



Prepared: 10/12/2018
Introduced: 10/23/2018
Revised:
Adopted:
Effective:

ORDINANCE O-20-2018

AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1 ANNEXATION OF 1.0+/- ACRES FROM JERSEY TOWNSHIP, LICKING COUNTY TO THE CITY OF NEW ALBANY, AND DECLARING AN EMERGENCY TO WAIVE THE THIRTY-DAY WAITING PERIOD

WHEREAS, pursuant to the petition filed by Joseph Tanoury, Underhill & Hodge LLC, agent for petitioners, with the Licking County Development and Planning Department, on August 14, 2018, and

WHEREAS, the foregoing Resolution #96-69 of the Licking County Commissioners granting the petition was delivered to the City of New Albany on August 23, 2018, and more than sixty (60) days have lapsed since the Resolution of the Board of County Commissioners was transmitted to the City of New Albany, and

WHEREAS, pursuant to Resolution R-35-2018 of the City of New Albany, the New Albany City Manager was authorized to enter into a Roadway Maintenance Agreement with the Licking County Board of Commissioners for the maintenance of sections of roadways impacted by this annexation, and

WHEREAS, the real estate is located in Licking County and is subject to the "New Albany East Community Authority" and subject to a special property assessment in compliance therewith, and

WHEREAS, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

WHEREAS, this ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the city and for the further reason that this ordinance is required to be immediately effective to promote timely economic development, and

WHEREAS, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of New Albany, Counties of Franklin, and Licking, State of Ohio, that:

Section 1: The application of property owners set forth in Licking County requesting the annexation of 1.0+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

Section 2: An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Licking County Board of Commissioners regarding the annexation proceedings have been on file with the Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this Council as required by law, and are hereby accepted.

Section 3: City Council of the City of New Albany hereby accepts the annexation of a 36.2+/-acre tract, situated in Jersey Township, Licking County, Ohio, the same being land of the owners set forth above, for annexation to the City of New Albany.

Section 4: The Clerk is herewith directed to deliver certified copies of this ordinance and other Proceedings relative to the annexation to the County Auditor, County Recorder, and the Secretary of State.

Section 5. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 6. This ordinance is declared to be emergency legislation, waiving the thirty (30) day waiting period, necessary for reasons stated above, and shall be effective upon passage.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

EXHIBIT A - O-20-2018

PROPOSED ANNEXATION
1.0± ACRE

FROM: JERSEY TOWNSHIP, LICKING COUNTY OHIO

TO: CITY OF NEW ALBANY

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Section 25, Township 2, Range 15, United States Military Lands, and being all of the 0.62 and 0.38 acre tracts conveyed to Barbara E. Pealer by deed of record in Instrument Number 200103200008591, (all references are to the records of the Recorder's Office, Licking County, Ohio) and being more particularly described as follows:

Beginning, for reference, at the centerline intersection of Morse Road SW and Beech Road SW, in the southerly City of New Albany corporation line, established by Ordinance Number O-15-2015, of record in Instrument Number 201506090011435, and the northerly corporation line of the City of Putaskala;

Thence North 85° 59' 17" West, with the centerline of said Morse Road SW, with said common corporation line, a distance of 1666.65 feet to the southeasterly corner of said 0.62 acre tract, a southwesterly corner of that 90.389 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200002020003279, the TRUE POINT OF BEGINNING;

Thence North 85° 59' 17" West, continuing with the centerline of said Morse Road SW, with the northerly corporation line of the City of Putaskala, with a southerly line of said 0.38 acre tract, with the southerly line of said 0.62 acre tract, a distance of 180.00 feet to an angle point the City of New Albany corporation line, the southwesterly corner of said 0.38 acre tract, a southeasterly corner of that 98.756 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200107200026097;

Thence North 03° 39' 34" East, with said City of New Albany corporation line, with the westerly line of said 0.38 acre tract, with an easterly line of said 98.756 acre tract, a distance of 242.00 feet to northwesterly corner of said 0.38 acre tract;

Thence South 85° 59' 17" East, continuing with said City of New Albany corporation line, with the northerly line of said 0.38 acre tract, with a southerly line of said 98.756 acre tract, a distance of 180.00 feet to a point in the westerly line of said 90.389 acre tract, the northeasterly corner of said 0.38 acre tract, a southeasterly corner of said 98.756 acre tract;

Thence South 03° 39' 34" West, continuing with said City of New Albany corporation line, with the easterly line of said 0.62 acre tract, with an easterly line of said 0.38 acre tract, with a westerly line of said 90.389 acre tract, a distance of 242.00 feet to the TRUE POINT OF BEGINNING, containing 1.0 acre, more or less.

This description is for annexation purposes only and is not for transfer.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

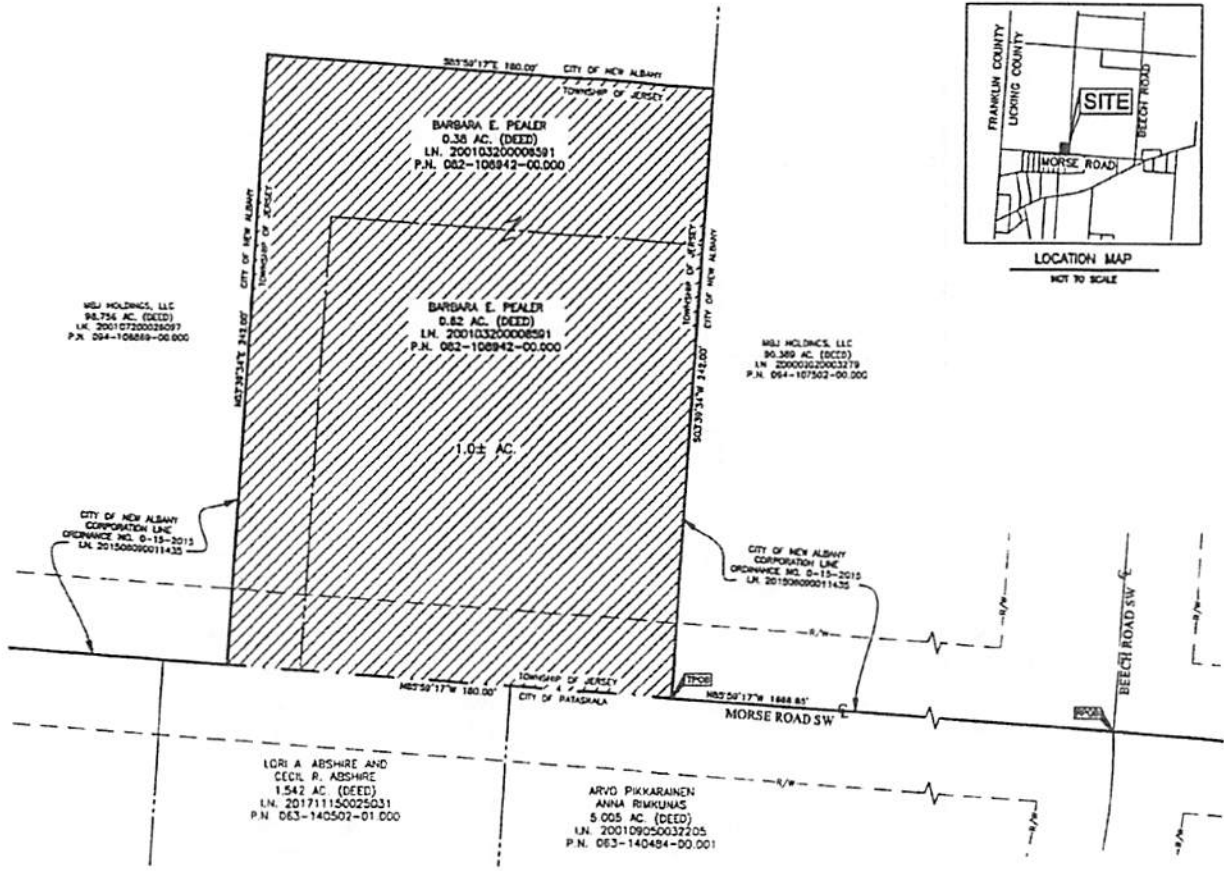
DRAFT

Joshua M. Meyer
Professional Surveyor No. 8485

Date

ANNEXATION OF 1.0± ACRE TO THE CITY OF NEW ALBANY FROM JERSEY TOWNSHIP

SECTION 25, TOWNSHIP 2, RANGE 15
UNITED STATES MILITARY LANDS
TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO



AREA TO BE ANNEXED

PROPOSED CITY OF NEW ALBANY CORPORATION LINE

EXISTING CITY OF NEW ALBANY CORPORATION LINE

Consistency Note:
Total perimeter of annexation area is 844.0 feet, of which 664.0 feet is contiguous with the City of New Albany by Ordinance Number O-15-2015, giving 78.7% perimeter consistency.

Proposed Annexation of 1.0± acre to the City of New Albany

The within map marked exhibit "A" and made a part of the petition of annexation filed with the Board of Commissioners of Licking County, Ohio, on 20__ under Chapter 709 of the Ohio Revised Code, is submitted as an accurate map of the territory in said petition described under the requirements of said Chapter 709 of the Ohio Revised Code.

Agree for Petitioners

The Board of County Commissioners of Licking County, Ohio, having seen and a petition bearing the signed names and addresses of the parties interested in the annexation to the City of New Albany, Ohio, of the territory shown hereon and having given due consideration to the prayer of said petition, do hereby grant the same

Board of Licking County Commissioners

Petition Received _____ 20__ _____ Commissioner

Petition Approved _____ 20__ _____ Commissioner

Transferred this ___ day of _____ 20__ upon the duplicates of this office

Containing _____ acres
Transfer Fee _____ Licking County Auditor

Received for Record _____ 20__ at _____ (AM-PM) and recorded _____ 20__ in plat ordinance, petition, etc in instrument Number _____

Plat Fee _____
Ordinance, etc. Fee _____ Licking County Recorder

Council for the City of New Albany, Ohio, by ordinance _____ passed _____ 20__ and approved by the mayor on _____ 20__ did accept the territory shown hereon for annexation to the City of New Albany Ohio a municipal corporation

Attest _____
Clerk, City of New Albany



DRAFT

By: Julius M. Meyer Date: _____
Professional Surveyor No. 8485

EMHT Survey, Mapping, Installation & Other, Inc. Engineers • Surveyors • Planners • Estimators 8018 New Albany Road, Columbus, OH 43264 Phone 614.776.6577 Website 614.776.6577 emht.com		Date: June 20, 2018
Scale: 1" = 30'		Job No: 20180045
Sheet: 1 of 1		
REVISIONS		
NO.	DATE	DESCRIPTION



Prepared: 10/12/2018
Introduced: 10/23/2018
Revised:
Adopted:
Effective:

ORDINANCE O-21-2018

AN ORDINANCE TO ACCEPT THE EXPEDITED TYPE 1 ANNEXATION OF 374.2+/- ACRES FROM PLAIN TOWNSHIP, FRANKLIN COUNTY AND FROM JERSEY TOWNSHIP, LICKING COUNTY TO THE CITY OF NEW ALBANY, AND DECLARING AN EMERGENCY TO WAIVE THE THIRTY-DAY WAITING PERIOD

WHEREAS, pursuant to the petition filed by Aaron L. Underhill, Esq., Underhill & Hodge LLC, agent for petitioners, with the Franklin County Development and Planning Department, on August 14, 2018, and

WHEREAS, the foregoing Resolution #0556-18 (Case #ANX-19-18) of the Franklin County Commissioners granting the petition was delivered to the City of New Albany on August 23, 2018, and more than sixty (60) days have lapsed since the Resolution of the Board of County Commissioners was transmitted to the City of New Albany, and

WHEREAS, pursuant to Resolution 20-2018 of the City of New Albany, the New Albany City Manager was authorized to enter into a Roadway Maintenance Agreement with the Franklin County Board of Commissioners; and no roadways were impacted in Licking County by this annexation, and

WHEREAS, pursuant to New Albany Codified Ordinance 1125.05, all newly annexed areas shall immediately be zoned into the Agricultural District and shall be subject to the regulations and restrictions pertaining thereto, and

WHEREAS, pursuant to New Albany Codified Ordinance 1125.06, all future annexed properties shall be added to the applicable New Albany Community Authority as described therein and are subject to a special property assessment in compliance therewith, and

WHEREAS, this ordinance constitutes an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the city and for the further reason that this ordinance is required to be immediately effective to promote timely economic development, and

WHEREAS, The New Albany City Council has determined that annexation of the real estate is in the best interests of the residents of the City of New Albany.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of New Albany, Counties of Franklin, and Licking, State of Ohio, that:

Section 1: The application of property owners set forth in Franklin and Licking County requesting the annexation of 374.2+/- acres, which is contiguous to the City of New Albany, is hereby accepted, and the

corporate boundaries of New Albany shall be extended to include the territory, more particularly described in Exhibit A, attached hereto and incorporated herein as if fully written.

Section 2: An accurate map of the territory attached as Exhibit B, the petition for its annexation, other related documents, and a certified transcript of the proceedings of the Franklin County Board of Commissioners regarding the annexation proceedings have been on file with the Clerk of Council of the City of New Albany for sixty (60) days prior to being presented to this council as required by law, and are hereby accepted.

Section 3: Council of the City of New Albany hereby accepts the annexation of a 374.2 +/- acre tract, situated in Plain Township, Franklin County, Ohio and Jersey Township, Licking County, the same being land of the owners set forth above, for annexation to the City of New Albany.

Section 4: The clerk is herewith directed to deliver certified copies of this ordinance and other proceedings relative to the annexation to the Franklin and Licking County Auditor, Franklin and Licking County Recorder, and the Secretary of State.

Section 5. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 6. This ordinance is declared to be emergency legislation, waiving the thirty (30) day waiting period, necessary for reasons stated above, and shall be effective upon passage.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

**CERTIFICATION BY CLERK OF COUNCIL
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-21-2018** were posted in accordance with Section 6.12 of the Charter, for 30 days starting on _____, 2018.

Jennifer Mason, Clerk of Council

Date

PROPOSED

Exhibit A

DESCRIPTION APPROVED
JARED N. KNERR
LICKING COUNTY ENGINEER
APPROVED BY
08/02/2018 JR

ANNEXATION
PLAT & DESCRIPTION
ACCEPTABLE
CORNELL R. ROBERTSON, P.E., P.S.
FRANKLIN COUNTY ENGINEER
By CR Date 8/2/18

RECEIVED

AUG 03 2018

Franklin County Engineer
Cornell R. Robertson, P.E., P.S.

PROPOSED ANNEXATION
374.2± ACRES

EXHIBIT A - O-21-2018

FROM: PLAIN TOWNSHIP, FRANKLIN COUNTY AND JERSEY TOWNSHIP, LICKING COUNTY

TO: CITY OF NEW ALBANY

Situated in the State of Ohio, County of Franklin, Township of Plain, in Lots 1, 2 and 3, Quarter Township 4, Township 2, Range 16, and County of Licking, Township of Jersey, in Sections 16 and 25, Township 2, Range 15, United States Military Lands, being comprised of all of that 12.950, 17.998, and 52.996 acre tracts conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201802020014909, all of that 1.000, 2.508, 6.16, 8.04, 7.34, and 5.49 acre tracts conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807270100579, all of that 109.456 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201808010103027, and all of that 50.663 and 99.571 acre tracts conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015615 (all references refer to the records of the Recorder's Office, Franklin County, Ohio, and Licking County, Ohio) and more particularly bounded and described as follows:

BEGINNING at the intersection of the centerline of Morse Road with the common County line of Franklin and Licking Counties;

Thence North 86° 23' 36" West, with said centerline, a distance of 499.31 feet to a point in the southwesterly corner of said 109.456 acre tract, in a southeasterly corner the remainder of that tract conveyed as First Parcel to David L. Haegele, Trustee of the David L. Haegele Trust dated August 1, 2007, an undivided one-half (1/2) interest and Deborah S. Haegele, Trustee of the Deborah S. Haegele Trust dated August 1, 2007, an undivided one-half (1/2) interest by deed of record in Instrument Number 200708070138359;

Thence with the line common to said 109.456 acre tract and said Haegele tract the following courses and distances:

- North 03° 36' 24" East, a distance of 60.61 feet to a point;
- North 35° 38' 02" West, a distance of 37.65 feet to a point;
- North 53° 40' 14" West, a distance of 363.05 feet to a point;
- North 35° 59' 56" West, a distance of 264.34 feet to a point;
- North 23° 21' 40" West, a distance of 97.77 feet to a point;
- North 43° 09' 04" East, a distance of 411.13 feet to a point; and

North 86° 23' 36" West, a distance of 1412.59 feet to the westerly line of said 109.456 acre tract, the easterly line of that 2.500 acre tract conveyed to Russel D. Gorsuch and Yun Cha Gorsuch by deed of record in Instrument Number 201312130204967;

Thence North 03° 38' 08" East, with the easterly lines of said 2.500 acre tract, those tracts conveyed to Dong Hwa Hong and Rhea Y. Chung by deed of record in Instrument Number 200202130041108, and that 4.50 acre tract conveyed to Samuel S. Chang and Jung Sil Chang by deed of record in Instrument Number 200402250039781, a distance of 800.68 feet to the northeasterly corner of said 4.50 acre tract;

Thence North 86° 33' 03" West, with the northerly line of said 4.50 acre tract, a distance of 263.09 feet to the southeasterly corner of that 2.0 acre tract conveyed to Donald Eugene Smith by deed of record in Instrument Number 201104210052461;

Thence North 04° 06' 06" East, with the easterly lines of said 2.0 acre tract and that 0.548 acre tract conveyed to David Spencer and Margret J. Spencer by deed of record in Instrument Number 199902010025609, a distance of 431.43 feet to the northeasterly corner of said 0.548 acre tract;

Thence North 85° 57' 29" West, with the northerly line of said 0.548 acre tract, a distance of 204.97 feet to a point in the easterly right of way line of Babbitt Road;

RECEIVED

AUG 03 2018

Franklin County Planning Department
Franklin County, OH

ANX-EXP1-19-18

**PROPOSED ANNEXATION
374.2± ACRES**

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Thence North 04° 02' 31" East, with said easterly right of way line, a distance of 60.00 feet to a southwesterly corner of that 0.550 acre tract conveyed to Monica Beltran by deed of record in Instrument Number 201609290132455;

Thence South 85° 57' 29" East, with the southerly line of said 0.550 acre tract, a distance of 197.78 feet to the southeasterly corner of said 0.550 acre tract;

Thence North 04° 02' 31" East, with the easterly lines of said 0.550 acre tract and that 0.549 acre tract conveyed to Jordan M. King by deed of record in Instrument Number 200710220183530, a distance of 212.32 feet to the northeasterly corner of said 0.549 acre tract;

Thence North 86° 34' 40" West, with the northerly line of said 0.549 acre tract, a distance of 257.79 feet to a point in the centerline of Babbitt Road;

Thence North 04° 02' 31" East, with said centerline, a distance of 986.70 feet to a point;

Thence North 03° 47' 20" East, continuing with said centerline, a distance of 854.13 feet to the southwesterly corner of that 34.262 acre tract conveyed to James L. Doran, II and Michele Gutridge Doran by deed of record in Official Record 31033F14;

Thence South 86° 07' 46" East, with the southerly line of said 34.262 acre tract, a distance of 2048.59 feet to the southeasterly corner of the remainder said 34.262 acre tract;

Thence North 02° 10' 25" East, with the easterly lines of said 34.262 acre tract, that 11.959 acre tract conveyed to Perry W. Doran and Kim M. Colbert by deed of record in Instrument Number 201004010039375, and that 29.898 acre tract conveyed to Grace W. Doran by deeds of record in Instrument Numbers 200104180081300 and 199912010296460, a distance of 857.17 feet to the southwesterly corner of that 177.497 acre tract conveyed to WH Holdings, LLC by deed of record in Instrument Number 200706010095487, in the City of New Albany corporation line, established by Ordinance Number O-27-2015, of record in Instrument Number 201510300154555;

Thence South 85° 01' 43" East, with the southerly line of said 177.497 acre tract and said City of New Albany corporation line, a distance of 673.06 feet to the southeasterly corner of said 177.497 acre tract, the southeasterly corner of said corporation line, in the westerly line of said 99.571 acre tract (Licking County), in the common county line of Franklin and Licking Counties;

Thence North 03° 44' 01" East, with said common county line, said corporation line, and the easterly line of said 177.497 acre tract, with the westerly line of said 99.571 acre tract, with the westerly line of said 50.663 acre tract, a distance of 1484.89 feet to a southwesterly corner of that 57.212 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200505200015068, a southwesterly corner of the City of New Albany corporation line, established by Ordinance Number O-30-2002, of record in Instrument Number 200210280040677;

Thence South 86° 27' 58" East, with a southerly line of said 57.212 acre tract and corporation line, a distance of 1653.65 feet to a corner thereof;

Thence South 03° 17' 57" West, with said corporation line, the City of New Albany corporation line, established by Ordinance Number O-15-2015, of record Instrument Number 201506090011435, the City of New Albany corporation line, established by Ordinance Number O-27-2016, of record in Instrument Number 201612050026926, the westerly line of said 57.212 acre tract, the westerly line of that 9.378 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201509140019689, a westerly line of that 7.284 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201407280014231, and the westerly line of that 7.266 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201407310014405, a distance of 1328.36 feet to the northwesterly corner of that 13.973 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200201170002294;

Thence South 03° 39' 34" West, with said City of New Albany corporation line (Instrument Number 201506090011435), with the westerly line of said 13.973 acre tract, the westerly line of that 14.000 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201301240002113, the westerly line of that 40.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201009130017863, and the westerly line of that 30.204 acre tract conveyed

PROPOSED ANNEXATION
374.2± ACRES

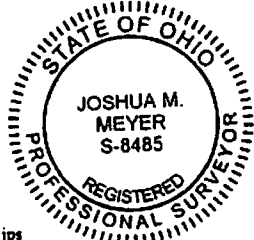
-3-

to MBJ Holdings, LLC by deed of record in Instrument Number 200201170002294, a distance of 2619.35 feet to the northeasterly corner of that 98.756 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200107200026097, the northwesterly corner of that 90.389 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200002020003279;

Thence North 86° 05' 37" West, with said City of New Albany corporation line (Instrument Number 201506090011435), and the northerly line of said 98.756 acre tract, a distance of 1663.89 feet to a northwesterly corner of said corporation line, in said common county line, the easterly line of said 109.456 acre tract;

Thence South 03° 28' 23" West, with the westerly line of said 98.756 acre tract, with said County line, and with said corporation line, a distance of 2616.99 feet to the POINT OF BEGINNING, containing approximately 374.2 acres of land, more or less.

This description is for annexation purposes only and is not for transfer.



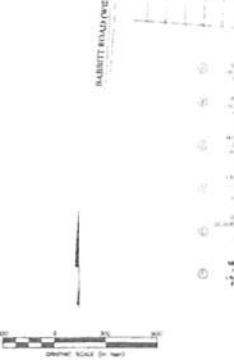
EVANS, MECHWART, HAMBLETON & TILTON, INC.

8-2-2018

Joshua M. Meyer
Professional Surveyor No. 8485

Date

PROPOSED ANNEXATION OF 374.2± ACRES
224.0± AC. TO THE CITY OF NEW ALBANY FROM PLAIN TOWNSHIP
 LOTS 1, 2 AND 3, QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16
 UNITED STATES MILITARY LANDS
 TOWNSHIP OF PLAIN, COUNTY OF FRANKLIN, STATE OF OHIO
150.2± AC. TO THE CITY OF NEW ALBANY FROM JERSEY TOWNSHIP
 SECTIONS 16 & 25, TOWNSHIP 2, RANGE 15
 UNITED STATES MILITARY LANDS
 TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO



LINE	BEARING	DISTANCE
1-1	N 89° 54' 42" W	66.91'
1-2	N 89° 54' 42" W	37.00'
1-3	N 89° 54' 42" W	87.97'
1-4	N 89° 54' 42" W	204.87'
1-5	N 89° 54' 42" W	80.00'
1-6	N 89° 54' 42" W	107.74'
1-7	N 89° 54' 42" W	210.00'
1-8	N 89° 54' 42" W	217.74'

RECEIVED
 AUG 03 2018
 Franklin County Planning Department
 Franklin County, OH

RECEIVED
 AUG 03 2018
 Franklin County Planning Department
 Franklin County, OH

ANX-EXP-1978
 PREPARED BY: [Signature]
 DATE: [Date]
 CHECKED BY: [Signature]
 DATE: [Date]

EMHT
 Scale: August 2, 2018
 Date: 1" = 300'
 Job No: 2017-0812
 Sheet: 1 of 1



Andrew M. Moore
 Professional Engineer No. 8911



Prepared: 09/18/2018
Introduced: 10/02/2018
Revised: 10/08/2018
Revised: 10/17/2018
Adopted:
Effective:

ORDINANCE O-18-2018

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF NEW ALBANY BY AMENDING THE ZONING MAP TO REZONE 635.4 +/- ACRES OF LAND GENERALLY LOCATED EAST OF BABBITT ROAD, NORTH OF MORSE ROAD AND WEST OF BEECH ROAD FOR AN AREA TO BE KNOWN AS THE "COUNTY LINE ZONING DISTRICT" FROM ITS CURRENT ZONING OF "AG" AGRICULTURAL DISTRICT AND "L-GE" LIMITED GENERAL EMPLOYMENT DISTRICT TO "L-GE" LIMITED GENERAL EMPLOYMENT DISTRICT AS REQUESTED BY MBJ HOLDINGS LLC C/O AARON UNDERHILL, ESQ.

WHEREAS, the Council of the City of New Albany has determined that it is necessary to rezone certain property located in the city of New Albany to promote orderly growth and development of lands; and

WHEREAS, the Rocky Fork-Blacklick Accord, Planning Commission, and City Council on separate occasions have held public hearings and received public input into the amendment of the zoning ordinance; and

WHEREAS, pursuant to the application by MBJ Holdings LLC c/o Aaron Underhill, the Rocky Fork-Blacklick Accord and Planning Commission of the City of New Albany have reviewed the proposed ordinance amendment and recommended its approval.

NOW, THEREFORE, BE IT ORDAINED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. The Council of the City of New Albany hereby amends the Zoning Ordinance Map of the City of New Albany to change the zoning classification of the following described site:

- A. A 635.4 ± acre area of land general located to the east of Babbitt Road, north of Morse Road, and west of Beech Road for an area to be known as the "County Line Zoning District" from its current zoning of "AG" Agricultural District and "L-GE" Limited General Employment District to "L-GE" Limited General Employment District;
- B. The zoning district's limitation text and site plan is hereby attached and marked Exhibit A.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the passage of this ordinance were adopted in an open meeting of the council and any decision making bodies of the City of New Albany which resulted in such formal action were in meetings open to the public or in compliance with all legal requirements of the City of New Albany, Counties of Franklin and Licking, State of Ohio.

Section 3. Pursuant to Article 6.07(b) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption and after the effective date of the associated annexation.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

PROPOSED

COUNTY LINE ZONING DISTRICT

LIMITATION (L-GE) TEXT

OCTOBER 17, 2018

The County Line Zoning District (hereinafter, the “Zoning District”) serves to extend the same or similar zoning and development standards to property being annexed to the City as currently apply to the Beech Road South Zoning District, and to incorporate the portion of the property from the Beech Road South Zoning District that is located to the west of Beech Road into this zoning so that the property that is the subject hereof will have one uniform set of regulations. The property that is the subject of this zoning text consists of 635.4+/- acres generally located adjacent to Beech Road on the east, adjacent to Babbitt Road on the west, and adjacent to Morse Road on the south. To the extent that a standard in this text conflicts with a standard that is provided in the City of New Albany’s Codified Ordinances, the standard contained in this text shall govern. This Zoning District shall be governed by the relevant provisions of the City’s Codified Ordinances to the extent that this text is silent on any particular matter.

A. Zoning Designation: L-GE, Limited General Employment District

B. Permitted Uses: The permitted and conditional uses contained and described in the Codified Ordinances of the City of New Albany, GE, General Employment District, Sections 1153.02 and 1153.03, provided that conditional uses are approved in accordance with Chapter 1115, Conditional Uses. The following uses from these code sections shall be prohibited:

1. Industrial product sales (See Section 1153.03(a)(1));
2. Industrial service (See Section 1153.03(a)(2));
3. Mini-warehouses (See Section 1153.03(a)(4)(c)). For purposes of clarification, this prohibition applies only to such facilities that are made available for rental to the general public.
4. Personal service (See Section 1153.03(b)(2)) and retail product sales and service (See Section 1153.03(b)(3)), except that such uses shall be allowed as accessory uses to a permitted use in this Zoning District;
5. Vehicle services (See Section 1153.03(b)(4));
6. Radio/television broadcast facilities (See Section 1153.03(c)(1)); and
7. Sexually-oriented businesses (See Section 1153.03(c)(3)).

C. Access, Parking, Site Circulation, and Traffic Commitments:

1. The developer shall work with the City Manager or his designee to determine the appropriate timing and phasing of all required street improvements.
2. Subject to other provisions in this text, on public rights-of-way which exist on the date of this text the number, locations, and spacing of curbcuts shall be determined and approved by the City Manager or his designee in consultation with the developer at the time that a certificate of appropriateness is issued for a project in this Zoning District.

3. Vehicular access to and from this Zoning District along Babbitt Road shall be limited to access for emergencies and utilities. The use of Babbitt Road for vehicular ingress and egress shall be prohibited for all other purposes including, but not limited to, construction traffic and employee and general visitor traffic. Any use of this driveway for other than the purposes set forth herein shall not be permitted without prior approval from the City Manager.

4. Parking and loading spaces shall be provided for each use per Section 1167 of the Codified Ordinances of the City of New Albany.

5. In conjunction with the filing of an application with the City for a plat or private site development a traffic study shall be filed by the applicant unless the City waives this requirement or modifies it to require less than a full study. The developer shall dedicate property as directed by the City for public street right-of-way as follows:

a. Babbitt Road: The total right-of-way for Babbitt Road shall be 60 feet. Right-of-way shall be dedicated to the City within this Zoning District to a width of 30 feet as measured from the centerline of Babbitt Road. The developer shall grant easements to the City which are adjacent to the aforementioned 60-foot right-of-way to the extent necessary to provide for the installation and maintenance of streetscape improvements, public utility lines, and leisure paths.

b. Morse Road: The developer shall dedicate property to the City as necessary to provide a minimum of 50 feet from the centerline of the right-of-way for Morse Road, unless the developer and the City agree during the time of the final engineering of any improvements to this public street to a greater right-of-way width. The developer shall grant easements to the City which are adjacent to the aforementioned 50-foot right-of-way to the extent necessary to provide for the installation and maintenance of streetscape improvements, public utility lines, and leisure paths.

c. Beech Road: The property owner has previously dedicated to the City right-of-way from this Zoning District necessary to provide a total of 80 feet of right-of-way for Beech Road, as well as easements adjacent to the aforementioned 80-foot right-of-way to the extent necessary to provide for the installation and maintenance of streetscape improvements, public utility lines, and leisure paths.

d. New Public Streets: All other public streets constructed within this zoning district shall have a right-of-way width that is appropriate for the character and anticipated usage of such streets as guided by the City of New Albany 2014 Strategic Plan and determined by the aforementioned traffic study.

D. Lot and Setback Commitments:

1. Lot Coverage: There shall be a maximum lot coverage in this Zoning District of 75%.

2. Setbacks:

a. Morse Road: There shall be a minimum building and pavement setback of 300 feet from the Morse Road as measured from the edge of the right-of-way

after the required right-of-way dedication for this street is completed as provided in this text, provided that drive lanes, but not parking areas, may be located no less than 150 feet from such right-of-way.

b. Babbitt Road: There shall be a minimum building setback of 250 feet from the centerline of the Babbitt Road right-of-way. There shall be a minimum pavement setback of 100 feet from the Babbitt Road as measured from the edge of the right-of-way after the required right-of-way dedication for this street is completed as provided in this text.

c. Beech Road: There shall be a minimum building and pavement setback of 100 feet from the Beech Road right-of-way as it exists on the date of this text.

d. New Public Streets: There shall be a minimum building and pavement setback of 25 feet from the right-of-way for any new public street within this Zoning District.

e. Perimeter Boundaries: Subject to Section J below, there shall be (i) a minimum pavement setback of 50 feet and a minimum building setback of 100 feet from all perimeter boundaries of this Zoning District which are adjacent to property on which residential uses are permitted, and (ii) a minimum pavement and building setback of 25 feet from all other perimeter boundaries that are not adjacent to a public right-of-way. Furthermore, where a parcel boundary follows or generally follows the centerline of a stream, the minimum pavement setback shall be 50 feet and the minimum building setback shall be 100 feet from the centerline of that stream.

f. From Streams: Subject to the immediately preceding subsection e., there shall be a minimum 100-foot wide stream corridor protection zone covering the existing stream which is located within the northern portion of this Zoning District. The amount of the stream corridor protection zone which is located on each side of the centerline of the stream may vary, provided that no less than 25 feet of this protection zone shall be located on either side of the stream. Notwithstanding the foregoing, should any applicable permits from federal or state governmental authorities more restrictive widths for this stream corridor, then the requirements of such permits shall govern.

g. Elimination of Setbacks: In the event that a parcel located within this subarea and an adjacent parcel located outside of this subarea (a) come under common ownership or control, (b) are zoned to allow compatible non-residential uses, and (c) are combined into a single parcel, then any minimum building, pavement, or landscaping setbacks set forth in this text as they apply to common property lines shall no longer apply with respect to these parcels.

E. Architectural Standards:

1. Building Height: The maximum building height for structures in this Zoning District shall be 65 feet, subject to adjustments as contemplated in Section J below.

2. Service and Loading Areas: Service areas and loading docks shall be screened to limit visibility from off-site.

3. Building Design:

- a. Building designs shall not mix architectural elements or ornamentation from different styles.
- b. Buildings shall be required to employ a comparable use of materials on all elevations.
- c. The number, location, spacing, and shapes of windows and door openings shall be carefully considered. Primary entrances to buildings shall be made sufficiently prominent that they can be easily identified from a distance.
- d. For office buildings and complexes, achieving a human or pedestrian scale is of less concern. When achieving such a scale is desired, it may be achieved by careful attention to width of facades, size and spacing of window and door openings, and floor to floor heights on exterior walls.
- e. Use of elements such as shutters, cupolas, dormers, and roof balustrades shall be avoided in building designs that are not based on traditional American architectural styles. Such elements may be employed only when they are common elements of a specific style, and this style shall be replicated in its entirety. When shutters are employed, even if they are non-operable, they must be sized and mounted in a way that gives the appearance of operability.
- f. Elements such as meter boxes, utility conduits, roof and wall projections such as vent and exhaust pipes, basement window enclosures, and trash containers shall be designed, located, or screened so as to minimize their visibility and visual impact from off-site. Solar energy systems shall be excluded from the requirements of this section.
- g. Accessory or ancillary buildings, whether attached or detached, shall be of similar design, materials and construction as the nearest primary structure. Fenestration themes that employ windows, panels and piers that are consistent with the architectural vocabulary of the building are encouraged.

4. Building Form:

- a. All building elevations shall be designed to be compatible with each other and to reflect a consistent design approach.
- b. Gable or hip roofs shall be avoided unless a building design replicates a traditional American architectural style that employs such roof forms. In non-stylistic contemporary designs, low or flat roofs may be employed. Roof visibility shall be minimized.

