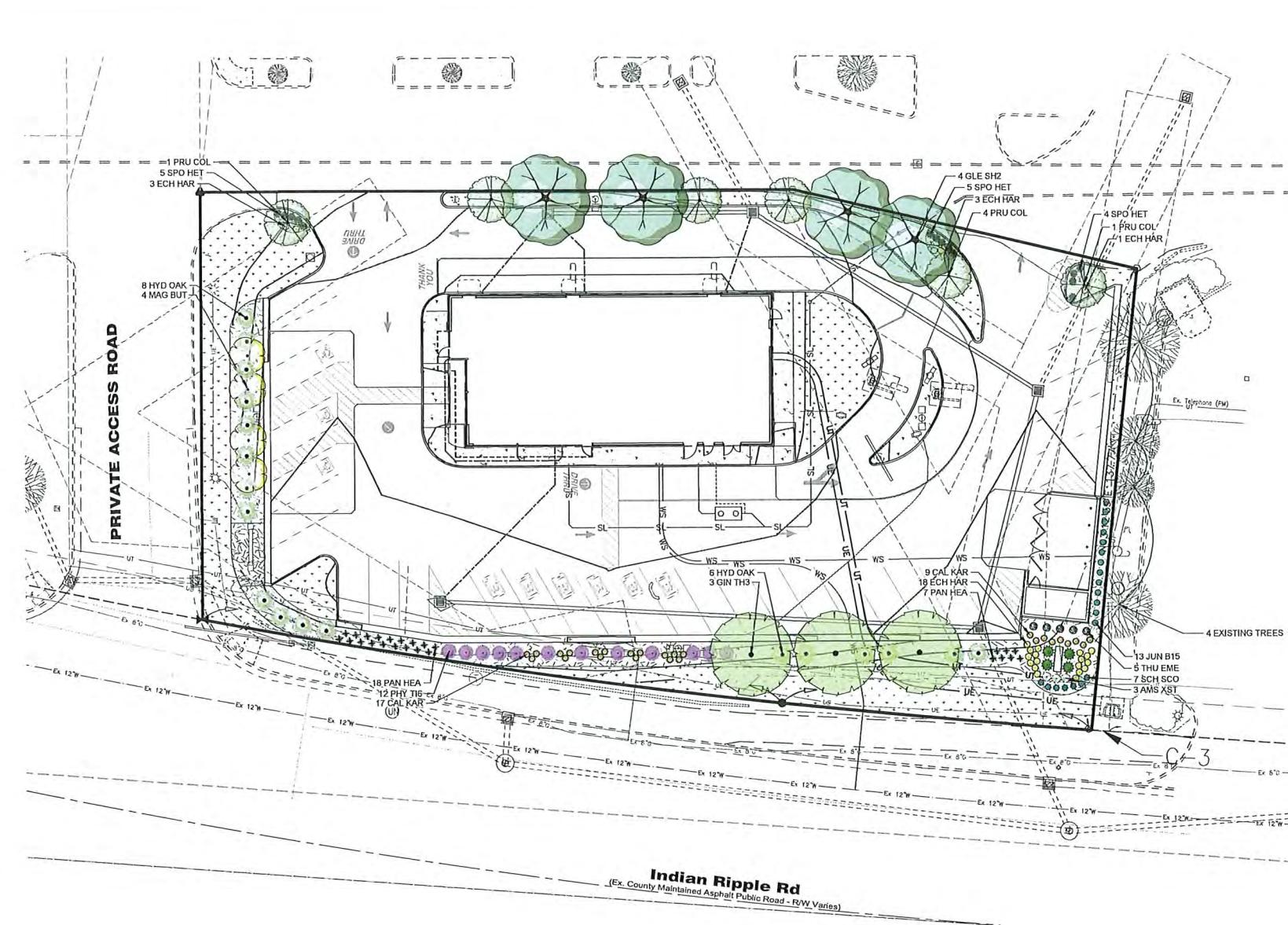
SEEDING & MULCHING
SILT FENCE —— = ——
DANDY BAG (OR APPROVED EQUAL)
CONSTRUCTION ENTRANCE
CONCRETE WASHOUT
FINISHED FLOOR ELEVATION
EXISTING SPOT GRADE
X PROPOSED TOP OF PAVEMENT
— PROPOSED CONTOURS
- EXISTING CONTOURS
EMERGENCY FLOOD ROUTE



811

Know what's below.
Call before you dig.

CAUTION!!!
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PLANT SCHEDULE

CODE	QTY	BOTANICAL NAME	COMMON NAME	TYPE	MIN. SIZE				
DECIDUOUS TREES									
GIN TH3	3	Ginkgo biloba 'Presidential Gold'	Presidential Gold Ginkgo	B & B	2.5' Cal				
GLE SH2	4	Gleditsia triacanthos f. 'inermis' 'Shademaster' TM	Shademaster Honeylocust	B & B	2.5' Cal				
	7	SUBTOTAL:							
EVERGREEN TREES									
THU EME	5	Thuja occidentalis 'Emerald'	Emerald Arborvitae	B & B	6' Ht.				
	5	SUBTOTAL:							
ORNAMENTAL TREES									
MAG BUT	4	Magnolia x 'Butterflies'	Butterflies Magnolia	B & B	1.5" Cal				
PRU COL	6	Prunus sargentii 'Columnaris'	Columnar Sargent Cherry	B & B	1.5" Cal				
	10	SUBTOTAL:							
CODE									
QTY									
BOTANICAL NAME									
COMMON NAME									
TYPE									
MIN. SIZE									
ANNUALS/PERENNIALS									
AMS XST	3	Amsinca x 'Starstruck'	Starstruck Bluestar	2 gal	Clump				
ECH HAR	25	Echinacea x 'Harvest Moon'	Harvest Moon Coneflower	2 gal	Clump				
	28	SUBTOTAL:							
DECIDUOUS SHRUBS									
HYD OAK	18	Hydrangea quercifolia 'Snow Queen'	Snow Queen Oakleaf Hydrangea	5 gal	24" Ht.				
PHY TIG	12	Physcarpus opulifolius 'SMPOTW'	Tiny Wine Ninebark	5 gal	24" Ht.				
	30	SUBTOTAL:							
EVERGREEN SHRUBS									
JUN TTG	4	Juniperus communis 'SMNJCB'	Tortuga® Common Juniper	B & B	24" Ht.				
JUN B15	13	Juniperus scopulorum 'Blue Arrow'	Blue Arrow Juniper	B & B	6' Ht.				
	17	SUBTOTAL:							
ORNAMENTAL GRASSES									
CAL KAR	26	Calamagrostis x acutiflora 'Karl Foerster'	Festuca Reed Grass	2 gal	Clump				
PAN HEA	25	Parthenocissus virginiana 'Heavy Metal'	Heavy Metal Blue Switch Grass	2 gal	Clump				
SCH SCO	7	Schizachyrium scoparium 'The Blues'	The Blues Little Bluestem	2 gal	Clump				
SPO HET	14	Sporobolus heterolepis	Prairie Dropseed	2 gal	Clump				
	72	SUBTOTAL:							

REFERENCE NOTES SCHEDULE

SYMBOL	DESCRIPTION	QTY	DETAIL
PLANTING ACCESSORIES			
	DOUBLE GROUND HARDWOOD MULCH (3" DEEP) - NON WOVEN GEOTEXTILE FABRIC, 8 OZ. WEIGHT - PLANTING SOILS DEPTH: 12"	3,326 sf	
	SEEDED LAWN - PLANTING SOILS DEPTH: 6"	5,995 sf	

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CITY OF BEAVERCREEK
PLANNING DEPARTMENT

158.135 LANDSCAPING, SCREENING, AND BUFFERING (C) LANDSCAPE REGULATIONS AND REQUIREMENTS.

1) REQUIREMENTS.
THE FOLLOWING ARE MINIMUM REQUIREMENTS FOR LANDSCAPE PLANS. CREATIVE LANDSCAPE PLANNING AND DESIGN IS ENCOURAGED PROVIDED IT MEETS THE MINIMAL REQUIREMENTS SET FORTH IN THIS SECTION. REFER TO § 158.135 (C)(2) BELOW FOR DESIGN GUIDELINES AND RECOMMENDATIONS ON HOW TO APPROACH THE PLANNING OF THE LANDSCAPE. PUD PROPOSALS ALLOW FLEXIBILITY PROVIDED THEY MEET THESE MINIMUM REQUIREMENTS.

c) COMMERCIAL AND INDUSTRIAL DEVELOPMENTS (B-2, B-3, B-4, O-1, ORP-1, RP-1, RO-1, I-1, I-2). IN ALL COMMERCIAL AND INDUSTRIAL DISTRICTS, AND IN THE CASE OF ALL NON-RESIDENTIAL USES IN RESIDENTIAL DISTRICTS:

- ONE (1) SHADE TREE IS REQUIRED PER 2,000 SQUARE FEET OR FRACTION OF OPEN GREEN SPACE PROVIDED.

- A LANDSCAPED STRIP SHALL BE PROVIDED ON THE PROPERTY ADJACENT TO ALL PUBLIC RIGHTS-OF-WAY.

- NEW COMMERCIAL AND INDUSTRIAL PLANNED UNIT DEVELOPMENTS (PUD) OR MAJOR MODIFICATIONS TO A PUD HAVE A MINIMUM REQUIREMENT OF MAINTAINING 25% GREEN SPACE OF THE TOTAL OPEN SPACE PROVIDED ON THE SITE.

- INTERIOR STREETS IN NONRESIDENTIAL DISTRICTS SHALL BE LANDSCAPED SUCH THAT THERE IS AT LEAST ONE (1) CANOPY DECIDUOUS OR EVERGREEN TREE PER 35 LINEAR FEET OF FRONTRAGE ALONG THE ROAD RIGHT-OF-WAY. THREE (3) ORNAMENTAL TREES PER 40 FEET OF FRONTRAGE ALONG THE ROAD RIGHT-OF-WAY.

WEST INTERNAL ROAD = 12"

127' / 35' = 4 CANOPY TREES REQUIRED
127' / 40' = 3.2 X 3 = 10 ORNAMENTAL TREES REQUIRED

EXISTING EASEMENTS & OVERHEAD UTILITIES PREVENT SHADE TREES FROM BEING PLANTED. TREES TO BE PLANTED ELSEWHERE ON SITE

2) PARKING LOT REQUIREMENTS.

a) LANDSCAPE STRIP REQUIREMENTS. WHEN A PARKING LOT IN ANY ZONE IS LOCATED ADJACENT TO A PUBLIC RIGHT-OF-WAY, A LANDSCAPED STRIP AS DESCRIBED IN FIGURE 3 SHALL BE PROVIDED ON THE PROPERTY BETWEEN THE PARKING LOT AND THE RIGHT-OF-WAY. THE LANDSCAPE STRIP MAY NOT INCLUDE ANY PAVED AREA EXCEPT PEDESTRIAN SIDEWALKS OR SIDEWALKS THAT ARE PART OF THE PROPERTY LINE WHICH CROSS THE LANDSCAPE STRIP. IN THE PUD OR IN OTHER CIRCUMSTANCES WHERE GREATER PARKING LOT SETBACKS ARE REQUIRED THAN THOSE LISTED IN FIGURE 3, THE GREATER REQUIREMENT SHALL APPLY. ANY OF THE FOLLOWING LANDSCAPE STRIP TREATMENTS MAY BE USED SINGLY OR IN COMBINATION:

CONCEPT GRAPHICS SCHEDULE

VEHICULAR USE AREA
Takeoff: 21,468 sf

INTERIOR VUA PLANTING
Takeoff: 1,968 sf

ROAD PERIMETER LANDSCAPING
INTERIOR ROADS REQUIRE:
- 1 CANOPY TREE / 35 LF
- 3 ORNAMENTAL TREES / 40 LF
- MASSING OF ORNAMENTAL GRASSES & ANNUALS AT ENTRANCES