5. Materials:

- a. Exterior building materials shall be appropriate for contemporary suburban

designs and shall avoid overly reflective surfaces. Traditional materials such as, but not limited to, wood, stone, brick, and concrete shall be permitted, along with contemporary materials such as, but not limited to, aluminum, metal, glass, stucco, or cementitious fiberboard (e.g., hardiplank or equivalent) shall be permitted on buildings not employing traditional styles. The use of reflective or mirrored glass shall be prohibited.

b. Prefabricated metal buildings, untreated masonry block structures, and buildings featuring poured concrete exterior walls are prohibited. Notwithstanding the foregoing, ancillary structures built and operated for the purpose of enclosing equipment and which are not occupied by a tenants or persons on a regular basis may be constructed using pre-engineered metal.

c. Generally, the quantity of materials selected for a building shall be minimized. A single material selection for the independent building components of roof, wall and accents is permitted (i.e., Architectural Grade shingle roof with Brick Masonry wall and EIFS Cornice and Accents).

d. Loading docks are not required to have the same degree of finish as a main entry unless they are visible from a public right-of-way.

e. Additional Standards for Uses Not Governed by DGRs: Buildings that are constructed to accommodate certain uses are not governed by the City's Design Guidelines and Requirements (DGRs). For example, buildings that are constructed for the operation of warehousing and/or distribution uses are not subject to the DGRs and can present challenges in meeting the community standard for architectural design. Such buildings are necessarily large and typically include long walls that together form a square or rectangular box. The goal for the development of buildings that are not subject to the DGRs is to balance the practical needs of these buildings with the desire to provide exterior designs that are attractive and complimentary to the architecture that will be found elsewhere in this zoning district.

Architecture by its nature is a subjective medium, meaning that the adoption of strict objective standards in all instances may not provide the best means for achieving appropriate design. In recognition of this fact, the standards set forth herein provide guidelines and suggestions for designing buildings that are not subject to the DGRs in an effort to set expectations for the quality of architecture that will be expected for these structures. On the other hand, these standards are meant to allow for some flexibility to encourage innovative design provided that the spirit and intent of these provisions are met.

In conjunction with an application for a certificate of appropriateness for each building or structure in this Zoning District that is not subject to or governed by the DGRs, and subject to Section J of this text, the applicant shall be required to submit to the City illustrations of the proposed exterior design of the building or structure for review and approval by the Design Review Committee contemplated in Section 1157.08(a)(1)(D) of the City Code. In designing such buildings, the user or applicant shall take into account the following, which are intended to set a level of expectation for the quality of design:

i. Architectural design for all portions of a building or structure that are visible from a public right-of-way (excluding public rights-of-way whose primary purpose is to accommodate truck traffic or service loading areas) shall meet the community standard in terms of quality while taking into account the unique nature of the use(s) that will be found therein.

ii. Uninterrupted blank wall facades shall be prohibited to the extent that they are visible from a public right-of-way. Design variations on long exterior walls shall be employed in order to create visual interest. Examples of such design variations include, but are not limited to, the use of offsets, recesses and/or projections, banding, windows, and/or reveals; scoring of building facades; color changes; texture or material changes; and variety in building height.

iii. The use of one or more architectural or design elements may be used to soften the aesthetics of the building, such as but not limited to canopies, porticos, overhangs, arches, outdoor patios, community spaces, or similar devices.

iv. Contemporary exterior designs, while not required, shall be encouraged in order to create architecture that does not look aged or dated even many years after the facility is built.

v. Landscaping and/or the use of existing vegetation shall be utilized where appropriate to enhance the aesthetics of the building and to lessen its visual impact when viewed from public rights-of-way.

vi. HVAC, generators and similar equipment and associated gravel or concrete yards or pads shall be located subject to the minimum building setbacks.

6. **Roof-Mounted Equipment:** Complete screening of all roof-mounted equipment shall be required on all four sides of buildings with materials that are consistent and harmonious with the building's façade and character. Such screening shall be provided in order to screen the equipment from off-site view and to buffer sound generated by such equipment.

F. **Buffering, Landscaping, Open Space, and Screening:** The following landscaping requirements shall apply to this Zoning District:

1. **Tree Preservation:** Standard tree preservation practices will be in place to preserve and protect trees during all phases of construction, including the installation of snow fencing at the drip line.

2. **Street Trees:** A street tree row shall be established along all publicly dedicated rights-of-way within or adjacent to this Zoning District and shall contain one (1) tree for every thirty (30) feet of road frontage. Trees may be grouped or regularly spaced. Minimum street tree size at installation shall be three (3) caliper inches. This requirement may be waived in areas where existing vegetation occurs, subject to approval of the City Landscape Architect.

3. **Parking Areas:** Within this Zoning District, there shall be no less than one (1) tree planted for every ten (10) parking spaces located therein. At least five percent (5%) of the vehicular use area shall be landscaped or green space (or treed areas). Parking lots shall be designed to accommodate parking lot islands with tree(s) at the end of parking aisles.

4. **Minimum On-Site Tree Sizes:** Unless otherwise set forth herein, minimum tree size at installation shall be no less than two and one half (2 ½) inches in caliper for shade trees, six (6) feet in height for evergreen trees, two (2) inches in caliper for ornamental trees, and thirty (30) inches in height for shrubs. Caliper shall be measured six (6) inches above grade.

5. **Pedestrian Circulation:** Unless they are part of a campus which for safety or security reasons requires access by the public to be restricted, for buildings whose primary use is office, an internal pedestrian circulation system shall be created so that a pedestrian using a public sidewalk along a public street can access the adjacent buildings through their parking lots as delineated with markings, crosswalks, and/or different materials, directing foot traffic, where possible, away from primary access drives. Pedestrian connections shall be provided between parking lots and the front of buildings. A building shall be considered to have offices as its primary use when greater than 50% of its total square footage is occupied by office uses. The requirements of this paragraph shall not apply to any building with a main entrance which is located 500 feet or more from a public right-of-way.

6. All street trees that are not installed prior to infrastructure acceptance shall be bonded to guarantee installation.

7. All project landscape plans are subject to review and approval by the City Landscape Architect.

8. **Screening – Residential Uses:** For those perimeter boundaries which abut properties containing existing residential uses or, as determined at the time that an application is filed for a building permit (“Building Permit”) in this Zoning District, has a zoning classification which permits the development and operation of residential uses thereon that are not owned by the developer (any real property meeting either of the foregoing criteria to be referred to herein as “Residential Property”), a minimum six (6) foot high mound shall be installed along the property line and shall include a landscape buffer on the mound which shall consist of a mixture of deciduous trees, evergreens and bushes to provide an opacity of 75% on the date that is 5 years after planting to a total height of 10 feet above ground level. These mounds shall be installed within the minimum pavement setback area as required by this zoning text and may encroach on the abutting property if that owner is in agreement with the mound’s installation on his/her property. The plan for these areas must be reviewed and approved by the City’s Landscape Architect. For purposes of determining which properties qualify as a Residential Property hereunder, if two properties have an intervening public street right-of-way between them, they shall still be considered abutting.

If there are existing trees within this perimeter area and the City Landscape Architect recommends preservation of them then the mounding may be omitted and the existing trees may be utilized as the required screening. The requirement for 75% opacity 5 years after installation is still applicable with this alternative and, therefore, if

necessary, additional landscaping materials (i.e., deciduous trees, evergreens or bushes) shall be planted along those perimeter boundary areas to meet the 75% opacity requirement. The plan for these areas must be reviewed and approved by the City's Landscape Architect.

Utilities and permitted access drives may be placed within or cross through perimeter boundaries which abut residentially zoned and used properties and the screening provided for above, provided, however, that the developer shall use good faith efforts to place utilities in a manner that minimizes the impact on the required screening.

In recognition of the amount of land area contained within this Zoning District, the following provisions shall apply to the installation of the required mounding and landscaping contemplated in this Section F.8:

a. Such mounding and landscaping shall be required to be installed along the entirety of the perimeter boundaries of any individual tax parcel, or project phase within a tax parcel, which includes a perimeter boundary line of this Zoning District that abuts Residential Property and upon which construction of buildings and/or pavement is to be undertaken pursuant to the issuance of a Building Permit by the City and installation shall be complete prior to the issuance of a Certificate of Occupancy; or

b. If the perimeter boundary line of the tax parcel, or project phase within a tax parcel, on which construction is to occur does not include a perimeter boundary line of this Zoning District that abuts a Residential Property, but an application for a Building Permit has been issued by the City with respect to that tax parcel, or project phase within a tax parcel, which allows for construction of a structure or pavement within 500 feet of a perimeter boundary line of a Residential Property, then the mounding and landscaping required by this Section F.8 shall be required to be installed along the entirety of the shared boundary line with that Residential Property and installation shall be complete prior to the issuance of a Certificate of Occupancy.

9. Master Landscape Standards Plan: The City of New Albany Business Campus South – Beech Road South Landscape Standards Master Plan which was previously created for the Beech Road corridor and approved by the Planning Commission on June 5, 2017 shall apply to the Beech Road frontage in this Zoning District.

10. Morse Road, Beech Road, and Babbitt Road:

a. Landscaping within the minimum required pavement setback along each of Morse Road, Beech Road, and Babbitt Road shall be coordinated and consistent throughout this zoning district and surrounding areas. Stormwater and other similar non-building activities require the landscaping stated in this text be installed. The rural character of the land along road ways should be designed/maintained as contemplated in Beech Road South Landscape Standards Master Plan.

b. A landscape buffer shall be located within the required minimum pavement setback along each of Morse Road, Beech Road, and Babbitt Road. The buffer shall be planted with a minimum quantity of one tree per 25 feet, in addition to

street trees. Trees shall be randomly planted to create a naturalized appearance. Trees shall be of native species. Evergreen trees or shrubs shall not be permitted in the area between the buffer landscape and the edge of street pavement. For landscaping which is not used to meet zoning text, codified ordinance and street tree requirements, the minimum caliper of tree material may be reduced to 1" caliper to gain additional plant material. A four-board white horse fence may be located 1 foot from the edge of the right-of-way along Morse Road.

c. The landscape buffer may consist of mounding. Mounding, when used, shall be a maximum of 12 feet in height. Trees shall be planted on the mound with a minimum of 70% of the trees occurring on the street side. No trees shall be located within the upper quartile of the crest of the mound.

11. Preservation Areas: Certain portions of the Zoning District contain environmentally sensitive elements that will be preserved and protected. These "Preservation Zones" are generally identified on the attached Preservation Plan. The intent of the Preservation Plan is to generally depict the portions of the Zoning District that will not be developed or disturbed. In addition to preservation zones which are noted on the Preservation Plan, Preservation Zones shall be deemed to include all minimum pavement setbacks along the perimeter boundaries of the Zoning District that are not adjacent to a public right-of-way. Within the Preservation Zones located within these perimeter setbacks, the developer shall preserve existing healthy and mature trees and vegetation but shall be permitted to place utilities within or allow them to cross through these areas, provided, however, that the developer shall use good faith efforts to place utilities in a manner that minimizes the impact on healthy and mature trees. Trees that are in good health and that are at least four (4) caliper inches in diameter at a height of three (3) feet above the ground shall be preserved where reasonably practical. Trees within these areas may be removed if they present a danger to persons or property.

The Preservation Zones that are located outside of the minimum required perimeter pavement setbacks as shown on the Preservation Plan illustrate the land that has been preserved pursuant to applicable federal and state permits that have been issued or once they are approved and issued by the Ohio Environmental Protection Agency and the U.S. Army Corps of Engineers. These Preservation Areas shall be maintained, protected, and preserved in accordance with such permits. The Preservation Plan is being provided for illustrative purposes only, and the final boundaries of the Preservation Zones that are located outside of the minimum required perimeter pavement setbacks shall be the same as the boundaries of the portions of the site that will be required to be preserved under applicable federal and state permits, as may be amended from time-to-time. Prior to commencing development in a portion of the Zoning District that contains a Preservation Zone that is located outside of the minimum required perimeter pavement setbacks, the developer shall provide detailed legal descriptions of such Preservation Zone to the Director of Development for record-keeping and enforcement purposes. Should the boundaries of any Preservation Zone that is located outside of the minimum required perimeter pavement setbacks change in the future as a result of amendments to or replacements of relevant federal and state permits, then the developer shall provide updated legal descriptions and an updated Preservation Plan to the Director of Development within a reasonable amount of time after such information is available, and the Preservation Plan then shall be considered to be enforceable as amended.

G. Lighting:

1. All parking lot and private driveway lighting shall be cut-off type fixtures and down cast. Parking lot lighting shall be from a controlled source in order to minimize light spilling beyond the boundaries of the site.
2. All parking lot lighting shall be of the same light source type and style. Building, pedestrian, and landscape lighting may be incandescent or metal halide.
3. All parking lot light poles shall be black or New Albany green and constructed of metal. Light poles shall not exceed 30 feet in height.
4. Landscape uplighting from a concealed source shall be subject to staff approval. All uplighting fixtures must be screened by landscaping. Lighting details shall be included in the landscape plan which is subject to review and approval by the City Landscape Architect.
5. No permanent colored lights or neon lights shall be used on the exterior of any building.
6. All other lighting on the site shall be in accordance with City Code.
7. Street lighting must meet the City Standards and Specifications.

H. **Signage:** All signage shall conform to the standards set forth in Chapter 1169 of the Codified Ordinances of the City of New Albany.

I. **Utilities:** Except as provided in this subsection I, all utility lines in this Zoning District shall be installed underground. Above-ground electric utility poles shall be permitted within an individual parcel (or multiple contiguous parcels under common ownership) located to the south of the stream identified as the "North Stream" on the plans which accompany this text provided that any such poles shall be located at least 300 feet from the edge of public rights-of-way, shall be of a monopole design, and shall not exceed the minimum height required by applicable utility installation standards. Reasonable efforts shall be made to minimize the visibility of above-ground electric utility poles from any public roadway.

For the purposes of this subsection I, connections by way of piping, cables, or conduits between a building and ground mounted equipment or accessory structures may be installed above-ground provided that, when such a connection is to be made between a building façade that is oriented toward a public right-of-way and ground-mounted equipment or an accessory structure located between that building façade and the public right-of-way:

1. The ground mounted equipment or structure is located at least 500 feet from the edge of the public right-of-way or the piping, cables, and/or conduits between a building and ground mounted equipment or structures are not visible from the public right-of-way; and
2. The connection is installed for its entire length at a height that does not exceed the height of the ground mounted equipment or structure to which the connection is made; and
3. The connection is on the rear of the ground-mounted equipment or structure (i.e., the

side which faces the building where the other end of the connection is being made).

J. Height Adjustments: It is anticipated that technology-oriented companies and other large parcel users may have certain operational and design requirements necessitating the development of buildings in excess of 65 feet in height. The Planning Commission shall have the authority, upon application from a property owner or other applicant as provided in Section J.1 below, to increase the allowable height for a building to a maximum of 85 feet within those portions of the Zoning District which are located to the south of the stream identified as the “North Stream” on the plans which accompanying this text. This Section J shall not be read or applied to override or supersede the provisions of Section 1165.05 of the Codified Ordinances as they relate to the right for certain elements of a building to exceed the maximum height provided for in this text in the absence of a request for an increase in building height.

1. **Procedure for Approval:** A property owner or other applicant seeking an increase in building height as contemplated in this Section J shall request the Planning Commission’s review by filing an application with the City on a form that is prescribed by its zoning staff. Such an application and any decisions made thereon by the Planning Commission shall not be considered to be a variance, but instead shall be considered to be administrative in nature in that the Planning Commission’s function will be to apply and administer the requirements of Section J.2 below to any application made pursuant hereto. The Planning Commission shall hold a public hearing on the application at its first meeting following the date that is 30 days after the application is filed in a manner that is deemed to be complete by the City’s zoning staff or on such later date as may be agreed by the applicant. The Planning Commission may vote on the application at any time following such public hearing, provided that in no circumstance shall such a vote occur later than the next meeting of the Planning Commission which immediately follows the meeting when the public hearing occurred (unless the applicant otherwise consents). The Planning Commission’s decision to approve or disapprove the application shall be based upon its consideration of the matters contemplated in Section J.2 below, and a decision to approve the application may be issued with conditions that are not inconsistent with the requirements set forth in Section J.2.

2. **Basis for Approval:** The Planning Commission shall approve the request for an increase in permissible building height if it determines that the following requirements are met (or waived by the Planning Commission based on the facts and circumstances of the particular proposal):

a. Buildings exceeding 65 feet in height shall:

i. Have a minimum setback of 300 feet as measured from the centerline of Babbitt Road;

ii. Have a minimum setback of 200 feet from any parcel as to which the current zoning permits residential uses and on which a residence exists on the date that the Planning Commission reviews the application for increased building height if the request is for a building height of up to 75 feet, and a minimum setback of 250 feet from any such parcel if the request for an increase in building height is between 76 feet and 85 feet; and

iii. Be located no closer to Beech Road than the western boundary of the wetlands mitigation/preservation area identified on the attached plans or a line

extending in a straight line from that boundary to each of the northern and southern boundaries of this Zoning District;

b. The need for an increase in building height (a) is the result of a technological or operational need or other function that cannot be reasonably, practically, or economically addressed or accommodated in a building that complies with the height requirement contained in Section E.1 above, or (b) reflects best or favored practices in the relevant industry;

c. Roof-mounted mechanical equipment and other appurtenant building elements shall be screened to limit from view from the rights-of-way for Beech Road, Morse Road, or Babbitt Road;

d. No lights or signage shall be installed on the building at a height greater than that which would be permitted without the increase in building height;

e. The design of the building with the additional height:

i. Incorporates, into the portions of the primary architectural elements of the building that exceed 65 feet, two or more of the architectural design elements contemplated in Section 5.e.ii of this text in order to reduce or eliminate the appearance of the building as being monolithic in form (or other design elements as reasonably determined by the Planning Commission to meet this objective);

ii. Does not include blank facades which are visible from a public right-of-way. For purposes of this text, a “blank facade” shall be defined to mean “the use of a single exterior façade material without any variations using other materials, patterns, textures, colors, or other means of creating visual interest extending full height in a vertical direction and 100 feet in a horizontal direction, unless otherwise approved by the Planning Commission based on sound architectural design principles”;

iii. Shall meet the architectural requirements set forth in Section E.2 through Section E.6 of this text, it being the intent that that the requirement of this Section J are in addition to other requirements for buildings as provided in this text;

f. The proposed building will utilize a sprinkler system; and

g. The relevant provider of fire protection services for the proposed building has confirmed that it will be able to provide adequate fire suppression services to the building with the increased height.



Prepared: 09/07/2018
Introduced: 10/23/2018
Revised:
Adopted:
Effective:

ORDINANCE O-22-2018

AN ORDINANCE TO DECLARE THE IMPROVEMENT TO CERTAIN PARCELS OF REAL PROPERTY TO BE A PUBLIC PURPOSE, EXEMPT 100% OF THAT IMPROVEMENT FROM REAL PROPERTY TAXATION, REQUIRE THE OWNERS OF THOSE PARCELS TO MAKE SERVICE PAYMENTS IN LIEU OF TAXES, PROVIDE FOR THE DISTRIBUTION OF THE APPLICABLE PORTION OF THOSE SERVICE PAYMENTS TO THE LICKING HEIGHTS LOCAL SCHOOL DISTRICT AND THE CAREER AND TECHNOLOGY EDUCATION CENTERS OF LICKING COUNTY, THE NEW ALBANY PLAIN LOCAL SCHOOL DISTRICT AND THE EASTLAND-FAIRFIELD CAREER & TECHNICAL SCHOOLS OF FRANKLIN COUNTY, ESTABLISH A MUNICIPAL PUBLIC IMPROVEMENT TAX INCREMENT EQUIVALENT FUND FOR THE DEPOSIT OF THE REMAINDER OF THOSE SERVICE PAYMENTS, SPECIFY THE PUBLIC INFRASTRUCTURE IMPROVEMENTS THAT DIRECTLY BENEFIT THOSE PARCELS, AND APPROVE AND AUTHORIZE THE EXECUTION OF ONE OR MORE TAX INCREMENT FINANCING AGREEMENTS

WHEREAS, Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code (collectively, the "*TIF Statutes*") authorize this Council to declare the improvement to certain parcels of real property located within the City of New Albany, Ohio (the "*City*") to be a public purpose and exempt from taxation, require the owner of those parcels to make service payments in lieu of taxes, provide for the distribution of the applicable portion of those service payments to the Licking Heights Local School District, the Career and Technology Education Centers of Licking County, the New Albany Plain Local School District and the Eastland-Fairfield Career & Technical School (each, a "*School District*"), establish a municipal public improvement tax increment equivalent fund for the deposit of the remainder of those service payments and specify public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, those parcels; and

WHEREAS, the parcels of real property identified and depicted in Exhibit A attached hereto (each, as now or hereafter configured on the tax list and duplicate of real and public utility property, a "*Parcel*", and collectively, the "*Parcels*") are located in the City, and this Council has determined to declare the Improvement (as defined in Section 1 of this Ordinance) to each Parcel to be a public purpose; and

WHEREAS, this Council has determined that it is necessary and appropriate and in the best interest of the City to exempt from taxation one hundred percent (100%) of the Improvement to each Parcel as permitted and provided in Section 5709.40(B) of the Ohio Revised Code for thirty (30) years and to simultaneously direct and require the current and future owner of each Parcel (each such owner individually, an "*Owner*," and collectively, the "*Owners*") to make annual Service Payments (as defined in Section 2 of this Ordinance); and

WHEREAS, the City has determined that a portion of the Service Payments shall be paid directly to each School District in an amount equal to the real property taxes that the School District would have received if the Improvement to the Parcels had not been exempted from taxation pursuant to this Ordinance; and

WHEREAS, pursuant to Section 5709.43(A) of the Ohio Revised Code, this Council has determined to establish a municipal public improvement tax increment equivalent fund in which there shall be deposited the remaining Service Payments distributed to the City; and

WHEREAS, this Council has determined to designate the public infrastructure improvements described in Exhibit B attached hereto (the "*Public Infrastructure Improvements*") as public infrastructure improvements made, to be made or in the process of being made that directly benefit, or that once made will directly benefit, the Parcels; and

WHEREAS, this Council has determined to provide for the execution and delivery of one or more Tax Increment Financing Agreements (each, a "*TIF Agreement*"), which will more fully provide for the collection of Service Payments; and

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of Education of the Licking Heights Local School District and the Board of Education of the New Albany Plain Local School District in accordance with, and within the time periods prescribed by, Sections 5709.40 and 5709.83 of the Ohio Revised Code and in furtherance of the commitment made by the City in the Compensation Agreement entered into between the Board of Education of the Licking Heights Local School District, the Board of Education of the New Albany Plain Local School District, and the City; and

WHEREAS, notice of this proposed Ordinance has been delivered to the Board of Education of Career and Technology Education Centers of Licking County (C-TEC) and the Board of Education of Eastland-Fairfield Career & Technical Schools in accordance with, and within the time periods prescribed by, Section 5709.83 of the Ohio Revised Code;

NOW, THEREFORE, BE IT ORDAINED by the Council for the city of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. Authorization of Tax Exemption. Pursuant to and in accordance with the provisions of Section 5709.40(B) of the Ohio Revised Code, one hundred percent (100%) of the increase in assessed value of each Parcel that is used or to be used for non-residential purposes and that would first appear on the tax list and duplicate of real and public utility property after the effective date of this Ordinance (which increase in assessed value is hereinafter referred to as the "*Improvement*", as further defined in Section 5709.40(A) of the Ohio Revised Code) is hereby declared to be a public purpose and shall be exempt from taxation for a period commencing with the first tax year that begins after the effective date of this Ordinance and in which an Improvement attributable to a new structure on that Parcel first appears on the tax list and duplicate of real and public utility property for that Parcel and ending on the earlier of (a) thirty (30) years after such commencement or (b) the date on which the City can no longer require service payments in lieu of taxes, all in accordance with the requirements of the TIF Statutes. The real property tax exemption granted pursuant to this Section and the payment obligation established pursuant to Section 2 are subject and subordinate to any real property tax exemption granted pursuant to Sections 3735.65 to 3735.70 or Sections 5709.61 to 5709.69 of the Ohio Revised Code.

Section 2. Service Payments and Property Tax Rollback Payments. Pursuant to Section 5709.42 of the Ohio Revised Code, this Council hereby directs and requires the Owner of each Parcel to make annual service payments in lieu of taxes with respect to the Improvement allocable thereto to the Treasurer of Licking County, Ohio and to the Treasurer of Franklin County, Ohio (the "*County Treasurer*") on or before the final dates for payment of real property taxes. The service payment in lieu of taxes for each Parcel, including any penalties and interest at the then current rate established under Sections 323.121(B)(1) and 5703.47 of the Ohio Revised Code, as the same may be amended or supplemented from time to time, or any other applicable provisions of the Ohio Revised Code (collectively, the "*Service Payments*"), shall be charged to each Parcel and collected in the same manner and in the same amount as the real property taxes that would have been charged and payable against the Improvement to that Parcel if it were not exempt from taxation pursuant to Section 1 of this Ordinance, all in accordance with Section 5709.42 of the Ohio Revised Code. The Service Payments, and any other payments with respect to the Improvement that are received by the County Treasurer in connection with the reduction required by Sections 319.302, 321.24, 323.152 and 323.156 of the Ohio Revised Code, as the same may be amended from time to time, or any successor provisions thereto as the same may be amended from time to time, or any other applicable provisions of the Ohio Revised Code (collectively, the "*Property Tax Rollback Payments*"), shall be allocated and distributed in accordance with Section 4 of this Ordinance.

Section 3. Tax Increment Equivalent Fund. This Council hereby establishes, pursuant to and in accordance with the provisions of Section 5709.43 of the Ohio Revised Code, the Oak Grove II Public Tax Increment Equivalent Fund (the "*Fund*"). The Fund shall be maintained in the custody of the City and shall receive all distributions to be made to the City pursuant to Section 4 of this Ordinance. Those Service Payments and Property Tax Rollback Payments received by the City with respect to the Improvement to each Parcel and so deposited pursuant to Section 5709.42 of the Ohio Revised Code shall be used solely for the purposes authorized in the TIF Statutes and this Ordinance, as the same may be amended from time to time. The Fund shall remain in existence so long as such Service Payments and Property Tax Rollback Payments are collected and used for the aforesaid purposes, after which time the Fund shall be dissolved and any incidental surplus funds remaining therein transferred to the City's General Fund, all in accordance with Section 5709.43 of the Ohio Revised Code.

Section 4. Distribution of Funds. Pursuant to the TIF Statutes, the County Treasurer is hereby requested and directed to distribute the Service Payments and Property Tax Rollback Payments as follows:

(i) to each School District, an amount equal to the amount the School District would otherwise have received as real property tax payments (including the applicable portion of any Property Tax Rollback Payments) derived from the Improvement to each Parcel if the Improvement had not been exempt from taxation pursuant to this Ordinance; and

(ii) to the City, all remaining amounts for further deposit into the Fund for payment of costs of the Public Infrastructure Improvements upon appropriation for that purpose by this Council. If so appropriated, such costs may but shall not be required to include, without limitation, all debt service payable on debt issued by the City or the New Albany Community Authority (the "*Authority*") to pay for Public Infrastructure Improvements, all amounts owed to any fund of the City or Authority to reimburse that fund for the costs of any Public Infrastructure Improvements previously paid from that fund, including interest payable on those amounts, and all amounts owed by the City or Authority to any third party for the construction of Public Infrastructure Improvements, including interest payable on those amounts.

Section 5. Public Infrastructure Improvements. This Council hereby designates the Public Infrastructure Improvements described in Exhibit B attached hereto, and any other public infrastructure improvements hereafter designated by ordinance, as public infrastructure improvements made, to be made or in the process of being made by the City that directly benefit, or that once made will directly benefit, the Parcels.

Section 6. Tax Increment Financing Agreement. The form of TIF Agreement presently on file with the Fiscal Officer is hereby approved and authorized with changes therein and amendments thereto not inconsistent with this Ordinance and not substantially adverse to the City and which shall be approved by the City Manager. The City Manager, for and in the name of the City, is hereby authorized to execute and deliver one or more TIF Agreements with one or more owners of a Parcel or Parcels in substantially that form along with any changes therein and amendments thereto, provided that the approval of such changes and amendments by the City Manager, and the character of those changes and amendments as not being substantially adverse to the City or inconsistent with this Ordinance, shall be evidenced conclusively by the City Manager's execution thereof.

Section 7. Further Authorizations. This Council hereby authorizes and directs the City Manager, the City Solicitor, the Fiscal Officer or other appropriate officers of the City to make such arrangements as are necessary and proper for collection of the Service Payments from the Owners, including the preparation and filing of any necessary exemption applications. This Council further hereby authorizes and directs the City Manager, the City Solicitor, the Fiscal Officer or other appropriate officers of the City to prepare and sign all agreements and instruments and to take any other actions as may be appropriate to implement this Ordinance.

Section 8. Filings with Ohio Department of Development. Pursuant to Section 5709.40(I) of the Ohio Revised Code, the City Manager or other appropriate officer of the City is hereby directed to deliver a copy of this Ordinance to the Director of Development of the State of Ohio within fifteen (15) days after its adoption. Further, on or before March 31 of each year that the exemption set forth in Section 1 of this Ordinance remains in effect, the City Manager or other appropriate officer of the City shall prepare and submit to the Director of Development of the State of Ohio the status report required under Section 5709.40(I) of the Ohio Revised Code.

Section 9. Tax Incentive Review Council. This council hereby designates the Tax Incentive Review Council created pursuant to Resolution R-46-2009 as the tax incentive review council responsible for reviewing annually all exemptions from taxation resulting from the declarations set forth in this Ordinance and any other such matters as may properly come before that council, all in accordance with Section 5709.85 of the Ohio Revised Code.

Section 10. Open Meetings. This Council finds and determines that all formal actions of this Council and any of its committees concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council or its committees, and that all deliberations of this Council and any of its committees that resulted in those formal actions were in meetings open to the public, all in compliance with the law, including Section 121.22 of the Ohio Revised Code.

Section 11. Effective Date. Pursuant to Article 6.07(b) of the New Albany Charter, this Ordinance shall become effective thirty (30) days after adoption.

CERTIFIED AS ADOPTED this ____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

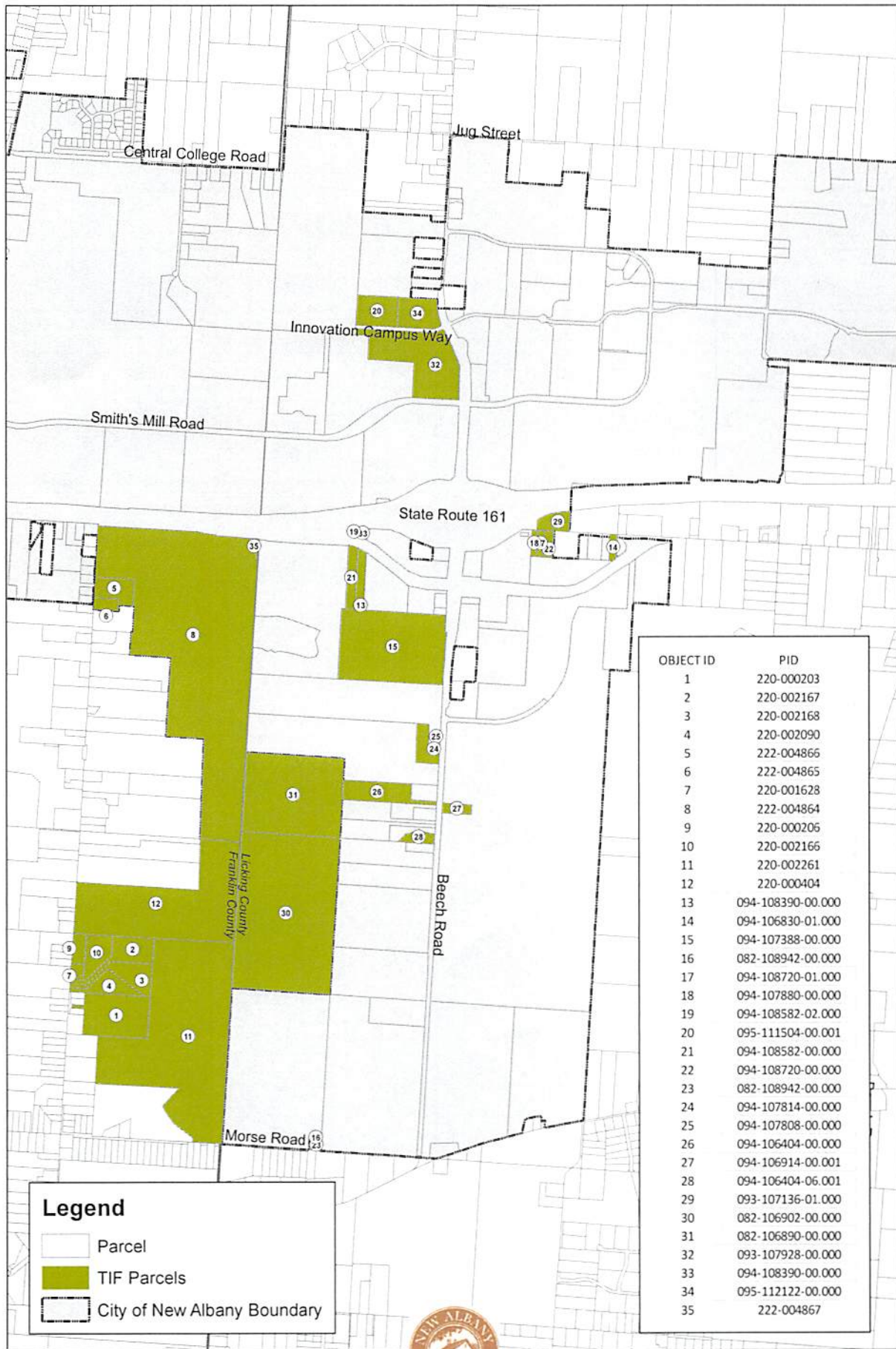
Mitchell H. Banchefsky
Law Director

PROPOSED

EXHIBIT A – O-22-2018

PARCELS (MAP)

The hatched areas on the attached map specifically identify and depict the Parcels and constitutes part of this Exhibit A. The Parcels include, without limitation, the tax parcels set forth on Exhibit A.



OBJECT ID	PID
1	220-000203
2	220-002167
3	220-002168
4	220-002090
5	222-004866
6	222-004865
7	220-001628
8	222-004864
9	220-000206
10	220-002166
11	220-002261
12	220-000404
13	094-108390-00.000
14	094-106830-01.000
15	094-107388-00.000
16	082-108942-00.000
17	094-108720-01.000
18	094-107880-00.000
19	094-108582-02.000
20	095-111504-00.001
21	094-108582-00.000
22	094-108720-00.000
23	082-108942-00.000
24	094-107814-00.000
25	094-107808-00.000
26	094-106404-00.000
27	094-106914-00.001
28	094-106404-06.001
29	093-107136-01.000
30	082-106902-00.000
31	082-106890-00.000
32	093-107928-00.000
33	094-108390-00.000
34	095-112122-00.000
35	222-004867

Legend




-  Parcel
-  TIF Parcels
-  City of New Albany Boundary



EXHIBIT A - O-22-2018

September 7, 2018

New Albany TIF Parcels - Business Park South Amendment
City of New Albany, Ohio

EXHIBIT B – O-22-2018

PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements include the construction of the following improvements that will directly benefit the Parcels and all related costs of permanent improvements (including, but not limited to, those costs listed in Section 133.15(B) of the Ohio Revised Code), along with any other improvements subsequently designated by City Council:

- public roads and highways (including street realignments);
- water and sewer lines;
- leisure trails and connections;
- parks and public facilities;
- environmental remediation projects;
- stormwater and flood remediation projects, including such projects on private property when determined to be necessary for public health, safety and welfare;
- gas, electric and communications services facilities, including fiber optics;
- land acquisition, including acquisition in aid of industry, commerce, distribution, or research;
- demolition, including demolition on private property when determined to be necessary for economic development purposes;
- landscaping and signage, including brick retaining walls at roadway intersections; including in each case, design and other related costs (including traffic studies); any rights-of-way or real estate acquisition; curbs and gutters, medians, sidewalks, bikeways, and landscaping (including scenic fencing and irrigation); traffic signs and signalization (including overhead street signage); street lighting and signs; burial of utility lines (including fiber optics); erosion and sediment control measures; grading, drainage and other related work; survey work, soil engineering, inspection fees and construction staking; and all other costs and improvements necessary and appurtenant thereto.



Prepared: 10/25/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

ORDINANCE O-23-2018

AN ORDINANCE TO ACCEPT WATER LINE, SANITARY SEWER, STREET AND STORM SEWER IMPROVEMENTS AND APPURTENANCES THERETO FOR NOTTINGHAM TRACE, PHASE 1, AS REQUESTED BY PULTE HOMES

WHEREAS, in accordance with New Albany Ordinance 77-91 as amended, and pursuant to written certification by the city engineer that the improvements and appurtenances thereto for Nottingham Trace, Phase 1, have been completed to the standards set by Ordinance 77-97 as amended; and

WHEREAS, a two-year maintenance bond in the amount of \$137,578, an engineering inspection fee deposit in the amount of \$2,408, and a five-year settlement bond of \$36,250 will be provided by the applicant prior to second reading. Any infrastructure items that cannot be completed due to weather conditions will be identified and a performance bond or escrow amount will be submitted in an amount deemed acceptable to the city as required by codified ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of New Albany, Counties of Franklin and Licking, State of Ohio that:

Section 1. The improvements and appurtenances thereto for are hereby accepted. Any weather-related items, street trees and landscaping covered under performance bonds must be installed as outlined in such performance bonds by July 30, 2019.

Section 2. It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this ordinance were adopted in an open meeting and that all deliberations of council and any decision making bodies of the City of New Albany which resulted in such formal actions were in meetings open to the public and in compliance with all legal requirements of the City of New Albany, Franklin and Licking Counties, Ohio.

Section 3. Pursuant to Article VI, Section 6.07(B) of the charter of the City of New Albany, this ordinance shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

PROPOSED



Prepared: 10/26/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

ORDINANCE O-24-2018

AN ORDINANCE TO AMEND CHAPTER 907 "RIGHTS-OF-WAY", OF THE CITY OF NEW ALBANY, OHIO'S CODIFIED ORDINANCES TO ADDRESS SMALL CELL FACILITIES, WIRELESS SUPPORT STRUCTURES, RELATED DESIGN GUIDELINES TO COMPLY WITH H.B 478, PROTECT CITY RIGHT-OF-WAY, AND PRESERVE THE PUBLIC HEALTH SAFETY AND WELFARE

WHEREAS, following collaborative negotiations between municipal leaders, (including representatives of the city) and the wireless telecommunications industry, House Bill 478 (H.B. 478) dealing with municipal regulation of wireless telecommunications in the public right-of-way, was enacted effective August 1, 2018; and

WHEREAS, the city and its consultants have been working to draft an amendment to Chapter 907 of the codified ordinances in order to comply with H.B. 478 and to create related design guidelines to protect the aesthetics of the city's right-of-way to the maximum extent possible; and

WHEREAS, this ordinance authorizes the city's director of public service to establish, implement and amend from time to time Design Guidelines relating to the location of any small cell facilities and wireless support structures located in the public right-of-way, the appearance and concealment of such facilities, including materials used for the arranging, screening and/or landscaping such facilities, as well as the design and appearance of wireless support structures; and

WHEREAS, H.B. 478, this proposed ordinance and the related Design Guidelines do not modify existing city regulation of cellular towers or wireless facilities outside the city's right-of way.

NOW, THEREFORE, BE IT ORDAINED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. That portions of Codified Ordinance Chapter 907 "Rights-of-way" be amended as set forth in Exhibit A, which depicts these amendments in redline (strikethrough and underline).

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this ordinance were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(B) of the New Albany Charter, this ordinance shall become effective thirty (30) days after adoption and after the effective date of the associated annexation.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

CHAPTER 907 - RIGHTS-OF-WAY

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CHAPTER 907 - RIGHTS-OF-WAY

907.01 - DECLARATION OF FINDINGS AND PURPOSE, SCOPE, DEFINITIONS.

- (a) Findings and purpose.
- (1) The City of New Albany, Ohio (the "City") is vitally concerned with the use of all Rights-of-way in the City as such Rights-of-way are a valuable and limited resource.
 - (2) Changes in the public utilities and communication industries have increased the demand and need for access to Rights-of-way and placement of facilities and structures therein.
 - (3) It is necessary to comprehensively plan and manage access to, and structures and facilities in, the Rights-of-way.
 - (4) The City has authority under the Laws and Constitution of the State of Ohio, including but not limited to Article 18, Sections 3, 4 and 7, to regulate public and private entities which use the Rights-of-way.
- (b) Scope. The provisions of this Chapter shall apply to all users of the Rights-of-way as provided herein. To the extent that anything in this Chapter 907 conflicts with other sections of the Code, then the provisions of this Chapter 907 shall control.
- (c) Definitions. For the purposes of Chapter 907 the following terms, phrases, words, and their derivations have the meanings set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "Sections" are, unless otherwise specified, references to Sections in this Chapter. Defined terms remain defined terms whether or not capitalized.
- (1) "ABANDONED" means the designation given to a Facility, except for a Small Cell Facility or Wireless Support Structure in the Right-of-way, when its operations or use are discontinued in a manner that is not in accordance with Section 907.02(g); or for a period exceeding ninety (90) consecutive days or a total of one hundred eighty (180) days in any 365-day period, without notice of the discontinued operations or use given to the City by the Provider and without the City's approval; and except for a period of discontinued operations or use that has been caused by acts of God. Small Cell Facilities or Wireless Support Structures shall be deemed Abandoned if the Facilities or Support Structures are unused for a period of three hundred sixty-five (365) days without the Operator otherwise notifying the City and receiving the City's approval.
- (21) "AFFILIATE" means each Person who falls into one or more of the following categories: (a) each Person having, directly or indirectly, a controlling interest in a Provider, (b) each Person in which a Provider has, directly or indirectly a controlling interest, (c) each officer, director, general partner, limited partner or shareholder holding an interest of fifteen percent (15%) or more, joint venturer or joint venture partner, of a Provider, and (d) each Person, directly or indirectly, controlling, controlled by, or under common control with the Provider; provided that Affiliate shall in no event mean any limited partner or shareholder holding an interest of less than fifteen percent (15%) of such Provider, or any creditor of such Provider solely by virtue of its status as a creditor and which is not otherwise an Affiliate by reason of owning a controlling interest in, being owned by, or being under common ownership, common management, or common control with, such Provider.
- (3) "ANTENNA" means communications equipment that transmits or receives radio frequency signals in the provision of Wireless Service.
- (24) "APPLICANT" means any Person who seeks to obtain a Certificate of Registration and/or a Permit.

- (35) "APPLICATION" means the process by which an Applicant submits a request to obtain a Certificate of Registration and/or a Permit.
- (46) "APPLICATION FEE" means the fee paid to the City for application for a Certificate of Registration pursuant to Section 907.03(Aa).
- (57) "BANKRUPTCY CODE" means the United States Bankruptcy Code of 1978, as amended including regulations promulgated by Title 11 of the United States Code.
- (68) "BEST EFFORT(S)" means the best reasonable efforts under the circumstances, taking into consideration, among other appropriate matters, all applicable Laws, regulations, safety, engineering and operational codes, available technology, human resources, and cost.
- (79) "CABLE FRANCHISE" means the same as "franchise" in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (810) "CABLE OPERATOR" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (911) "CABLE SERVICE" means the same as in the Cable Communications Policy Act of 1984, 98 Stat. 2779, 47 U.S.C. 522.
- (1012) "CERTIFICATE OF REGISTRATION" means the document issued to each Provider and its unique System to occupy the Rights-of-way within the City that outlines the terms of that occupancy of the Rights-of-way.
- (1113) "CITY" means The City of New Albany, Ohio.
- (1214) "CITY COUNCIL" means the governing body of the City of New Albany, Ohio.
- (1315) "CITY OF COLUMBUS" means the City of Columbus, Ohio and/or its divisions or departments.
- (1416) "CITY MANAGER" means the duly appointed City Manager of the City of New Albany, Ohio.
- (1517) "CODE (or C.O.)" means the codified ordinances of New Albany, Ohio.
- (18) "COLLOCATION OR COLLOCATE" means- to install, mount, maintain, modify, operate, or replace Wireless Facilities on a Wireless Support Structure.
- (1619) "CONFIDENTIAL/PROPRIETARY INFORMATION" means all information that has been either identified or clearly marked as confidential/proprietary by the Provider prior to any submission.
- (1720) "CONSTRUCT" means, but not be limited to, digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-way. Construct shall also include the act of opening and/or cutting into the surface of any paved, unimproved or improved surface that is any part of the Right-of-way.
- (1821) "CONSTRUCTION" means, but not limited to, the act or process of digging, boring, tunneling, trenching, excavating, obstructing, installing wires, installing conduit, installing pipes, installing transmission lines, installing poles, installing signs or installing Facilities, other than landscaping, ornamental plantings in, on, above, within, over, below, under or through any part of the Rights-of-way. Construction shall also include the act of opening and/or cutting into the surface of any paved, unimproved or improved surface that is part of the Right-of-way.
- (1922) "CONSTRUCTION BOND" means a bond posted to ensure proper and complete Construction and/or repair of a Facility and the affected Rights-of-way pursuant to a Permit.
- (2023) "CONSTRUCTION AND MAJOR MAINTENANCE PLAN" means a written plan including maps of the expected location, design, other related equipment and Facilities of a Provider

which describes in full the Construction intended to be accomplished by the Provider in the Rights-of-way over the next calendar year.

(2124) "CONSTRUCTION PERMIT" means the Permit specified in Section 907.143 et seq. which must be obtained before a Person may Construct in, locate in, occupy, maintain, move or remove Facilities from, in or on the Rights-of-way.

(2225) "COUNTY" means Franklin County, Ohio or Licking County, Ohio. County specifically excludes any and all contractors, agents or other Persons acting on behalf of said County(s).

(2326) "CREDIBLE" means worthy of being believed.

(27) "DECORATIVE POLE" means a pole, arch, or structure other than a street light pole placed in the public-way Right-of-Way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for the following: (i) electric lighting; (ii) specifically designed informational or directional signage; or (iii) temporary holiday or special event attachments.

(28) "DESIGN GUIDELINES" means detailed guidelines and specifications promulgated by the City in accordance with ORC 4939 for the design and installation of Small Cell Facilities and Wireless Support Structures in the Right-of-way.

(2429) "DIRECTOR OF FINANCE" means the duly appointed Director of Finance of the City of New Albany, Ohio.

(2530) "DIRECTOR OF PUBLIC SERVICE" means the duly appointed Director of Public Service of the City of New Albany, Ohio or his/her designee.

(2631) "EMERGENCY" means a condition that poses a clear and immediate danger to life or health, or of a significant loss of property.

(2732) "FACILITY(IES)" means any tangible thing located in any Rights-of-way within the City, and includes Wireless Facilities and Wireless Support Structures; but shall not include boulevard plantings, ornamental plantings or gardens planted or maintained in the Rights-of-way between a Person's property and the street edge of pavement.

(2833) "FCC" means the Federal Communications Commission, or any successor thereto.

(2934) "FERC" means the Federal Energy Regulatory Commission as created and amended in accordance with the Federal Power Act, 16 U.S.C. 792, or its statutory successor.

(3035) "FINANCE DIRECTOR" means the duly appointed Finance Director of the City of New Albany, Ohio.

(3136) "FULL" means unable to accommodate any additional Facilities as determined by the Director of Public Service following a reasonable analysis taking into consideration all applicable Law; commonly accepted industry standards; and routine engineering practices.

(37) "HEIGHT" means the distance measured from the pre-existing grade level to the highest point on the structure, including the Small Cell Facility, even if said highest point is an Antenna or lightening protection device.

(38) "HISTORIC DISTRICT" means a building, property, or site, or group of buildings, properties, or sites that are either of the following:

(a) Listed in the national register for historic places or formally determined eligible for listing by the keeper of the national register, the individual who has been delegated the authority by the federal agency to list properties and determine their eligibility for the national register, in accordance with section VI.D.1.a.i-v of the nationwide programmatic agreement codified at 47 C.F.R. part 1, Appendix C.

(b) A registered historic district as defined in ORC 149.311.

- (3239) "IN" when used in conjunction with Rights-of-way, means in, on, above, within, over, below, under or through a Rights-of-way.
- (3340) "INSPECTOR" means any Person authorized by the Director of Public Service to carry out inspections related to the provisions of Chapter 907.
- (3441) "LAW" means any local, state and/or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff or other requirement in effect either at the time of execution of Chapter 907 or at any time during the location of, and/or while a Provider's Facilities are located in the public Rights-of-way.
- (3542) "LAW DIRECTOR" means the duly appointed Law Director of the City of New Albany, Ohio.
- (43) -"MICRO WIRELESS PERMIT" means a permit, which must be obtained before a person can construct, modify, collocate or replace a Small Cell Facility or Wireless Support Structure, as set forth in Section 907.07 et seq., in or on the Rights-of-way.
- (3644) "MINOR MAINTENANCE PERMIT" means a Permit, which must be obtained before a Person can perform minor maintenance, as set forth in Section 907.1516, in or on the Rights-of-way.
- (45) -"OCCUPY OR USE" means, with respect to a public Right-of-way, to place a tangible thing in a public Right-of-way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.
- (3746) "OMUTCD" means the Ohio Manual of Uniform Traffic Control Devices which is the uniform system of traffic control devices promulgated by the Ohio Department of Transportation pursuant to ORC 4511.09.
- (3847) "ORC" means the Revised Code of the State of Ohio.
- (3948) "OHIO UTILITY PROTECTION SERVICE" means the utility protection service as defined in ORC 153.64 and/or Section 3781.26 or a statutory successor thereto.
- (4049) "OPEN VIDEO SERVICE" means any video programming Services provided to any Person through the use of Rights-of-way, which Person is certified by the FCC to operate an Open Video System pursuant to § 651 et seq. of the Telecommunications Act of 1996 (codified at 47 U.S.C. Title VI, Part V), regardless of the facilities used.
- (50) "OPERATOR" means Wireless Service Provider, Cable Operator, or a Video Service Provider that operates a Small Cell Facility and provides Wireless Service. For purposes of this chapter, Operator includes a Wireless Service Provider, Cable Operator, or a Video Service Provider that provides information services as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20), as services that are fixed in nature or use unlicensed spectrum.
- (4151) "PERMIT" means a Construction Permit ~~or,~~ a Minor Maintenance Permit or a Micro Wireless Permit, as the context requires.
- (4252) "PERMIT COST" means all direct, incidental and indirect costs actually incurred or realized by the City for Permit issuance, Permit oversight and pavement degradation resulting from Construction activity.
- (4353) "PERMIT FEE" means money paid to the City for a Permit to Construct in the Rights-of-way and/or Collocate Small Cell Facilities and/or Wireless Support Structures in the Rights-of-Way, as the context requires, and as required by Chapter 907.

- (4454) "PERMITTEE" means any Person to whom a Construction Permit and/or, Minor Maintenance Permit and/or a Micro Wireless Permit has been granted by the City and not revoked.
- (4555) "PERSON" means any natural person or corporate personentity, business association or other business entity including, but not limited to, a partnership, a sole proprietorship, a political subdivision, a public or private agency of any kind, a utility, a successor or assign of any of the foregoing, or any other legal entity.
- (4656) "PROVIDER" means a Person who owns or operates a System and has a valid Certificate of Registration. The City, County, Schools, Small Cell Facility Operators and Cable Operators operating pursuant to a valid Cable Franchise, or Video Service Provider operating pursuant to a valid Video Service Authorization shall also be considered Providers.
- (57) "PUBLIC UTILITY" means a Wireless Service Provider as defined in division (A)(20) of ORC 4927.01 or any company described in ORC 4905.03 except in divisions (B) and (I) of that section, which company also is a Public Utility as defined in ORC 4905.02; and includes any electric supplier as defined in ORC 4933.81.
- (4758) "PUCO" means the Public Utilities Commission of Ohio as defined in ORC 4901.02.
- (4859) "REGISTRATION MAINTENANCE FEE" means the money paid to the City to maintain a Certificate of Registration and compensate the City for all actual costs incurred by the City in the management, administration and control of the Rights-of-way of the City, and which are not reasonably recoverable by the City through Construction Permit Fees or other approved recovery mechanisms.
- (4960) "REMOVAL BOND" means a bond posted to ensure the availability of sufficient funds to remove a Provider's Facilities upon abandonment or disuse, or discontinuance of a Provider's use or occupation of the Rights-of-way.
- (5061) "RESTORATION" means the process and the resultant effects by which a Rights-of-way is returned to a condition as good as or better than its condition immediately prior to the Construction. Restoration shall occur in accordance with the Rules and Regulations as may be enacted or amended from time to time.
- (5162) "RIGHT(S) OF WAY" means the surface of, and the space within, through on, across, above or below, the paved or unpaved portion of any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which, on or after July 2, 2002, is owned or controlled by the City. Right of Way excludes a private easement, the surface and space in, above, within, over below, under or through any real property in which the City has an interest in Law or equity, whether held in fee, or other estate or interest, or as a trustee for the public, including, but not limited to any public street, boulevard, road, highway, freeway, lane, alley, court, sidewalk, parkway, river, tunnel, viaduct, bridge, conduit, or any other place, area, or real property owned by or under the legal or equitable control of the City that, consistent with the purposes for which it was dedicated, may be used for the purposes of constructing, operating, repairing, or replacing a System. Rights-of-way shall not include buildings, parks, or other public property or easements that have not been dedicated to compatible uses, except to the extent the use or occupation of such property is specifically granted in a Permit or by Law.
- (5263) "RIGHT(S) OF WAY COST" means all direct, incidental and indirect costs borne by the City for the management and administration of the Rights-of-way and this Chapter.
- (5364) "RULE(S) AND REGULATION(S)" means any rules or regulations adopted by the Director of Public Service pursuant to Section 907.06(Ee).
- (5465) "SCHOOLS" means the New Albany- Plain Local School District. Schools specifically exclude any and all contractors, agents or other Persons acting on behalf of said Schools.

(5566) "SERVICE(S)" means the offering of any service or Utility for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, or alternatively, the provision (for a fee or otherwise) of any service or Utility between two (2) or more points for a proprietary purpose to a class of users other than the general public that in the opinion of the Director of Public Service constitutes a service.

(67) "SMALL CELL FACILITY" a wireless facility that meets both of the following requirements:

(a) Each Antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.

(b) All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

(68) "STATE" means the State of Ohio.

(5669) "SUPPLEMENTARY APPLICATION" means any application made to Construct on or in more of the Rights-of-way than previously allowed, to extend a Permit that had already been issued, or to otherwise modify or amend the specifics of a Permit application.

(5770) "SYSTEM" means any System of conduit, cables, ducts, pipes, wires, lines, towers, antennae, wave guides, optic fiber, microwave, laser beams and any associated converters, equipment or Facilities or Utilities designed and constructed for the purpose of producing, receiving, amplifying, delivering or distributing Services within the City. A System shall specifically include, but not necessarily be limited to: electric distribution and/or transmission systems, natural or artificial gas distribution and/or transmission systems, water distribution systems, storm sewer systems, sanitary sewer systems, cable television systems, video service networks, telecommunications systems (whether voice, video, data, or other), fiber optic systems, and wireless communications systems.

(5871) "SYSTEM REPRESENTATIVE" means the specifically identified agent/employee of a Provider who is authorized to direct field activities of that Provider and serve as official notice agent for System related information. Any such System Representative shall be required to be available at all times to receive notice of and immediately direct response to System related emergencies or situations.

(5972) "TRANSFER" means the disposal by the Provider, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation or otherwise, of fifty-one percent (51%) or more at one time of the ownership or controlling interest in the System, or fifty-one percent (51%) cumulatively over the term of a Certificate of Registration of such interests to a corporation, partnership, limited partnership, trust, or association or Person or group of Persons acting in concert.

(6073) "TRENCHLESS TECHNOLOGY" means, but not be limited to, the use of directional boring, horizontal drilling, microtunneling and other techniques in the Construction of underground portions of Facilities which result in the least amount of disruption and damage to Rights-of-way as possible.

(6174) "UNDERGROUND FACILITY(IES)" means all lines, cables, conduits, pipes, posts, tanks, vaults and any other Facilities which are located wholly or partially underneath Rights-of-way.

(6275) "UNUSED FACILITY(IES)" means facilities located in the Rights-of-way which have remained unused for twelve (12) months and for which the Provider is unable to provide the City with a Credible plan detailing the procedure by which the Provider intends to begin actively using such Facilities within the next twelve (12) months, or that it has a potential purchaser or

user of the Facilities who will be actively using the Facilities within the next twelve (12) months, or that the availability of such Facilities is required by the Provider to adequately and efficiently operate its System.

- (6376) "UTILITY(IES)" means any water, sewer, gas, drainage, sprinkler or culvert pipe and any electric power, telecommunications, signal communications, cable television or video service provider conduit, fiber, wire, cable, or an operator thereof.
- (6477) "UTILITY CORRIDOR(S)" means those specific areas of the Rights-of-way designated as such by the Director of Public Service pursuant to Section 907.03(Ee)(1).
- (78) "UTILITY POLE" A structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric or telecommunications service. Utility Pole excludes street signs and decorative poles.
- (6579) "VIDEO SERVICE" means the same as "video service" in ORC 1332.21(J).
- (6680) "VIDEO SERVICE AUTHORIZATION (or VSA)" means a "video service authorization" as issued to a Video Service Provider by the Director of the Ohio Department of Commerce in accordance ORC 1332.24(A)(1).
- (6781) "VIDEO SERVICE NETWORK" means the same as "video service network" in ORC 1332.21(L).
- (6882) "VIDEO SERVICE PROVIDER (or VSP)" means the same as "video service provider" in ORC 1332.21(M).
- (83) "WIRELESS FACILITY" means
- (a) equipment at a fixed location that enables wireless communications between user equipment and a communications network, including all of the following:
- (1) Equipment associated with wireless communications;
- (2) Radio transceivers, Antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of the technological configuration.
- (b) The term includes Small Cell Facilities.
- (c) The term does not include any of the following:
- (1) The structure or improvements on, under, or within which the equipment is Collocated;
- (2) Coaxial or fiber-optic cable that is between Wireless Support Structures or Utility Poles or that is otherwise not immediately adjacent to or directly associated with a particular Antenna.
- (84) "WIRELESS SERVICE" means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using Wireless Facilities.
- (85) "WIRELESS SERVICE PROVIDER" means a person who provides Wireless Service as defined in division (A)(19) of ORC 4927.01.
- (86) "WIRELESS SUPPORT STRUCTURE" means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or Utility Pole is capable of supporting Small Cell Facilities. As used in this chapter, Wireless Support Structure excludes all of the following:
- (a) A Utility Pole or other facility owned or operated by a municipal electric utility;
- (b) A Utility Pole or other facility used to supply traction power to public transit systems including railways, trams, streetcars, and trolleybuses.
- (6988) "WORKING DAY" means any Monday, Tuesday, Wednesday, Thursday, or Friday, but excluding legal holidays observed by the City.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.02 - RIGHTS-OF-WAY ADMINISTRATION.

- (a) Administration. The City Manager shall be the principal City official responsible for the administration of Chapter 907, except as otherwise provided herein. The City Manager may delegate any or all of the duties hereunder to the Director of Public Service or other designee.
- (b) Rights-of-Way Occupancy. Each Person who occupies, uses or seeks to ~~occupy~~ Occupy or use the Rights-of-way to operate a System located in the Rights-of-way, or who has, or seeks to have, a System located in any Rights-of-way, shall apply for and obtain a Certificate of Registration pursuant to Chapter 907. Any Person owning, operating or maintaining a System in the Rights-of-way without a Certificate of Registration, including Persons operating under a permit, license or franchise issued by the City prior to the effective date of Chapter 907 shall apply for and obtain a Certificate of Registration from the City, unless exempted by Section 907.02(~~Dd~~). Application will consist of providing the information set forth in Section 907.03 and as reasonably required by the Director of Public Service.
- (c) No Construction Without a Certificate of Registration. Following the effective date of Chapter 907, no Person shall Construct or perform any work on or in any Rights-of-way nor shall a Provider, ~~or~~ use any System or any part thereof located on or in any Rights-of-way without first obtaining a Certificate of Registration. Whoever violates this section is guilty of a misdemeanor of the fourth (4th) degree as provided for in Section 907.99.
- (d) Exceptions.
- (1) The following entities are not obligated to obtain a Certificate of Registration: the City and resellers of Services or Persons that do not own any System or Facilities in the Rights-of-way.
 - (2) The following entities are required to participate in the Certificate of Registration process, but shall be exempt from the financial obligations of the Application Fee required by Section 907.03(A) and the Registration Maintenance Fee required by Section 907.05(~~Aa~~): Cable Operators for the purpose of providing only Cable Service and operating pursuant to a valid Cable Franchise; Video Service Provider for the purpose of providing only Video Service and operating pursuant to a valid Video Service authorization issued in accordance with ORC 1332.24; any entity which possesses an existing and valid non-terminable, non-amendable or non-revocable written privilege or authority previously granted by the City for the use or occupancy of the Right-of-way, whereby such exemption shall be limited to for specific term and limited conditions or obligations as previously granted; the Schools; the City of Columbus; and the County. In addition, Cable Operators shall be exempt from any requirement of the Certificate of Registration process that is in direct conflict with the requirements of, and/or specifically exempted by, a valid Cable Franchise with the City.
- (e) Systems in Place Without a Certificate of Registration. Any System or part of a System found in the Rights-of-way for which a Certificate of Registration has not been obtained or an exemption has been otherwise authorized by Chapter 907, shall be deemed to be a nuisance and an unauthorized use of the Rights-of-way. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to abating the nuisance; taking possession of the Facilities and/or non-complying portion of such System; and/or prosecuting the violator.
- (f) Future Uses. Subject to applicable Law, ~~in~~ allowing Providers and Permittees to place Facilities in the Rights-of-way, the City shall not be liable for any damages caused thereby to any Provider's Facilities that are already in place or that shall be placed in the Rights-of-way unless those damages arise out of the sole negligence, gross negligence, willful misconduct, or fraud of the City. No Provider is entitled to rely on the provisions of this Chapter as creating a special duty to any Provider.

(g) Discontinuance of Operations, Abandoned and Unused Facilities.

- (1) A Provider who has discontinued or is discontinuing its operations of any System in the City shall:
- A. Provide information satisfactory to the City that the Provider's obligations for its System in the Rights-of-way under this section and any other sections in the Code have been lawfully assumed by another Applicant and/or Provider; or
 - B. Submit a written proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights-of-way capacity. Such proposal must be approved or denied by the Director of Public Service. The Director of Public Service's denial of a proposal to re-use its Facilities in a manner that promotes the City's goals of providing innovative and economic solutions to efficiently and economically utilize limited Rights-of-way capacity shall be done in writing and describe the Director of Public Service's reasons for such a denial. The denial may be appealed by the Provider to the City Manager. The decision of the City Manager shall be final; or
 - C. Submit a written proposal for abandonment of Facilities in place indicating why good engineering practice would support this type of solution. The Director of Public Service must approve or deny said proposal. The Director of Public Service's denial of a proposal to abandon facilities in place shall be done in writing and describe the Engineers reasons for such a denial. The denial may be appealed by the Provider to the City Manager. The decision of the City Manager shall be final; or
 - D. Completely remove all specifically identified portion(s) of its System in a manner acceptable to the City within a reasonable amount of time if the City believes that there exists a reasonable justification for such removal; or
 - E. Submit to the City within a reasonable amount of time and in accordance with ORC 4905.20 and 4905.21, a proposal for transferring ownership of its Facilities to the City. If a Provider proceeds under this clause, the City may, at its option where lawful:
 1. purchase the Facilities; or
 2. unless a valid removal bond has already been posted pursuant to Section 907.1718(Bb), require the Provider to post a bond in an amount sufficient to reimburse the City for reasonably anticipated costs to be incurred in removing the Facilities.
- (2) Facilities of a Provider ~~who-that~~ fail to comply with this ~~S~~section and which remain Unused Facilities shall be deemed to be ~~a~~Abandoned. Abandoned Facilities are deemed to be a nuisance. The City may exercise any remedies or rights it has at Law or in equity, including, but not limited to:
- A. abating the nuisance;
 - B. taking possession of the Facilities and restoring them to a useable condition subject to a finding of the PUCO pursuant to the requirements of ORC 4905.20 and 4905.21; or
 - C. requiring removal of the Facilities by the Provider or by the Provider's surety.
- (3) If the City requires a Provider to remove Unused Facilities in any Rights-of-way, the City shall use reasonable efforts to direct that this removal occur in conjunction with other scheduled excavations of the Rights-of-way. If the City abates the nuisance it may take all action necessary to recover its costs and to abate said nuisance, including but not limited to, those methods set forth in ORC 715.261.
- (h) Nature of Issuance. A Certificate of Registration shall not convey equitable or legal title in the Rights-of-way. A Certificate of Registration is only the nonexclusive, limited right to occupy Rights-of-way in the City, for the limited purposes and for the limited period stated in the Certificate of Registration and in accordance with Chapter 907 of the Code. The rights to occupy the Right-of-way may not be subdivided or subleased; provided, however, that two (2) or more Providers may

collocate Facilities in the same area of the Rights-of-way so long as each such Provider complies with the provisions of Chapter 907. ~~Collocating-Such~~ Providers may file a joint application for a Construction Permit. A Certificate of Registration does not excuse a Provider from obtaining appropriate access or pole attachment agreements before collocating its Facilities on Facilities of others, including the City's Facilities. A Certificate of Registration does not prevent a Provider from leasing space in or on the Provider's System, so long as the sharing of Facilities does not cause a violation of Law, including the provisions of Chapter 907. A Certificate of Registration does not excuse a Provider from complying with any provisions of the Code or other applicable Law.

- (i) Other Approvals, Permits, and Agreements . In addition to a Certificate of Registration, Providers shall obtain any and all regulatory approvals, permits, authorizations, or licenses necessary for the offering or provision of such Services from the appropriate federal, state and local authorities and upon the City's reasonable request, shall provide copies of such documents to the City. Further, a Certificate of Registration issued pursuant to Chapter 907 shall not entitle a Provider to use, alter, convert to, or interfere with, the Facilities, easements, poles, conduits, lines, pipelines, wires, fiber, cable or any other real or personal property of any kind whatsoever under the management or control of the City.

(Ord. [O-06-2014](#) . Passed 3-18-14)

907.03 - CERTIFICATE OF REGISTRATION APPLICATIONS.

- (a) Certificate of Registration Applications . To obtain a Certificate of Registration to construct, own, or maintain any system within the City, or to obtain a renewal of a Certificate of Registration issued pursuant to this Chapter, an Application must be filed with the City on the form adopted by the City which is hereby incorporated by reference. For all Applications the City shall collect an Application Fee. The Application Fee shall be equal to all the actual and direct costs incurred by the City that are associated with receiving, reviewing, processing and granting (or denying) an Application. At the time of its decision to either grant or deny an Application the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Application and provide a written invoice to the Applicant for the appropriate amount. The City shall require that the Applicant remit all Application Fee amounts invoiced within thirty (30) days of its decision to either grant or deny a Certificate of Registration. Any Applicant who fails to timely remit such invoiced Application Fee amounts shall be subject to the penalties of this Chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration having been issued. Information Required for Application to Obtain a Certificate of Registration.
- (1) The Applicant shall keep all of the information required in this section current at all times, provided further that Applicant or Provider shall notify the City of any changes to the information required by this section within thirty (30) days following the date on which the Applicant or Provider has knowledge of such change. The information provided to the City at the time of Application shall include, but not be limited to:
- A. Each Applicant's name, legal status (i.e. partnership, corporation, etc.), street address and e-mail address, if applicable, and telephone and facsimile numbers; and
 - B. The name, address and e-mail address, if applicable, and telephone and facsimile numbers of a System Representative. The System Representative shall be available to the City at all times. Current information regarding how to contact the System Representative in an Emergency shall be provided at the time of Application and shall be updated as necessary to assure accurate contact information is available to the City at all times; and
 - C. A certificate of insurance where required to be provided to meet the requirements of this ~~S~~section shall:
 1. Verify that an insurance company licensed to do business in the State of Ohio has issued an insurance policy to the Applicant;

2. Verify that the Applicant is insured on an occurrence basis against claims for personal injury, including death, as well as claims for property damage arising out of the:
 - (i) Use and occupancy of the Rights-of-way by the Applicant, its officers, agents, employees and contractors; and
 - (ii) Placement and use of Facilities in the Rights-of-way by the Applicant, its officers, agents, employees and contractors, including, but not limited to, protection against liability arising from any and all operations, damage of Underground Facilities and collapse of property;
3. Name the City, its elected officials, officers, employees, agents and volunteers as an additional insured as to whom the comprehensive general liability and completed operation and products liability insurance required herein are in force and applicable and for whom defense will be provided as to all such coverage, as is required within Chapter 907;
4. Require that the City be notified thirty (30) days in advance of cancellation of, or coverage changes in, the policy. The liability insurance policies required by this section shall contain the following endorsement:
 - (i) "It is hereby understood and agreed that this policy may not be diminished in value, canceled nor the intention not to renew be stated, until thirty (30) days after receipt by the City, by registered mail, return receipt requested, of a written notice addressed to the Director of Public Service or her/his designee of such intent to cancel, diminish or not to renew."

Within thirty (30) days after receipt by the City of said notice, and in no event later than five (5) days prior to said cancellation, the Provider (or Applicant) shall obtain and furnish to the Director of Public Service a certificate of insurance evidencing replacement insurance policies.

5. Satisfy the requirements for comprehensive liability coverage, automobile liability coverage and umbrella coverage as follows:
 - (i) Comprehensive general liability insurance: comprehensive general liability insurance to cover liability, bodily injury, and property damage must be maintained. Coverage must be written on an occurrence basis, with the following minimum limits of liability and provisions, or their equivalent:

(1)	Bodily injury:	
	Each occurrence -	One Million Dollars (US \$1,000,000.00)
	Annual aggregate -	Three Million Dollars (US \$3,000,000.00)
	Property damage:	
(2)	Each occurrence -	One Million Dollars

		(US \$1,000,000.00)
	Annual aggregate -	Three Million Dollars
		(US \$3,000,000.00)
(3)	Personal Injury:	
	Annual aggregate -	Three Million Dollars
		(US \$3,000,000.00)
(4)	Completed operations and products liability shall be maintained for six (6) months after the termination of a Certificate of Registration.	
(5)	Property damage liability insurance shall include coverage for the following hazards: E — explosion, C — collapse, U — underground.	