Takeoff: 395 lf

PARKING PERIMETER
10' WIDE REQUIRED ON SITES 20,000 SF OR LARGER
- 1 TREE & 3 SHRUBS REQUIRED / 35 LF

Takeoff: 514 lf



REV	DATE	DESCRIPTION	REV'D BY
1	11-21-24	REVISED PER STAFF COMMENTS	CDS

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PROPOSED MCDONALD'S RESTAURANT AT:
4380 INDIAN RIPPLE ROAD
BEAVERCREEK, OHIO

JOB NO.: 25-0186
DATE: 10-21-25
SCALE: 1" = 40'
LANDSCAPE PLAN
SHEET: 1

REV	DATE	DESCRIPTION	REV'D BY
1	11-21-24	REVISED PER STAFF COMMENTS	CDS

UC# 34-2137

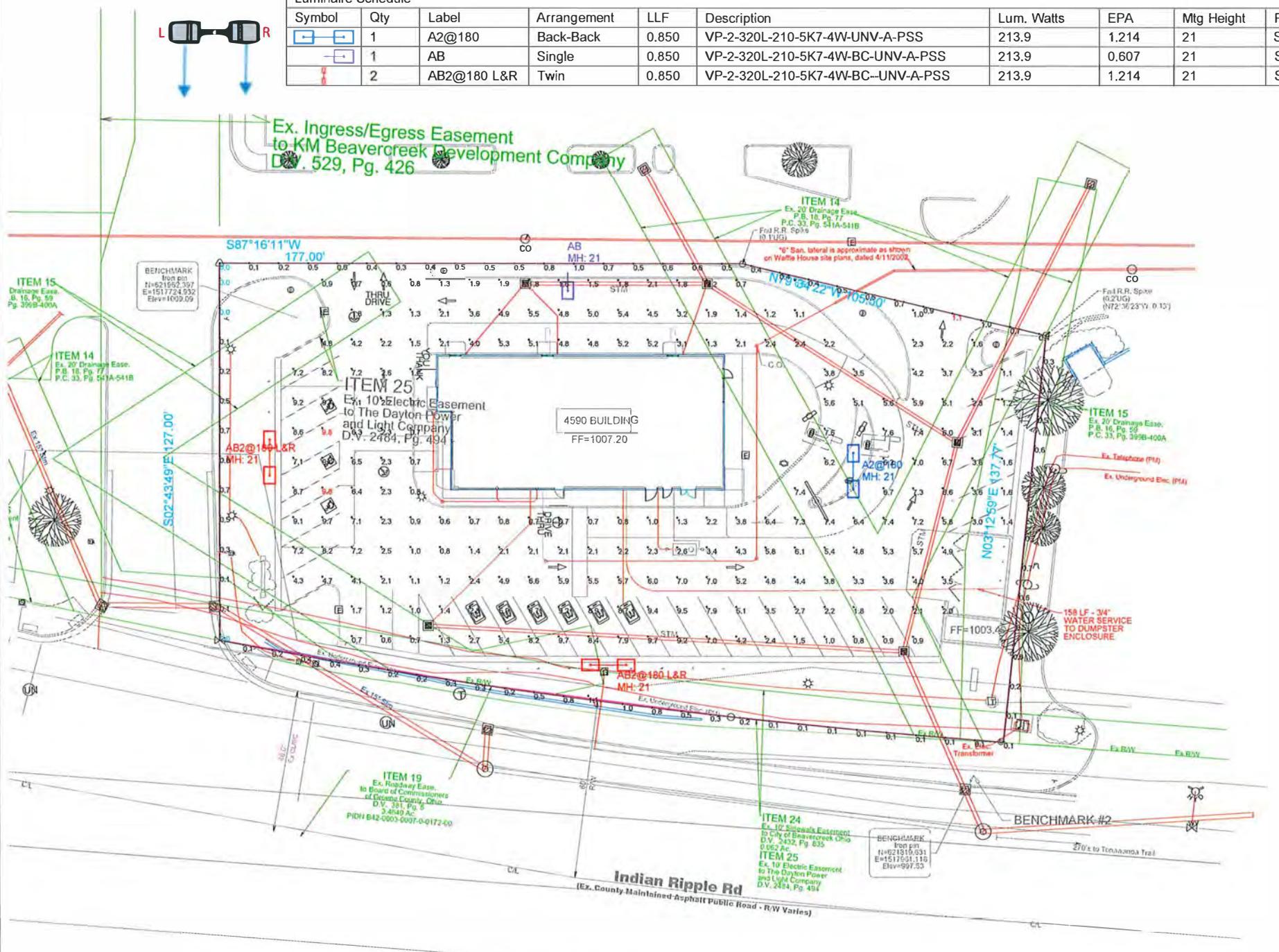
bayer becker
www.bayerbecker.com
6900 Tylerville Road, Suite A
Mason, OH 45040 - 513.356.8600

NOTE

1. THE FOOTCANDLE LEVELS AS SHOWN ARE BASED ON THE FOLLOWING CRITERIA. ANY SUBSTITUTIONS IN SPECIFIED FIXTURES OR CHANGES TO LAYOUT WILL AFFECT LIGHTING LEVELS SHOWN AND WILL NOT BE THE RESPONSIBILITY OF SECURITY LIGHTING.
2. DISTANCE BETWEEN READINGS 10'

Calculation Summary							
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min
PAVED SURFACE READINGS	Illuminance	Fc	4.00	9.8	0.5	8.00	19.60
PROPERTY LINE READINGS	Illuminance	Fc	0.42	1.1	0.0	N.A.	N.A.

Luminaire Schedule									
Symbol	Qty	Label	Arrangement	LLF	Description	Lum. Watts	EPA	Mtg Height	Pole Type
	1	A2@180	Back-Back	0.850	VP-2-320L-210-5K7-4W-UNV-A-PSS	213.9	1.214	21	SES-18-40-1-TA-GL-xx (4")
	1	AB	Single	0.850	VP-2-320L-210-5K7-4W-BC-UNV-A-PSS	213.9	0.607	21	SES-18-40-1-TA-GL-xx (4")
	2	AB2@180 L&R	Twin	0.850	VP-2-320L-210-5K7-4W-BC--UNV-A-PSS	213.9	1.214	21	SES-18-40-1-TA-GL-xx (4")



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ole Fixtures Are Full Cutoff
ilt=0
alculation Grids Are At Grade
ole Light Mounting Height=21ft
18' Pole + 3' Base)

PROJECT WIND LOAD CRITERIA BASED ON:
ASCE 7-10 WIND SPEEDS (3-SEC PEAK GUST MPH)
50 YEAR MEAN RECURRENCE INTERVAL
LIFED 100 YR. WIND LOAD, 90 MPH

Regional Drawing
34-2137

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ITY OF BEAVERCREEK ANNING DEPARTMENT

HALFS CURRENT ILLUMINATION SPECIFICATIONS OF A 2-1

THIS LIGHTING DESIGN IS BASED ON INFORMATION SUPPLIED BY OTHERS TO US.
IF LIGHTING SYSTEMS, SITE DETAILS PROVIDED NECESSARY ARE REPRESENTED
AS A VISUALIZATION, FIELD DEVIATIONS MAY SIGNIFICANTLY AFFECT
THE LIGHTING SYSTEMS. THE CONTRACTOR IS RESPONSIBLE FOR THE INFORMATION
PROVIDED, AND THE CONTRACTOR IS RESPONSIBLE FOR THE FIELD
LOCATION, ORIENTATION, MOUNTING HEIGHT, ETC.) SHOULD BE
CONFIRMED WITH THE CONTRACTOR, AND THE SPECIFIER RESPONSIBLE FOR THE
LIGHTING DESIGN.

LUMNARE DATA IS TESTED TO INDUSTRY STANDARDS UNDER LABORATORY
CONDITIONS. OPERATING VOLTAGE AND NORMAL MANUFACTURING TOLERANCES OF
P. BULBAST, AND LUMNARE MAY AFFECT FIELD RESULTS.

CONFORMANCE TO FACILITY CODE AND OTHER LOCAL REQUIREMENTS IS THE
RESPONSIBILITY OF THE OWNER AND THE OWNER'S REPRESENTATIVE.

THE CONTRACTOR MAY NOT USE EXTERNS, OR OTHER EQUIPMENT, WHICH
IF ATTACHED TO THE SYSTEM, MAY AFFECT THE CONTRACTOR'S DESIGN.
IF ATTACHED TO THE SYSTEM, PLEASE CONFIRM WITH THE CONTRACTOR.
IF ATTACHED TO THE SYSTEM, PLEASE CONFIRM WITH THE CONTRACTOR.
IF ATTACHED TO THE SYSTEM, PLEASE CONFIRM WITH THE CONTRACTOR.
IF ATTACHED TO THE SYSTEM, PLEASE CONFIRM WITH THE CONTRACTOR.



Front Elevation



Rear Elevation



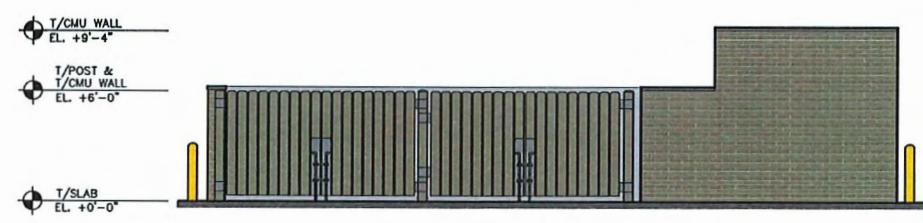
Non-Drive-Thru Side Elevation

Materials Legend	
Face Brick (Main Wall) "Silverado" by Hebron Brick	
Fiber Cement Siding Panels (Parapet Accent) 'Channel Profile' by Truexterior, Paint SW 7019 Gauntlet Gray	
EIFS (Feature Wall & Drive-Thru Accents) "Iron Ore" SW7069 by Sherwin Williams	
Aluminum Battens Wood grain	
Aluminum Canopy (Prefinished Metal) "White"	
Aluminum Underscore (Prefinished) "Gold"	
Aluminum Trellis (Prefinished) "RAL 7022"	
Metal Coping "Weathered Zinc"	
Metal Coping "RAL 7022"	
Service Doors & Frames "Fairview Taupe" HC-85 by Benjamin Moore	
Glazing (Windows & Storefront) 1" Insulated Clear Glass	
Storefront Mullions "Deep Bronze"	

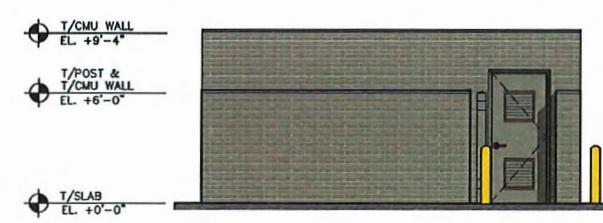
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CITY OF BEAVERCREEK
PLANNING DEPARTMENT



Trash Enclosure Front



Trash Enclosure Side View

RESOLUTION

BEAVERCREEK TOWNSHIP TRUSTEES

CASE #541

Applicant: Indian Ripple Center,
and Ohio Partnership
2349 Stanley Avenue
Dayton, Ohio 45404

WHEREAS:

On January 30, 1976, application was filed with the Beavercreek Township Zoning Commission by Indian Ripple Center, an Ohio Partnership, requesting the reclassification of 28.920 acres from Business B-3 to Planned Unit Development-Business, on the premises described in the application, and

WHEREAS: on June 14, 1976, the Beavercreek Township Trustees held Public Hearing on the aforementioned request, at which time any and all persons were given an opportunity to be heard thereon, and

WHEREAS: the Beavercreek Township Zoning Trustees after careful study and consideration of all evidence submitted at the Hearing, find and recommend that:

- 1 - The Planned Unit Development is consistent in all respects with the purpose and intent of the Zoning Resolution.
- 2 - Existing surrounding zoning is R-1A residential to the North and East; B-2 Community Business to the East; B-3 General Business and B-4 Highway Business to the South; and B-1 Local Business and R-4 Multiple Family Residential to the West (in Kettering, Ohio).
- 3 - Existing surrounding land uses are single-family residential to the north and east; two small businesses and Crestview Nursing Home to the east; vacant land to the south; and apartments to the west.
- 4 - The remaining three corners of the intersection between Indian Ripple Road and County Line Road have been developed containing four automobile service stations, a restaurant, and small convenience stores.
- 5 - An elevated water storage facility is located south of the property.