(ii) **Comprehensive auto liability insurance:** Comprehensive auto liability insurance to cover owned, hired, and non-owned vehicles must be maintained. Applicant may maintain comprehensive auto liability insurance as part of Applicant's comprehensive general liability insurance, however, said insurance is subject to approval by the Director of Public Service or his/her designee. Coverage must be written on an occurrence basis, with the following limits of liability and provisions, or their equivalent:

(1)	Bodily injury:	
	Each occurrence -	One Million Dollars
		(US\$1,000,000.00)
	Annual aggregate -	Three Million Dollars
		(US\$3,000,000.00)
(2)	Property damage:	
	Each occurrence -	One Million Dollars

		(US\$1,000,000.00)
	Annual aggregate -	Three Million Dollars
		(US\$3,000,000.00)

- (2) Additional insurance : The City reserves the right to require any other insurance coverage it deems necessary after review of any proposal submitted by Applicant.
 - (3) Self-insurance : Those Applicants maintaining a book value in excess of fifty million dollars (\$50,000,000.00) may submit a statement requesting to self-insure. If approval to self-insure is granted, Applicant shall assure the City that such self-insurance shall provide the City with no less than would have been afforded to the City by a third party insurer providing Applicant with the types and amounts of coverage detailed in this sSection. This statement shall include:
 - A. Audited financial statements for the previous year; and
 - B. A description of the Applicant's self-insurance program; and
 - C. A listing of any and all actions against or claims made against Applicant for amounts over one million dollars (\$1,000,000.00) or proof of available excess umbrella liability coverage to satisfy all total current claim amounts above fifty million dollars (\$50,000,000.00).
 - D. The Director of Public Service may modify or waive these requirements if they are not necessary in determining the sufficiency of the self-insurance. The Director of Public Service may request applicable and pertinent additional information if it is necessary in determining the sufficiency of the self-insurance.
 - (4) The City's examination of, or failure to request or demand, any evidence of insurance in accordance with Chapter 907 shall not constitute a waiver of any requirement of this section and the existence of any insurance shall not limit Applicant's obligations under Chapter 907.
 - (5) Documentation that Applicant or Provider maintains standard workers' compensation coverage as required by Law. Similarly, Provider shall require any subcontractor to provide workers' compensation coverage in amounts required by Law for all of the subcontractor's employees.
 - (6) If the Person is a corporation, upon specific request of the City, a copy of the certificate of incorporation (or its legal equivalent) as recorded and certified to by the secretary of state (or legal equivalent) in the state or country in which incorporated.
 - (7) A copy of the Person's certificate of authority from the PUCO and/or the FCC and/or FERC, if the Person is lawfully required to have or actually does possess such certificate from said commission(s) and any other approvals, permits, or agreements as set out in Section 907.02(h).
 - (8) Upon request of the City, a narrative (or if applicable PUCO/FCC/FERC application information) describing Applicant's proposed activities in the City including Credible information detailing Applicant's financial, managerial, and technical ability to fulfill Applicant's obligations under Chapter 907 and carry on Applicant's proposed activities.
- (b) Criteria for Issuance of a Certificate of Registration.
- (1) In deciding whether to issue a Certificate of Registration, the City shall consider:
 - A. Whether the issuing of the Certificate of Registration will contribute to the health, safety, and welfare of the City and its citizens.
 - B. Whether issuing of the Certificate of Registration will be consistent with Chapter 907.

- C. Whether Applicant has submitted a complete Application and has secured all certificates and other authorizations required by Law in order to Construct and operate a System in the manner proposed by the Applicant.
 - D. Whether the Applicant is delinquent on any taxes or other obligations owed to the City, County or State of Ohio.
 - E. Unless Applicant is otherwise exempted from such consideration by ORC 4939.03(c)(5), whether the Applicant has the requisite financial, managerial, and technical ability to fulfill all its obligations under this Chapter and the issuance of a Certificate of Registration.
 - F. Any other applicable Law.
- (c) Grant or Denial of an Application for a Certificate of Registration .
- (1) The City, not later than sixty (60) days after the date of filing by an Applicant of a completed Application for a Certificate of Registration, shall grant or deny the Application.
 - (2) If an Application for a Certificate of Registration is denied, the City shall provide to the Applicant, in writing, the reasons for denying the Application and such other information as the Applicant may reasonably request to obtain consent.
- (d) Obligations of a Provider Upon Receipt of a Certificate of Registration . In addition to the other requirements set forth herein, in the City's Design Guidelines, and in the Rules and Regulations each Provider shall:
- (1) Use its Best Efforts to cooperate with other Providers and users of the Rights-of-way and the City for the best, most efficient, and least obtrusive use of Rights-of-way, consistent with safety, and to minimize traffic and other disruptions; and
 - (2) When possible, participate in joint planning, Construction and advance notification of Rights-of-way work, as may be required by the City; and
 - (3) Upon reasonable written notice, and at the direction of the Director of Public Service, promptly remove or rearrange Facilities as necessary for public safety; and
 - (4) Perform all work, Construction, maintenance or removal of Facilities within the Rights-of-way, in accordance with good engineering, construction and arboricultural practice (if applicable), including any appropriate state building codes, safety codes and Law and use Best Efforts to repair and replace any street, curb or other portion of the Rights-of-way, or Facilities located therein, to a condition to be determined by the Director of Public Service to be adequate under current standards and not less than materially equivalent to its condition prior to such work and to do so in a manner which minimizes any inconvenience to the public, the City and other Providers, all in accordance with all applicable provisions of this Chapter, any Rules and Regulations and Design Guidelines the City may adopt and the Code; and
 - (5) Construct, install, operate and maintain its Facilities and System in a manner consistent with all applicable Laws, ordinances, construction standards and governmental requirements including, but not limited to, The National Electric Safety Code, National Electric Code and applicable FCC, FERC, or other federal, state and/or local regulations; and
 - (6) Be on notice that removal of trees, or the use of vegetation management programs within the Rights-of-way of the City require prior written approval by the Director of Public Service or his/her designee. Any such activities, unless an Emergency, shall only be performed following the prior written approval of the Director of Public Service or his/her designee and must be performed in accordance with the then most current standard horticultural and arboreal practices as promulgated by entities such as the National Arbor Day Foundation, the International Society of Arboriculture, and the Tree Care Industry, all as may be required by the City. Pruning shall at a minimum meet or exceed the requirements of the most current version of the American National Standards Institute ANSI A300 standard. Any additionally required horticultural and arboreal practices and guidelines shall be described in the Rules and Regulations adopted by the Director of Public Service pursuant to Section 907.06(Ee).

Emergency removal of trees or the use of vegetation management programs within the Rights-of-way of the City may be performed in Rights-of-way as described herein and in accordance with the Rules and Regulations, but the Director of Public Service shall be provided notice of such Emergency work being performed within two (2) Business Days of the start of the work. Any non-emergency tree removal or the use of vegetation management programs within the Rights-of-way that is performed without the Director of Public Service or designee's written permission shall subject a Person to the penalties of Section 907.99 and may further require that the tree or vegetation be replaced, at the sole expense of the responsible Person, with a healthy tree or vegetation of like kind and quality; and

- (7) Warrant that all worker facilities, conditions and procedures that are used during Construction, installation, operation and maintenance of the Provider's Facilities within the Rights-of-way shall comply with all applicable standards of the Federal Occupational Safety and Health Administration; and
 - (8) Use its Best Efforts to cooperate with the City in any Emergencies involving the Rights-of-way; and
 - (9) Provider shall, weather permitting, remove all graffiti within ten (10) calendar days of notice. Provider shall use all reasonable efforts to remove any and all graffiti on any of the Provider's Facilities located within the City Rights-of-way. Should the Provider fail to do so, the City may take whatever action is necessary to remove the graffiti and bill the Provider for the cost thereof; and
 - (10) Providers shall use all reasonable efforts to field identify their Facilities in the Rights-of-way whenever Providers are notified by the City that the City has determined that such identification is reasonably necessary in order for the City to begin planning for the Construction, paving, maintenance, repairing, relocating or in any way altering any street or area in the Rights-of-way as defined in this Chapter. The City shall notify the Providers of the City's date to begin the process at least thirty (30) days prior to the commencement of said activities. In field identifying Facilities:
 - A. Providers shall identify all Facilities that are within the affected Rights-of-way using customary industry standards and distinct identification; and
 - B. Facilities will be so marked as to identify the Provider responsible for said Facilities; and
 - C. Should any such marking interfere with the Facilities function, create a safety problem or violate any safety code, alternative methods of marking the Facilities may be approved by the Director of Public Service; and
 - D. All marking should be clearly readable from the ground and include the product name or logo only. No advertising will be permitted.
 - (11) A Provider that is replacing an existing ~~utility-Utility pole-Pole~~ shall be responsible to coordinate with all other Providers to ensure the orderly transfer of all lines or cables to the replacement ~~Utility Poleutility-pole~~, the removal of the existing ~~Utility Poleutility-pole~~, and the restoration of the Rights-of-way within thirty (30) days weather permitting after the replacement ~~Utility Pole utility-pole~~ is installed. Upon request, the Director of Public Service may grant the Provider additional time for good cause.
- (e) Establishment of Utility Corridors .
- (1) The Director of Public Service may assign specific corridors within the Rights-of-way, or any particular segment thereof as may be necessary, for each type of Facilities that are, or that the Director of Public Service expects, may someday be, located within the Rights-of-way.
 - (2) Any Provider whose Facilities are in the Rights-of-way and are in a position at variance with Utility Corridors established by the Director of Public Service shall at the time of the next Construction of the area, excluding normal maintenance activities, move such Facilities to their assigned position within the Rights-of-way. Existing underground Facilities located within a designated Utility Corridor shall not be required to relocate into adjacent or alternative portions

- of the Rights-of-way unless they are in conflict with an actual or proposed public improvement project. The above requirements may be waived by the Director of Public Service for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, Law precluding such underground Facilities, and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements by the Director of Public Service, the Provider may appeal the denial to the City Manager. The decision of the City Manager shall be final
- (3) The Director of Public Service shall make every good faith attempt to accommodate all existing and potential users of the Rights-of-way as set forth in this Chapter.
 - (4) Providers may enter into written agreements to use existing poles and conduits with the owners of same and shall use Best Efforts to install their Facilities within the Rights-of-way.
 - (5) No Facility placed in any Rights-of-way shall be placed in such a manner that interferes with normal travel on such Rights-of-way.
 - (6) Unless otherwise stated in a Certificate of Registration or Permit, ~~or Section 907.03(F)(6)(c)~~ all Facilities within the Rights-of-way shall be Constructed and located in accordance with the Code and with the following provision:
 - A. Whenever all existing Facilities that have been traditionally located overhead are located underground in a certain area within the City, a Provider who desires to place its Facilities in the same area must also locate its Facilities underground.
 - B. Whenever a Provider is required to locate or re-locate Facilities underground within a certain area of the City, every Provider with Facilities within the same area of the City shall concurrently re-locate their Facilities underground.
 - C. The above requirements must be waived by the City for good cause shown including, but not limited to, consideration of such factors as: the remaining economic life of the Facilities, public safety, customer service needs, Law precluding such undergrounding of Facilities; and hardship to the Provider. If a Provider is denied a requested waiver from the above requirements, the Provider may appeal the denial of the Director of Public Service to the City Manager.

(f) Historic Districts .

- (1) Except as otherwise provided by Law, the City shall have the authority to prohibit the use or occupation of the Right-of-way by a Provider if the Right-of-way for which the Provider seeks use and occupancy lies within a Historic District.
- (2) As a condition for approval for the co-location or installation of Small Cell Facilities and/or Wireless Support Structures in an area of the City designated as a Historic District, the City may:
 - A. Require reasonable, technically feasible, and nondiscriminatory design or concealment measures for the Small Cell Facilities and Wireless Support Structures.
 - B. Request that a provider comply with the design and aesthetic standards of the Historic District or a residential district, as provided for in the City's Design Guidelines..
 - C. Request that a provider explore the feasibility of using certain camouflage measures to improve the aesthetics of the Small Cell Facilities and Wireless Support Structures to minimize the impact to the area aesthetics.
- (3) This section may not be construed to limit the City's authority to enforce local codes, administrative rules, or Rules and Regulations adopted by ordinance, which are applicable to a historic area designated by the State or City and historic preservation zoning regulations consistent with the preservation of local zoning authority under 47 U.S.C. Section 332(c)(7), the requirements for facility modifications under 47 U.S.C. Section 1455(a), or the National Historic Preservation Act of 1966 (54 U.S.C. Section 300101 et seq.), and the regulations adopted to implement those laws.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.04 - REPORTING REQUIREMENTS.

- (a) Construction and Major Maintenance Plan. Each Provider shall, at the time of initial Application and by January 1 of each following year, file a Construction and Major Maintenance Plan with the Director of Public Service. Such Construction and Major Maintenance Plan shall be provided for all geographical areas requested by the Director of Public Service, up to and including the entire geographical area of the City. It shall be submitted using a format(s) mutually agreeable to the Provider and the City and shall contain the information determined by the Director of Public Service to be necessary to facilitate the coordination and reduction in the frequency of Construction in the Rights-of-way. The Construction and Major Maintenance Plan shall include, but not be limited to, all currently scheduled and/or anticipated Construction projects for the next calendar year, if none are scheduled or anticipated then the Plan shall so state. The Provider shall use its Best Efforts in supplying this information and shall update the Construction and Major Maintenance Plan on file with the Director of Public Service whenever there is a material change in scheduled and/or anticipated Construction projects. In an effort to assist Providers with the completion of their annual Construction and Major Maintenance Plan, the Director of Public Service, on or before October 1 of each year, will send each Provider's System Representative a descriptive narrative (and any mapping information reasonably available) for all the planned Right-of-way improvements and/or scheduled maintenance that the City then currently intends to undertake during the next calendar year. The City may, in its sole discretion, update and/or modify the descriptive narrative and mapping information provided.
- (b) Mapping Data. With the filing of its Application for a Certificate of Registration, a Provider shall be required to accurately inform the City of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then currently occupies and begin submitting to the City all information that currently exists and which can be provided regarding the location of its Facilities in the Right-of-way in hard copy or in the most advanced format (including, but not limited to, electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. Unless otherwise required by Section 907.4314(Bb), a Provider shall have up to one year from the date of the Provider's initial filing of an Application for a Certificate of Registration to completely submit all the mapping data for a Provider's System in the entire geographical area of the City which it owns or over which it has control that are located in any Rights-of-way of the City in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The Provider shall supply the mapping data on paper if the Director of Public Service determines that the format currently being used by the Provider is not capable of being read by the City. Anytime after the issuance of a Certificate of Registration, and upon the reasonable request of the Director of Public Service, a Provider shall be required to provide to the City any additional location information for any Facilities which it owns or over which it has control that are located in any Rights-of-way of the City required by the City. Unless otherwise required by Law, Any and all actual direct, incidental and indirect costs incurred by the City during the process of reviewing, inputting and/or converting a Provider's mapping information to comport with the City's then current standard format (whether electronic or otherwise) shall be directly billed to, and must be timely remitted by, the Provider. Failure to pay such mapping costs within sixty (60) days of receipt of an invoice shall subject an Applicant or Provider to revocation of its Certificate of Registration and the penalties of Section 907.99. Further, each Provider that has been issued a Certificate of Registration shall accurately inform the City on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then occupied as of the immediately previous December 1. The Director of Public Service may, in the future, adopt additional specifications and further define or modify the mapping data requirements under this section for reasons including, but not limited to, changes in technology or the Law regarding public disclosure of a Provider's mapping information. When the City modifies and/or amends the mapping data

requirements, the City shall use Best Efforts to avoid unreasonably increasing the burden to the Providers that may be associated with satisfying the amended mapping requirements. When the mapping requirements of Section 907.04(Bb) are amended, each Provider shall be served with a copy of the new specifications or modifications by regular U.S. Mail to the System Representative identified in each Certificate of Registration and in accordance with Section 907.2019(Dd); provided, however, that any failure of any Provider to actually receive such notice shall not in any way affect the validity or enforceability of said specifications or modifications.

- (c) Exemption from Disclosure. In the event that the City receives a request from a third party for the disclosure of information a provider has clearly marked as Confidential/Proprietary Information, then the City shall respond in accordance with ORC Ch. 149. However, the City will endeavor to notify the Provider of any such the request prior to making the subject document(s) available for inspection or copying, at which point it will be the Provider's sole and exclusive responsibility to take whatever steps it deems necessary to protect such documents from disclosure.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.05 - COMPENSATION FOR CERTIFICATE OF REGISTRATION.

- (a) Compensation. As compensation for the City's costs to administer Chapter 907, manage, administer and control the Rights-of-way and maintain each Certificate of Registration issued, every Provider or any Person operating a System shall pay to the City a Registration Maintenance Fee. The Registration Maintenance Fee shall be determined and assessed to Providers and other Persons operating a System or otherwise using and occupying the Rights-of-way in accordance with the following process and formula:
- (1) The City by February 28 of each year, shall calculate all actual and incurred costs associated with Rights-of-way management, administration and control for the previous calendar year that the City was not able to reasonably recover through Construction Permit Fees or other recovery mechanisms provided for in Chapter 907.
 - (2) Providers and Applicants, as required in Section 907.04(Bb), shall accurately inform the City upon application for a Certificate of Registration and on or before each subsequent January 1 of the number of miles (rounded up to the nearest mile) of Right-of-way the Provider's System then occupied as of the immediately previous December 1.
 - (3) The City shall total the entire number of miles of Right-of-way reported as being used or occupied by all Providers.
 - (4) The City shall divide the calculated costs referenced in Section 907.05(Aa)(1) by the total number of miles of Right-of-way reported as being used or occupied by all Providers as referenced in Section 907.05(Aa)(3) to arrive at a per-mile cost number.
 - (5) The City shall then multiply each Provider's mileage calculation as referenced in Section 907.05(Aa)(2) by the per-mile cost calculation referenced in Section 907.05(Aa)(4). The product shall be a Provider's then current annual Registration Maintenance Fee.
 - (6) The City shall perform its annual calculation of Registration Maintenance Fees following receipt of the Providers required December 1 mileage report. Registration Maintenance Fees shall be invoiced to Providers on or about March 1 of each calendar year and shall be due thirty (30) days following receipt.
 - (7) Cable companies operating under non-exclusive Cable Franchises for the purposes of providing Cable Service, Video Services Provider operating under a VSA for the purpose of providing Video Services, and providers of Open Video System services, which compensate the City under other mechanisms in an amount equal to or greater than the Annual Registration Maintenance Fee that would normally be required for their Right-of-way use in The City, shall have the mileage of the Right-of-way they use and/or occupy included in the calculations

described in Section 907.05, but shall not be required to contribute to the recovery of Rights-of-way Costs as defined by Chapter 907 with the exception of Permit Costs.

- (8) The City may by separate legislation enacted by City Council on or about February 28 of each year, in accordance with the results of Section 907.05(Aa)(4), enact an initial and thereafter a new annual Registration Maintenance Fee (per mile) by appropriately increasing or decreasing the previous year(s) Registration Maintenance Fee (per mile). Revised Registration Maintenance Fees shall be effective upon passage.
- (b) Timing. Registration Maintenance Fees shall be paid each calendar year in accordance with Section 907.05(Aa)(6). Registration Maintenance Fees shall be paid in full for the first year of the registration as a condition of the Certificate of Registration becoming effective. Fees may be prorated from the effective date of the Certificate of Registration to the end of the calendar year if less than one full year.
- (c) Taxes and Assessments. To the extent taxes or other assessments are imposed by any taxing authority or community authority on the use of City property as a result of a Provider's use or occupation of the Rights-of-way, the Provider shall be responsible for payment of such taxes or assessments. Such payments shall be in addition to any other fees payable pursuant to Chapter 907 and shall not be considered an offset to, or in lieu of, the fees and charges listed in Chapter 907. The Registration Maintenance Fee is not in lieu of any tax, fee, or other assessment except as specifically provided in Chapter 907, or as required by applicable Law.
- (d) Interest on Late Payments. In the event that any Registration Maintenance Fee is not paid to the City by April 1, the Provider shall pay a monthly late charge of one percent of the unpaid balance for each month or any portion thereof for which payment is not made.
- (e) No Accord and Satisfaction. No acceptance by the City of any Registration Maintenance Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such Registration Maintenance Fee payment be construed as a release of any claim the City may have for additional sums payable.
- (f) Cost of Publication. A Provider shall assume all actual and direct newspaper or other appropriate publication costs of up to one thousand dollars (\$1,000.00) associated with its certificate of Registration that may be required by Law or that may otherwise be required by its Application for a Certificate of Registration or other Permit as provided for herein.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.06 - OVERSIGHT AND REGULATION.

- (a) Reports. Upon reasonable request of the Director of Public Service, a Provider shall provide the City with a list of any and all material communications, public reports, petitions, or other filings, either received from or submitted to any municipal, county, state or federal agency or official (and any response thereto submitted by or received by a Provider), and any other information or report reasonably related to a Provider's obligations under Chapter 907 which in any way materially effects the operation of the System or a Provider's representations and warranties set forth herein, but not including tax returns or other filings which are confidential. Upon request, a Provider shall promptly, but in no case later than thirty (30) business days following the request, deliver to the City a complete copy of any item on said list. Upon the request of the City, a Provider shall promptly submit to the City any information or report reasonably related to a Provider's obligations under Chapter 907, its business and operations with respect to the System or its operation, in such form and containing such information as the City shall specify. Such information or report shall be accurate and complete and supplied within thirty (30) days.
- (b) Confidentiality. All information submitted to the City that is considered Confidential Information, trade secret and/or proprietary information or information that upon public its disclosure would be highly likely to place critical portions of the Provider's System in real danger of vandalism, sabotage

or an act of terrorism, must be clearly marked as such when submitted. The City shall endeavor to exercise all reasonable legal protections so as not to publicly disclose to any third party such information unless required by Law. The City shall, following receipt of a request for public disclosure of clearly marked trade secret and/or proprietary information submitted by a Provider, endeavor to use reasonable Best Efforts to timely place the Provider's System Representative on notice that such a request for public disclosure has been made.

- (c) Provider's Expense . All reports and records required under Chapter 907 shall be furnished at the sole expense of a Provider.
- (d) Right of Inspection and Audit . The City's designated representatives shall have the right to inspect, examine, or audit during normal business hours and upon reasonable notice to a Provider under the circumstances; documents, records, or other information which pertain to a Provider's operation of a System within the City that are related to its obligations under Chapter 907. All such documents shall be made available within the City or in such other place that the City may agree upon in writing in order to facilitate said inspection, examination, or audit.
- (e) Rules and Regulations . The Director of Public Service may propose and adopt (and from time to time amend) the Rules and Regulations regarding Chapter 907, Design Guidelines, Construction standards and occupancy requirements of the Right-of-way. Prior to the initial adoption of the Rules and Regulations, the Director of Public Service shall provide written notice and a copy of the proposed language of such adoption, via United States Regular Mail, to each Provider who holds a then current Certificate of Registration. Each Provider shall then have thirty (30) days following the date of the City's mailing to provide written comment regarding the proposed language to the Director of Public Service. At least forty-five (45) days, but not more than sixty (60) days following the date of the City's mailing, the Director of Public Service shall schedule and hold a meeting, to make available a forum at which all then current Providers may address any questions, concerns and make reasonable suggestions regarding the proposed new Rules and Regulations to the Director of Public Service. The Director of Public Service shall, following said meeting and the review of the Providers' comments and suggestions, adopt the Rules and Regulations in a manner that best serves the City.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.07 - SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES.

- (a) Use of Rights of Way. In accordance with ORC 4939, this section establishes terms and conditions for the use of the Right-of-way by an Operator to Collocate Small Cell Facilities and Construct, maintain, modify, operate, or replace Wireless Support Structures to distribute Wireless Service in the City.
- (b) Applicability. The application procedures, permit fees, and auditing procedures outlined in this chapter shall be applicable to applications to establish wireless facilities. However, Wireless Facilities that are not Small Cell Facilities or Wireless Support Structures as defined in this chapter are not subject to this section.
- (c) Certificate of Registration Required. In accordance with this chapter, and unless otherwise prohibited by Law, each Person who occupies, uses, or seeks to Occupy or Use the Rights-of-way to operate a Small Cell Facility or Wireless Support Structure in the Right-of-way, or who has, or seeks to have, a Small Cell Facility or Wireless Support Structure located in any Right-of-way, shall apply for and obtain a Certificate of Registration for the System pursuant to this chapter.
- (d) Construction Permit and Minor Maintenance Permit Required. All applications for the construction or modification of a Small Cell Facility or Wireless Support Structure shall comply with the

Construction Permit and Right-of-way Minor Maintenance Permit requirements set forth in this chapter and any other applicable Law.

(e) Micro Wireless Permit Submission. In addition to the requirements in (c) and (d) of this Section 907.07, a Micro Wireless Permit shall be submitted by any Person that seeks to Construct, modify, Collocate, or replace a Small Cell Facility or Wireless Support Structure in any Right-of-way. The City's consent shall not be required for the replacement of a Small Cell Facility and/or Wireless Support Structure with a Small Cell Facility and/or Wireless Support Structure, respectively, that is consistent with the City's Design Guidelines and is substantially similar to the existing Small Cell Facility and/or Wireless Support Structure, or the same size or smaller than the existing Small Cell Facility and/or Wireless Support Structure and complies with the requirements for Construction Permits as provided in this chapter.

(1) For processing a Micro Wireless Permit, the city may charge a fee for each Small Cell Facility and/or Wireless Support Structure in accordance with Law and as listed on the Micro Wireless Permit forms.

(2) The City shall grant or deny a Micro Wireless Permit in accordance with any required timelines under Law or any other timeline provided for in the City's Design Guidelines, whichever shall be more favorable to the Applicant.

A. If the City fails to approve or deny a Micro Wireless Permit within the required time period, provided that the time period is not otherwise tolled in accordance with the provisions of this section, the Micro Wireless Permit shall be deemed granted upon the requesting entity notifying the City that the time period for granting or denying the request of consent has lapsed.

(3) Requests for consent that do not meet the requirements listed on the application or stated herein or in the City's Design Guidelines shall be deemed incomplete or shall otherwise be denied by the City.

A. If a Micro Wireless Permit is deemed incomplete, within thirty (30) days of receiving the application, the City shall provide written notice to the Applicant that clearly and specifically delineates all missing documents or required information.

(i) Once the Applicant submits the documents or information in response to the City's notice of incompleteness, the time period for review resumes and the City shall grant, deny, or deem the Micro Wireless Permit to be incomplete due to not providing the information identified in the original notice of incompleteness.

(ii) For a Micro Wireless Permit that is deemed incomplete for a second or subsequent time, the city shall continue to follow the process in Section 907.07(e)(3)(A)(i) of this section until such time that a complete Application is received from the Applicant. At such time, the City shall, within the required time period for review, grant or deny the Micro Wireless Permit.

B. If a Micro Wireless Permit is denied, the City shall provide in writing its reasons for denying the request, supported by substantial, competent evidence, and such information that the Applicant may reasonably request to obtain consent.

(i) Except in the case of a Public Utility subject to the jurisdiction and recognized on the rolls of the public utilities commission or a Cable Operator possessing a valid franchise awarded pursuant to the "Cable Communications Policy Act of 1984," 98 Stat. 2779, 47 U.S.C.A. 541, the city, for good cause shown, may withhold, deny, or delay its consent to any person based upon the person's failure to possess the financial, technical, and managerial resources necessary to protect the public health, safety, and welfare.

- (4) The City shall permit a Person seeking to Construct, modify, Collocate, or replace more than one Small Cell Facility or more than one Wireless Support Structure within the Right-of-way to file a consolidated application for consent.
 - A. No more than thirty (30) Small Cell Facilities or thirty (30) Wireless Support Structures shall be proposed within a single Application to receive a single Permit for the Construction, modification, Collocation, or replacement of Small Cell Facilities or Wireless Support Structures in the Right-of-way.
 - B. A single Application may only address multiple Small Cell Facilities or Wireless Support Structures if they each involve substantially the same type of Small Cell Facility and/or substantially the same type of Wireless Support Structure.
 - C. If an Applicant intends to submit five (5) or more Small Cell Facilities or Wireless Support Structures in a single Application, a pre-application meeting that includes the Applicant and the public service department may be required by the City in order to help expedite the permitting process. This pre-application meeting may also include a site visit if so requested by the City.
 - D. The Director of Public Service may separately address Applications for which incomplete information has been received or which are denied.
- (5) If the number of requests for consent is likely to result in difficulty processing Applications within the time limits set forth in Law due to the lack of resources of the City, then the City may toll the time limits as follows:
 - A. The time period for the City to grant or deny a Micro Wireless Permit may be tolled for up to twenty-one (21) days for the first fifteen (15) requests for consent for Small Cell Facilities or Wireless Support Structures received by the City above the thresholds provided in the table below within any consecutive thirty-day period:

<u>Population of city at the time that the Small Cell facility or Wireless Support Structure request for consent is received:</u>	<u>Number of applications:</u>
<u>30,000 persons or less</u>	<u>15 applications or more</u>
<u>30,001 to 40,000 persons</u>	<u>20 applications or more</u>
<u>40,001 to 50,000 persons</u>	<u>25 applications or more</u>
<u>50,001 to 60,000 persons</u>	<u>30 applications or more</u>
<u>60,001 to 100,000 persons</u>	<u>60 applications or more</u>

- B. For every additional fifteen (15) requests for consent that the City receives above the thresholds provided in the table above, the City may toll the time period to grant or deny its consent for up to fifteen (15) additional days.
- C. In no instance shall the city toll the time period for any Small Cell Facility or Wireless Support Structure Micro Wireless Permit by more than ninety (90) consecutive days.
- D. Upon request by the Applicant, the City shall provide written notice of the time limit for a Small Cell Facility or Wireless Support Structure Micro Wireless Permit.
- (f) Annual Charge. The total annual charge to reimburse the City for Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-way shall be in accordance with Law.
- (g) Term. The City's approval term of a Collocation to a Wireless Support Structure shall be for a period of not less than ten (10) years, with a presumption of renewal for successive five-year terms.

unless otherwise terminated or not renewed for cause or by mutual agreement between the Operator and the City.

- (1) An Operator may remove its Small Cell Facilities at any time subject to applicable Permit requirements and may stop paying annual charges or fees established by Law.
 - (2) In the event that use of a Small Cell Facility or Wireless Support Structure is discontinued, the owner shall submit written notice to the City to discontinue use and the date when the use shall be discontinued. If the Small Cell Facility or Wireless Support Structure is not removed within three hundred sixty-five (365) days of discontinued use, the Small Cell Facility or Wireless Support Structure shall be considered Abandoned in accordance with ORC 4939 and the City may remove the Small Cell Facility or Wireless Support Structure at the owner's expense.
- (h) Design Guidelines. The Director of Public Service is authorized to establish, implement and amend, from time to time, Design Guidelines regarding, among other things: (1) the location of any ground-mounted Small Cell Facilities; (2) the location of a Small Cell Facility on a Wireless Support Structure; (3) the appearance and concealment of Small Cell Facilities, including those relating to materials used for arranging, screening or landscaping; and (4) the design and appearance of a Wireless Support Structure, including any Height requirements adopted by the City.
- (1) The City, as opposed to the Construction of a new Wireless Support Structure in the Right-of-way, shall prefer locating Small Cell Facilities on existing Wireless Support structures without increasing the Height of the Wireless Support Structure by more than five (5) feet, including the Antenna and any associated shroud or concealment material.
 - (2) The City shall permit, consistent with Law and for the purpose of providing Wireless Service, Collocation of a Small Cell Facility by an Operator to a Wireless Support Structure owned by the City and located in the Right-of-way, provided that the Operator comply with the Design Guidelines under (h) of Section 907.07 and any reasonable terms and conditions for such Collocation that are adopted by the City and consistent with the Design Guidelines and this chapter.
 - A. The City may condition approval of the Collocation on replacement or modification of the Wireless Support Structure at the Operator's cost if the City determines that replacement or modification is necessary for compliance with its construction or safety standards.
 - B. A replacement or modification of the Wireless Support Structure shall conform to the applicable Design Guidelines and the City's applicable specifications for the type of structure being replaced.
 - C. The City may retain ownership of a replacement Wireless Support Structure.
 - D. The City may require removal and relocation of a Small Cell Facility or Wireless Support Structure, at the Permittee's sole expense, in order to accommodate Construction of a public improvement project by the City.
 - (3) The City may propose an alternate location to the proposed location of a new Wireless Support Structure that is within one hundred (100) feet of the proposed location or within a distance that is equivalent to the width of the Right-of-way in or on which the new Wireless Support Structure is proposed, whichever is greater, which the Operator shall use if it has the right to use the alternate location on reasonable terms and conditions and the alternate location does not impose technical limits or additional costs.

907.087 - REGISTRATION TERM.

The term of each Certificate of Registration granted under Chapter 907 shall be valid from the date of issuance until such time as it is revoked, terminated, has lapsed or is properly amended.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.098 - INDEMNITY.

- (a) Indemnity Required. Each Certificate of Registration issued pursuant to Chapter 907 shall contain provisions whereby Providers agree to defend, indemnify and hold the City and its agents, officers, elected officials, employees, volunteers, and subcontractors harmless from and against all damages, costs, losses or expenses:
- (1) For the repair, replacement, or restoration of City property, equipment, materials, structures and Facilities which are damaged, destroyed or found to be defective as a result of such Provider's acts or omissions; and
 - (2) From and against any and all claims, demands, suits, causes of action, and judgments:
 - A. for damage to or loss of the property of any Person, and/or the death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any Person;
 - B. arising out of, incident to, concerning or resulting from the act or omissions of such Provider, its agents, employees, and/or subcontractors, in the performance of activities pursuant to such Certificate of Registration, no matter how, or to whom, such loss may occur.
 - (3) In any event, all Persons using or occupying the Rights-of-way agree to defend, indemnify and hold harmless the City as set forth above as a condition of their use and occupancy of the Rights-of-way.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.109 - CIVIL FORFEITURES.

In addition to any other penalties set forth in this Chapter 907 and the remedy of specific performance, which may be enforced in a court of competent jurisdiction, the Director of Public Service may assess an additional penalty of civil forfeiture for failure to comply with any provision of Chapter 907. Such penalty shall be a monetary sum, payable to the City, in the amount of five hundred dollars (\$500.00) per twenty-four (24) hour day of violation and any subsequent portion of a day less than twenty-four (24) hours in length. Prior to assessing said penalty, the City will provide written notice to the Provider detailing the failure to comply with a specific provision of Chapter 907. Such notice shall also indicate that said penalty shall be assessed in fifteen (15) calendar days subsequent to the date of receipt if compliance is not achieved. If a Provider desires to challenge such penalty, Provider must request a hearing before the City Manager within ten (10) days of service of the notice. Such hearing shall be held within thirty (30) days of the Provider's request. If Provider requests such hearing before the City Manager, such penalty shall be temporarily suspended. However, if, after the hearing, the City Manager determines that Provider failed to comply with the specific provision(s) of Chapter 907 referenced in the notice, such penalty shall be assessed starting with the fifteen (15) calendar days after receipt of the notice referenced in this section and continuing each day thereafter until compliance is achieved. The determination of the City Manager shall be final. The Provider may file an administrative appeal pursuant to ORC Ch. 2506. The penalty shall continue to accrue during the appeal unless the Provider obtains a stay and posts a supersedeas bond pursuant to ORC 2505.09 or the Provider comes into full compliance with Chapter 907.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.110 - TERMINATION OF CERTIFICATE OF REGISTRATION.