NOW, THEREFORE, BE IT RESOLVED, THAT the Beavercreek Township Trustees hereby recommends approval for this Planned Unit Development.

Adopted: June 23, 1976

Voting for Adoption: Harley J. Coon, Frederick L. Berta

Abstain: Robert C. Workman

PLANNING COMMISSION RESOLUTION

RESOLUTION

CITY OF BEAVERCREEK
PLANNING COMMISSION
December 3, 2025

Re: PUD 541 MOD 11/25
McDonald's
Major MOD

WHEREAS, Vanessa Stickel, 3595 Albrecht Avenue, Akron, OH, 44312, has filed an application requesting approval of a PUD Major Modification for the construction of a 4,192 sq. ft. McDonald's Restaurant that will be located on .9 acres located at 4380 Indian Ripple Road, further described as Book 3, Page 7, Parcel 174 on the Greene County Property Tax Atlas.

WHEREAS, public hearing was held on December 3, 2025 by the Beavercreek Planning Commission at which time all people who wished to testify gave their comments at the public hearing; and

WHEREAS, the Beavercreek Planning Commission finds that the facts submitted with this PUD Major Modification application and presented at the public hearing and any modifications, amendments, or supplementary conditions satisfy the standards and criteria for PUD Major Modification approval as per §158.070 of the Zoning Code; and

WHEREAS, the Beavercreek Planning Commission is taking administrative action in approving this Conditional Use with the following conditions

NOW, THEREFORE BE IT RESOLVED THAT:

SECTION I

The Beavercreek Planning Commission recommends to Beavercreek City Council approval of this Major Modification to the Specific Site Plan for the Greene Crossing Shopping Center with the following conditions and requirements.

SECTION II

1. All conditions contained in PUD 541, SSP #1 and all subsequent modifications to PUD 541 are incorporated herein by reference to the extent they are not specifically amended or altered by any plans and conditions with this Major Modification.
2. The approved site, grading and utility plans shall be those plans dated "Received November 24, 2025" except as modified herein.
3. The approved architectural elevations and signage plans shall be those plans dated "Received November 24, 2025" except as modified herein.
4. All building mechanical equipment is to be screened from all directions with architectural features (roof forms or parapet walls) on the building. Pad mounted equipment must be screened with landscaping and/or masonry walls and shall not be visible to the public.

PLANNING COMMISSION RESOLUTION

5. A PUD Agreement must be signed by the owner/occupant and a bond or letter of credit for the required site landscaping must be submitted prior to issuance of a zoning permit for any portion of the project for the purpose, but not for the sole purpose, of insuring the installation of landscaping. Said bond or letter of credit must meet the requirements of the City's landscaping and screening regulations.
6. Perpetual maintenance of landscaping shall be provided and any dead or diseased materials shall be removed and replaced with similar types, species and sizes as originally planted within three months, weather permitting.
7. All trash collection containers shall be enclosed within the building or screened from view and enclosed within a permanent dumpster enclosure. All dumpster enclosures shall be constructed with the same materials used to construct the building, the final design of which shall be reviewed and approved by the Planning Department prior to the release of a zoning permit.
8. The dumpster enclosure's gate shall be constructed of a vinyl or composite material, or other material, to be approved by the Planning Department. The gate shall be painted to match the adjacent material.
9. Temporary signs shall not be permitted within this development.
10. All concerns of the City Engineer, Fire Department, Sanitary Engineer and the Planning Department shall be addressed and approved prior to the release of a zoning permit.
11. All man doors and service doors shall be painted to match the color of the building as to blend in with the proposed facade.
12. No portion of the building may be occupied for the first time or reoccupied later until and unless an application of a Certificate of Use Compliance has been submitted to the City by the property owner or by the prospective occupant. No such occupancy may occur until the application of Certificate of Use Compliance has been approved and issued by the City.
13. The façade shall not be painted or altered without the express permission of the Planning Department and/or the Planning Commission.
14. A final landscape plan and final photometric plan shall be reviewed and approved by the Planning Department prior to the execution of the required PUD Agreement and the release of a zoning permit for the building.
15. All wall signs shall be consistent with size and location of the proposed signs shown on the approved architectural elevations.
16. The ground sign shall be situated on a brick base, and have brick sides, the material of which shall match the principal building. The final design shall be reviewed and approved by the Planning Department prior to the release of a zoning permit for the sign.
17. The ground sign shall have no more than 50% electronic copy on each of the two faces.

PLANNING COMMISSION RESOLUTION

18. All wall signs shall be individually mounted channel letters, the use of raceways or painting of letters on the wall shall be prohibited.
19. Downspouts shall be internally mounted and shall not be visible on the exterior of the structure or on any structure within this development except as specifically approved by the Planning Commission and/or Planning Department.
20. EIFS parapet walls must extend 3 feet above the roofline.

SECTION III

These plans and all papers relating to the approved plan shall be submitted with this Resolution to City Council.

The Clerk is directed to transmit this case to City Council for further determination as required by law.

ADOPTED: December 3, 2025

VOTING FOR ADOPTION: James Fountain
Johnathon Meyer
Laura Palumbo
Michael Self

AGAINST: None

ABSENT: Jacob Jones

Chairman

Attest

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date January 12, 2026	Reference Topic: Resolution 26-01 Authorizing the City Manager or Finance Director to Request Advance Draws from the Greene County Auditor for 2025 Real Estate and Personal Property Taxes Collected in 2026.
Agenda Reference No.: X. A	

ACTION REQUESTED		
<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input checked="" type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other

BACKGROUND AND STAFF SUMMARY:

Although the County Auditor collects property taxes throughout the year, revenues are only distributed in March and August of each year. By passing this Resolution, the City is able to receive money in advance of these semi-annual distributions. During 2025, the City received five advance draws from the Greene County Auditor totaling \$17.6 million dollars which was used for cash flow purposes and to earn additional interest income.

STAFF RECOMMENDATION: Staff recommends adoption of Resolution 25-01.

CITY OF BEAVERCREEK
RESOLUTION 25-01

SPONSORED BY COUNCIL MEMBER _____ ON THE 12th
DAY OF JANUARY, 2026.

A RESOLUTION AUTHORIZING THE CITY MANAGER OR HIS
DESIGNEE THE FINANCE DIRECTOR TO REQUEST ADVANCE DRAWS
UPON THE AMOUNTS COLLECTED BY THE GREENE COUNTY
AUDITOR FOR THE CITY OF BEAVERCREEK 2025 REAL ESTATE AND
PERSONAL PROPERTY TAXES COLLECTED DURING CALENDAR
YEAR 2026.

WHEREAS, The County Auditor has begun collecting for the City of
Beavercreek 2026 Real Estate and Personal Property Taxes; and

WHEREAS, the City wishes to make use of those funds prior to the normal
disbursement dates by the County Auditor.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY
OF BEAVERCREEK, OHIO:

SECTION 1.

That the City Manager or his designee, the Finance Director be and are
hereby authorized to request advance draws from the County Auditor from
those funds collected for Real Estate and Personal Property Taxes for the City
of Beavercreek during the calendar year 2026.

SECTION 2.

That said Resolution shall take effect immediately upon its adoption.

ADOPTED by the Beavercreek City Council on this 12th day of January,
2026.

ATTEST:

Don Adams, Mayor

Debbie Haines, Clerk of Council

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026	Reference Topic: Resolution 26-02 2026 GCCOA Senior Services Funding
Agenda Reference No.: X. B	

ACTION REQUESTED		
<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Other _____

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input checked="" type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Zoning
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

BACKGROUND AND STAFF SUMMARY:

Each year, the Board of the Greene County Council on Aging (GCCOA) allocates funding to the City of Beavercreek and Beavercreek Township to support senior services operations. These communities account for approximately 33% of the senior population in Greene County. As part of the Senior Center Operation Agreement, Beavercreek Township directs its portion of the GCCOA Senior Services Levy to the City of Beavercreek. For the year 2026, GCCOA has designated \$311,303 in funding to the Beavercreek Senior Center. This grant includes \$169,596 for senior center services and \$141,707 for transportation. The total allocation represents approximately 48% of the revenue needed to sustain the Beavercreek Senior Center's annual operations, covering costs for operations, maintenance, personnel, and programming.

STAFF RECOMMENDATION:

Staff is recommending adoption of this resolution.

CITY OF BEAVERCREEK

**RESOLUTION 26-02
ON THE 12TH DAY OF JANUARY 2026.**

**A RESOLUTION AUTHORIZING SUBMISSION OF AN APPLICATION
FOR THE GREENE COUNTY COUNCIL ON AGING
TRANSPORTATION & SENIOR CENTER SERVICES GRANT FUNDING.**

WHEREAS, the Board of the Greene County Council on Aging provides grant funding for the support of transportation services and senior center services.

WHEREAS, the City of Beavercreek can utilize grant funding to support the Beavercreek Senior Center.

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

SECTION I. That the City of Beavercreek approves applying for the Transportation & Senior Center Services Grant in the amount of \$311,303.

SECTION II. That the City of Beavercreek is hereby authorized and directed to execute and file an application with the Greene County Council on Aging and to provide all necessary information and documentation required.

SECTION III. It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action in meeting open to the public in compliance with all legal requirements, including, but not limited to Section 121.22 of the Ohio Revised Code.

SECTION IV. This resolution shall become effective immediately upon its passage. This RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek, Ohio this 13th day of January 2025.

Don Adams, Mayor

ATTEST:

Debbie Haines, Clerk of Council

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026	Reference Topic: GRE-MR679-0.00 PID# 123911 Stedman Lane Sidewalks Project <u>Resolution No. 26-04</u>
Agenda Reference No.: X.C	

ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Development
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

OVERVIEW:

In early 2025, the Engineering Division received notice that the City's application for Federal funding to construct a new eight (8) foot wide sidewalk, curb, gutter, and storm sewer along the west side of Stedman Lane between Dayton-Xenia Road and the Summerfield subdivision had been approved by MVRPC. Since this approval, the Engineering Division has programmed this project with ODOT and it is now appropriate to enter into an agreement with ODOT for the administration of this improvement.

The proposed funding and timeline for this project are listed below:

<u>Component</u>	<u>Time Frame</u>	<u>Estimated Cost</u>	<u>Local Share</u>	<u>Federal Share</u>
Engineering	2026	\$ 50,000	\$ 50,000	\$ 0
Right-of-Way	2028	\$ 67,500	\$ 67,500	\$ 0
Construction	2030	\$ 357,500	\$ 107,250 (30%)	\$ 250,250 (70%)

RECOMMENDATION:

It is therefore recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 26-04**

SPONSORED BY COUNCIL MEMBER _____
ON THE _____ DAY OF _____, 2026.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
LPA FEDERAL PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF
TRANSPORTATION FOR THE PROJECT KNOWN AS GRE-MR679-0.00
(STEDMAN LANE SIDEWALKS) PROJECT, PID NO. 123911.**

WHEREAS, the City of Beavercreek and the Ohio Department of Transportation desire to enter into an agreement which will delineate responsibility for the funding and the administration of the Stedman Lane Sidewalks Project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to enter, with the Ohio Department of Transportation, an agreement for the funding and the administration of the Stedman Lane Sidewalks Project as approved by Beavercreek City Council on January 12, 2026 and attached as Exhibit 'A'.