- (a) Default Notice Provided. The City through its Director of Public Service shall give written notice of default to a Provider if the City, in its sole discretion, determines that a Provider has:

- (1) Violated any material provision or requirement of the issuance or acceptance of a Certificate of Registration or any Law and failed to cure as may be required; or
 - (2) Evaded or Attempted to evade any provision of the issuance of a Certificate of Registration or the acceptance of it; or
 - (3) Practiced any fraud or deceit upon City; or
 - (4) Made a material misrepresentation of fact in the Application for a Certificate of Registration.
- (b) Cure Required. If a Provider fails to cure a default within thirty (30) calendar days after such notice is served by the City then such default shall be a material default and City may exercise any remedies or rights it has at Law or in equity to terminate the Certificate of Registration. If the Director of Public Service decides there is cause or reason to terminate, the following procedure shall be followed:
- (1) City shall serve a Provider with a written notice of the reason or cause for proposed termination and shall allow a Provider a minimum of ten (10) calendar days to cure its breach.
 - (2) If the Provider fails to cure within ten (10) calendar days, the Director of Public Service may declare the Certificate of Registration terminated.
 - (3) The Provider shall have ten (10) calendar days to appeal the termination to the City Manager. All such appeals shall be in writing. If the City Manager determines there was not a breach, then the City Manager shall overturn the decision of the Director of Public Service. Otherwise, the City Manager shall affirm the decision of the Director of Public Service to terminate. The determination of the City Manager shall be final.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.121 - UNAUTHORIZED USE OF PUBLIC RIGHTS-OF-WAY.

- (a) No Use Without Authorization. No Person shall use the Rights-of-way to operate a System that has not been authorized by the City in accordance with the terms of Chapter 907 and been issued a Certificate of Registration.
- (b) No Use Without Certificate of Registration. No Person shall place or have placed any Facilities in, on, above, within, over, below, under, or through the Rights-of-way, unless allowed under Chapter 907 or having been issued a Certificate of Registration.
- (c) Unauthorized Use a Violation. Each and every unauthorized use shall be deemed to be a violation and a distinct and separate offense. Each and every day any violation of Chapter 907 continues shall constitute a distinct and separate offense.
- (d) Distinct and Separate Offense. No Person shall fail to comply with the provisions of Chapter 907. Each and every failure to comply shall be deemed a distinct and separate offense. Each and every day any violation of Chapter 907 continues shall constitute a distinct and separate offense.
- (e) Penalty Assessed. The violation of any provision of Chapter 907 shall be unlawful and a misdemeanor offense. The penalty for any violation of Chapter 907 shall be as provided in Section 907.99.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.132 - ASSIGNMENT OR TRANSFER OF OWNERSHIP AND RENEWAL.

- (a) Assignment or Transfer Approval Required. A Certificate of Registration shall not be assigned or transferred, either in whole or in part, other than to an Affiliate, without the prior written consent of the City, which consent shall not be unreasonably withheld. Any assignment or transfer of Certificate of

Registration, including an assignment or transfer by means of a fundamental corporate change, requires the written approval of the City.

- (b) Procedure to Request Assignment or Transfer Approval. The parties to the assignment or transfer of Certificate of Registration shall make a written request to the City for its consent in the form of the Certificate of Registration Application. The City shall reply in writing within sixty (60) days of actual receipt of the request and shall indicate its approval of the request or its determination that a hearing is necessary. City may conduct a hearing on the request within thirty (30) days of such determination if it determines that a sale or transfer of the Certificate of Registration adversely affects the City.
- (c) Notice and Hearing. Notice of a hearing shall be given fourteen (14) days prior to the hearing by publishing notice thereof once in a newspaper of general circulation in the City. The notice shall contain the date, time and place of the hearing and shall briefly state the substance of the action to be considered by City.
- (d) Review by City. The City will review the qualifications (including, but not limited to legal, technical and financial where appropriate) of the proposed assignee or transferee and terms of the existing Certificate of Registration. City will make its decision in writing setting forth any conditions for assignment or transfer. Within one hundred twenty (120) days of actual receipt of the request for assignment or transfer, the City shall approve or deny such assignment or transfer request in writing.
- (e) Fundamental Corporate Change. For purposes of this section, fundamental corporate change means the sale or transfer of a controlling interest in the stock of a corporation or the sale or transfer of all or a majority of a corporation's assets, merger (including a parent and its subsidiary corporation), consolidation or creation of a subsidiary corporation. For the purposes of this section, fundamental partnership change means the sale or transfer of all or a majority of a partnership's assets, change of a general partner in a limited partnership, change from a limited to a general partnership, incorporation of a partnership, or change in the control of a partnership.
- (f) Certificate of Registration and Assignee/Transferee Replacement Issuance Required. In no event shall a transfer or assignment of ownership or control be ultimately acceptable to the City without transferee or assignee requesting and being issued a replacement Certificate of Registration within ninety (90) days of transfer or assignment.
- (g) Not a Transfer. Notwithstanding anything to the contrary, no such consent or approval shall be required for a transfer or assignment to any Person controlling, controlled by or under the same common control of the original holder of the Certificate of Registration.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.143 - CONSTRUCTION PERMITS.

- (a) Construction Permit Requirement. Except as otherwise provided in the Code, no Person may Construct in any Rights-of-way without first having obtained a Construction Permit as set forth below. This requirement shall be in addition to any requirements set forth in the Code.
 - (1) A Construction Permit allows the Permittee to Construct in that part of the Rights-of-way described in such Construction Permit and to obstruct travel over the specified portion of the Rights-of-way by placing Facilities described therein, to the extent and for the duration specified therein.
 - (2) A Construction Permit is valid only for the dates and the area of Rights-of-way specified in the Construction Permit itself and shall in no event be valid for more than one hundred eighty (180) days from the construction start date.
 - (3) No Permittee may Construct in the Rights-of-way beyond the date or dates specified in the Construction Permit unless such Permittee:
 - A. Submits a Supplementary Application for another Construction Permit before the expiration of the initial Construction Permit; and

- B. Is granted a new Construction Permit or Construction Permit Extension.
- (4) Original Construction Permits issued pursuant to Section 907.~~13-14~~ shall, when possible, be conspicuously displayed at all times at the indicated work site and shall be available for inspection by Inspectors and authorized City personnel. If the original Construction Permit involves work conducted simultaneously at multiple locations, each location shall display a photocopy of the original Construction Permit. If the original Construction Permit is not conspicuously displayed at the indicated work site, then upon request, the original Construction Permit must be produced within twelve (12) hours or the first earliest Business Hour, whichever is later. For purposes of this ~~S~~section, Business Hour shall mean the hours between 8:00 a.m. and 5:00 p.m. during a Business Day.
- (b) Construction Permit Applications.
1. Application for a Construction Permit, unless an Emergency shall be made to the Director of Public Service no less than fourteen (14) Business Days prior to the requested start of Construction.
 2. All Construction Permit Applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:
 - A. Credible evidence that the Applicant (where required) has been issued a Certificate of Registration or proof that the Applicant has written authority to apply for a Construction Permit on behalf of a party that has been issued a Certificate of Registration; and
 - B. Submission of a completed Construction Permit Application in the form required by the Director of Public Service, including, but not limited to, all required attachments, and scaled, dated drawings showing the location and area of the proposed project, number and location of street crossings, and the location of all then known existing and proposed Facilities of the Applicant or Provider within the proposed project area. All drawings, plans and specifications submitted with the Application shall comply with applicable technical codes, Rules and Regulations, or Design Guidelines where applicable, and be certified as to being in such compliance by trained technical personnel acceptable to the Director of Public Service. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The City reserves the right, in circumstances that the Director of Public Service considers unique, complex or unusual, to request that certain submitted drawings, plans and specifications be accompanied by the certification of a registered licensed professional engineer; and
 - C. A City approved traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the OMUTCD, to prevent injury or damage to Persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic; and
 - D. If the Applicant wants to install new Facilities, evidence that there is no surplus space and evidence that the Applicant has received an appropriate Permit and is adhering to the City's Rules and Regulations; and
 - E. If Applicant is proposing an above ground installation on existing poles within the Rights-of-way, the applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:
 1. The size and height-Height of the existing poles; and
 2. Based on the facilities currently on the existing poles, the excess capacity currently available on such poles before installation of Applicant's Facilities; and
 3. Based on the facilities currently on the existing poles, the excess capacity for like or similar Facilities that will exist on such poles after installation of Applicant's Facilities; and

- F. If the Applicant proposes to install new poles within the Rights-of-way, the Applicant shall provide:
 - 1. Credible evidence satisfactory to the City that there is no excess capacity on existing poles or in existing underground systems; and
 - 2. Credible evidence to the City that it is not financially and/or technically practicable for the Applicant to make an underground installation or locate its facilities on existing poles; and
 - 3. the location, size, ~~height~~Height, color, and material of the proposed poles; and
 - 4. Credible evidence satisfactory to the City that the Applicant will adhere to all the applicable Laws concerning the installation of new poles.
 - G. If Applicant is proposing an underground installation in existing ducts or conduits within the Rights-of-way, the Applicant shall provide Credible information satisfactory to the City to sufficiently detail and identify:
 - 1. based on the existing facilities, the excess capacity for like or similar facilities currently available in such ducts or conduits before installation of Applicant's Facilities; and
 - 2. based on existing facilities, the excess capacity for like or similar facilities that will exist in such ducts or conduits after installation of Applicant's Facilities.
 - H. If Applicant is proposing an underground installation within new ducts or conduits to be constructed within the Rights-of-way, the Applicant must provide Credible information satisfactory to the City to sufficiently detail and identify:
 - 1. the location, depth, size, and quantity of proposed new ducts or conduits; and
 - 2. the excess capacity for like or similar equipment that will exist in such ducts or conduits after installation of Applicant's Facilities.
 - I. A preliminary Construction schedule and completion date; and
 - J. Payment of all money then due to the City for:
 - 1. Permit Fees;
 - 2. Any loss, damage, or expense suffered by the City as a result of Applicant's prior Construction in the Rights-of-way or any Emergency actions taken by the City.
 - 3. Any Certificate of Registration issued to the Applicant/Person whose Facilities are being Constructed.
 - 4. Any other money due to the City from the Applicant/Person whose Facilities are being Constructed.
 - K. When a Construction Permit is requested for purposes of installing additional Systems or any part of a System, the posting of a Construction Bond and Removal Bond, acceptable to the City and subject to Chapter 907, for the additional Systems or any part of a System is required.
 - L. Upon request, the Director of Public Service may modify or waive the information requirements if they are not necessary in evaluating the Construction Permit application. The Director of Public Service may request applicable and pertinent additional information if it is necessary in evaluating the Construction Permit application.
- (c) Issuance of Permit; Conditions.
- (1) If the City determines that the Applicant has satisfied the requirements of Chapter 907 and the Construction Permit process, the Director of Public Service shall issue a Construction Permit subject to the provisions of Section 907.~~1314~~(Cc)(2).

- (2) The City may impose reasonable conditions upon the issuance of the Construction Permit and the performance of the Permittee thereunder in order to protect the City's investment in the Right-of-way, protect the public health, safety and welfare, to insure the structural integrity of the Rights-of-way, to protect the property and safety of other users of the Rights-of-way, or to minimize the disruption and inconvenience to the traveling public.
- (d) Construction Permit Fees.
1. The City shall collect a Construction Permit Fee equal to the actual and direct cost incurred by the City that is associated with receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or the Construction work associated therewith. Following completion of the Construction work for which a Construction Permit has been granted (or at the time of the denial of Construction Permit) the City shall calculate and assess all actual and direct costs involved in receiving, reviewing, processing and granting (or denying) the Construction Permit and any oversight of the Construction Permit or Construction Work associated therewith. Quarterly, the City will cause the Director of Finance to issue a written invoice to a Provider that lists and summarizes the costs for each Construction Permit issued to and/or completed by the Provider over the previous ninety (90) days. The Provider shall remit payment to the City for the original quarterly invoice within thirty (30) days after the Director of Finance issues such invoice. Any Applicant who fails to timely remit such invoiced Construction Permit Fee amounts shall be subject to the penalties of this Chapter, the imposition of any other legal or equitable remedies available to the City and the immediate revocation of any Certificate of Registration or Construction Permit having been issued.
 2. The City may in addition to these direct and actual costs listed in ~~subsection 907.14(Dd)~~(1) may include in the Construction Permit Fee the cost of the value of degradation and reduction in the useful life of the Rights-of-way that will result from Construction that has taken place therein. "Degradation and the reduction in the useful life" for the purpose of this ~~S~~section means the accelerated depreciation of the Rights-of-way caused by Construction in or disturbance of the Rights-of-way, resulting in the need to reconstruct or repair such Rights-of-way earlier than would be required if the Construction did not occur.
 3. Except as otherwise provided herein, no future Construction Permits shall be issued to an Applicant without payment of all outstanding Construction Permit Fee invoices within thirty (30) days of the issuance of the original invoice. The City shall be exempt from payment of Construction Permit Fees. Construction Permit Fees that were paid for a Permit that the City has revoked due to breach and in accordance with the terms of Section 907.110 or Section 907.176~~(Ee)~~ are not refundable.
- (e) Joint Applications. Applicants are encouraged to submit joint Applications for Construction Permits to work in the Rights-of-way at the same place and time. Joint Applicants shall have the ability to divide amongst themselves, in proportions the parties find appropriate, any applicable Construction Permit Fees.
- (f) Exceptions to Permit Requirements.
- (1) The following shall be excluded from the requirements of Section 907.~~1314~~:
 - A. The repairing or improvement of streets or other public places under or by virtue of a contract with the City.
 - B. The maintenance, planting or removal of trees and shrubs from within the Right-of-way.
 - C. The addition of an overhead customer service line for any Utility, which service line does not cross across the edge of pavement limits or extend over pavement at a ~~height-Height~~ of less than fifteen (15) feet above the pavement.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.154 - CONSTRUCTION, RELOCATION AND RESTORATION.

(a) Utility Engineering Study Required.

(1) Prior to commencement of any initial Construction, extension, or relocation of Facilities in the Rights-of-way, except for repair, maintenance or replacement with like Facilities or relocations requested or caused by a third party (excluding the City) or another Permittee, a Permittee shall conduct a utility engineering study on the proposed route of Construction expansion or relocation if requested by the Director of Public Service. Where such Construction and/or relocation is requested or caused by a third party, every Permittee located within the Rights-of-way at issue or involved with the work shall use all Best Efforts to cooperate and assist any other Permittee or person who is directed by the City to perform the required utility engineering study. A utility engineering study consists of, at minimum, completion of the following tasks:

- A. Secure all available "as-built" plans, plats and other location data indicating the existence and approximate location of all Facilities along the proposed Construction route.
- B. Visibly survey and record the location and dimensions of any Facilities along the proposed Construction route, including, but not limited to, manholes, valve boxes, utility boxes, posts and visible street cut repairs.
- C. Determine and record the presence and precise location of all Underground Facilities the Applicant or Person on whose behalf the Permit was applied for owns or controls in the Rights-of-way along the proposed System route. Upon request of the Director of Public Service, a Permittee shall also record and identify the general location of all other Facilities in the Rights-of-way along the proposed System route. For the purposes of this Section, general location shall mean the alignment of other Facilities in the Rights-of-way, but shall not necessarily mean the depth of other Facilities in the Rights-of-way.
- D. Plot and incorporate the data obtained from completion of the tasks described in Section 907.15 4(Aa)(1)(aA)—(eC) on the Construction Permittee's proposed System route maps and Construction plans.
- E. Where the proposed location of Facilities and the location of existing Underground Facilities appear to conflict on the plans drafted in accordance with Section 907.14(Aa)(1)(dD), Permittee has the option of either utilizing non-destructive digging methods, such as vacuum excavation, at the critical points identified to determine as precisely as possible, the horizontal, vertical and spatial position, composition, size and other specifications of the conflicting Underground Facilities, or re-designing the Construction plans to eliminate the apparent conflict. Unless waived by the Director of Public Service, a Permittee shall not excavate more than a three (3) feet by three (3) feet square hole in the Rights-of-way to complete this task.
- F. Based on all of the data collected upon completion of the tasks described in this section, adjust the proposed System design to avoid the need to relocate other Underground Facilities.

(2) The Director of Public Service may modify the scope of the utility engineering study as necessary depending on the proposed Construction plans.

(b) Copy to City. Upon completion of the tasks described in Section 907.1415(Aa), the Construction Permittee shall submit the proposed System route maps and Construction Plans, with the results of the utility engineering study, in the most advanced format (including, but not be limited to electronic and/or digital format) then currently being used by the Provider that is then currently capable of technologically being read (or readily converted to a readable form) by the City. The mapping data is only required to be at the "Atlas" level of detail necessary for the City to reasonably determine the location of the Provider's facilities in the Rights-of-way. The Provider shall supply the mapping data on paper if the Director of Public Service determines that the format currently being used by the Provider is not capable of being read by the City.

(c) Qualified Firm. All utility engineering studies conducted pursuant to this section shall be performed by the Permittee if in the discretion of the Director of Public Service the Construction Permittee is

qualified to complete the project itself, alternatively utility engineering studies shall be performed by a firm specializing in utility engineering that is approved by the City.

- (d) Cost of Study. The Permittee shall bear the cost of compliance with Section 907.~~1415(Aa)~~—(Cc).
- (e) Construction Schedule. Unless otherwise provided for in Chapter 907 or in the Rules and Regulations, or unless the Director of Public Service waives any of the requirements of this ~~s~~Section due to unique or unusual circumstances, a Permittee shall be required to submit a written Construction schedule to the City fourteen (14) Working Days before commencing any work in or about the Rights-of-way, and shall further notify the City not less than two (2) Working Day in advance of any excavation in the Rights-of-way. This ~~s~~Section shall apply to all situations with the exception of circumstances under Section 907.~~1617(Dd)~~(1) (Emergency Situations) and Section 907.~~15-16~~ (Minor Maintenance).
- (f) Location of Facilities.
 - (1) The placement of new Facilities and replacement of old Facilities, either above ground or underground, shall be completed in conformity with applicable Laws and the City's Rules and Regulations.
 - (2) The City shall have the power to prohibit or limit the placement of new or additional Facilities within the Rights-of-way if the Right-of-way is Full. In making such decisions, the City shall strive to the extent possible to accommodate all existing and potential users of the Rights-of-way, but shall be guided primarily by considerations of the public health, safety and welfare, the condition of the Rights-of-way, the time of year with respect to essential Utilities, the protection of existing Facilities in the Rights-of-way, future City and County plans for public improvements, development projects which have been determined to be in the public interest and nondiscriminatory and competitively neutral treatment among Providers.
- (g) Least Disruptive Technology. All Construction or maintenance of Facilities shall be accomplished in the manner resulting in the least amount of damage and disruption of the Rights-of-way. Specifically, every Permittee when performing underground Construction, if technically and/or technologically feasible and not economically unreasonable, shall utilize Trenchless Technology, including, but not limited to, horizontal drilling, directional boring, and microtunneling. In addition, all cable, wire or fiber optic cable installed in the subsurface Rights-of-way pursuant to Chapter 907 may be required to be installed in conduit, and if so required, no cable, wire or fiber optic cable may be installed pursuant to Chapter 907 using "direct bury" techniques.
- (h) Special Exceptions. The City, in its sole discretion, may grant a special exception to the requirements of Section 907.~~1415(Ff)~~ and 907.~~1415(Gg)~~ if a Permittee, upon application, demonstrates with written evidence that:
 - (1) The exception will not create any threat to the City's investment or in the Rights-of-way, the public health, safety or welfare.
 - (2) Permittee demonstrates that the increased economic burden and the potential adverse impact on the Permittee's Construction schedule resulting from the strict enforcement of the requirement actually or effectively inhibits the ability of the Permittee to provide Services in the City.
 - (3) The Permittee demonstrates that the requirement unreasonably discriminates against the Permittee in favor of another Person.
 - (4) The requirements requested by the City herein create an unreasonable economic burden for the Permittee that outweighs any potential benefit to the City.
- (i) Relocation of Facilities.
 - (1) A Provider shall as promptly as reasonably possible and at its own expense, permanently remove and relocate its Facilities in the Rights-of-way whenever the City finds it necessary to request such removal and relocation. In instances where the City requests removal and/or relocation, the City shall waive all applicable Construction Permit Fees. Upon removal and/or

relocation, the Provider shall restore the Rights-of-way to the same or better condition it was in prior to said removal or relocation. If existing poles are required to be removed and/or relocated, then the existing poles will be replaced with poles of the same or similar size. In accordance with Law, the Director of Public Service may request relocation and/or removal in order to prevent unreasonable interference by the Provider's Facilities with:

- A. A public improvement undertaken or approved by the City.
 - B. The City's investment in the Right-of-way.
 - C. When the public health, safety, and welfare requires it, or when necessary to prevent interference with the safety and convenience of ordinary travel over the Rights-of-way.
 - D. The sale, conveyance, vacation, or narrowing of all or any part of a Right-of-way.
- (2) Notwithstanding the foregoing, a Provider who has Facilities in the Right-of-way subject to a vacation or narrowing that is not required for the purposes of the City, shall have a permanent easement in such a vacated portion or excess portion in conformity with ORC 723.041.
- (3) If, in the reasonable judgment of the City, a Provider fails to commence removal and/or relocation of its Facilities as designated by the City, within thirty (30) days after the City's removal order, or if a Provider fails to substantially complete such removal, including all associated repair of the Rights-of-way of the City, within twelve (12) months thereafter, then, to the extent ~~not in~~ inconsistent with applicable Law, the City shall have the right to:
- A. Declare that all rights, title and interest to the Facilities belong to the City with all rights of ownership, including, but not limited to, the right to connect and use the Facilities or to effect a transfer of all right, title and interest in the Facilities to another Person for operation; or
 - B. Authorize removal of the Facilities installed by the Provider in, on, over or under the Rights-of-way of the City at Provider's cost and expense, by another Person; however, the City shall have no liability for any damage caused by such action and the Provider shall be liable to the City for all reasonable costs incurred by the City in such action; and
 - C. To the extent consistent with applicable Law, any portion of the Provider's Facilities in, on, over or under the Rights-of-way of the City designated by the City for removal and not timely removed by the Provider shall belong to and become the property of the City without payment to the Provider, and the Provider shall execute and deliver such documents, as the City shall request, in form and substance acceptable to the City, to evidence such ownership by the City.
- (j) Pre-Excavation Facilities Location .
- (1) Before the start date of any Rights-of-way excavation, each Provider who has Facilities located in the area to be excavated shall, to the best of its ability, mark the horizontal and approximate vertical placement of all its Facilities.
 - (2) All Providers shall notify and work closely with the excavation contractor in an effort to establish the exact location of its Facilities and the best procedure for excavation.
- (k) Rights-of-way Restoration .
- (1) The work to be done under the Permit, and the Restoration of the Rights-of-way as required herein, weather permitting, must be completed within the dates specified in the Permit. In addition to its own work, the Permittee must restore the general area of the work, and the surrounding areas, including trench backfill, paving and its foundations in accordance with the Code and Rules and Regulations. If a Permittee is unable to timely complete the restoration of Rights-of-way due to unreasonable inclement weather conditions, the Permittee shall complete the restoration of the Rights-of-way as soon as weather conditions make it possible to do so and upon said completion notify the City.

- (2) In approving an Application for a Construction Permit, the City may ~~choose either to~~ have the Permittee restore the Rights-of-way or ~~alternatively to the City may~~ restore the Rights-of-way itself at the Permittee's cost if the Permittee has in the past not abided by requirements of Chapter 907.
 - (3) If the City chooses to allow Permittee to restore the Right-of-way, the Permittee shall at the time of Application for a Construction Permit post a Construction Bond in an amount determined by the City to be sufficient to cover the cost of restoring the Rights-of-way to its approximate pre-excavation condition. If, twelve (12) months after completion of the Restoration of the Right-of-way, the City determines that the Rights-of-way have been properly restored, the surety on the Construction Bond shall be released.
 - (4) The Permittee shall perform the work according to the standards and with the materials specified by the City. The City shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis. The City in exercising this authority shall be guided by the following standards and considerations: the number, size, depth and duration of the excavations, disruptions or damage to the Rights-of-way; the traffic volume carried by the Rights-of-way; the character of the neighborhood surrounding the Rights-of-way; the pre-excavation condition of the Rights-of-way; the remaining life-expectancy of the Rights-of-way affected by the excavation; whether the relative cost of the method of Restoration to the Permittee is in reasonable balance with the prevention of an accelerated depreciation of the Rights-of-way that would otherwise result from the excavation, disturbance or damage to the Rights-of-way; and the likelihood that the particular method of Restoration would be effective in slowing the depreciation of the Rights-of-way that would otherwise take place. Methods of Restoration may include, but are not limited to, patching the affected area, replacement of the Rights-of-way base at the affected area, and in the most severe cases; milling, overlay and/or street reconstruction of the entire area of the Rights-of-way affected by the work.
 - (5) By restoring the Rights-of-way itself, the Permittee guarantees its work and shall maintain it for twelve (12) months following its completion. During this twelve (12) month period, it shall, upon notification from the Director of Public Service, correct all Restoration work to the extent necessary using the method required by the Director of Public Service. Weather permitting, said work shall be completed within five (5) calendar days of the receipt of the notice from the Director of Public Service, unless otherwise extended by the Director of Public Service.
 - (6) If the Permittee fails to restore the Rights-of-way in the manner and to the condition required by the City, or fails to satisfactorily and timely complete all repairs required by the City, the City, at its option, may do such work. In that event, the Permittee shall pay to the City, within thirty (30) days of billing/invoicing, the Restoration cost of restoring the Rights-of-way and any other costs incurred by the City. Upon failure to pay, the City may call upon any bond or letter of credit posted by Permittee and/or pursue any and all legal and equitable remedies.
 - (7) If the work to be done under the Permit is being done at the same location and the same period of time as work by the City and/or another Permittee(s), then the Director of Public Service may reasonably apportion the Restoration responsibility among the City, Providers and/or other Persons.
- (l) Damage to Other Facilities .
- (1) In the case of an Emergency, and if possible after reasonable efforts to contact the Provider seeking a timely response, when the City performs work in the Rights-of-way and finds it necessary to maintain, support, or move a Provider's Facilities to protect those Facilities, the costs associated therewith will be billed to that Provider and shall be paid within thirty (30) days from the date of billing. Upon failure to pay, the City may pursue all legal and equitable remedies in the event a Provider does not pay or the City may call upon any bond or letter of credit posted by the Permittee and pursue any and all legal or equitable remedies. Each Provider shall be responsible for the cost of repairing any damage to the Facilities of another

Provider caused during the City's response to an Emergency occasioned by that Provider's Facilities.

- (2) Each Provider shall be responsible for the cost of repairing any City-owned Facilities in the Rights-of-way which the Provider or its Facilities damage.
- (m) Rights-of-way Vacation .
- (1) If the City sells or otherwise transfers a Right-of-way which contains the Facilities of a Provider, such sale or transfer shall be subject to any existing easements of record and any easements required pursuant to ORC 723.041.
- (n) Installation Requirements . The excavation, backfilling, Restoration, and all other work performed in the Rights-of-way shall be performed in conformance with all applicable Laws, Rules and Regulations, other standards as may be promulgated by the Director of Public Service.
- (o) Inspection . When the Construction under any Permit hereunder is completed, the Permittee shall notify the Director of Public Service.
- (1) The Permittee shall make the Construction site available to the Inspector and to all others as authorized by Law for inspection at all reasonable times during the execution and upon completion of the Construction.
 - (2) At the time of inspection, the Inspector may order the immediate cessation of any work which poses a serious threat to the life, health, safety or well-being of the public, violates any Law or which violates the term and conditions of the Permit and/or Chapter 907. The City may inspect the work, however; the failure of the City to inspect the work does not alleviate the responsibility of the Permittee to complete the work in accordance with the approved Permit and the requirements of Chapter 907.
 - (3) The Inspector may issue an order to the Permittee for any work which does not conform to the Permit and/or applicable standards, conditions or codes. The order shall state that failure to correct the violation will be cause for revocation of the Permit. The order may be served on the Permittee as provided in Section 907.~~1920(Dd)~~. An order may be appealed to the Director of Public Service. The decision of the Director of Public Service may be appealed to the City Manager whose decision shall be final. If not appealed, within ten (10) days after issuance of the order, the Provider shall present proof to the Director of Public Service that the violation has been corrected. If such proof has not been presented within the required time, the Director of Public Service may revoke the Permit pursuant to Section 907.~~1617(Ee)~~.
- (p) Other Obligations .
- (1) Obtaining a Construction Permit does not relieve Permittee of its duty to obtain all other necessary Permits, licenses, and authority and to pay all fees required by any other Laws.
 - (2) Permittee shall comply with all requirements of all Laws, including the Ohio Utility Protection Service.
 - (3) Permittee shall perform all work in conformance with all applicable Laws and standards, and is responsible for all work done in the Rights-of-way pursuant to its Permit, regardless of who performs the work.
 - (4) No Rights-of-way obstruction or excavation may be performed when seasonally prohibited or when conditions are unreasonable for such work, except in the case of an Emergency as outlined in Section 907.~~1617(Dd)~~(1).
 - (5) Permittee shall not obstruct a Right-of-way so that the natural free and clear passage of water through the gutters or other waterways shall be interfered with. The Director of Public Service may waive this requirement if it is technically or economically unreasonable in the circumstances.

- (6) Private vehicles other than necessary Construction vehicles may not be parked within or adjacent to a Permit area. The loading or unloading of trucks adjacent to a Permit area is prohibited unless specifically authorized by the Permit.
- (q) Undergrounding Required . Any owner of property abutting upon a street or alley where Service Facilities are now located underground and where the Service connection is at the property line, shall install or cause others to install underground any Service delivery infrastructure from the property line to the buildings or other structures on such property to which such Service is supplied. Where not otherwise required to be placed underground by Chapter 907, a Provider shall locate Facilities underground at the request of an adjacent property owner, provided that such placement of Facilities underground is consistent with the Provider's normal construction and operating standards and that the additional costs of such undergrounding over the normal aerial or above ground placement costs of identical Facilities are borne directly by the property owner making the request. A Provider, under any circumstance shall, upon the reasonable request of the City, always use Best Efforts to place Facilities underground. Where technically possible and not economically unreasonable or unsafe (based upon the technology employed and Facilities installed), all Facilities to be installed by a Provider under the Right-of-way shall be installed in conduit.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.165 - MINOR MAINTENANCE PERMIT.

- (a) Right-of-way Minor Maintenance Permit Requirement . No Person shall perform Minor Maintenance of Facilities in the Rights-of-way without first having obtained a Right-of-way Minor Maintenance Permit as set forth in this Chapter. Minor Maintenance means: (i) the routine repair or replacement of Facilities with like Facilities not involving Construction and not requiring traffic control for more than two (2) hours at any one location; (ii) or the routine repair or replacement of Facilities with like Facilities not involving Construction and taking place on thoroughfares and arterials between the hours of 9:00 A.M. and 3:00 P.M.; (iii) or the routine repair or replacement of Facilities with like Facilities not involving construction on all Rights-of-ways, other than thoroughfares and arterials, that does not impede traffic and is for a period of less than eight (8) contiguous hours; (iv) or Construction other than on thoroughfares and arterials that takes less than eight (8) contiguous hours to complete, does not impede traffic and does not involve a pavement cut. The Director of Public Service may adopt Rules and Regulations pursuant to Section 907.06(Ee) that clarify the definition of Minor Maintenance and/or provide a process for a Provider to determine whether particular activity constitutes Minor Maintenance.
- (1) A Right-of-way Minor Maintenance Permit allows the Right-of-way Minor Maintenance Permittee to perform all minor maintenance in any part of the Rights-of-way as required.
 - (2) A Right-of-way Minor Maintenance Permit is valid from the date of issuance until revoked by the Director of Public Service.
 - (3) A Right-of-way Minor Maintenance permit must be displayed or upon request produced within twelve (12) business hours.
 - (4) A Right-of-way Minor Maintenance Permit by itself shall under no circumstances provide a Permittee with the ability to cut pavement without seeking additional authority from the Director of Public Service.
- (b) Right-of-way Minor Maintenance Permit Applications . Application for a Right-of-way Minor Maintenance Permit shall be made to the Director of Public Service. In addition to any information required by the Director of Public Service, all Right-of-way Minor Maintenance Permit Applications shall contain, and will only be considered complete upon compliance with the following provisions:
- (1) Credible evidence that the Applicant has obtained a Certificate of Registration or proof that the Applicant has written authority to apply for a Right-of-way Minor Maintenance Permit on behalf of a party that has been issued a Certificate of Registration.

- (2) Submission of a completed Right-of-way Minor Maintenance Permit Application in the form required by the Director of Public Service.
 - (3) A statement that the Applicant will employ protective measures and devices that, consistent with the OMUTCD, will prevent injury or damage to Persons or property and to minimize disruptions to the efficient movement of pedestrian and vehicular traffic.
- (c) Issuance of Right-of-way Minor Maintenance Permits; Conditions .
- (1) If the Director of Public Service determines that the Applicant has satisfied the requirements of this Chapter and the Right-of-way Minor Maintenance Permit process, the Director of Public Service shall issue a Right-of-way Minor Maintenance Permit subject to the provisions of this Chapter.
 - (2) The City may impose reasonable conditions, in addition to the Rules and Regulations enacted by the Director of Public Service, upon the issuance of the Right-of-way Minor Maintenance Permit and the performance of the Right-of-way Minor Maintenance Permittee thereunder in order to protect the public health, safety, and welfare, to insure the structural integrity of the Rights-of-way, to protect the property and safety of other users of the Rights-of-way, to protect the City's investment in the Right-of-way, or to minimize the disruption and inconvenience to the traveling public.
- (d) Right-of-way Minor Maintenance Permit Fees . The Director of Public Service shall not charge a fee for the issuance of the Right-of-way Minor Maintenance Permit but may revoke the Right-of-way Minor Maintenance Permit as any other Permit may be revoked under this Chapter.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.176 - ENFORCEMENT OF PERMIT OBLIGATION.