SECTION II.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to execute any amendments to the agreement between the City of Beavercreek and the Ohio Department of Transportation that may become necessary during the administration of this improvement.

SECTION III.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION IV.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek,
Ohio this _____ day of _____, 2026.

Mayor

ATTEST:

Clerk of Council

EXHIBIT A

Agreement Number: 42497

PID Number: 123911

County-Route-Section: GRE MR 679 0.00

SAM Unique Entity ID: KNAYXXNH3PL9

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **City of Beaver Creek, 1368 Research Park Drive, Beavercreek, OH 45432** (LPA).

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (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** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The **Construction of a sidewalk on the west side of Stedman Lane from Dayton-Xenia Road to Summerfield Park** (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 AND COMPLIANCE

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

A. FEDERAL

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures

- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs
- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – “Selection of Architects and Engineers”
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

3.1 The total cost for the PROJECT associated with Federal funds is estimated to be **\$357,500.00**.

ODOT shall provide to the LPA **70** percent of the eligible costs, utilizing Spending Authority Code (SAC) **4CD7/MV07** up to a maximum of **\$250,250.00** in Federal funds in the **Construction Contract/Construction Inspection** phase(s)/subphase(s). The funding does not include Toll Revenue Credit or Credit Bridge. This maximum amount reflects the funding limit for the PROJECT set by the applicable SAC Program Manager.

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

3.3 The LPA is administering the Federally funded Construction Contract/Construction Inspection phase(s)/subphase(s) of the project and is therefore considered a subrecipient of Federal funds and is responsible for reporting the applicable Federal expenditures (including any Toll Revenue Credit or Credit Bridge) on their Schedule of Expenditures of Federal Award.

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT or ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.
- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 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 (NEPA) and related regulations, including but not limited to 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 ODOT's Office of Contracts. 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W 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 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W 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.
- 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 procedures.
- 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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W 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 Certification of Right of Way Control Letter, 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 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.
- 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. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 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.
- 6.8 Unless by prior written agreement, 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 ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 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.

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 Manager 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. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 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 letting the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.

7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.

7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 <https://ohioauditor.gov/findings.html>. 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 that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.10 Per ORC 9.75(B), 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, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. 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, 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 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 must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment;

change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.

- 8.3 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.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. 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. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. 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 daily as the items of work are completed and accepted.
- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, a direct pay form 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 30 days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.
- 8.7 Payment or reimbursement to the LPA shall be submitted to:

Pete Landrum, City Manager
Beaver Creek
1368 Research Park Drive
Beaver Creek, OH 45432

- 8.8 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.
- 8.9 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 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.

- 8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, 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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.
- 8.11 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, 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.
- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.
- 8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.
- 8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.
- 8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

9. CERTIFICATION AND RECAPTURE OF FUNDS

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

the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from 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 (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.
- 10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.
- 10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:
 - (a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally assisted programs of the U.S. DOT, 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

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

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

(c) **Solicitations for 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 (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.

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

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

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

(f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) 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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA

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

- 12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

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

14. NOTICE

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

If to the LPA:

If to ODOT:

Pete Landrum, City Manager	Doug Gruver, P.E., D8 DD
City of Beaver Creek	ODOT D8
1368 Research Park Drive	505 S SR 741
Beaver Creek, OH 45432	Lebanon, OH 45036
manager@beavercreekohio.gov	Doug.Gruver@DOT.Ohio.Gov

15. GENERAL PROVISIONS

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

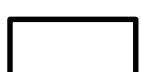
To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: [LPA official must initial the option selected.]



- 1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**
 - (A) The LPA **does not** currently maintain an ODOT approved Federally compliant time-tracking system¹, **and**
 - (B) The LPA **does not** intend to have a Federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
 - (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.



- 2. Direct labor plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.²**
 - (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
 - (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



- 3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.³**
 - (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
 - (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

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

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 15 % of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 15% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 15% de minimis indirect cost rate on any project, the LPA’s time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of Local Programs . A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

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



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

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C) Instead of using the Federal 15% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

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

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

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

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

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

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

15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) 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 Agreement.

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

15.5 *Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio and Federal Ethics and Conflict of Interest laws as provided by ORC Sections 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

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

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

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

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

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

LPA: City of Beavercreek	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title: Pete E. Landrum City Manager	Pamela Boratyn Director
Date:	Date:



**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026 Agenda Reference No.: X.D	Reference Topic: GRE-CR25-1.19 PID# 121218 Grange Hall Rd Pedestrian Improvements Project <u>Resolution No. 26-05</u>
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ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Development
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

OVERVIEW:

In early 2024, the Engineering Division received notice that the City's application for Federal funding to construct a new sidewalk along Grange Hall Road and multiuse path in Spring House Park had been approved by MVRPC. Since this approval, the Engineering Division has programmed this project with ODOT and it is now appropriate to enter into an agreement with ODOT for the administration of this improvement.

This project will consist of the construction of an eight (8) foot wide sidewalk along the west side of Grange Hall Road between Kensington Glen and Shakertown Road, a twelve (12) foot multiuse path along the east side of Spring House Park from Shakertown Road to Rockfield Drive, and an eight (8) foot wide sidewalk along the west side of Grange Hall Road between Rockfield Drive and SR 835. This project will also provide for a new pedestrian bridge over the Little Beaver Creek along the west side of Grange Hall Road, as well as limited curb and drainage improvements along Grange Hall Road near intersections.

The proposed funding and timeline for this project are listed below:

Component	Time Frame	Estimated Cost	Local Share	Federal Share
Engineering	2024	\$ 195,000	\$ 195,000	\$ 0
Right-of-Way	2025	\$ 25,000	\$ 25,000	\$ 0
Construction	2026-2027	\$ 1,628,000	\$ 325,600 (20%)	\$ 1,302,400 (80%)

RECOMMENDATION:

It is therefore recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 26-05**

SPONSORED BY COUNCIL MEMBER _____
ON THE _____ DAY OF _____, 2026.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
LPA FEDERAL PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF
TRANSPORTATION FOR THE PROJECT KNOWN AS GRE-CR25-1.19
(GRANGE HALL PEDESTRIAN IMPROVEMENTS PROJECT), PID NO.
121218.**

WHEREAS, the City of Beavercreek and the Ohio Department of Transportation desire to enter into an agreement which will delineate responsibility for the funding and the administration of the Grange Hall Pedestrian Improvements Project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to enter, with the Ohio Department of Transportation, an agreement for the funding and the administration of the Grange Hall Pedestrian Improvements Project as approved by Beavercreek City Council on January 12, 2026 and attached as Exhibit 'A'.

SECTION II.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to execute any amendments to the agreement between the City of Beavercreek and the Ohio Department of Transportation that may become necessary during the administration of this improvement.

SECTION III.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION IV.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek,
Ohio this _____ day of _____, 2026.

Mayor

ATTEST:

Clerk of Council

EXHIBIT A

Agreement Number: 41390

PID Number: 121218

County-Route-Section: GRE CR 25 1.19 - Grange Hall PED

SAM Unique Entity ID: KNAYXXNH3PL9

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **City of Beavercreek, 1368 Research Park Drive, Beavercreek, Ohio 45432 (LPA)**.

1. **PURPOSE**

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (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** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 **On Grange Hall Road from Kensington Glen to SR 835-Construction of an 8 foot wide sidewalk along the west side of Grange Hall Road between Kensington Glen and Shakertown Road, a 12 foot multiuse path along the east side of Spring House Park from Shakertown Road to Rockfield Drive, and an 8 foot wide sidewalk along the west side of Grange Hall Road between Rockfield Drive and SR 835. This project will also provide for a new pedestrian bridge over the Little Beaver Creek along the west side of Grange Hall Road, as well as limited curb and drainage improvements at the intersections along Grange Hall Road (PROJECT) and 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 AND COMPLIANCE**

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

A. **FEDERAL**

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed

- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures
- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – “Selection of Architects and Engineers”
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

3.1 The total cost for the PROJECT associated with Federal funds is estimated to be **\$1,583,600.00**.

ODOT shall provide to the LPA **80 percent** of the eligible costs, utilizing Spending Authority Code (SAC) **4CD7/MV07** (Assistance Listing Number: **20.205 Highway Planning and Construction**), up to a maximum of **\$1,302,400.00** in Federal funds in the **Construction Contract/Construction Inspection phase(s)/subphase(s)**. The funding **does not** include **Toll Revenue Credit or Credit Bridge**. This maximum amount reflects the funding limit for the PROJECT set by the applicable SAC Program Manager.

3.2 If after execution of this Agreement, FHWA notifies ODOT that the ALN for the PROJECT is different than the ALN listed in 3.1 above, ODOT shall change the ALN to comply with the requirements of 2 CFR 200.332 and provide notice in writing or by email of the new ALN pursuant to 14.1 of this Agreement.

- 3.3 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100% Locally funded work, and all cost overruns and contractor claims in excess of the maximum(s) indicated in 3.1 above.
- 3.4 The LPA is administering the Federally funded **Construction Contract/Construction Inspection phase(s)/subphase(s)** of the project and is therefore considered a **subrecipient of Federal funds and is responsible for reporting the applicable Federal expenditures (including any Toll Revenue Credit or Credit Bridge) on their Schedule of Expenditures of Federal Award.**

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT or ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.
- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 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 (NEPA) and related regulations, including but not limited to 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 [ODOT's Office of Contracts](#). 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W 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 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W 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.
- 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 procedures.
- 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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W 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 Certification of Right of Way Control Letter, 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 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.
- 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. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 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.
- 6.8 Unless by prior written agreement, 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 ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 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.

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 Manager 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. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 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 letting the contracts.

7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.

7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.

7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 <https://ohioauditor.gov/findings.html>. 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 that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.10 Per ORC 9.75(B), 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, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. 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 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 must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and Disadvantaged Business Enterprise (DBE)/Small Business Enterprise (SBE), if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of the LPA Materials Management Process in the Local-let Manual.
- 8.3 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.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. 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. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. 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 daily as the items of work are completed and accepted.
- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio (STATE). ODOT shall pay the Contractor or reimburse the LPA within 30 days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.

8.7 Payment or reimbursement to the LPA shall be submitted to:

Jeff Moorman, P.E. Public Services Director/City Engineer
City of Beavercreek
1368 Research Park Drive
Beavercreek, Ohio 45432

8.8 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.

8.9 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 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.

8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, 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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, 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.

8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.

8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.

8.14 The LPA shall be responsible for monitoring all DBE/SBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the Local-let Manual.

8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

9. **CERTIFICATION AND RECAPTURE OF FUNDS**

9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the STATE for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from 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 (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"),

is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.

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

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

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

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

(c) **Solicitations for 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 (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.

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

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

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

(f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials

and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) 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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily

commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.
- 12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

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

14. NOTICE

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

If to the LPA:

If to ODOT:

Jeff Moorman, P.E. Public Services Director/City Engineer	Doug Gruver, P.E. D8 DD
City of Beavercreek	ODOT D8
1368 Research Park Drive	505 South SR 741
Beavercreek, Ohio 45432	Lebanon, Ohio 45306
jlinkous@clintoncountyengineer.org	Doug.gruver@dot.ohio.gov

15. GENERAL PROVISIONS

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

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



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

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



2. Direct labor plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.²

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

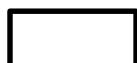
¹ A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records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

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 15 % of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 15% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 15% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of Local Programs . A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.