- (a) Mandatory Denial of Permit . Except in the case of an Emergency, no Permit will be granted:
- (1) To any Person who has not yet made an Application or who is occupying any Right-of-way without a valid Certificate of Registration; or
 - (2) To any Person who has outstanding debt owed to the City unless payment in full has been placed in an escrow account approved by the City Director of Finance and the Law Director; or
 - (3) To any Person as to whom there exists grounds for the revocation of a Permit; or
 - (4) If, in the discretion of the Director of Public Service, the issuance of a Permit for the particular date and/or time would cause a conflict or interfere with an exhibition, celebration, festival, or any other event. The Director of Public Service, in exercising this discretion, shall be guided by the safety and convenience of ordinary travel of the public over the Rights-of-way considerations relating to the public health, safety and welfare and/or the City's investment in the Right-of-way.
- (b) Permissive Denial of Permit . The Director of Public Service may deny a Permit in order to protect the public health, safety and welfare, and/or protect the City's investment in the Right-of-way to prevent interference with the safety and convenience of ordinary travel over the Rights-of-way, or when necessary to protect the Rights-of-way and its users.
- (1) The Director of Public Service, in his/her discretion, may consider one or more of the following factors:
 - A. The extent to which Rights-of-way space where the Permit is sought is available; and/or
 - B. The competing demands for the particular space in the Rights-of-way; and/or
 - C. The availability of other locations in the Rights-of-way or in other Rights-of-way for the proposed Facilities; and/or

- D. The applicability of Chapter 907 or other regulations of the Rights-of-way that affect location of Facilities in the Rights-of-way; and/or
 - E. The degree of compliance of the Provider with the terms and conditions of its Certificate of Registration, Chapter 907, and other applicable ordinances and regulations; and/or
 - F. The degree of disruption to surrounding communities and businesses that will result from the use of that part of the Rights-of-way; and/or
 - G. The condition and age of the Rights-of-way, and whether and when it is scheduled for total or partial re-construction; and/or
 - H. The balancing of the costs of disruption to the public and damage to the Rights-of-way, against the benefits to that part of the public served by the expansion into additional parts of the Rights-of-way; and/or
 - I. Whether such Applicant or its agent has failed within the past three (3) years to comply, or is presently not in full compliance with, the requirements of Chapter 907 or, if applicable, any other Law.
- (2) Under no circumstances will open cutting take place on any street except where:
- A. An absolute emergency situation constitutes that an open cut is necessary; and/or
 - B. Vital services to resident(s) or business(es) are needed or have been cut off and there is no reasonable alternative (such as jacking or boring) in supplying or restoring such services; and/or
 - C. The Director of Public Service determines it is in the best interests of the City that such an open cut take place.
- (c) Discretionary Issuance of Permit.
- (1) Notwithstanding the provisions of Sections 907.1617(Aa)(1) and 907.176(Aa)(2), the Director of Public Service may issue a Permit in any case where the Permit is necessary;
 - A. To prevent substantial economic hardship to a customer of the Permit Applicant, if established by Credible evidence satisfactory to the City; or
 - B. To allow such customer to materially improve its Service; or
 - C. To allow a new economic development project to be granted a Permit under this section.
 - (2) To be granted a Permit under this sSection, the Permit Applicant must not have had knowledge of the hardship, the plans for improvement of Service, or the development project when it was required to submit its list of next year projects.
- (d) Work Done Without A Permit in Emergency Situations.
- (1) Each Provider shall, as soon as is practicable, immediately notify the Director of Public Service of any event regarding its Facilities which it considers to be an Emergency. The Provider may proceed to take whatever actions are necessary in order to respond to the Emergency. Within five (5) business days, unless otherwise extended by the Director of Public Service, after the occurrence or discovery of the Emergency (whichever is later), the Provider shall apply for the necessary Permits, pay the fees associated therewith or have those fees attributed to its quarterly invoice balance in accordance with Sections 907.1314(Dd) and fulfill the rest of the requirements necessary to bring itself into compliance with Chapter 907 for any and all actions taken in response to the Emergency. In the event that the City becomes aware of an Emergency regarding a Provider's Facilities, the City may use Best Efforts to contact the Provider or the System Representative of each Provider affected, or potentially affected, by the Emergency. In any event, the City may take whatever action it deems necessary in order to respond to the Emergency, the cost of which shall be borne by the Provider whose Facilities caused the Emergency.

- (2) Except in the case of an Emergency, any Provider who Constructs in, on, above, within, over, below or through a Rights-of-way without a valid Permit must subsequently obtain a Permit, pay double the calculated fee for said Permit, pay double all the other fees required by the Code, deposit with the City the fees necessary to correct any damage to the Rights-of-way and comply with all of the requirements of Chapter 907.
- (e) Revocation of Permits.
- (1) Permittees hold Permits issued pursuant to the Code as a privilege and not as a right. The City reserves its right, as provided herein, to revoke any Permit, without refunding any fees, in the event of a substantial breach of the terms and conditions of any Law, ordinance, Rule or Regulation, or Design Guideline where applicable, or any provision or condition of the Permit. A substantial breach by Permittee shall include, but shall not be limited to, the following:
- A. The violation of any provision or condition of the Permit; or
 - B. An evasion or attempt to evade any provision or condition of the Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the City or its citizens; or
 - C. Any material misrepresentation of fact in the Application for a Permit; or
 - D. The failure to maintain the required Construction or Removal Bonds and/or insurance; or
 - E. The failure to obtain and/or maintain, when required, a Certificate of Registration; or
 - F. The failure to complete the Construction in a timely manner; or
 - G. The failure to correct a condition of an order issued pursuant to Section 907.~~1615(Oo)~~(3).
- (2) If the Director of Public Service determines that the Permittee has committed a substantial breach of a term or condition of any Law, or any condition of the Permit, the Director of Public Service shall serve a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the Permit. Upon a substantial breach, as stated above, the Director of Public Service may place additional or revised conditions on the Permit.
- (3) By the close of the next business day following receipt of notification of the breach, Permittee shall contact the Director of Public Service with a plan, acceptable to the Director of Public Service, for its correction. Permittee's failure to so contact the Director of Public Service, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to reasonably implement the approved plan, shall be cause for immediate revocation of the Permit.
- (4) If a Permittee commits a second substantial default as outlined above, Permittee's Permit will automatically be revoked and the Permittee will not be allowed further Permits for up to and including one full year, except for Emergency repairs.
- (5) If a Permit is revoked, the Permittee shall also reimburse the City for the City's reasonable costs, including Restoration costs and the costs of collection and reasonable attorneys' fees incurred in connection with such revocation.

(Ord. O-06-2014. Passed 3-18-14.)

907.~~187~~ - CONSTRUCTION AND REMOVAL BONDS.

- (a) Construction Bond. Prior to the commencement of any Construction, a Construction Permittee, excluding the County, shall deposit with the Finance Director an irrevocable, unconditional letter of credit and/or surety bond in an amount determined by the Director of Public Service to be appropriate based upon fair and reasonable criteria. Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Service shall serve written notice to the Construction Permittee detailing the Construction default, problem or deficiency. If the Director of Public Service determines that correction or repair of

the Construction default, problem or deficiency has not occurred or has not been substantially initiated within ten (10) calendar days after the date following service and notification and detailing the Construction default, problem or deficiency, then the City may attach the letter of credit or surety bond. Upon attachment, written notice shall be served on the Construction Permittee by the Director of Public Service.

- (b) Removal Bond. Upon issuance of a Certificate of Registration and continuously thereafter, and until one hundred twenty (120) days after a Provider's Facilities have been removed from the Rights-of-way, (unless the Director of Public Service notifies the Provider that a reasonably longer period shall apply), a Provider shall deposit with the Finance Director and maintain an irrevocable, unconditional letter of credit or surety bond in an amount equal to or greater than one hundred thousand dollars (\$100,000.00), the director of public Service shall make all reasonable efforts to allow Provider a period of five (5) calendar days after serving notification in writing to correct or repair any default, problem or deficiency prior to the Director of Public Service attachment of the letter of credit or surety bond regarding the removal of Facilities. Upon attachment, written notice shall be provided to the Provider by the Director of Public Service.
- (c) Blanket Bond.
- (1) In lieu of the Construction Bond required by Section 907.2019(Aa) and the Removal Bond required by Section 907.187(Bb), Provider may deposit with the Finance Director an irrevocable, unconditional letter of credit and/or surety bond in the amount of five million dollars (\$5,000,000.00). Unless a Construction default, problem or deficiency involves an Emergency or endangers the safety of the general public, the Director of Public Service shall make all reasonable effort to allow Permittee a period of five (5) calendar days after sending notification in writing to correct or repair any default, problem or deficiency prior to Director of Public Service's attachment of the letter of credit or surety bond.
- (d) Self-Bonding. In lieu of the Construction Bond required by Section 907.1718(Aa), the Removal Bond required by Section 907.1920(Bb) and the Blanket Bond required by Section 907.1718(Cc), those Providers maintaining a book value in excess of fifty million dollars (\$50,000,000.00) may submit a statement to the Finance Director requesting to self-bond. If approval to self-bond is granted, a Provider shall assure the City that such self-bonding shall provide the City with no less protection and security than would have been afforded to the City by a third party surety providing Provider with the types and amounts of bonds detailed in the above named Ssections. This statement shall include:
- (1) Audited financial statements for the previous year; and
 - (2) A description of the Applicant's self-bonding program.
 - (3) Other applicable and pertinent information as reasonably requested by the Director of Public Service.
- (e) Purposes.
- (1) The bonds required by this section, and any self-bonding to the extent it has been permitted, shall serve as security for:
- A. The faithful performance by the Permittee or Provider of all terms, conditions and obligations of Chapter 907; and
 - B. Any expenditure, damage, or loss incurred by the City occasioned by the Permittee or Provider's violation of Chapter 907 or its failure to comply with all rules, regulations, orders, Permits and other directives of the City issued pursuant to Chapter 907; and
 - C. The payment of all compensation due to the City, including Permit Fees; and
 - D. The payment of premiums (if any) for the liability insurance required pursuant to Chapter 907; and
 - E. The removal of Facilities from the Rights-of-way pursuant to Chapter 907; and

- F. The payment to the City of any amounts for which the Permittee or Provider is liable that are not paid by its insurance or other surety; and
 - G. The payment of any other amounts which become due to the City pursuant to Chapter 907 or the Law.
- (f) Form. The bond documents required by this sSection and any replacement bond documents shall contain the following endorsement: "It is hereby understood and agreed that this bond may not be canceled or not renewed by the surety nor the intention to cancel or not to renew be stated by the surety until ninety (90) days after completion of Construction of the Facilities and, notwithstanding the foregoing, shall in no case be canceled or not renewed by the surety until at least ninety (90) days' written notice to City of surety's intention to cancel or not renew this bond.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.198 - INDEMNIFICATION AND LIABILITY.

(a) City Does Not Accept Liability.

- (1) By reason of the acceptance of an Application, the grant of a Permit or the issuance of a Certificate of Registration, the City does not assume any liability:
 - A. For injuries to Persons, damage to property, or loss of Service claims; or
 - B. For claims or penalties of any sort resulting from the installation, presence, maintenance or operation of Facilities.

(b) Indemnification.

- (1) By applying for and being issued a Certificate of Registration with the City a Provider is required, or by accepting a Permit a Permittee is required to protect, defend, indemnify, and hold harmless the City's agents, elected officials, officers, employees, volunteers and subcontractors from all costs, liabilities, claims, and suits for damages of any kind arising out of the Construction, presence, installation, maintenance, repair or operation of its Facilities, or out of any activity undertaken in or near on a Rights-of-way, whether any act or omission complained of is authorized, allowed, or prohibited by a Permit. A Provider or Permittee shall not bring, nor cause to be brought, any action, suit or other proceeding claiming damages, or seeking any other relief against the City's agents, elected officials, officers, employees, volunteers, and subcontractors for any claim nor for any award arising out of the presence, installation, maintenance or operation of its Facilities, or any activity undertaken in or near a Rights-of-way, whether the act or omission complained of is authorized, allowed or prohibited by a Permit. This Ssection is not, as to third parties, a waiver of any defense or immunity otherwise available to the Provider, Permittee or to the City; and the Provider or Permittee, in defending any action on behalf of the City, shall be entitled to assert in any action every defense or immunity that the City could assert in its own behalf. Any and all exercise of the above shall be consistent with, but not limited to, the following:
 - A. To the fullest extent permitted by Law, all Providers and Permittees shall, at their sole cost and expense, fully indemnify, defend and hold harmless the City, its elected officials, agents, officers, employees, volunteers and subcontractors from and against any and all lawsuits, claims (including without limitation worker's compensation claims against the City or others), causes of actions, actions, liability, and judgments for injury or damages (including, but not limited to, expenses for reasonable legal fees and disbursements assumed by the City in connection therewith); and
 - 1. Persons or property, in any way arising out of or through the acts or omissions of Provider or Permittee, its subcontractors, agents or employees attributable to the occupation by the Provider or Permittee of the Rights-of-way, to which Provider's or Permittee's negligence shall in any way contribute, and regardless of whether the

- City's negligence or the negligence of any other party shall have contributed to such claim, cause of action, judgment, injury or damage; and
2. Arising out of any claim for invasion of the right of privacy, for defamation of person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent or any other right of any person, firm and corporation by the Provider, but excluding claims arising out of or related to The City's actions; and
 3. Arising out of Provider or Permittee's failure to comply with the provisions of Law applicable to Provider or Permittee in its business hereunder.
- B. The foregoing indemnification is conditioned upon the City:
1. Giving Provider or Permittee prompt notice of any claim or the commencement of any action, suit or proceeding for which indemnification is sought; and
 2. Affording the Provider or Permittee the opportunity to participate in any compromise, settlement, or other resolution or disposition of any claim or proceeding subject to indemnification; and
 3. Cooperate in the defense of such claim and making available to the Provider or Permittee all pertinent information under the City's control.
- C. The City shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Provider or Permittee shall pay all reasonable fees and expenses of such separate counsel if employed.

(Ord. [O-06-2014](#) . Passed 3-18-14.)

907.~~2019~~ - GENERAL PROVISIONS.

- (a) Non-exclusive Remedy . The remedies provided in Chapter 907 are not exclusive or in lieu of other rights and remedies that the City may have at Law or in equity. The City is hereby authorized at any time to seek legal and equitable relief for actual or threatened injury to the public Rights-of-way, including damages to the Rights-of-way, whether caused by a violation of any of the provisions of Chapter 907 or other provisions of the Code.
- (b) Severability . If any section, subsection, sentence, clause, phrase, or portion of Chapter 907 is for any reason held invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. If a regulatory body or a court of competent jurisdiction should determine by a final, non-appealable order that any Permit, right or any portions of this section are illegal or unenforceable, then any such Permit or right granted or deemed to exist hereunder shall be considered as a revocable Permit with a mutual right in either party to terminate without cause upon giving sixty (60) days written notice to the other. The requirements and conditions of such a revocable Permit shall be the same requirements and conditions as set forth in the Permit, right or registration, respectively, except for conditions relating to the term of the Permit and the right of termination. If a Permit or right shall be considered a revocable Permit as provided herein, the Permittee must acknowledge the authority of the City to issue such revocable Permit and the power to revoke it.
- (c) Reservation of Regulatory and Police Powers . The City, by the granting of a Permit or by issuing a Certificate of Registration pursuant to Chapter 907, does not surrender or to any extent lose, waive, impair, or lessen the lawful powers and rights, which it has now or may be hereafter vested in the City under the Constitution and Laws of the United States, State of Ohio and under the Charter of the City of New Albany to regulate the use of the Rights-of-way. The Permittee by its acceptance of a Permit, or Provider by applying for and being issued a Certificate of Registration, is deemed to acknowledge that all lawful powers and rights, regulatory power, or police power, or otherwise as now are or the same as may be from time to time vested in or reserved to the City, shall be in full

force and effect and subject to the exercise thereof by the City at any time. A Permittee or Provider is deemed to acknowledge that its rights are subject to the regulatory and police powers of the City to adopt and enforce general ordinances necessary to the safety and welfare of the public and is deemed to agree to comply with all applicable general Laws and ordinances enacted by the City pursuant to such powers.

- (d) Method of Service . Any notice or order of the Director of Public Service or the City Manager shall be deemed to be properly served if a copy thereof is:
- (1) Delivered personally; or
 - (2) Successfully transmitted via facsimile transmission to the last known fax number of the person to be served; or
 - (3) Left at the usual place of business of the person to whom it is to be served upon and with someone who is eighteen (18) years of age or older; or
 - (4) Sent by certified, preposted U.S. mail to the last known address; or
 - (5) If the notice is attempted to be served by certified, preposted U.S. mail and then returned showing that the letter was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, preposted, first-class U.S.; or
 - (6) If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the structure, building, premises or property affected by such notice.
- (e) Applies to All Providers . Chapter 907 shall apply to all Providers and all Permittees unless expressly exempted.
- (f) Police Powers . All Persons' rights are subject to the police powers of the City to adopt and enforce ordinances necessary to the health, safety and welfare of the public. All persons shall comply with all applicable Laws enacted by the City pursuant to its police powers. In particular, all persons shall comply with City zoning and other land use requirements pertaining to the placement and specifications of Facilities, unless otherwise prohibited by Law.
- (g) Compliance . No Person shall be relieved of its obligation to comply with any of the provisions of Chapter 907 by reason of any failure of the City to enforce prompt compliance.
- (h) Foreclosure and Receivership .
- (1) Upon the filing of any voluntary or involuntary petition under the Bankruptcy Code by or against any Provider and/or Permittee, or any action for foreclosure or other judicial sale of the Provider and/or Permittee Facilities located within the Rights-of-way, the Provider and/or Permittee shall so notify the Director of Public Service within fourteen (14) calendar days thereof and the Provider and/or Permittee's Certificate of Registration or Permit (as applicable) shall be deemed void and of no further force and effect.
 - (2) The City shall have the right to revoke, pursuant to the provisions of the Code, any Certificate of Registration or Permit granted pursuant to Chapter 907, subject to any applicable provisions of Law, including the Bankruptcy Code, one hundred and twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of the Provider and/or Permittee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days or unless:
 - A. Within one hundred and twenty (120) days after election or appointment, such receiver or trustee shall have fully complied with all the provisions of the relevant Certificate of Registration, any outstanding Permit, Chapter 907, and remedied all defaults thereunder; and

- B. Said receiver or trustee, within said one hundred and twenty (120) days, shall have executed an agreement, duly approved by a court having jurisdiction over the Facilities, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of the relevant Certificate of Registration, Permit and Chapter 907.
- (i) Choice of Law and Forum. This Chapter 907 and the terms and conditions of any Certificate of Registration or Permit shall be construed and enforced in accordance with the substantive Laws of the City, State of Ohio and United States, in that order. As a condition of the grant of any Permit or issuance of any Certificate of Registration all disputes shall be resolved in a court of competent jurisdiction for Franklin County, Ohio.
 - (j) Force Majeure. In the event any Person's performance of any of the terms, conditions or obligations required by Chapter 907 is prevented by a cause or event not within such Person's control, such inability to perform shall be deemed excused and no penalties or sanctions shall be imposed as a result thereof. For the purpose of this section, causes or events not within the control of a Provider shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, failure or loss of, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires.
 - (k) No Warranty. The City makes no representation or warranty regarding its right to authorize the Construction of Facilities on any particular Rights-of-way. The burden and responsibility for making such determination shall be upon the Person installing Facilities in the Rights-of-way.
 - (l) Continuing Obligation and Holdover. In the event a Provider or Permittee continues to operate all or any part of the Facilities after the termination, lapse, or revocation of a Certificate of Registration, such Provider or Permittee shall continue to comply with all applicable provisions of this Chapter and other Laws throughout the period of such continued operation, provided that any such continued operation shall in no way be construed as a renewal or other extension of the Certificate of Registration, nor as a limitation on the remedies, if any, available to the City as a result of such continued operation after the term, including, but not limited to, damages and restitution. Any conflict between the issuance of a Certificate of Registration or of a Permit and any other present or future lawful exercise of the City's regulatory or police powers shall be resolved in favor of the latter.
 - (m) Appeals. All appeals provided for by this Chapter and any notification to the City required by this Chapter shall be in writing and sent via certified U.S. mail to the City Manager or Director of Public Service as specified in this Chapter 907.
 - (n) City Facilities. As part of City required standards wherever Rights-of-way are under Construction, if deemed advisable and practicable by the Director of Public Service, the City may install all such Facilities deemed necessary to accommodate future Provider needs. Any such installed Facilities shall be City property and may be conveyed to any Person under such terms and conditions as are deemed advisable by the City.
 - (o) Section Headings. Section headings are for convenience only and shall not be used to interpret any portion of this Chapter.

(Ord. [O-06-2014](#). Passed 3-18-14.)

907.99 - PENALTIES.

In addition to any other penalties set forth in this Chapter, and the remedy of specific performance which may be enforced in a court of competent jurisdiction the following penalties shall apply:

- (1) Any Person violating the provisions of this Chapter shall be guilty of a misdemeanor of the fourth (4th) degree. Each day such violation continued shall be deemed a separate offense.

(Ord. [O-06-2014](#). Passed 3-18-14.)



NEW ALBANY, OHIO

SMALL CELL

DESIGN GUIDELINES & REQUIREMENTS

10.23.2018 DRAFT



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This plan contains design guidelines and requirements for the deployment of small cell wireless facilities and other wireless network enhancements in the city of New Albany. This section may be amended from time to time in accordance with the codified ordinance of the city of New Albany as more technology becomes available.



Existing Village Center character.



Existing neighborhood character.



Existing Business Campus character

A- SMALL CELL WIRELESS FACILITIES

I. Purpose

A. To balance the deployment of small cell facilities and associated wireless support structures in the public right-of-way and on City-owned poles that allow small cell facility operators to provide fast, reliable coverage and capacity, while preserving the character, aesthetics, and pedestrian-friendly design of New Albany's streetscapes within the Village Center, as well as maintaining the city's rural road corridors;

B. To promote the availability of a wide range of utility, communication, and other services to residents of the City at reasonable costs, including the rapid implementation of new technologies and innovative services;

C. To ensure that structures and facilities within the public right-of-way protect the health, safety, and welfare of the public by minimizing and reducing impacts to surrounding land uses and to the City, its residents and visitors;

D. To protect the integrity of neighborhoods, commercial areas, and the Village Center and ensure that access to and occupancy or use of public rights-of-way in such areas is technologically and aesthetically appropriate; and

E. To foster partnerships to expedite the installation and operation of small cell facilities in order to enhance wireless service for commercial, residential, and institutional users in the city.

II. Definitions

For the purposes of this chapter, the following terms shall have the meanings provided. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word "shall" is always mandatory and not merely permissive.

A. Amenity Zone: means a portion of the public right-of-way, typically adjacent to the sidewalk, but outside the pedestrian walking area, including streetscape elements, landscaping, and street trees.

B. Antenna: means communications equipment that transmits or receives radio frequency signals in the provision of wireless service.

C. City: means the City of New Albany and the City's elected officials, employees, residents, and agents and invitees.

D. Collocation or Collocate: means to install, mount, maintain, modify, operate, or replace small cell facilities on a new or existing wireless support structure or utility pole.

E. Decorative Pole: means a pole, arch, or structure other than a street light pole placed in the public way specifically designed and placed for aesthetic purposes and on which no appurtenances or attachments have been placed except for any of the following:

1. Electric lighting
2. Specially designed informational or directional signage
3. Temporary holiday or special event attachments

F. Local: means within the geographical boundaries of the City.

G. Occupy or Use: means, with respect to a public right-of-way, to place a tangible thing in a public right-of-way for any purpose, including, but not limited to, constructing, repairing, positioning, maintaining, or operating lines, poles, pipes, conduits, ducts, equipment, or other structures, appurtenances, or facilities necessary for the delivery of public utility services or any services provided by a cable operator.

H. Microwireless Permit: means a written authorization for the use of the public right-of-way or collocation on a service pole required from a municipality before a wireless service provider may perform an action or initiate, continue, or complete a project over which the municipality has police power authority.

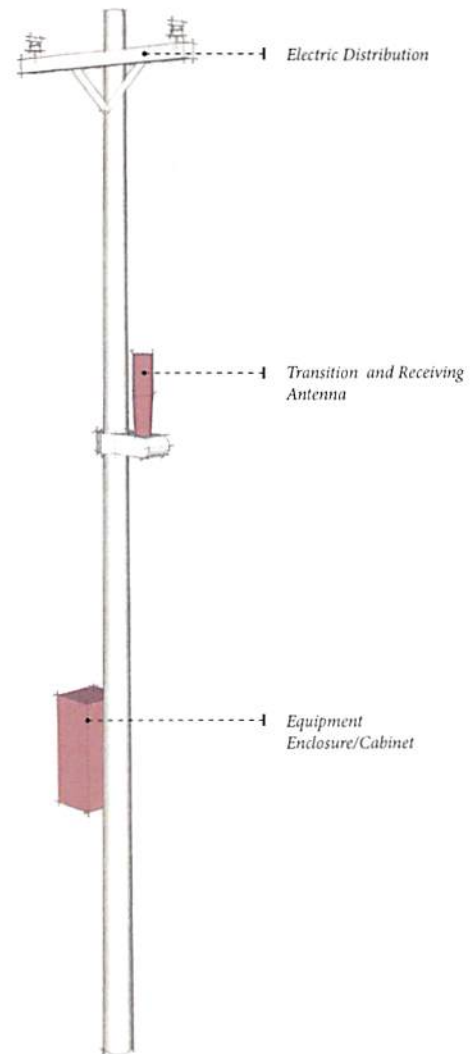
I. Private Easement: means an easement or other real property right that is only for the benefit of the grantor and grantee and their successors and assigns.

J. Right-of-Way (ROW) or Public Way: means the surface of, and the space within, through, on, across, above, or below, any public street, public road, public highway, public freeway, public lane, public path, public alley, public court, public sidewalk, public boulevard, public parkway, public drive, public easement, and any other land dedicated or otherwise designated for a compatible public use, which is owned or controlled by the City of New Albany. The term does not include a private easement.

K. Residential Area: means a single-family residential lot or other multifamily residence or undeveloped land that is designated for residential use by zoning.

L. Service Pole: means a pole, owned or operated by the City and located in the right-of-way, including:

1. A pole that supports traffic control functions;
2. A structure for signage; and
3. A pole that supports lighting, other than a decorative pole.



Utility pole with a small cell wireless facility.



Example of an existing utility pole in the City of New Albany.



Example of existing esplanade commercial street light in the City of New Albany



Example of a new small cell facility on an existing light pole.



Example of a new small cell facility on a new wireless support structure.

M. Small Cell Facility: means a wireless facility that meets both of the following requirements:

1. Each antenna is located inside an enclosure of not more than six cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an enclosure of not more than six cubic feet in volume.
2. All other wireless equipment associated with the facility is cumulatively not more than twenty-eight cubic feet in volume. The calculation of equipment volume shall not include electric meters, concealment elements, telecommunications demarcation boxes, grounding equipment, power transfer switches, cut-off switches, and vertical cable runs for the connection of power and other services.

N. Small Cell Facility Operator or Operator: means a wireless service provider, or its designated agent, or cable operator, or its designated agent, that operates a small cell facility and provides wireless service. "Operator" includes a wireless service provider or cable operator that provides information services and services that are fixed in nature or use unlicensed spectrum.

O. Utility Pole: means a structure that is designed for, or used for the purpose of, carrying lines, cables, or wires for electric distribution or telecommunications service. "Utility pole" excludes street signs and decorative poles.

P. Village Center: means the area within the boundary delineated in the New Albany Form Based Code, as established by the City's *Village Center Strategic Plan*.

Q. Wireless Facility: means equipment at a fixed location that enables wireless communication between user equipment and a communications network, including all of the following:

1. Equipment associated with wireless communications;
2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration.
3. The term includes small cell facilities.
4. The term does not include any of the following:
 - a. The structure or improvements on, under, or within which the equipment is collocated;
 - b. Coaxial or fiber-optic cable that is between wireless support structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

R. Wireless Service: means any services using licensed or unlicensed wireless spectrum, whether at a fixed location or mobile, provided to the public using wireless facilities.

S. Wireless Service Provider: means a person who provides wireless service as defined in division (A) (20) of section 4927.01 of the Ohio Revised Code.

T. Wireless Support Structure: means a pole, such as a monopole, either guyed or self-supporting, street light pole, traffic signal pole, a fifteen-foot or taller sign pole, or utility pole capable of supporting small cell facilities. "Wireless support structure" excludes all of the following:

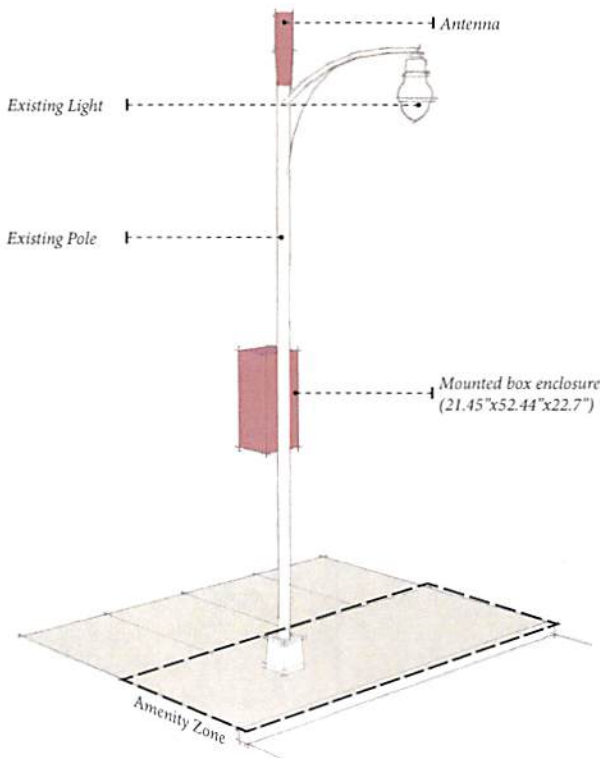
1. A utility pole or other facility owned or operated by a municipal electric utility; and
2. A utility pole or other facility used to supply traction power to public transit systems, including railways, trams, streetcars, and trolleybuses.

III. Applicability

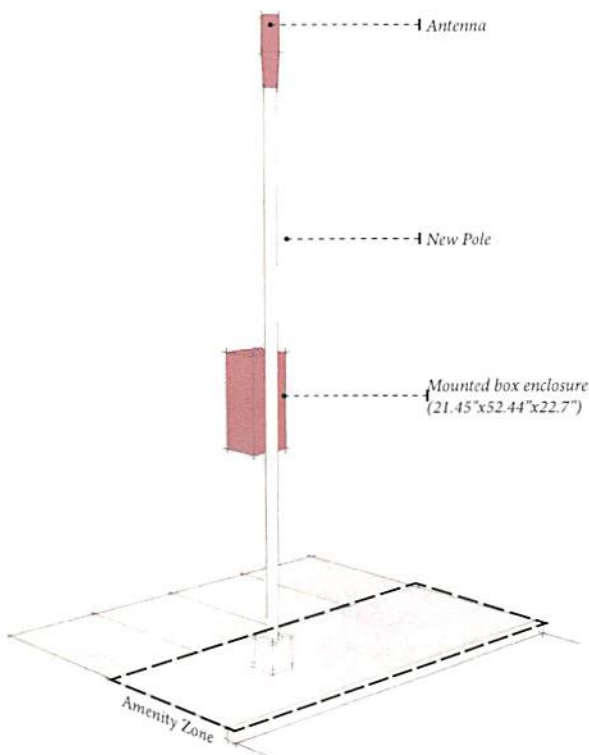
Application submittals proposing to collocate small cell facilities in association with existing or new support structures within the right-of-way require a right-of-way permit to be issued through the City of New Albany. Every application to collocate small cell facilities and wireless support structures shall be classified in one of the following ways:

A. Outside Village Center. The areas outside of the Village Center shall follow typical review timeframes for the right-of-way permit as established by city policy.

B. Inside Village Center. The Village Center boundary shall be established by the City's Village Center Strategic Plan. In order to protect the vision and deliberate planning the community has undertaken to create a vibrant and attractive environment for new residents and businesses the following are the most preferred areas for the installation of small cell facilities and wireless support structures.



Major modification on a commercial esplanade street light.



New small cell facility on a new wireless support structure.

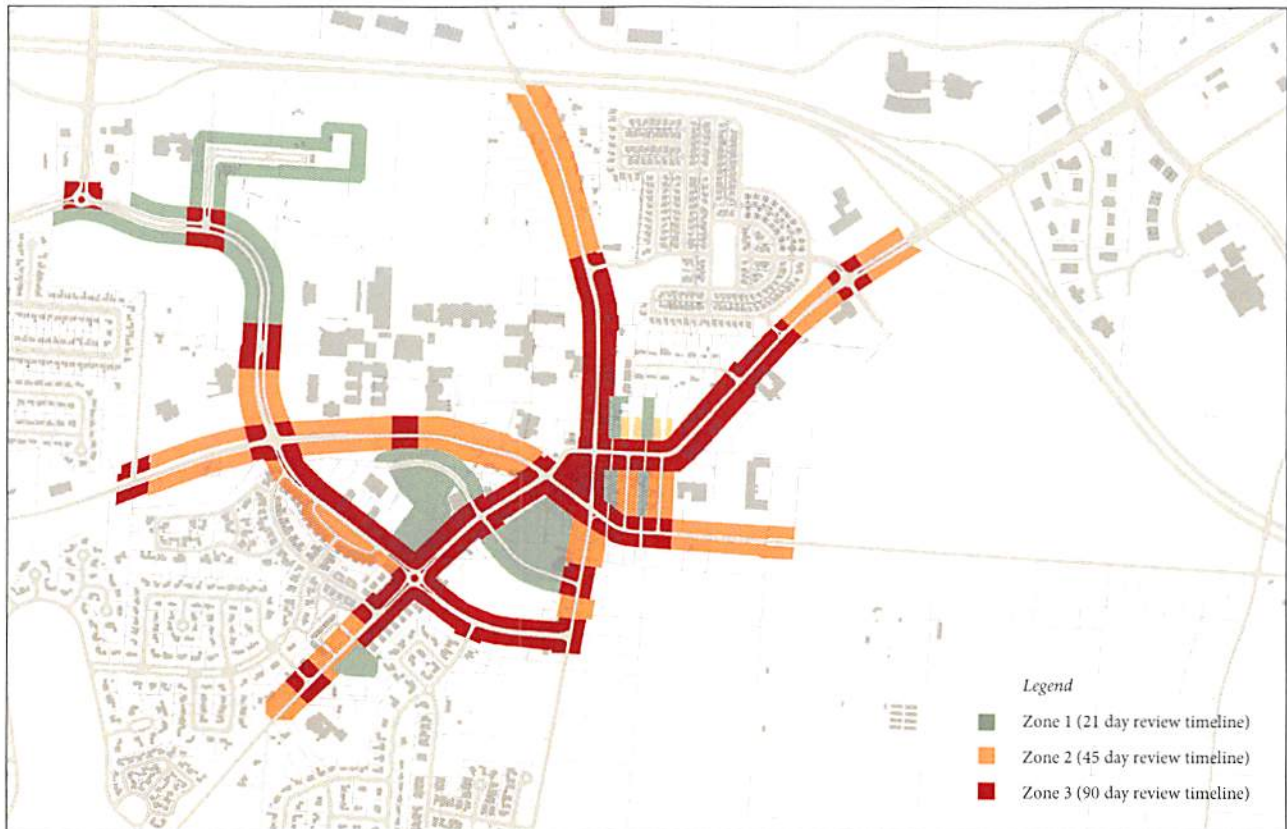


Example of existing pedestrian acorn street light in the Village Center.



Example of existing dual arm acorn street light in the Village Center.

1. Zone 1 – Preferred (shown in green) – This area encompasses right-of-way on secondary/service roads and alleys. Within secondary and service roads such as Village Hall Road the small cell facility must be located in the tree lawn between the street curb and the sidewalk. It also includes public right-of-way fronting publicly owned properties. In addition to public right-of-way and for the limited purpose of encouraging the effective and efficient deployment of small cell facilities and wireless support structures in Zone 1, several municipally owned parcels located outside the right-of-way (such as public parking lots and select parks), shall be made available to applicants for use to install and operate small cell facilities and wireless support structures. The city shall review applications within Zone 1 within 21 days from the submittal date for collocation within the right-of-way and city owned fee simple lots.
2. Zone 2 – Discouraged (shown in orange) – The collocation of small cell facilities in association with existing or new support structures must be located between the sidewalk (but not on the sidewalk) and the building, within the tree lawn (amenity zone). The city shall review applications within Zone 2 within 45 days from the submittal date for collocation within the right-of-way.



Zone Map depicting the preferred and discouraged locations for small cell wireless facilities and wireless support structures

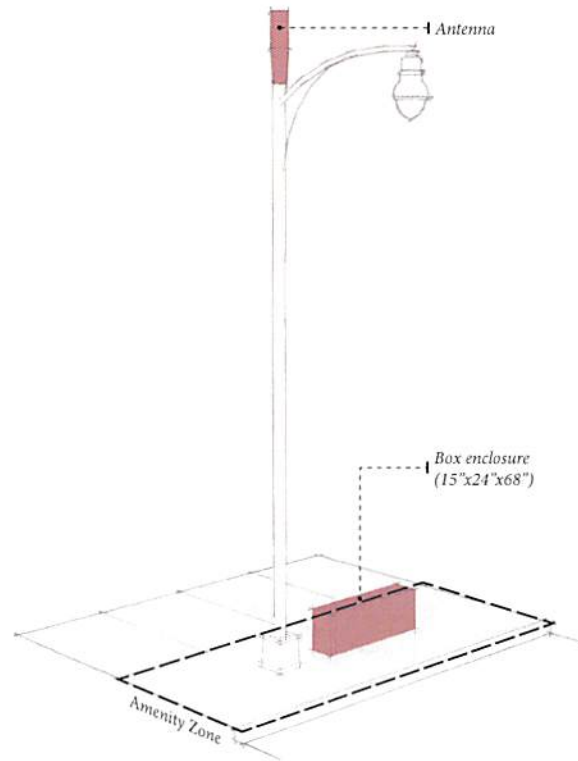
3. Zone 3 – Strongly Discouraged (shown in red) - This area encompasses right-of-way within 100 feet of intersections, highly traveled pedestrian zones, residential areas, and where the tree lawn (amenity zone) is located between the sidewalk and the street. Small cell facilities must be located 100 feet away from intersections and between the sidewalk and the street. The city shall review applications within Zone 3 within 90 days from the submittal date for collocation within the right-of-way.
4. Any new or other non-specified street, including residential subdivisions or other streets residential in character, which is not depicted or identified in the Zone Map below shall fall under the Zone 3 review category.

IV. Design Guidelines and Requirements.

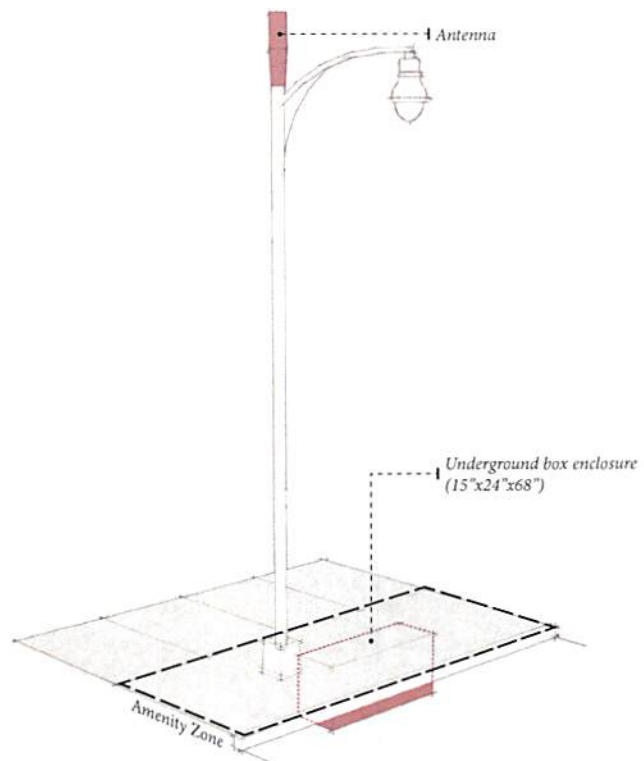
The following standards shall apply to all small cell facilities, including new and existing support structures throughout the city of the New Albany. Unless otherwise noted all of the design guidelines and requirements shall be met unless the applicant can demonstrate with clear and convincing evidence that it is not technically feasible.

A. General Design Standards for all small cell facilities and wireless support structures

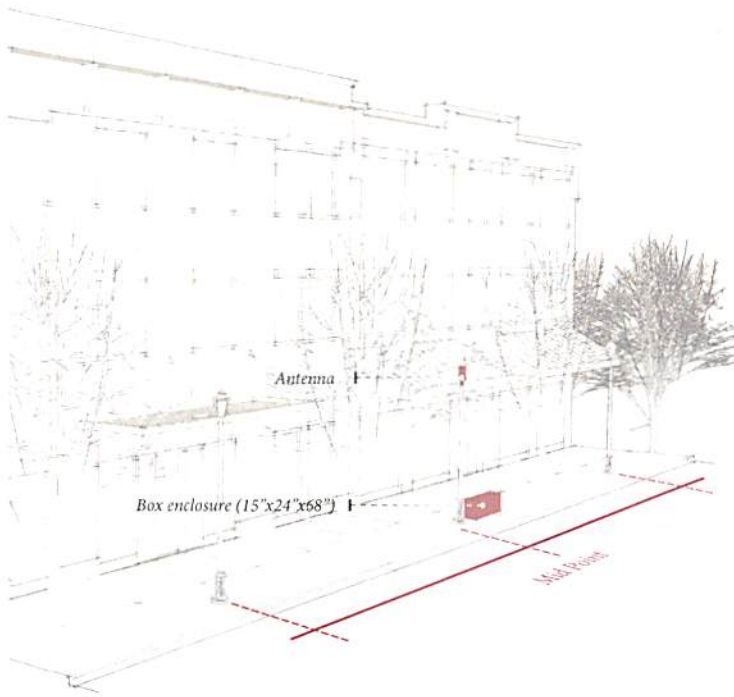
1. Collocations between two separate wireless service providers on the same support structure is encouraged whenever feasible and safe.
2. All small cell facilities and wireless support structures shall be designed, constructed, operated, and maintained in compliance with all generally applicable health and safety regulations, including without limitation all applicable regulations for human exposure to RF emissions.
3. Unless otherwise required for compliance with FAA or FCC regulations, the facility shall not include any permanent installed lights. Any lights associated with the electronic equipment shall be appropriately shielded from public view. The provisions in this subsection shall not be interpreted to prohibit installations on streetlights or the installation of luminaires on new poles when required.
4. All facilities shall utilize the lowest visible radio-frequency (RF) warning sticker required by government or utility regulations. Placement of the RF sticker must be as close as possible to the antenna and face directly away from the street. ID stickers must utilize the lowest visibility sticker as possible and use colors that are consistent or complimentary to the color of the equipment cabinet and/or pole on which it is to be placed.



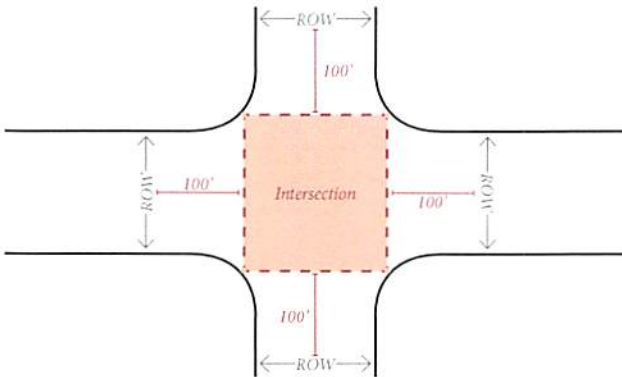
Small cell wireless facility on an esplanade street light with a ground-mounted equipment box



Small cell wireless facility on an esplanade street light with an underground equipment box



Example of new small cell facility on a new wireless support structure placed within the Village Center between two existing acorn light poles.



Example of 100 foot setback from intersections



Example of existing typical amenity zone in the Village Center

5. The applicant must design the proposed installation in a manner that mimics the design and any concealment elements of the existing small cell facility and wireless support structure.
6. To protect the safety of the public, any additional equipment must not negatively impact the structural integrity of the support structure and must comply with all applicable local, state, and federal codes and regulations.

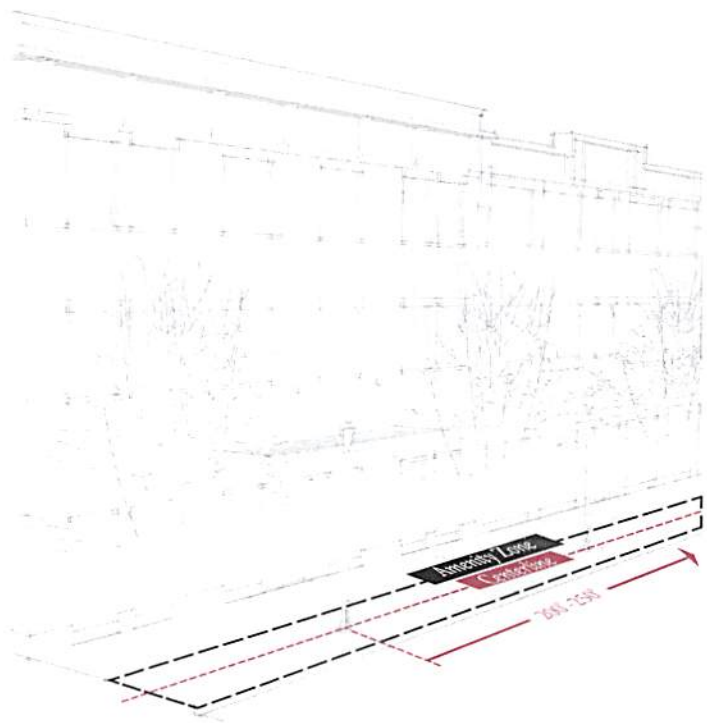
B. Placement & Location Standards

1. Applicants shall work with city staff to ensure that all small cell facilities and wireless support structures installed and operated in the City properly protect the public health, safety and welfare of the City and its residents by meeting the requirements of the Codified Ordinances of the City (specifically inclusive of C.O. 907) and these Design Guidelines as described herein.
2. All small cell facilities and wireless support structures shall be located to avoid any physical or visual obstruction to pedestrian or vehicular traffic or any other location that would create safety hazards to pedestrians, cyclists, or motorists.
3. All small cell facilities and wireless support structures shall conform/meet the location standards as found in the Applicability section of these regulations.
4. These guidelines encourage applicants to consider existing poles and other potential support structures prior to installing any new poles to reduce congestion in the public right-of-way. All applicable design, construction, and location standards will be considered when reviewing applications for new facilities installed on existing poles or other potential support structures in the public right-of-way.
5. It is the city's strong preference to collocate new small cell facilities on existing support structures in order to minimize the number of poles within the right-of-way. New poles can only be constructed when the applicant can demonstrate with clear and convincing evidence that using an existing structure is not technically feasible or not potentially available.
6. Placement of small cell facilities in the Village Center shall be a minimum of 250 feet apart to minimize the hazard of multiple poles adjacent to the roadway unless the applicant can demonstrate with clear and convincing evidence that it is not technically feasible. Placement of small cell facilities in the Village Center's Zone 1 may be closer subject to staff approval.
7. Placement of small cell facilities outside of the Village Center shall be a minimum of 200 feet apart to minimize the hazard of multiple poles adjacent to the roadway unless the applicant can demonstrate with clear and convincing evidence that it is not technically feasible.

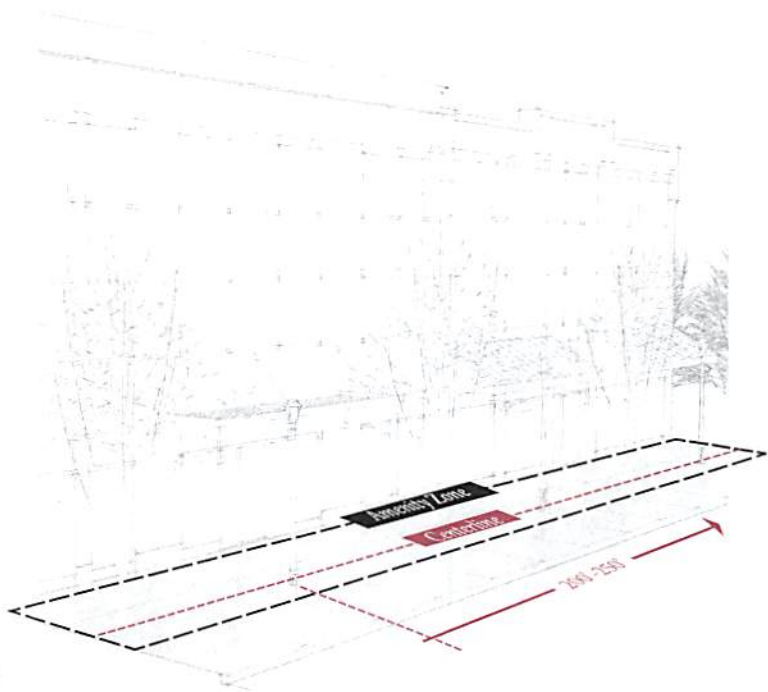
8. The centerline of any new pole must be aligned with the centerlines of existing poles on the same sidewalk or street segment. Alternate locations will be considered where there is conflict with overhead utility lines and facilities.
9. All new facilities and/or equipment and other related improvements must be placed within the amenity zone.
10. All new facilities and/or equipment and other related improvements must be setback at least 100 feet from public street intersections. The location cannot obstruct motorists' sightlines or pedestrian access.
11. In residential zoning districts, small cell facilities shall be located where the shared property line between two residential parcels intersects the public right-of-way, unless such location would prohibit or have the effect of prohibiting the operator's wireless service in the area.
12. For a privately owned structure in the public right-of-way onto which an applicant proposes to attach a small cell facility, if the owner of the structure requires more restrictive standards than those in this plan, the more restrictive standards shall apply. If any portion of the privately owned structure is on private property, the applicant must first obtain all applicable zoning and building permits prior to submittal.
13. The city, in its proprietary capacity, retains sole and absolute discretion over whether and on what terms it may allow small cell facilities on its poles and other facilities in the public right-of-way unless otherwise in conflict with law. Applicants may not submit any applications in connection with city owned poles or other facilities without a valid and fully executed agreement to use the specific pole or other facility.
14. A small cell facility on a city-owned wireless support structure may not use the same power source that provides power for the original purpose of the wireless support structure.

C. Antenna Design Standards

1. The city prefers that antennas are not collocated on the small pedestrian acorn lights within the Village Center or residential areas.
2. Antennas associated with installation on existing or replaced wireless support structures must be located within the amenity zone and have concealed cable connections, antenna mount, and other hardware.
3. The maximum dimensions for panel style antennas shall be 30" high and 12" wide. The maximum dimensions for canister style antennas shall be 30" high and 16" in diameter.

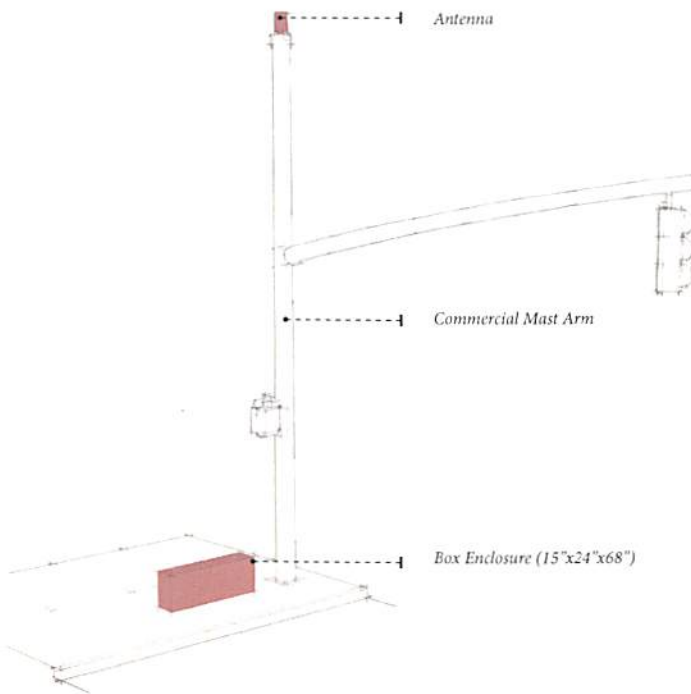


Typical Amenity Zone





Example of existing commercial signal mast arm in the City of New Albany.



Major modification on a commercial signal mast arm with ground-mounted equipment box.



Example of poorly designed antenna (left) and well designed antenna (right)

4. Antennas that overhang the roadway or sidewalks are discouraged due to concerns for public safety. If an antenna overhangs a roadway or side it must comply with all applicable setback and vertical clearance requirements.

D. Cabinet, Shroud, Meter, and similar equipment design Standards

1. All pole mounted equipment must be installed as flush to the pole as possible, using stainless steel banding straps. Through-bolting or use of lag bolts is prohibited. All pole mounted equipment shall be located as close together as possible and on the same side of the pole.
2. Pole mounted equipment is strongly discouraged. When pole-mounted equipment is either permitted or required, the equipment must be concealed within a single shroud or cabinet and must contain all the equipment associated with the facility other than the antenna including but limited to, the electric meter and disconnect switch. All cables and conduits associated with the equipment must be concealed from view, routed directly through the tapered metal pole and be underground between the pole and the ground mounted cabinet. Wood poles must use conduit to conceal cables and wires from view.
3. Equipment cabinets may not extend more than 24" from the face of the pole. No overhead cables, for electric or otherwise, shall be permitted.
4. Standoff mounts for any equipment may not exceed 4".
5. Equipment in an environmentally controlled underground vault may be required in some areas where technologically feasible and appropriate for the location. Equipment shall be placed underground within the Village Center Zone 3.
6. Unless required to be within an environmentally controlled underground vault, ground mounted equipment is required unless the applicant shows clear and convincing evidence that the equipment must be pole-mounted. Increased costs alone shall be presumed to be an insufficient reason.
7. Ground mounted equipment shall incorporate concealment elements into the proposed design. Ground-mounted equipment must be concealed within a single shroud or cabinet and must contain all the equipment associated with the facility other than the antenna including but limited to, the electric meter and disconnect switch. All cables and conduits associated with the equipment must be concealed from view and be underground between the pole and the ground mounted cabinet. Concealment may

include, but shall not be limited to, strategic placement in less obtrusive and stealth design for the cabinet. Cabinets should be placed as far as from the public street as possible and ideally behind existing horse fence.

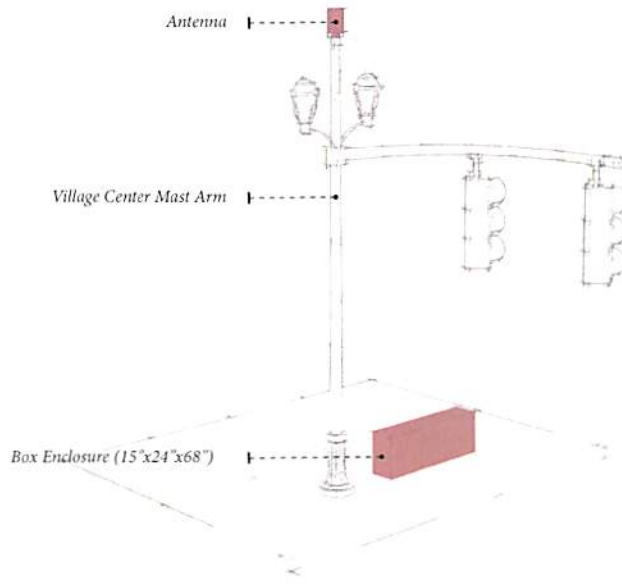
8. The applicant is required to incorporate ambient noise suppression measures and/or to place the equipment in locations less likely to impact adjacent residences or businesses to ensure compliance with all applicable noise regulations.
9. Color for all equipment and similar devices shall be New Albany green, black, or another color that matches the existing pole. The colors must be consistent with other cabinet and pole colors in the general area.

E. Pole Design Standards

1. It is the city's preference new poles are placed approximately in the middle of existing poles. New Poles must match existing poles in appearance, height, design, material, and color as those used on same section of street.
2. The city reserves the right to require a metal pole rather than a wood pole based on the built, natural environmental character, or city plans of the proposed site location. Wood poles shall not be permitted in the following areas:
 - a. Areas where plans call for underground utilities or non-wood poles;
 - b. Within the Village Center;
 - c. Sections or sides of streets where there are not currently wood poles.
3. It is the city's preference that new support structures' height are consistent with other poles in the vicinity, the built environment, the neighborhood character, the overall site appearance, and the purposes in these guidelines. If a compatible height cannot be clearly determined, then a maximum pole height of 40 feet above ground shall be used (including appurtenances). The zoning district height limit shall not be determinative.
4. Pole diameter shall be consistent with the surrounding poles. The applicant shall consider other poles in the vicinity, the built environment, the neighborhood character, the over site appearances, and the purposes of these guidelines when determining pole appearance. The paint color of the new pole shall match existing poles in the vicinity.
5. Within the Village Center, new poles shall meet Village Center design and specification standards.



Example of existing Village Center signal mast arm.



Major modification on a Village Center signal mast arm with ground-mounted equipment box.



Example of top-mounted antenna on a decorative mast arm.



9

GUIDELINES TEXT BY:
MRSK

GRAPHIC DESIGN BY:
MRSK





Prepared: 10/29/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

ORDINANCE O-25-2018

ANNUAL APPROPRIATION ORDINANCE

AN ORDINANCE TO MAKE APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF NEW ALBANY, STATE OF OHIO, DURING THE FISCAL YEAR ENDING DECEMBER 31, 2019

WHEREAS, Ohio Revised Code §5705.38(A) requires the taxing authority of each political subdivision to pass an annual appropriation measure on or about the first day of each year; and

WHEREAS, Council for the City of New Albany, State of Ohio, wishes to provide for funding for current expenses and other expenditures of the city during fiscal year 2019.

NOW, THEREFORE, BE IT ORDAINED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio that:

Section 1: To provide for the current expenses and other expenditures within the 2019 Annual Budget Program of the City of New Albany during the fiscal year ending December 31, 2019, the annual sums as follows are hereby set aside and appropriated:

Fund	Department	Category	Amount
General	Police	Personal Services	4,754,619
General	Police	Operating and Contractual Services	248,550
General	Community Development	Personal Services	1,523,690
General	Community Development	Operating and Contractual Services	1,496,700
General	Public Service	Personal Services	2,900,716
General	Public Service	Operating and Contractual Services	906,500
General	Land & Building Maintenance	Personal Services	62,280
General	Land & Building Maintenance	Operating and Contractual Services	1,288,900
General	Council	Personal Services	208,544
General	Council	Operating and Contractual Services	384,250
General	Administrative Services	Personal Services	1,390,185
General	Administrative Services	Operating and Contractual Services	1,162,685

Fund	Department	Category	Amount
General	Finance	Personal Services	599,717
General	Finance	Operating and Contractual Services	631,150
General	Legal	Operating and Contractual Services	400,000
General	General Administration	Personal Services	187,029
General	General Administration	Operating and Contractual Services	675,500
General	N/A	Capital	52,000
General	N/A	Transfers & Other Financing Uses	1,699,723
		Total General Fund	20,572,739

Fund	Department	Category	Amount
Severance Liability	General Administration	Personal Services	250,000
Street Construction, Maintenance & Repair	Public Service	Operating and Contractual Services	80,000
Street Construction, Maintenance & Repair	N/A	Capital	600,000
State Highway	Public Service	Operating and Contractual Services	20,000
State Highway	N/A	Capital	20,000
Permissive Tax	Public Service	Operating and Contractual Services	65,000
Permissive Tax	N/A	Capital	30,000
Economic Development (NACA)	Community Development	Operating and Contractual Services	2,475,562
Economic Development (NACA)	N/A	Transfers & Other Financing Uses	525,438
Economic Development (NAECA)	N/A	Transfers & Other Financing Uses	99,847
Hotel Excise Tax	Community Development	Operating and Contractual Services	110,000
Healthy New Albany Facilities	Land & Building Maintenance	Operating and Contractual Services	460,000
Healthy New Albany Facilities	N/A	Transfers & Other Financing Uses	255,193
Mayors Court Computer	Administrative Services	Operating and Contractual Services	6,500
Oak Grove EOZ	Finance	Operating and Contractual Services	3,631,000
Central College EOZ	Finance	Operating and Contractual Services	1,748,000
Oak Grove II EOZ	Finance	Operating and Contractual Services	1,648,000
Blacklick EOZ	Finance	Operating and Contractual Services	3,800,000
Alcohol Education	Police	Operating and Contractual Services	1,000
Alcohol Indigent	Administrative Services	Operating and Contractual Services	1,000
Drug Use Prevention Program Grant	Police	Personal Services	35,500
Law Enforcement & Education	Police	Operating and Contractual Services	2,250
Safety Town	Police	Operating and Contractual Services	42,000
DUI Grant	Police	Personal Services	2,500
Law Enforcement Assistance	Police	Personal Services	1,200
K-9 Patrol	Police	Operating and Contractual Services	10,000

Fund	Department	Category	Amount
Windsor TIF	General Administration	Operating and Contractual Services	652,000
Windsor TIF	N/A	Transfers & Other Financing Uses	727,362
Wentworth Crossing TIF	General Administration	Operating and Contractual Services	126,000
Wentworth Crossing TIF	N/A	Transfers & Other Financing Uses	90,000
Hawksmoor TIF	General Administration	Operating and Contractual Services	66,000
Hawksmoor TIF	N/A	Transfers & Other Financing Uses	76,201
Enclave TIF	General Administration	Operating and Contractual Services	23,000
Enclave TIF	N/A	Transfers & Other Financing Uses	50,000
Saunton TIF	General Administration	Operating and Contractual Services	47,000
Saunton TIF	N/A	Transfers & Other Financing Uses	75,000
Richmond Square TIF	General Administration	Operating and Contractual Services	47,000
Richmond Square TIF	N/A	Transfers & Other Financing Uses	85,282
Tidewater I TIF	General Administration	Operating and Contractual Services	127,000
Tidewater I TIF	N/A	Transfers & Other Financing Uses	125,000
Ealy Crossing TIF	General Administration	Operating and Contractual Services	100,000
Ealy Crossing TIF	N/A	Transfers & Other Financing Uses	150,000
Upper Clarenton TIF	General Administration	Operating and Contractual Services	179,000
Upper Clarenton TIF	N/A	Transfers & Other Financing Uses	80,000
Balfour Green TIF	General Administration	Operating and Contractual Services	12,000
Balfour Green TIF	N/A	Transfers & Other Financing Uses	12,130
Straits Farm TIF	General Administration	Operating and Contractual Services	315,316
Blacklick TIF	General Administration	Operating and Contractual Services	16,000
Blacklick TIF	N/A	Capital	2,800,000
Blacklick TIF	N/A	Transfers & Other Financing Uses	265,480
Blacklick II TIF	General Administration	Operating and Contractual Services	500
Village Center TIF	General Administration	Operating and Contractual Services	518,000
Village Center TIF	N/A	Transfers & Other Financing Uses	536,025
Research & Technology District TIF	General Administration	Operating and Contractual Services	3,000
Oak Grove II TIF	General Administration	Operating and Contractual Services	9,000
Oak Grove II TIF	N/A	Capital	2,000,000
Total Special Revenue Funds			25,233,286

Fund	Department	Category	Amount
Debt Service	N/A	Debt Service	4,847,661
Total Debt Service Funds			4,847,661

Fund	Department	Category	Amount
Capital Improvement	N/A	Capital	9,030,000
Capital Improvement	Finance	Operating and Contractual Services	64,000
Park Improvement	N/A	Capital	1,100,000
Park Improvement	Finance	Operating and Contractual Services	13,000
Water & Sanitary Sewer Improvement	N/A	Capital	12,500,000
Water & Sanitary Sewer Improvement	N/A	Transfers & Other Financing Uses	220,513
Leisure Trail Improvement	N/A	Capital	260,000
Bond Improvement	N/A	Capital	1,000,000
Capital Equipment Replacement	N/A	Capital	577,300
Oak Grove II Infrastructure	N/A	Capital	2,000,000
Oak Grove II Infrastructure	Finance	Operating and Contractual Services	24,000
Economic Development Capital	N/A	Capital	25,000
		Total Capital Projects Funds	26,813,813
		Total All Funds	77,467,499

Section 2: To affect the purposes of the foregoing appropriations, the city manager is authorized to enter into agreements on such terms determined in the city manager's discretion, consistent with all other ordinances and resolutions in effect and enacted from time to time.

Section 3: The Director of Finance is authorized to allocate the appropriations for a department within activities. Except as provided in Section 4, the Director of Finance is authorized to approve transfers between activities, provided that funds may not be transferred between appropriation line items.

Section 4: The Director of Finance is authorized to transfer up to \$10,000 between appropriation line items, provided that such transfers are within the same fund and department, where applicable.

Section 5: The Director of Finance is authorized create the Economic Development – NAECA fund for the purpose of receiving distributions from the New Albany East Community Authority to be used for Economic Development purposes.

Section 6. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 7: Pursuant to the Article VI, § 6.07(a) of the charter of the City of New Albany, this ordinance shall take effect upon passage.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

**CERTIFICATION BY CLERK OF COUNCIL
OF PUBLICATION OF LEGISLATION**

I certify that copies of Ordinance **O-25-2018** were posted in accordance with Section 6.12 of the Charter for 30 days starting on _____, 2018.

Jennifer Mason, Clerk of Council

Date



Prepared: 10/17/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

RESOLUTION R-40-2018

A RESOLUTION TO APPROVE THE FINAL PLAT FOR 68 AGE RESTRICTED SINGLE FAMILY LOTS ON 24.656 +/- ACRES AND ACCEPT RESERVES "A," "D," "E," "F," "G," and "H" FOR PHASE 1 OF THE "COURTYARDS AT NEW ALBANY" SUBDIVISION LOCATED EAST OF STATE ROUTE 605, WEST OF THE WENTWORTH CROSSING SUBDIVISION, AND GENERALLY SOUTH OF NEW ALBANY ROAD EAST, AS REQUESTED BY EPCON COMMUNITIES

WHEREAS, an application to approve the Final Plat for phase 1 of the Courtyards at New Albany subdivision has been submitted; and

WHEREAS, Codified Ordinance Chapter 1187 requires approval of the final plat by Council; and

WHEREAS, the New Albany Planning Commission, after review during a public meeting on June 18, 2018, recommended approval of this Final Plat (FP-38-2018); and

WHEREAS, the phase 1 Final Plat for The Courtyards at New Albany includes approximately 24.656 +/- acres of land to be subdivided into 68 residential lots in addition to the public streets; and

WHEREAS, the 24.656 acre phase 1 Final Plat for The Courtyards at New Albany final plat includes approximately 8.049 +/- acres of parkland; and open space;

WHEREAS, the final plat for The Courtyards at New Albany includes the commitment to dedicate reserves A, D, E, F, G, and H to the City for public parkland and open space; and

WHEREAS, New Albany City Council has agreed to the terms and conditions by which this parkland will be donated; and

WHEREAS, the city engineer certifies the phase 1 Final Plat for The Courtyards at New Albany meets all the requirements of Chapter 1187 of the Codified Ordinances, stormwater management, design requirements and will meet all other requirements of the City.

NOW, THEREFORE, BE IT RESOLVED by Council for the city of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. The said phase 1 Final Plat for The Courtyards at New Albany is attached to this resolution as Exhibit A and made a part herein is approved.

Section 2. City Council hereby accepts the lands shown on the map attached hereto as Exhibit A, under the terms and conditions outlined and the covenants and restrictions stipulated in the deed and final plat.

Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this resolution were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 4. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

THE COURTYARDS AT NEW ALBANY

PHASE I

NOTE 1A - The proposed site for the proposed development is located on the east side of the intersection of New Albany Road and the proposed extension of the New Albany Road. The proposed site is bounded to the north by the existing New Albany Road, to the south by the proposed extension of the New Albany Road, to the east by the proposed extension of the New Albany Road, and to the west by the proposed extension of the New Albany Road. The proposed site is bounded to the north by the existing New Albany Road, to the south by the proposed extension of the New Albany Road, to the east by the proposed extension of the New Albany Road, and to the west by the proposed extension of the New Albany Road.

NOTE 1B - The proposed site for the proposed development is located on the east side of the intersection of New Albany Road and the proposed extension of the New Albany Road. The proposed site is bounded to the north by the existing New Albany Road, to the south by the proposed extension of the New Albany Road, to the east by the proposed extension of the New Albany Road, and to the west by the proposed extension of the New Albany Road. The proposed site is bounded to the north by the existing New Albany Road, to the south by the proposed extension of the New Albany Road, to the east by the proposed extension of the New Albany Road, and to the west by the proposed extension of the New Albany Road.

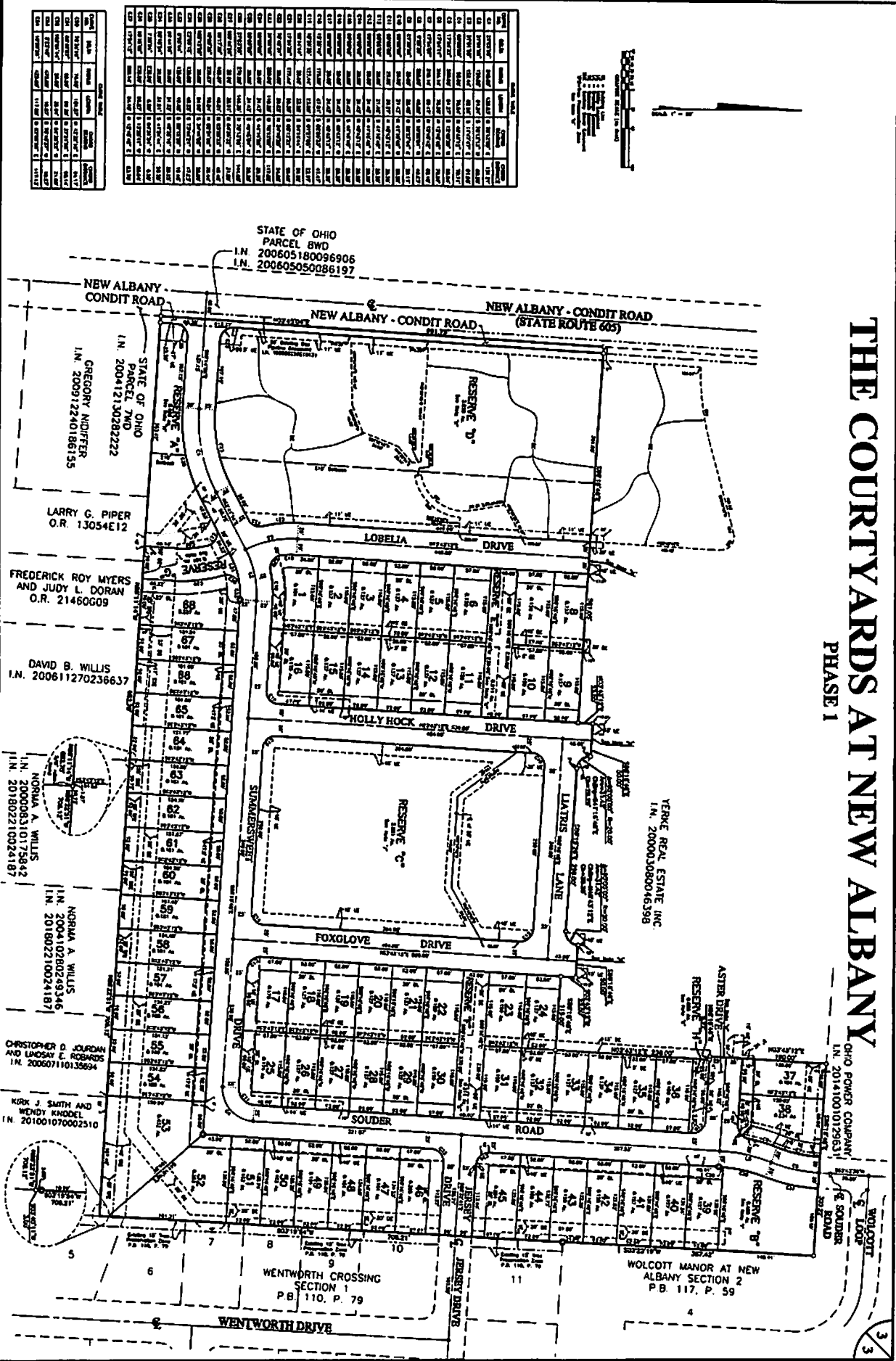
NOTE 1C - The proposed site for the proposed development is located on the east side of the intersection of New Albany Road and the proposed extension of the New Albany Road. The proposed site is bounded to the north by the existing New Albany Road, to the south by the proposed extension of the New Albany Road, to the east by the proposed extension of the New Albany Road, and to the west by the proposed extension of the New Albany Road. The proposed site is bounded to the north by the existing New Albany Road, to the south by the proposed extension of the New Albany Road, to the east by the proposed extension of the New Albany Road, and to the west by the proposed extension of the New Albany Road.