3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.³

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



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

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C) Instead of using the Federal 15% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

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

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

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

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

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

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

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

15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) 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 Agreement.

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

15.5 *Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio and Federal Ethics and Conflict of Interest laws as provided by ORC Sections 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the

contractor(s) or its subcontractor(s), acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

- 15.8 *Lobbying*: Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.
- 15.9 *Debarment*. LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 *Governing Law*: This Agreement and any claims arising out of this Agreement shall be governed by the laws of the STATE. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.11 *Assignment*: Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.12 *Merger and Modification*: This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.13 *Severability*: If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.14 *Signatures*: Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 15.15 *Facsimile Signatures*: Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

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

LPA: City of Beavercreek	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title: Pete E. Landrum City Manager	Pamela Boratyn Director
Date:	Date:

GRANGE HALL ROAD PEDESTRIAN IMPROVEMENTS MAP (PAGE 1)



LEGEND

 Project Location



1:6,000

0 200 400 800 1,200
Feet



Beavercreek

GRANGE HALL ROAD PEDESTRIAN IMPROVEMENTS MAP (PAGE 2)



LEGEND

 Project Location



1:9,600

0 400 800 1,600 2,400
Feet



Beavercreek

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026	Reference Topic: GRE-CR51-0.00 PID# 119969 Pentagon Blvd Resurfacing Project <u>Resolution No. 26-06</u>
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ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Development
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

OVERVIEW:

In early 2023, the Engineering Division received notice that the City's application for Federal funding to resurface Pentagon Blvd from Grange Hall Road to N Fairfield Road had been approved by MVRPC. Since this approval, the Engineering Division has programmed this project with ODOT and it is now appropriate to enter into an agreement with ODOT for the administration of this improvement.

This project will consist of the mill and overlay of Pentagon Blvd from Grange Hall Road to N Fairfield Road. The project will also consist of curb ramp replacement for non-ADA compliant curb ramps, curb repair, inlet repair, and sidewalk repair/resurfacing along the project.

The proposed funding and timeline for this project are listed below:

Component	Time Frame	Estimated Cost	Local Share	Federal Share
Engineering	2024	\$ 100,000	\$ 100,000	\$ 0
Construction	2026	\$ 1,382,400	\$ 552,960 (40%)	\$ 829,440 (60%)

RECOMMENDATION:

It is therefore recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 26-06**

SPONSORED BY COUNCIL MEMBER _____
ON THE _____ DAY OF _____, 2026.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
LPA FEDERAL PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF
TRANSPORTATION FOR THE PROJECT KNOWN AS GRE-CR51-0.00
(PENTAGON BLVD RESURFACING PROJECT), PID NO. 119969.**

WHEREAS, the City of Beavercreek and the Ohio Department of Transportation desire to enter into an agreement which will delineate responsibility for the funding and the administration of the Pentagon Blvd Resurfacing Project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to enter, with the Ohio Department of Transportation, an agreement for the funding and the administration of the Pentagon Blvd Resurfacing Project as approved by Beavercreek City Council on January 12, 2026 and attached as Exhibit 'A'.

SECTION II.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to execute any amendments to the agreement between the City of Beavercreek and the Ohio Department of Transportation that may become necessary during the administration of this improvement.

SECTION III.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION IV.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek,
Ohio this _____ day of _____, 2026.

Mayor

ATTEST:

Clerk of Council

EXHIBIT A

Agreement Number: 39982

PID Number: 119969

County-Route-Section: GRE CR 51 0.00 Pentagon Blvd

SAM Unique Entity ID: KNAYXXNH3PL9

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and City of Beavercreek (LPA), 1368 Research Park Drive, Beavercreek, OH 45432.

1. **PURPOSE**

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (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** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The **Resurface Pentagon Blvd from Grange Hall Road to North Fairfield Road including curb, curb ramps, inlet repair, and sidewalk.** (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 AND COMPLIANCE**

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

A. **FEDERAL**

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures
- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs

- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – “Selection of Architects and Engineers”
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

3.1 The total cost for the PROJECT associated with Federal funds is estimated to be \$1,382,400.00.

ODOT shall provide to the LPA 60 percent of the eligible costs, utilizing Spending Authority Code (SAC) 4TA7/MV07 up to a maximum of \$829,440 in Federal funds in the Construction Contract/Construction Inspection phase(s)/subphase(s). The funding does not include Toll Revenue Credit or Credit Bridge. This maximum amount reflects the funding limit for the PROJECT set by the applicable SAC Program Manager.

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

3.3 The LPA is administering the Federally funded Construction Contract/Construction Inspection phase(s)/subphase(s) of the project and is therefore considered a beneficiary of Federal funds and is not responsible for reporting the applicable Federal expenditures on their Schedule of Expenditures of Federal Award.

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT or ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.
- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 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 (NEPA) and related regulations, including but not limited to 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 [ODOT's Office of Contracts](http://www.dot.state.oh.us/OfficeOfContracts). 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W 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 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W 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.
- 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 procedures.
- 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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W 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 Certification of Right of Way Control Letter, 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 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.

- 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. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 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.
- 6.8 Unless by prior written agreement, 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 ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 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.

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 Manager 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. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 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 letting the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.
- 7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must

perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

- 7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 <https://ohioauditor.gov/findings.html>. 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 that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.
- 7.10 Per ORC 9.75(B), 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, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. 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 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 must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.

8.3 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.

8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. 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. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. 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 daily as the items of work are completed and accepted.

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

8.6 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.

8.7 Payment or reimbursement to the LPA shall be submitted to:

Nick Smith, City Engineer
City of Beavercreek
1368 Research Park Drive
Beavercreek. OH 45432

8.8 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.

8.9 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 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.

8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, 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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.

- 8.11 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, 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.
- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.
- 8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.
- 8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.
- 8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the STATE for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from 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 (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.

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

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

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

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

(c) **Solicitations for 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 (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.

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

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

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

(f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) 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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

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

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

12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. **THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS**

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

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

14. **NOTICE**

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Nick Smith, City Engineer	Doug Gruver, P.E., Deputy Director
City of Beavercreek	Ohio Department of Transportation-D08
1368 Research Park Drive	505 South SR 741
Beavercreek, OH 45432	Lebanon, OH 45036
smith@beavercreekohio.gov	Doug.Gruver@dot.ohio.gov

15. **GENERAL PROVISIONS**

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

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



- 1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**
 - (A) The LPA **does not** currently maintain an ODOT approved Federally compliant time-tracking system¹, **and**
 - (B) The LPA **does not** intend to have a Federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
 - (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.



- 2. Direct labor plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.²**
 - (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
 - (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



- 3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.³**
 - (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
 - (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

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

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 15 % of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 15% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 15% de minimis indirect cost rate on any project, the LPA’s time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of Local Programs . A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

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

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

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C) Instead of using the Federal 15% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

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

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

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

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

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

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

15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) 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 Agreement.

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

15.5 *Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio and Federal Ethics and Conflict of Interest laws as provided by ORC Sections 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

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

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

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

15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.

15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the STATE. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

15.12 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

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

LPA: City of Beavercreek	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title: Pete E. Landrum City Manager	Pamela Boratyn Director
Date:	Date:

PENTAGON BOULEVARD RESURFACING



LEGEND

 Project Location



1:12,000

0 400 800 1,600 2,400
Feet



**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026 Agenda Reference No.: X.F	Reference Topic: GRE-CR71-2.66 PID# 119964 Shakertown Road Widening Project <u>Resolution No. 26-07</u>
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ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Development
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

OVERVIEW:

In early 2024, the Engineering Division received notice that the City's application for Federal funding to widen Shakertown Road from Carthage Drive to Southern Belle Blvd. had been approved by MVRPC. Since this approval, the Engineering Division has programmed this project with ODOT and it is now appropriate to enter into an agreement with ODOT for the administration of this improvement.

This project will consist of the widening of Shakertown Road from Carthage Drive to Southern Belle Blvd. The existing two-lane section of Shakertown Road will widen to three (3) lane section. This will include one through lane in each direction and a two way left turn lane. Along with this widening, a five (5) foot sidewalk and a ten (10) foot sidewalk will be included with the project. This roadway will also be improved with curb and gutter and storm sewer throughout the project.

The proposed funding and timeline for this project are listed below:

Component	Time Frame	Estimated Cost	Local Share	Federal Share
Engineering	2025	\$ 450,000	\$ 450,000	\$ 0
Right-of-Way	2026	\$ 225,000	\$ 225,000	\$ 0
Construction	2027	\$ 3,210,000	\$ 802,500 (25%)	\$ 2,407,500 (75%)

RECOMMENDATION:

It is therefore recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 26-07**

SPONSORED BY COUNCIL MEMBER _____
ON THE _____ DAY OF _____, 2026.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
LPA FEDERAL PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF
TRANSPORTATION FOR THE PROJECT KNOWN AS GRE-CR71-2.66
(SHAKERTOWN ROAD WIDENING PROJECT), PID NO. 119964.**

WHEREAS, the City of Beavercreek and the Ohio Department of Transportation desire to enter into an agreement which will delineate responsibility for the funding and the administration of the Shakertown Road Widening Project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to enter, with the Ohio Department of Transportation, an agreement for the funding and the administration of the Shakertown Road Widening Project as approved by Beavercreek City Council on January 12, 2026 and attached as Exhibit 'A'.

SECTION II.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to execute any amendments to the agreement between the City of Beavercreek and the Ohio Department of Transportation that may become necessary during the administration of this improvement.

SECTION III.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION IV.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek,
Ohio this _____ day of _____, 2026.

Mayor

ATTEST:

Clerk of Council

EXHIBIT A

Agreement Number: 43624

PID Number: 119964

County-Route-Section: GRE CR 71 2.66 Shakertown Road

SAM Unique Entity ID: KNAYXXNH3PL9

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **City of Beavercreek, 1368 Research Park Drive, Beavercreek, Ohio 45432 (LPA)**.

1. PURPOSE

- 1.1** The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (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** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3** **The project will widen existing Shakertown Road from Carthage Drive to Southern Belle Blvd to a three lane section with curb and gutter and storm sewer through the project length. The project also includes sidewalk on both sides** (PROJECT) and 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 AND COMPLIANCE

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

A. FEDERAL

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures

- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – “Selection of Architects and Engineers”
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

3.1 The total cost for the PROJECT associated with Federal funds is estimated to be **\$3,885,000.00**.

ODOT shall provide to the LPA **75** percent of the eligible costs, utilizing Spending Authority Code (SAC) **4TB7/MV07** (Assistance Listing Number: **20.205 Highway Planning and Construction**,) up to a maximum of **\$2,407,500.00** in Federal funds in the **Construction Contract/Construction Inspection phase(s)/subphase(s)**. The funding **does not** include **Toll Revenue Credit or Credit Bridge**. This maximum amount reflects the funding limit for the PROJECT set by the applicable SAC Program Manager.

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

3.3 The LPA is administering the Federally funded **Construction Contract/Construction Inspection phase(s)/subphase(s)** of the project and is therefore considered a **subrecipient of Federal funds and is responsible for reporting the applicable Federal expenditures (including any Toll Revenue Credit or Credit Bridge) on their Schedule of Expenditures of Federal Award**.

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT or ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.
- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 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 (NEPA) and related regulations, including but not limited to 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 ODOT's Office of Contracts. 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W 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 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W 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.
- 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 procedures.
- 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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W 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 Certification of Right of Way Control Letter, 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 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.
- 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. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 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.
- 6.8 Unless by prior written agreement, 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 ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 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.

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 Manager 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. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 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 letting the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.

7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.

7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 <https://ohioauditor.gov/findings.html>. 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 that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.10 Per ORC 9.75(B), 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, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. 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 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 must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment;

change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and Disadvantaged Business Enterprise (DBE)/Small Business Enterprise (SBE), if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of the LPA Materials Management Process in the Local-let Manual.

- 8.3 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.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. 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. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. 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 daily as the items of work are completed and accepted.
- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio (STATE). ODOT shall pay the Contractor or reimburse the LPA within 30 days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.
- 8.7 Payment or reimbursement to the LPA shall be submitted to:

Mr. Pete Landrum, City Manager
City of Beavercreek
1368 Research Park Drive
Beavercreek, Ohio 45432
- 8.8 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.
- 8.9 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 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.

- 8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, 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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.
- 8.11 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, 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.
- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.
- 8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.
- 8.14 The LPA shall be responsible for monitoring all DBE/SBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the Local-let Manual.
- 8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

9. CERTIFICATION AND RECAPTURE OF FUNDS

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

the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from 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 (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.
- 10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.
- 10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:
 - (a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally assisted programs of the U.S. DOT, 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

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

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

(c) **Solicitations for 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 (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.

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

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

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

(f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) 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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA

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

- 12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

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

14. NOTICE

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

If to the LPA:

If to ODOT:

Mr. Pete Landrum, City Manager	Doug Gruver, P.E. D8 DD
City of Beavercreek	ODOT D8
1368 Research Park Drive	505 South SR 741
Beavercreek, 45432	Lebanon, 45036
landrum@beavercreekohio.gov	Doug.gruver@dot.ohio.gov

15. GENERAL PROVISIONS

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

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



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

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



2. Direct labor plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.²

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



3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.³

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

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

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 15 % of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 15% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 15% de minimis indirect cost rate on any project, the LPA’s time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of Local Programs . A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

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



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

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
- (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
- (C) Instead of using the Federal 15% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

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

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

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

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

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

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

15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) 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 Agreement.

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

15.5 *Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio and Federal Ethics and Conflict of Interest laws as provided by ORC Sections 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

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

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

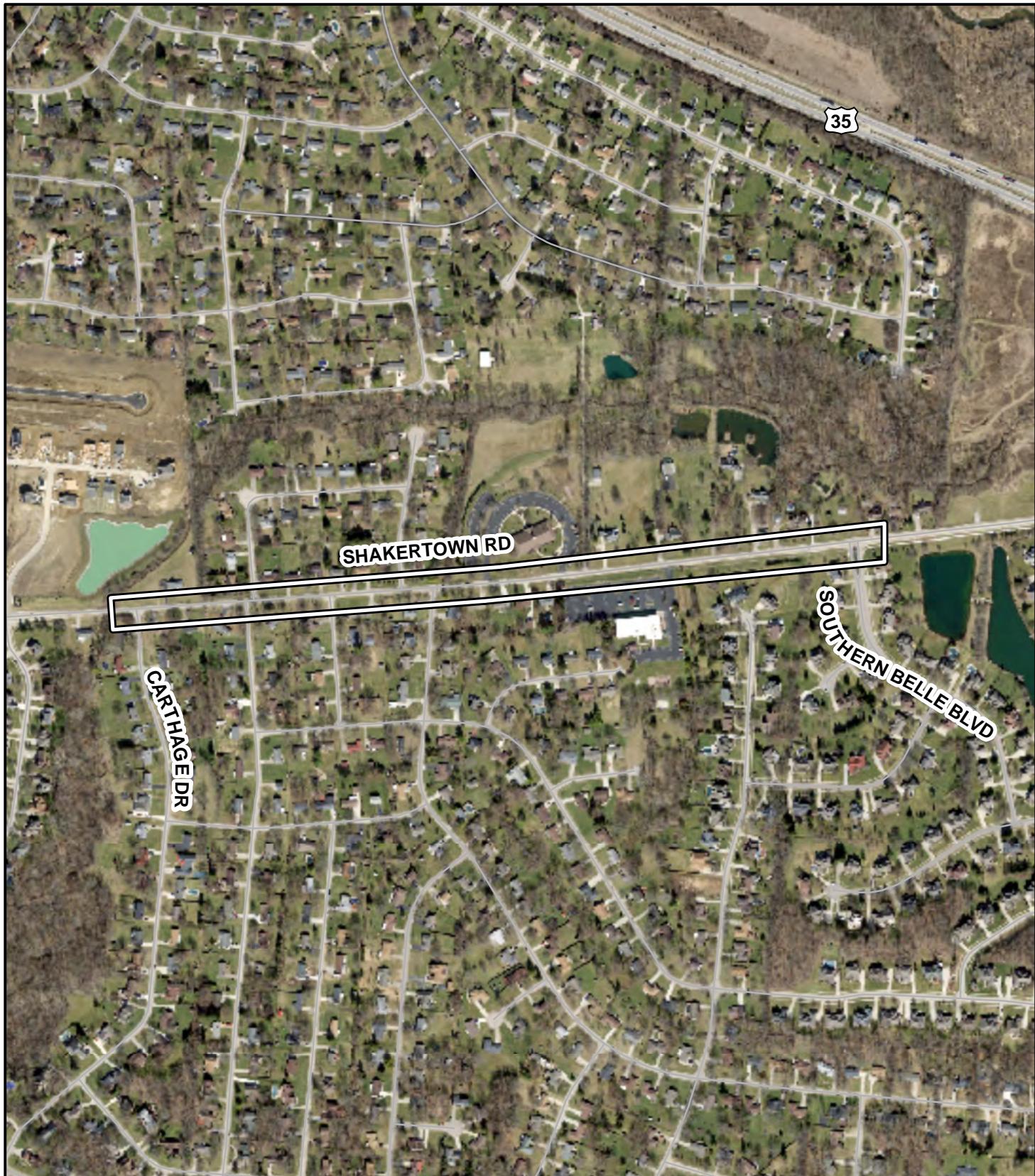
with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation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

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

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

LPA: City of Beavercreek	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title: Pete E. Landrum City Manager	Pamela Boratyn Director
Date:	Date:

SHAKERTOWN ROAD WIDENING



LEGEND

 Project Location



1:7,200

0 200 400 800 1,200 1,600
Feet



**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026	Reference Topic: GRE-MR419-1.50 PID# 123910 Lantz Road Sidewalks Project <u>Resolution No. 26-08</u>
Agenda Reference No.: X.G	

ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Development
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

OVERVIEW:

In early 2025, the Engineering Division received notice that the City's application for Federal funding to install an eight (8) foot wide sidewalk, curb, gutter, and storm sewer along Lantz Road from Shoreham Drive to Virgallito Park had been approved by MVRPC. Since this approval, the Engineering Division has programmed this project with ODOT and it is now appropriate to enter into an agreement with ODOT for the administration of this improvement.

The proposed funding and timeline for this project are listed below:

Component	Time Frame	Estimated Cost	Local Share	Federal Share
Engineering	2028	\$ 75,000	\$ 75,000	\$ 0
Right-of-Way	2029	\$ 50,000	\$ 50,000	\$ 0
Construction	2030	\$ 561,000	\$ 112,200 (20%)	\$ 448,800 (80%)

RECOMMENDATION:

It is therefore recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 26-08**

SPONSORED BY COUNCIL MEMBER _____
ON THE _____ DAY OF _____, 2026.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
LPA FEDERAL PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF
TRANSPORTATION FOR THE PROJECT KNOWN AS GRE-MR419-1.50
(LANTZ ROAD SIDEWALKS PROJECT), PID NO. 123910.**

WHEREAS, the City of Beavercreek and the Ohio Department of Transportation desire to enter into an agreement which will delineate responsibility for the funding and the administration of the Lantz Road Sidewalks Project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to enter, with the Ohio Department of Transportation, an agreement for the funding and the administration of the Lantz Road Sidewalks Project as approved by Beavercreek City Council on January 12, 2026 and attached as Exhibit 'A'.

SECTION II.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to execute any amendments to the agreement between the City of Beavercreek and the Ohio Department of Transportation that may become necessary during the administration of this improvement.

SECTION III.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION IV.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek,
Ohio this _____ day of _____, 2026.

Mayor

ATTEST:

Clerk of Council

EXHIBIT A

Agreement Number: 42496

PID Number: 123910

County-Route-Section: GRE MR 419 1.50 Lantz Rd

SAM Unique Entity ID: KNAYXXNH3PL9

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **City of Beavercreek (LPA), 1368 Research Park Drive, Beavercreek, OH 45432**.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (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** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The **addition of a sidewalk along the south side of Lantz Road from Shoreham Drive and Virgallito Park.** (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 AND COMPLIANCE

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

A. FEDERAL

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures
- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – “Selection of Architects and Engineers”
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

3.1 The total cost for the PROJECT associated with Federal funds is estimated to be \$561,000.00.

ODOT shall provide to the LPA 80 percent of the eligible costs, utilizing Spending Authority Code (SAC) 4CD7 CARBON REDUCTION MPO - F (Assistance Listing Number: 20.265 Carbon Reduction Program,) up to a maximum of \$448,800 in Federal funds in the Construction Contract/Construction Inspection phase(s)/subphase(s). The funding does not include Toll Revenue Credit or Credit Bridge. This maximum amount reflects the funding limit for the PROJECT set by the applicable SAC Program Manager.

3.2 If after execution of this Agreement, FHWA notifies ODOT that the ALN for the PROJECT is different than the ALN listed in 3.1 above, ODOT shall change the ALN to comply with the requirements of 2 CFR 200.332 and provide notice in writing or by email of the new ALN pursuant to 14.1 of this Agreement.

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

3.4 The LPA is administering the Federally funded Construction Contract/Construction Inspection phase(s)/subphase(s) of the PROJECT and is therefore considered a subrecipient of Federal funds and is responsible for reporting the applicable Federal expenditures (including any Toll Revenue Credit or Credit Bridge) on their Schedule of Expenditures of Federal Award.

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT or ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.
- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 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 (NEPA) and related regulations, including but not limited to 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 ODOT's Office of Contracts. 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W 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 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W 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.
- 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 procedures.
- 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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W 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 Certification of Right of Way Control Letter, 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 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.

- 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. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 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.
- 6.8 Unless by prior written agreement, 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 ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 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.

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 Manager 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. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 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 letting the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.
- 7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must

perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

- 7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 <https://ohioauditor.gov/findings.html>. 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 that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.
- 7.10 Per ORC 9.75(B), 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, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. 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, 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 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 must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and Disadvantaged Business Enterprise (DBE)/Small Business Enterprise (SBE), if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of the LPA Materials Management Process in the Local-let Manual.

8.3 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.

8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. 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. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. 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 daily as the items of work are completed and accepted.

8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, the Direct Payment to Contractor form 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 30 days of receipt of the approved Contractor's invoice from the LPA.

8.6 The LPA shall not withhold retainage on projects with **federal** funding received as a subrecipient through ODOT. However, a prime contractor will still be permitted to hold retainage on subcontractors who do not provide a performance bond. Should a prime contractor exercise its option to retain funds, it must be done in strict accordance with sections 153.12 and 153.14 of the Ohio Revised Code, and pursuant to 49 CFR 26.29(b)(3), and LPAs shall monitor the prompt release in accordance with these ORC and CFR requirements. Additionally, no subcontract provision shall permit the contractor to delay subcontractor's retainage payments until the project's final payment.

8.7 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.

8.8 Payment or reimbursement to the LPA shall be submitted to:

Nick Smith, City Engineer
City of Beavercreek
1368 Research Park Drive
Beavercreek, OH 45432

8.9 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.

- 8.10 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 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.
- 8.11 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, 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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.
- 8.12 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, 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.
- 8.13 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.
- 8.14 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.
- 8.15 The LPA shall be responsible for monitoring all DBE/SBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the Local-let Manual.
- 8.16 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the STATE for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from 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 (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.

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

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

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

(b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited

English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

- (c) **Solicitations for 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 (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.
- (d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
 - (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
 - (2) cancellation, termination, or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) 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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

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

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

12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

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

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

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Nick Smith, City Engineer	Doug Gruver, P.E., Deputy Director
City of Beavercreek	Ohio Department of Transportation-D08
1368 Research Park Drive	505 South SR 741
Beavercreek, OH 45432	Lebanon, OH 45036
smith@beavercreekohio.gov	Doug.Gruver@dot.ohio.gov

15. GENERAL PROVISIONS

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

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



- 1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**
 - (A) The LPA **does not** currently maintain an ODOT approved Federally compliant time-tracking system¹, **and**
 - (B) The LPA **does not** intend to have a Federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
 - (C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.



- 2. Direct labor plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.²**
 - (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
 - (B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



- 3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.³**
 - (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
 - (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

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

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 15 % of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 15% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 15% de minimis indirect cost rate on any project, the LPA’s time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of Local Programs . A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

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



4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.⁴
 - (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
 - (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
 - (C) Instead of using the Federal 15% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

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

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

All non-Federal entities, including ODOT's LPA sub-recipients, that have aggregate Federal awards expenditures from all sources of \$1,000,000 or more in the non-Federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the

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

correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) 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 Agreement.

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

15.5 *Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio and Federal Ethics and Conflict of Interest laws as provided by ORC Sections 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

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

15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on

legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.

15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.

15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the STATE. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

15.12 *Merger and Modification:* This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

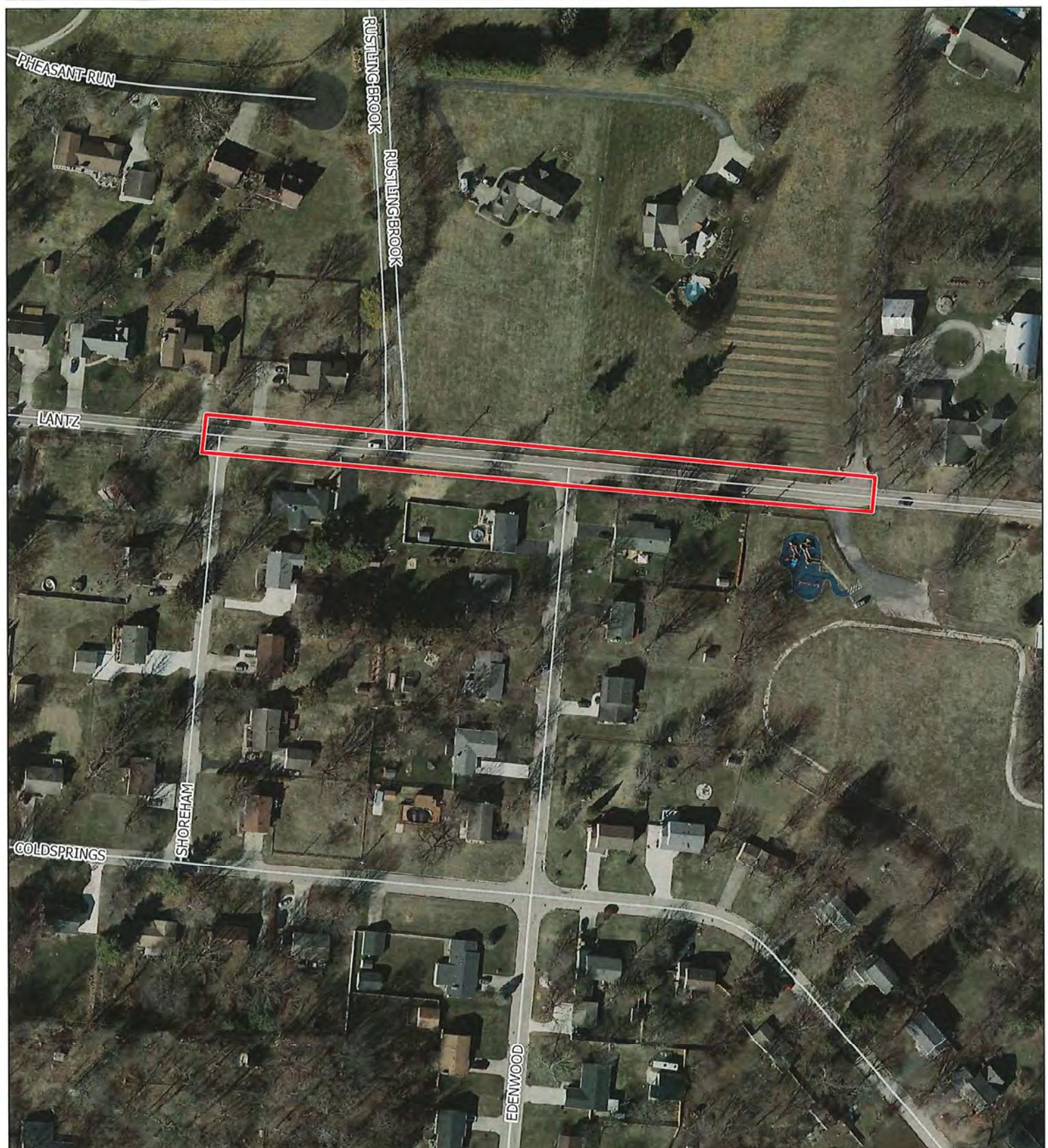
15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

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

LPA: City of Beavercreek	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title: Pete E. Landrum City Manager	Pamela Boratyn Director
Date:	Date:

Lantz Road Side Path



Project
Location



0 50 100 200 300
US Feet



Beavercreek

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026	Reference Topic: GRE-CR40-0.49 PID# 123909 Kemp Road Widening Project <u>Resolution No. 26-09</u>
Agenda Reference No.: X.H	

ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input checked="" type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input checked="" type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Development
<input type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

OVERVIEW:

In 2025, the Engineering Division received notice that the City's application for Federal funding to widen Kemp Road from Interstate 675 to Grange Hall Road had been approved by MVRPC. Since this approval, the Engineering Division has programmed this project with ODOT and it is now appropriate to enter into an agreement with ODOT for the administration of this improvement.

This project will consist of the widening of Kemp Road from I-675 to Grange Hall Road. This will include widening to 3 lanes for a two-way left turn lane, an 8 ft wide sidewalk on the north side of the road and a 5 ft wide sidewalk on the south side of the road. The project will include curb and gutter, storm sewer, and horizontal and vertical profile adjustments as needed to meet current sight distance requirements.

The proposed funding and timeline for this project are listed below:

Component	Time Frame	Estimated Cost	Local Share	Federal Share
Engineering	2028	\$ 545,000	\$ 545,000	\$ 0
Right-of-Way	2029	\$ 400,000	\$ 400,000	\$ 0
Construction	2031	\$ 3,884,100	\$ 971,025 (25%)	\$ 2,913,075 (75%)

RECOMMENDATION:

It is therefore recommended that City Council approve the attached Resolution so that this project may proceed.

**CITY OF BEAVERCREEK
RESOLUTION NO. 26-09**

SPONSORED BY COUNCIL MEMBER _____
ON THE _____ DAY OF _____, 2026.

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A
LPA FEDERAL PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF
TRANSPORTATION FOR THE PROJECT KNOWN AS GRE-CR40-0.49 (KEMP
ROAD WIDENING PROJECT), PID NO. 123909.**

WHEREAS, the City of Beavercreek and the Ohio Department of Transportation desire to enter into an agreement which will delineate responsibility for the funding and the administration of the Kemp Road Widening Project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BEAVERCREEK, OHIO, THAT:

SECTION I.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to enter, with the Ohio Department of Transportation, an agreement for the funding and the administration of the Kemp Road Widening Project as approved by Beavercreek City Council on January 12, 2026 and attached as Exhibit 'A'.

SECTION II.

On behalf of the City of Beavercreek, the City Manager is hereby authorized to execute any amendments to the agreement between the City of Beavercreek and the Ohio Department of Transportation that may become necessary during the administration of this improvement.

SECTION III.

It is hereby found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that any and all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including, but not limiting to Section 121.22 of the Ohio Revised Code.

SECTION IV.

This Resolution shall become effective immediately upon its passage.

THIS RESOLUTION IS ADOPTED BY THE Council of the City of Beavercreek,
Ohio this _____ day of _____, 2026.

Mayor

ATTEST:

Clerk of Council

EXHIBIT A

Agreement Number: 42495

PID Number: 123909

County-Route-Section: GRE CR 40 0.48 Kemp Rd

SAM Unique Entity ID: KNAYXXNH3PL9

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and **City of Beavercreek (LPA), 1368 Research Park Drive, Beavercreek, OH 45432**.

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (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** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The **widening Kemp Road from I-675 to Grange Hall Road to provide a two way left turn lane. Addition of sidewalk on both sides of Kemp Road. Minor horizontal and vertical profile adjustments.** (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 AND COMPLIANCE

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

A. FEDERAL

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures

- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – “Selection of Architects and Engineers”
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

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

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

3.1 The total cost for the PROJECT associated with Federal funds is estimated to be \$3,884,100.

ODOT shall provide to the LPA 75 percent of the eligible costs, utilizing Spending Authority Code (SAC) 4TB7 MPO AREALOCAL GOVT PROJECTS - CMAQ (Assistance Listing Number: 20.205 Highway Planning and Construction,) up to a maximum of \$2,913,075.00 in Federal funds in the Construction Contract/Construction Inspection phase(s)/subphase(s). The funding does not include Toll Revenue Credit or Credit Bridge. This maximum amount reflects the funding limit for the PROJECT set by the applicable SAC Program Manager.

3.2 If after execution of this Agreement, FHWA notifies ODOT that the ALN for the PROJECT is different than the ALN listed in 3.1 above, ODOT shall change the ALN to comply with the requirements of 2 CFR 200.332 and provide notice in writing or by email of the new ALN pursuant to 14.1 of this Agreement.

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

3.4 The LPA is administering the Federally funded Construction Contract/Construction Inspection phase(s)/subphase(s) of the PROJECT and is therefore considered a subrecipient of Federal funds

and is responsible for reporting the applicable Federal expenditures (including any Toll Revenue Credit or Credit Bridge) on their Schedule of Expenditures of Federal Award.

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 recognized set of written design standards may be either the LPA's formally written local design standards that have been **reviewed and accepted** by ODOT **or** ODOT's Design Manuals and the appropriate AASHTO publication. Notwithstanding the foregoing, for projects that contain a high crash rate or areas of crash concentrations, ODOT may require the LPA to use a design based on ODOT's L&D Manual. The LPA shall be responsible for ensuring that any standards used for the PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes.
- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 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 (NEPA) and related regulations, including but not limited to 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 ODOT's Office of Contracts. 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(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W 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 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.
- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W 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.
- 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 procedures.
- 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 any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W 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 Certification of Right of Way Control Letter, 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 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.
- 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. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 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.
- 6.8 Unless by prior written agreement, 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 ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 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.

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 Manager 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. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 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 letting the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project 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 maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.

7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. 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, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.

7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.

7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 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 <https://ohioauditor.gov/findings.html>. 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 that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.10 Per ORC 9.75(B), 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, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. 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, 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 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 must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO

and Disadvantaged Business Enterprise (DBE)/Small Business Enterprise (SBE), if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of the LPA Materials Management Process in the Local-let Manual.

- 8.3 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.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. 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. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. 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 daily as the items of work are completed and accepted.
- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, the Direct Payment to Contractor form 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 (STATE). ODOT shall pay the Contractor or reimburse the LPA within 30 days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 The LPA shall not withhold retainage on projects with **federal** funding received as a subrecipient through ODOT. However, a prime contractor will still be permitted to hold retainage on sub-contractors who do not provide a performance bond. Should a prime contractor exercise its option to retain funds, it must be done in strict accordance with sections 153.12 and 153.14 of the Ohio Revised Code, and pursuant to 49 CFR 26.29(b)(3), and LPAs shall monitor the prompt release in accordance with these ORC and CFR requirements. Additionally, no subcontract provision shall permit the contractor to delay subcontractor's retainage payments until the project's final payment.
- 8.7 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 the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 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 mechanic's 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 mechanic's lien is resolved.
- 8.8 Payment or reimbursement to the LPA shall be submitted to:

Nick Smith, City Engineer
City of Beavercreek
1368 Research Park Drive
Beavercreek, OH 45432

8.9 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.

8.10 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 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.

8.11 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, 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(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) 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(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all 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(s) including requests for information and/or documents and/or to testify.

8.12 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, 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.

8.13 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.

8.14 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.

8.15 The LPA shall be responsible for monitoring all DBE/SBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the Local-let Manual.

8.16 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

9. CERTIFICATION AND RECAPTURE OF FUNDS

9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the STATE for the purpose of this Agreement and

to the certification of funds by the Office of Budget and Management, as required by ORC 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from 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 (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.

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

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

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

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

(c) **Solicitations for 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 (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.

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

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

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

(f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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 consultant(s) and/or contractor(s) 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(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) 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 neglect or failure 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 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 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 and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to

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

- 12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

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

14. NOTICE

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

If to the LPA:

If to ODOT:

Nick Smith, City Engineer	Doug Gruver, P.E., Deputy Director
City of Beavercreek	Ohio Department of Transportation-D08
1368 Research Park Drive	505 South SR 741
Beavercreek, OH 45432	Lebanon, OH 45036
smith@beavercreekohio.gov	Doug.Gruver@dot.ohio.gov

15. GENERAL PROVISIONS

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

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



- 1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**
(A) The LPA **does not** currently maintain an ODOT approved Federally compliant time-tracking system¹, **and**
(B) The LPA **does not** intend to have a Federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
(C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.



- 2. Direct labor plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.²**
(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
(B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.



- 3. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 15% De Minimis Indirect Cost Rate.³**
(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
(B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

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

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 15 % of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 15% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 15% de minimis indirect cost rate on any project, the LPA’s time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of Local Programs . A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

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



4. Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.⁴
 - (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
 - (B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
 - (C) Instead of using the Federal 15% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

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

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

All non-Federal entities, including ODOT's LPA sub-recipients, that have aggregate Federal awards expenditures from all sources of \$1,000,000 or more in the non-Federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the

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

correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) 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 Agreement.

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

15.5 *Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio and Federal Ethics and Conflict of Interest laws as provided by ORC Sections 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.

15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

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

15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on

legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.

15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.

15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the STATE. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

15.12 *Merger and Modification:* This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

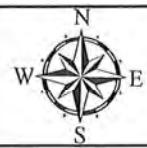
The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: City of Beavercreek	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Title: Pete E. Landrum City Manager	Pamela Boratyn Director
Date:	Date:

Kemp Road Widening



Project
Location



0 140 280 560 840
US Feet



Beavercreek

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12, 2026	Reference Topic: New Liquor Permit – Regal Cinemas, Inc. - 2651 Fairfield Commons Blvd., Beavercreek, OH 45431
Agenda Reference No.: XI. A	

ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input checked="" type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Development
<input checked="" type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

OVERVIEW:

The Ohio Department of Commerce, Division of Liquor Control sent notification of a request for a new liquor permit for Regal Cinema, 2651 Fairfield Commons Blvd., Beavercreek, OH 45431.

There were no required record checks on this request and staff does not have any objections or concerns.

RECOMMENDATION:

Staff is recommending this application request move forward without comment.



Department of Commerce

Division of Liquor Control

com.ohio.gov

Mike DeWine, Governor Jim Tressel, Lt. Governor Sherry Maxfield, Director

BEAVERCREEK CITY COUNCIL
ATTN CLERK
1368 RESEARCH PARK DR
BEAVERCREEK OH 45432

NOTICE TO LEGISLATIVE AUTHORITY

TO		
07268210-9 PERMIT NUMBER	NEW TYPE	REGAL CINEMAS INC 2651 FAIRFIELD COMMONS BEAVERCREEK OH 45431
ISSUE DATE:		
FILING DATE: 10/29/2024		
PERMIT CLASSES: D-5 D-6		
29005 TAX DISTRICT	JUN	RECEIPT NO
Muni/Village/Twp: Beavercreek		
FROM 12/12/2025		
PERMIT NUMBER	TYPE	
ISSUE DATE:		
FILING DATE:		
PERMIT CLASSES:		
TAX DISTRICT		RECEIPT NO

MAILED 12/12/2025

RESPONSES MUST BE POSTMARKED NO LATER THAN 01/12/2026

IMPORTANT NOTICE

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

REFER TO THIS NUMBER IN ALL INQUIRIES: JUN NEW 07268210-9
(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT THE HEARING
BE HELD IN OUR COUNTY SEAT IN COLUMBUS

WE DO NOT REQUEST A HEARING

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

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

(Signature)

(Title) - Clerk of County Commissioner

(Date)

Clerk of City Council

Township Fiscal Officer

(Printed Name)

(Email Address)

(Telephone No.)

**CITY OF BEAVERCREEK
CITY COUNCIL
AGENDA ITEM REPORT**

Meeting Date: January 12 th , 2026	Reference Topic: Liquor Permit Transfer - Kubera Drive Thru, LLC. - Beverage Express - 3850 Kemp Rd., Beavercreek, OH 45431
Agenda Reference No.: XI. B	

ACTION REQUESTED

<input type="checkbox"/> Adopt Ordinance	<input type="checkbox"/> Adopt Resolution	<input type="checkbox"/> Review and Comment
<input type="checkbox"/> No Action Requested	<input checked="" type="checkbox"/> Accept Staff Recommendation	<input type="checkbox"/> Adopt Motion

RESPONSIBLE DEPARTMENT OR AGENCY		
<input type="checkbox"/> Finance	<input type="checkbox"/> City Council	<input type="checkbox"/> Law
<input type="checkbox"/> Parks & Recreation	<input type="checkbox"/> Engineering	<input type="checkbox"/> Planning & Development
<input checked="" type="checkbox"/> Police	<input type="checkbox"/> Public Service	<input type="checkbox"/> City Manager
<input type="checkbox"/> Clerk of Council	<input type="checkbox"/> Human Resources	<input type="checkbox"/> Other _____

OVERVIEW:

The Ohio Department of Commerce, Division of Liquor Control sent notification of a request for a Liquor Permit Transfer from Mahaganapati, LLC., 3850 Kemp Rd. Beavercreek, OH 45431 to Kubera Drive Thru, LLC - Beverage Express - 3850 Kemp Rd., Beavercreek, OH 45431.

The required record checks were completed on one applicant and staff does not have any objections to the permit request.

RECOMMENDATION:

Staff is recommending this application request move forward without comment.



**Department of
Commerce**

Division of Liquor Control

com.ohio.gov

Mike DeWine, Governor Jim Tressel, Lt. Governor Sherry Maxfield, Director

BEAVERCREEK CITY COUNCIL
ATTN CLERK
1368 RESEARCH PARK DR
BEAVERCREEK OH 45432

NOTICE TO LEGISLATIVE AUTHORITY

TO		
10010360-1 PERMIT NUMBER	TRFO TYPE	Kubera drive thru llc Beverage express 3850 Kemp rd Beavercreek OH 45431
ISSUE DATE:		
FILING DATE: 12/11/2025		
PERMIT CLASSES: C-1 C-2		
29005 TAX DISTRICT	JUN	RECEIPT NO
FROM 12/18/2025		
05412614-1 PERMIT NUMBER	TYPE	MAHAGANAPATI LLC MAHAGANAPATI LLC 3850 KEMP RD BEAVERCREEK OH 45431
ISSUE DATE:		
FILING DATE:		
PERMIT CLASSES:		
29005 TAX DISTRICT	JUN	RECEIPT NO
Muni/Village/Twp: Beavercreek		

MAILED 12/18/2025

RESPONSES MUST BE POSTMARKED NO LATER THAN 01/18/2026

IMPORTANT NOTICE

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REFER TO THIS NUMBER IN ALL INQUIRIES: JUN TRFO 10010360-1
(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT THE HEARING BE HELD IN OUR COUNTY SEAT IN COLUMBUS

WE DO NOT REQUEST A HEARING

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

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

(Signature)

(Title) - Clerk of County Commissioner
 Clerk of City Council
 Township Fiscal Officer

(Date)

(Printed Name)

(Email Address)

(Telephone No.)



1368 Research Park Drive
Beavercreek, Ohio

Beavercreek

CITY COUNCIL
Work Session – Tuesday, January 20, 2026, 5:00 p.m.
Council Chambers

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. DISCUSSION ITEMS
 - A. Land Use Plan Update
 - B. Hotel Regulations
 - C. Survey Review - Single Waste Hauler
 - D. Community Conversations with Council Proposed Dates
 - E. Financial Review 2026
- V. COUNCIL COMMITTEE/EVENT UPDATES
- VI. ADJOURNMENT

DRAFT



1368 Research Park Drive
Beavercreek, Ohio

CITY COUNCIL
Regular Meeting – Monday, January 26, 2026 6:00 p.m.
Council Chambers

PROCLAMATION – Congestive Heart Failure (CHF)

- I. CALL TO ORDER
- II. ROLL CALL
- III. PLEDGE AND PRAYER/MOMENT OF SILENCE – Council Member Duerr
- IV. APPROVAL OF AGENDA
- V. APPROVAL OF MINUTES
 - A. January 12, 2026 Regular Meeting Minutes
- VI. PUD 25-3 SSP #17-Brew (Tabled)
- VII. PUD 97-1 Amend 1/26 Hampton Inn/Homewood Suites
 - A. Applicant Input
 - B. Staff Input
 - C. Public Input
 - D. Ordinance 26-03 An ordinance amending Ordinance 00-27 (PUD 97-1, Fairfield Place)
- VIII. PUD 97-1 MOD 1/26, Major, Hampton Inn/Homewood Suites
 - A. Applicant Input
 - B. Staff Input
 - C. Public Input
 - D. Motion
- IX. PUD 25-1 SSP#1 Creekland Preserve
 - A. Applicant Input
 - B. Staff Input
 - C. Public Input
 - D. Motion
- X. PUD 26-01 Raider Rezoning
 - A. Applicant Input
 - B. Staff Input
 - C. Public Input
 - D. Ordinance 26-04 An ordinance rezoning 8.916 Acres from A1, Agricultural to C-PUD 26-1 Commercial Planned Unit Development
- XI. ORDINANCES, RESOLUTIONS AND PUDS
 - A. Ordinance 26-01 Appropriation of Property Owned by Dawgdoc, LLC for Grange Hall Road Sidewalk Improvement Project
 - B. Resolution 26-10 Grange Hall Road Pedestrian Improvement Project Right-of-Way Acquisition; Dawgdoc Property
 - C. Ordinance 26-02 Appropriation of Property Owned by Chris Wilkey for Grange Hall Road Sidewalk Improvement
 - D. Resolution 26-11 Grange Hall Road Pedestrian Improvement Project Right-of-Way Acquisition; Wilkey Property
 - E. Resolution 26-12 Extension of the Expiration Date for Specific Site Plan #1 of PUD 06-01 (Ashford Center), Related to Project Ranier
- XII. DECISION ITEM
 - A. 4th Quarter Financial Report



1368 Research Park Drive
Beavercreek, Ohio

Beavercreek

CITY COUNCIL
Regular Meeting – Monday, January 26, 2026 6:00 p.m.
Council Chambers

- XIII. CITIZEN COMMENTS
- XIV. COUNCIL TIME
- XV. MAYOR'S REPORT
- XVI. CITY MANAGER'S REPORT
- XVII. ADJOURNMENT

DRAFT