NOTE 1D - The proposed site for the proposed development is located on the east side of the intersection of New Albany Road and the proposed extension of the New Albany Road. The proposed site is bounded to the north by the existing New Albany Road, to the south by the proposed extension of the New Albany Road, to the east by the proposed extension of the New Albany Road, and to the west by the proposed extension of the New Albany Road. The proposed site is bounded to the north by the existing New Albany Road, to the south by the proposed extension of the New Albany Road, to the east by the proposed extension of the New Albany Road, and to the west by the proposed extension of the New Albany Road.

THE COURTYARDS AT NEW ALBANY

PHASE 1

OHIO POWER COMPANY
I.N. 201410010129631



Lot No.	Area	Owner	Parcel No.
1	RESERVE 'D'		
2	RESERVE 'D'		
3	RESERVE 'D'		
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100	RESERVE 'D'		

STATE OF OHIO
PARCEL 8WD
I.N. 200605180096906
I.N. 200605050086197

NEW ALBANY
CONDIT ROAD

NEW ALBANY - CONDIT ROAD
(STATE ROUTE 605)

STATE OF OHIO
PARCEL 7WD
GREGORY KOFFER
I.N. 200912240188155

LARRY G. PIPER
O.R. 13054E12

FREDERICK ROY MYERS
AND JUDY L. DORAN
O.R. 21460G09

DAVID B. WILLIS
I.N. 200811270236637

NORTON A. WILLIS
I.N. 200808310175842
I.N. 201802210024187

NORTON A. WILLIS
I.N. 200810280289346
I.N. 201802210024187

CHRISTOPHER D. JOURDAN
AND LINDSAY E. ROBARDS
I.N. 2006071101135694

KIRK J. SMITH AND
WENDY KNODEL
I.N. 201001070002510

YERKE REAL ESTATE INC.
I.N. 200003080046398

WENTWORTH CROSSING
SECTION 1
P.B. 110, P. 79

WOLCOTT MANOR AT NEW
ALBANY SECTION 2
P.B. 117, P. 59

ALL DIMENSIONS IN FEET AND DECIMALS THEREOF.



Prepared: 10/22/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

RESOLUTION R-41-2018

A RESOLUTION TO AMEND THE OAK GROVE II COMMUNITY REINVESTMENT AREA TO ADD APPROXIMATELY 416.615 +/- ACRES TO THAT AREA, CONFIRMING THE DESIGNATION OF A HOUSING OFFICER AND THE CREATION OF A COMMUNITY REINVESTMENT AREA HOUSING COUNCIL AND TAX INCENTIVE REVIEW COUNCILS, AND TO EXPAND THE OAK GROVE II ECONOMIC OPPORTUNITY ZONE TO ADD THAT AREA

WHEREAS, the Council of the City of New Albany, Ohio (the "City") desires to pursue all reasonable and legitimate incentive measures to assist and encourage development in specific areas of the City that have not enjoyed sufficient reinvestment in new construction; and

WHEREAS, Council, by its Resolution No. R-17-09 adopted March 3, 2009, designated the Oak Grove II Community Reinvestment Area (the "Original Oak Grove II Area"), and by each of its Resolutions No. R-41-2010 adopted July 6, 2010, R-72-2010 adopted November 16, 2010, R-53-2012 adopted October 2, 2012, R-26-2013 adopted August 6, 2013, R-72-2014 adopted September 16, 2014, R-49-2015 adopted November 17, 2015, R-45-16 adopted November 1, 2016, R-02-2017 adopted February 7, 2017, and R-07-2018 adopted July 17, 2018, expanded that Original Oak Grove II Area (as expanded to date, the "Current Oak Grove II Area"), which enabled the City to offer in that Current Oak Grove II Area real property tax exemptions on the construction of certain new structures and the remodeling of certain existing structures as described in Ohio Revised Code ("R.C.") Section 3735.67; and

WHEREAS, the City desires to promote commercial and industrial development in an additional area contiguous to the Current Oak Grove II Area, which contiguous area includes approximately 416.615 +/- acres and which is depicted on Exhibit A attached hereto (the "Oak Grove II Expansion Area"); and

WHEREAS, the City believes that the redevelopment of the Oak Grove II Expansion Area would encourage economic stability, maintain real property values and generate new employment opportunities and desires to designate the Oak Grove II Expansion Area as a community reinvestment area pursuant to R.C. Sections 3735.65 to 3735.70; and

WHEREAS, as required by R.C. Section 3735.66, a survey of housing was prepared for the Oak Grove II Expansion Area (the "Survey"); and

WHEREAS, that Survey shows the facts and conditions relating to existing housing and commercial structures and undeveloped land in the Oak Grove II Expansion Area, including, among other things, evidence of deterioration and lack of new construction, or repair or rehabilitation, of structures in that Oak Grove II Expansion Area; and

WHEREAS, the construction of new commercial or industrial structures in the Oak Grove II Expansion Area will serve to encourage economic stability, maintain real property values and generate new employment opportunities; and

WHEREAS, the construction of new commercial or industrial structures in the Oak Grove II Expansion Area constitutes a public purpose for which real property tax exemptions may be granted; and

WHEREAS, the City created an economic opportunity zone (the "Oak Grove II EOZ") to encourage commercial and other business development in the City and now the City, to consistently preserve areas and zones, wishes to expand the Oak Grove II EOZ in conjunction with the expansion of the Oak Grove II CRA so that the two, when mapped, have the same area and boundaries;

NOW, THEREFORE, BE IT RESOLVED by Council for the city of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. Conditions in the Oak Grove II Expansion Area. Based on the findings in the Survey and on this Council's own knowledge of the facts and conditions existing in the Oak Grove II Expansion Area, this Council hereby finds that the Oak Grove II Expansion Area is one in which housing facilities or structures of historical significance are located and new housing construction and repair of existing facilities or structures are discouraged.

Section 2. Creation of Oak Grove II Expanded CRA. This Council hereby designates the Oak Grove II Expansion Area as a community reinvestment area (collectively with the Current Oak Grove II Area, the "Oak Grove II CRA") in accordance with R.C. Section 3735.66. Only new commercial and/or industrial structures consistent with the applicable zoning regulations within the Oak Grove II CRA will be eligible for the exemptions provided for in Section 3 of this Resolution, and residential remodeling or new structures, including, but not limited to multi-family condominium or apartment structures or remodeling thereof, shall not be eligible for the exemptions granted in that Section 3.

Section 3. Tax Exemptions in the Oak Grove II CRA. Within the Oak Grove II CRA, the percentage of the tax exemption on the increase in the assessed valuation resulting from improvements to commercial and industrial real property and the term of those exemptions shall be negotiated in advance of construction occurring according to the rules outlined in R.C. Section 3735.67. The City has the authority to negotiate, approve or deny any request for such a tax exemption. The results of the negotiation as approved by this Council will be set forth in writing in a Community Reinvestment Area Agreement as provided in R.C. Section 3735.671. The maximum exemption that may be negotiated in the Oak Grove II CRA is 15 years for 100% for construction of new commercial or industrial structures. If the newly constructed structure qualifies for an exemption, during the period of the exemption the exempted percentage of the value of the structure shall not be considered to be an improvement on the land on which it is located for the purpose of real property taxation.

The Mayor, the City Manager, and the City Community Development Director, or any one of them, are hereby authorized to give any and all notices on behalf of this Council that may be required by law, including, without limitation, those notices required by R.C. Sections 3735.671, 3537.673 and 5709.83, in connection with the consideration, approval or entering into of any agreements under R.C. Section 3735.671.

Section 4. Designation of Housing Officer. To administer and implement the provisions of this Resolution, the Council hereby confirms the prior designation of the City Manager as the Housing Officer for the Oak Grove II CRA as described in R.C. Sections 3735.65 to 3735.70.

Section 5. Application Fee. All projects are required to comply with the State application fee requirements of R.C. Section 3735.672(C). The City may also require a local annual monitoring fee of one percent of the amount of taxes exempted under an agreement, provided there shall be a minimum local annual monitoring fee of \$500 and a maximum local annual monitoring fee of \$2,500.

Section 6. Housing Council and Tax Incentive Review Councils. This Council hereby confirms the prior creation of a Community Reinvestment Area Housing Council (the "Housing Council") for the Oak Grove II CRA. That Housing Council is composed of two members appointed by the Mayor, two members appointed by this Council and one member appointed by the City's Municipal Planning Commission. A majority of those five members shall appoint two additional members who shall be residents of the City. Terms of the members of the Housing Council shall be three years. An unexpired term resulting from a vacancy in the Housing Council shall be filled in the same manner as the initial appointment was made. The Housing Council shall make an annual inspection of the properties within the Oak Grove II CRA for which an exemption has been granted under R.C. Section 3735.67. The Housing Council also shall also hear appeals under R.C. Section 3735.70.

The "Franklin County Tax Incentive Review Council" and the "Licking County Tax Incentive Review Council" (each a "TIRC") were both previously created pursuant to R.C. Section 5709.85. Each TIRC reviews annually the compliance of each agreement involving the granting of exemptions for commercial or industrial real property improvements under R.C. Section 3735.671 and makes written recommendations to this Council as to continuing, modifying or terminating each agreement based upon the performance of each agreement.

Section 7. Resolution to be Forwarded and Published. The Housing Officer or the Housing Officer's designee is hereby authorized and directed to forward a copy of this Resolution to the Franklin County Auditor and the Licking County Auditor, and to cause to be published a copy of this Resolution in a newspaper of general circulation in the City once per week for two consecutive weeks following its adoption.

Section 8. Authorization to Petition the Director of Development Services. The Housing Officer or the Housing Officer's designee is hereby authorized and directed, on behalf of the City, to petition the State Director of Development Services, in accordance with R.C. Section 3735.66, for confirmation of the Oak Grove II CRA as expanded to include the Oak Grove II Expansion Area.

Section 9. Open Meeting. The Council hereby finds and determines that all formal actions relative to the passage of this Resolution were taken in an open meeting of this Council and any of its committees and that all deliberations of this Council and of its committees that resulted in formal action were taken in meetings open to the public in full compliance with the applicable legal requirements, including R.C. Section 121.22.

Section 10. Effective Date. Pursuant to Article 6.07 of the New Albany Charter, this Resolution shall take effect upon adoption.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

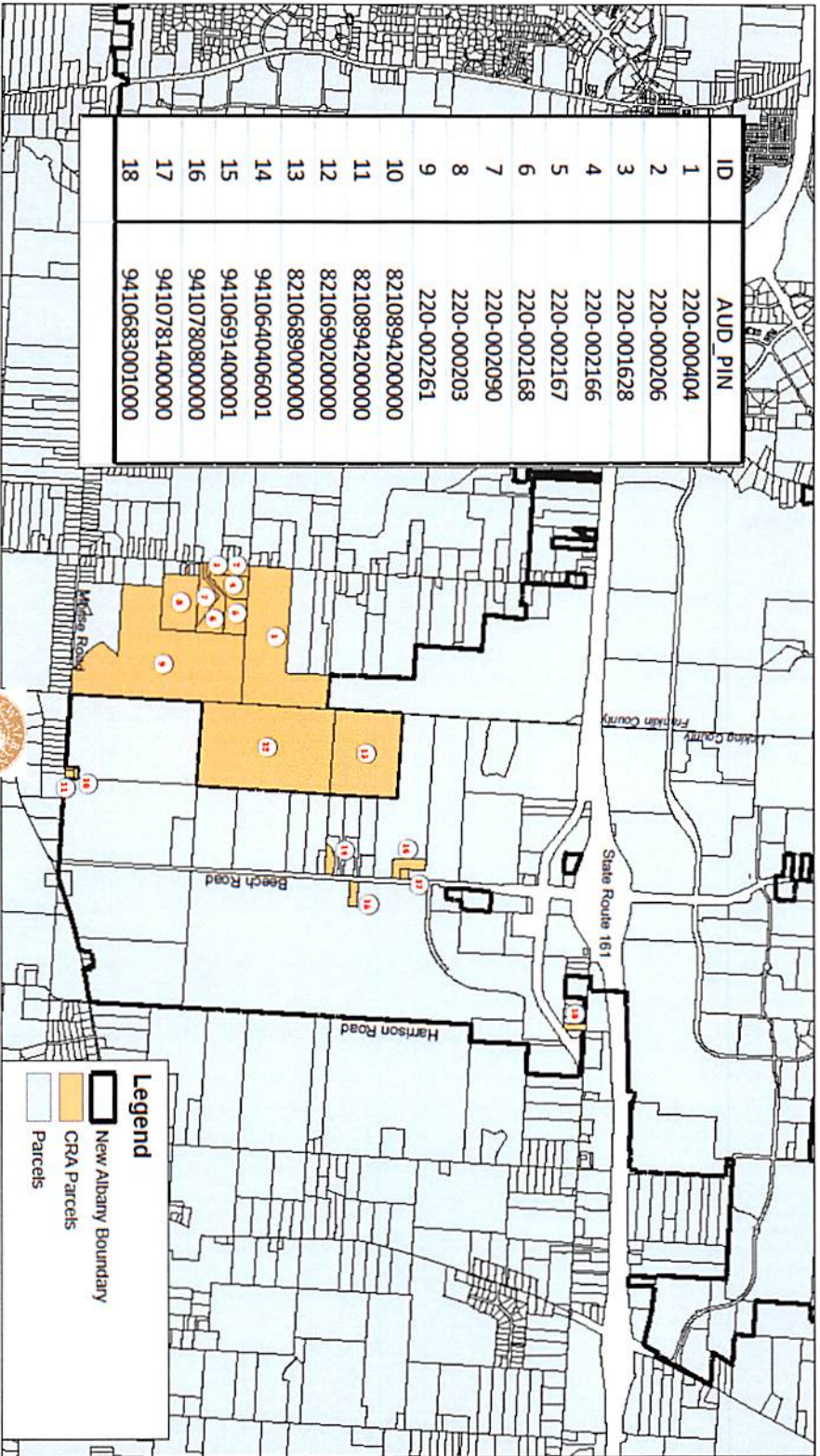
Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

PROPOSED

EXHIBIT A – R-41-2018



New Albany CRA Parcels - Oak Grove II Babbitt Road
 City of New Albany, Ohio

October 16, 2018



Prepared: 10/22/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

RESOLUTION R-42-2018

A RESOLUTION TO APPROVE AND ADOPT THE HARRISON ROAD AREA PLAN ADDENDUM TO THE 2014 NEW ALBANY STRATEGIC PLAN, AS REQUESTED BY THE CITY OF NEW ALBANY

WHEREAS, Council of the City of New Albany has established a Strategic Plan to guide land use, infrastructure development and economic impact; and to provide a guideline to establish goals, objectives and strategies related to the development of the City of New Albany, and adopted it by Resolution R-11-1998 on March 3, 1998; and

WHEREAS, Council of the City of New Albany adopted an update to the Strategic Plan by Resolution R-38-2014 on May 20, 2014; and

WHEREAS, The New Albany Planning Commission approved and recommended the Harrison Road Area Plan Addendum to the 2014 Strategic Land Use and Transportation Plan at their meeting of October 15, 2018.

NOW, THEREFORE, BE IT RESOLVED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. City Council hereby adopts the Harrison Road Area Plan Addendum to the 2014 Strategic Land Use and Transportation Plan, as presented to the City Council and which shall be attached hereto as Exhibit A upon adoption.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 3. Pursuant to Article 6.07(A) of the New Albany Charter, this resolution shall take effect upon adoption.

CERTIFIED AS RESOLVED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

PROPOSED



CITY OF NEW ALBANY
HARRISON ROAD AREA PLAN
ADDENDUM TO THE 2014 STRATEGIC PLAN

ACKNOWLEDGEMENTS

CITY OF NEW ALBANY LEADERSHIP

Sloan Spalding, Mayor

Colleen Briscoe, President Pro Tempore

Marlene Brisk

Mike Durik

Chip Fellows

Dr. Glyde Marsh

Matt Shull

CITY OF NEW ALBANY STAFF

Joseph Stefanov, City Manager

Jennifer Chrysler, Community Development, Director

Adrienne Joly, Director of Administrative Services

Stephen Mayer, Development Services Manager

MKSK STAFF

Chris Hermann, Principal

Aron Fraizer, Associate

Sarah Lilly, Planning Intern



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INTRODUCTION

In 2014, the City of New Albany completed the most recent update of its Strategic Plan. The Strategic Plan identifies the desired future land use, development, and transportation recommendations for both the City and its future expansion areas. A Strategic Plan allows the City to identify how areas should be maintained, develop, and grow in a way that best serves the goals of the New Albany community.

Since the completion of the 2014 Strategic Plan, additional agreements with the City of Columbus have extended New Albany's centralized water and sanitary sewer service areas to the east. In order to responsibly plan for the future of the Harrison Road study area and its possible future incorporation into New Albany, it is

necessary to integrate it into the 2014 Strategic Plan. This Harrison Road Area Plan serves as an addendum to the Strategic Plan, applying its strategies and recommendations to the Harrison Road study area.

This document establishes land use, development, and corridor standards. The Area Plan is created prior to proposed development so that it may serve as a tool to help the City guide new development and infrastructure decisions, and ensure that the established character and high standard of design synonymous with New Albany is upheld. The Harrison Road Area Plan Addendum is the second addendum to 2014 Strategic Plan, the first was the 2015 Mink Road Area Plan Addendum.



HARRISON ROAD AREA PLAN STUDY AREA



Plan Components & Uses

The Harrison Road Area Plan serves as an addendum to the 2014 Strategic Plan. As such, the recommendations presented in this document build upon the land use, transportation, and corridor recommendations in the Strategic Plan, which should be consulted for additional details and background on these matters.

The Harrison Road Area Plan covers five topics:

- **Land Use:** which identifies the desired land uses for the Harrison Road study area should it be incorporated into the City.
- **Thoroughfare Plan:** which identifies potential road connections to appropriately support development and integrate the study area into New Albany's street network.
- **Bicycle Facilities:** which identifies the appropriate types of on-street and off-street bicycle, leisure trail, and sidewalk facilities within the study area. This section also identifies important regional bike connections.
- **Natural Features:** which speaks to New Albany's tradition of incorporating existing natural features to enhance site design, preserve character, and integrate future development.
- **Corridor Strategies:** which identify strategies to enhance the Harrison Road study area road corridors to fit with the character, identity, and high quality of design present in New Albany.

Together, these recommendations establish preferred future land patterns and identify appropriate roadway corridor networks that will serve as the backbone of future development in the Harrison Road study area.

Existing Conditions

Today, the Harrison Road study area consists of mostly low-density rural residential and agricultural uses. The majority of the land is used for agricultural production, though tree stands exist along several tributaries that run through the site. Located in Jersey Township in Licking County, the roads are rural, two-lane township roads with no curbs.

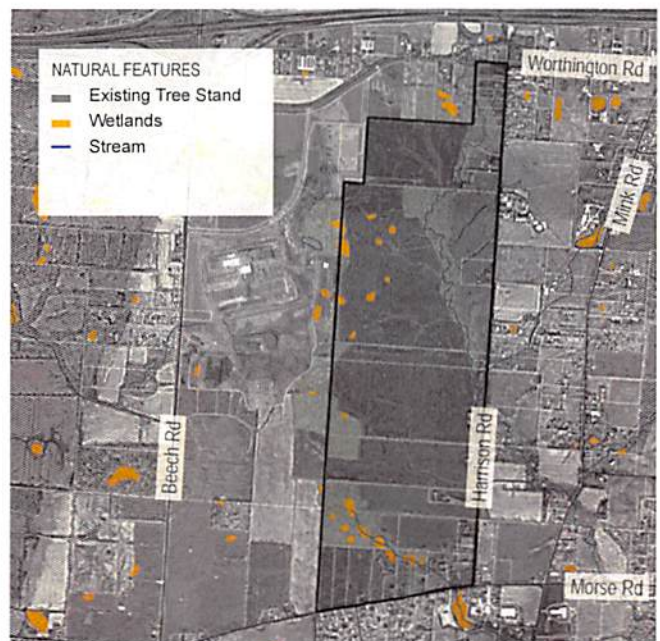
The Harrison Road area's rural character includes several natural features. Two tributary streams are located in the area, the most significant being the South Fork Licking River that primarily runs north to south on the west side of Harrison Road and a smaller unnamed stream on the southern end of the study area just north of

Morse Road. The soils in these areas contribute to existing wetlands in the study area. In addition to the tree stands, a number of the parcels in this study area are separated by trees rows.

An important component of the Harrison Road Area Plan's study area is its location proximate to Business Park South and its adjacency to the Facebook Data Center which is currently under construction on Beech Road.



EXISTING RURAL CHARACTER



THERE ARE SEVERAL IDENTIFIED WETLANDS WITHIN THE STUDY AREA

LAND USE

The Future Land Use Map (see pages 14-15) identifies desired future land use patterns for the city of New Albany and its future expansion areas, as well as development strategies for each type of land use. Because of the Harrison Road study area's location within the Beech Road South Corridor, the Office District land use is identified as the appropriate future land use for this area.

The Strategic Plan's Office District land use category is intended to provide for a number of employment-intensive uses, including office, research, and light industrial uses. Having an adequate amount of land and development in this district is important for the overall fiscal health of the city. The Office District is designed to allow for flexibility and diversification of businesses that seek to locate in the New Albany Business Park.

This area plan adheres to the planning principles of connectivity and context sensitive development already practiced throughout the community. Office and employment-related uses within the Harrison Road study area should comply with the Office Development Standards outlined in the 2014 Strategic Plan, and should promote the high standards of design established in the New Albany Business Park, which include:

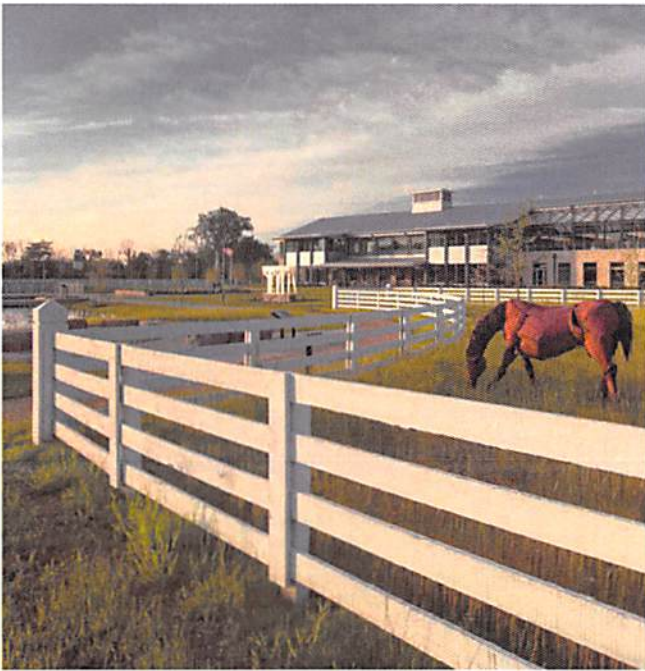
- Creating campus-style office developments that are walkable and allow for the integration of the leisure trail system;
- Strategically locating parking to create shared-parking opportunities where applicable;
- Identifying opportunities for combined stormwater services; and
- Creating centralized, common open spaces that unify office developments.

This will ensure development is consistent with existing office and business uses in the New Albany Business Park South, and uphold the high standard of office development the Park has established.

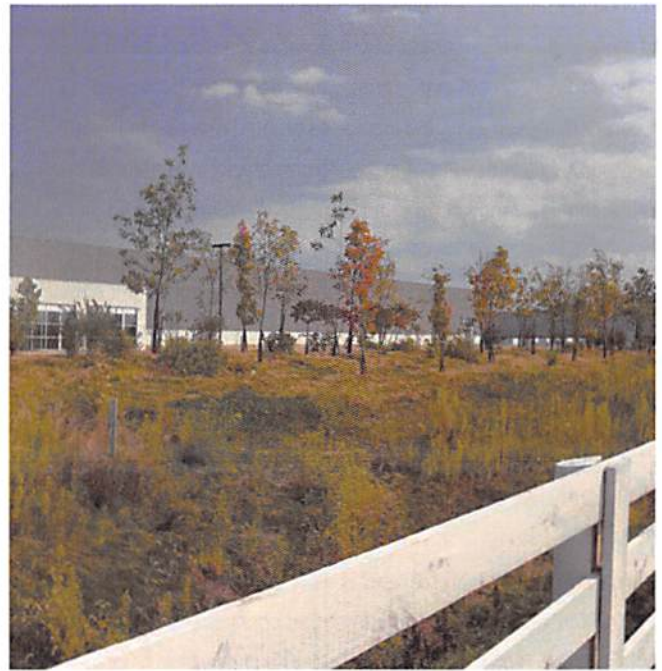
OFFICE DEVELOPMENT STANDARDS

- All development standards of the Office District shall apply.
- Common open spaces or greens are encouraged and should be framed by buildings to create a "campus like" environment.
- Appropriate screening should be installed as a buffer between the office district and adjacent residential districts as well as non-commercial uses. If mounding is necessary to achieve this screening, the "reverse slope" type with the gradual slope side toward the right-of-way is preferred.
- No freeway/pole signs are allowed.
- Heavy landscaping is necessary to buffer these uses from adjacent residential areas.
- Loading areas should be designed so they are not visible from the public right-of-way, or adjacent properties.
- A 200-foot buffer between right-of-way and buildings should be provided along S.R. 161.

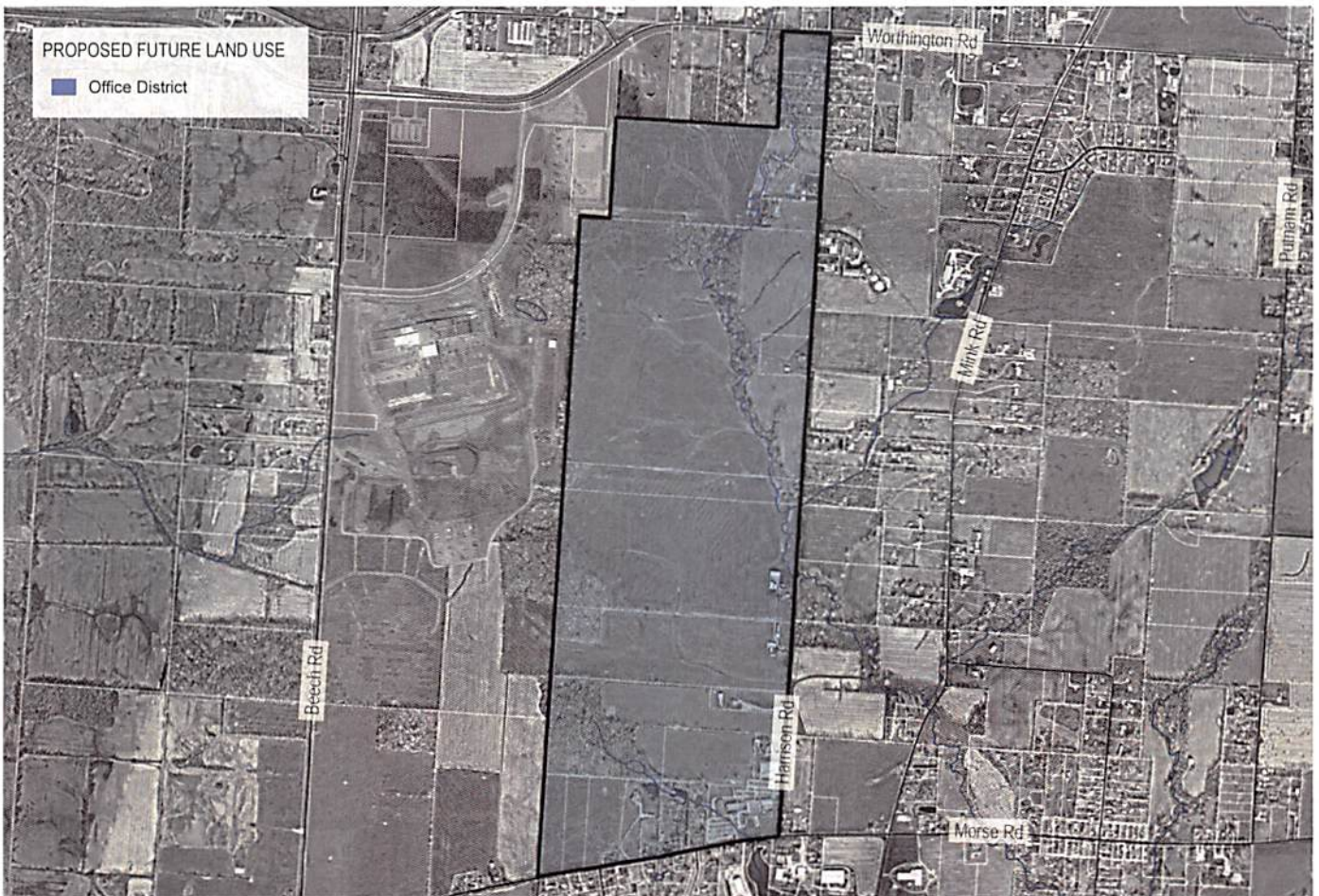
Standards related to residential and non-commercial adjacencies and site design are of particular importance to ensure compatibility between new development and the existing rural character of the Harrison Road area. This is particularly important along the Harrison Road and Morse Road corridors, where existing residential uses are located. Appropriate landscaping, buffering, and setbacks should be applied between office/industrial and residential uses located along these corridors in order to preserve the quality of life for residents living there.



EXISTING DEVELOPMENT ELSEWHERE IN EW ALBANY'S OFFICE DISTRICT



EXISTING DEVELOPMENT ELSEWHERE IN NEW ALBANY'S OFFICE DISTRICT



FUTURE LAND USE MAP FOR HARRISON ROAD STUDY AREA

THOROUGHFARE PLAN UPDATE

In addition to identifying the desired future land use for the Harrison Road study area, it is important to plan for a road network that will support development in this area. The existing and proposed road corridors must handle the increased amount of traffic that will be created by future development, while preserving the pastoral character that is synonymous with New Albany's road corridors.

Because there are plans to update the entire Strategic Plan for New Albany in 2019, a more in-depth and holistic examination of the city's street network and connectivity needs will be undertaken at that time. In the event that this area develops prior to completion of an updated Thoroughfare Plan, the street typologies included in this section should be followed.

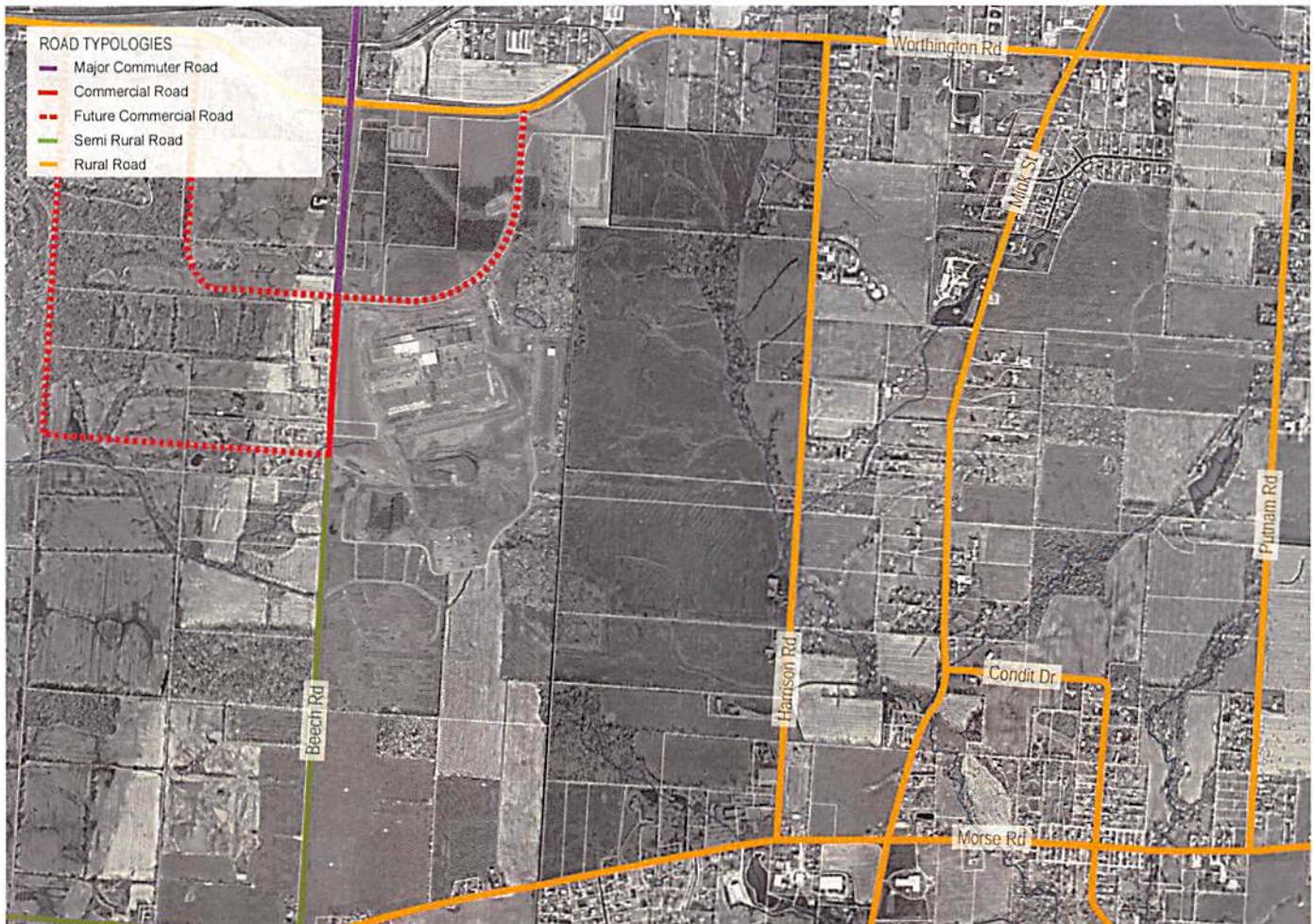
The Thoroughfare Plan map excerpt below from the existing Strategic Plan identifies needed future road connections as well as classifies the existing roads and their planned character.

Street Typologies

The typologies assigned to each road corridor within the Harrison Road study area are based upon the Strategic Plan's Thoroughfare Plan - Street Typologies Map. This guides the design and character of any future corridors so that they complement the existing New Albany street network and character.

All three roadways within the study area — Worthington, Harrison, and Morse — are rural roads and should follow the Rural Roadway Typology as this area develops. The ultimate build-out of this area may necessitate additional road connections to handle and distribute future traffic generated by the employment centers. Any future street connections or enhancements should follow the defined commercial roadway typologies.

More detailed information on each of these road typologies can be found on pages 9 and 10 of this report.



EXCERPT FROM THOROUGHFARE PLAN



Rural Roadway

One of the aesthetic objectives of New Albany is the preservation of the rural corridor character in and around the city. Defining characteristics of rural road corridors include a narrow road width, two-lanes, the use of planted swales (drainage ditches) rather than curbs, and naturally placed (irregularly-spaced) trees. Together with New Albany's signature white horse fence, leisure trails, and scenic setbacks, this creates a rural corridor character. On-street bicycle

facilities should be limited to shared road conditions in order to preserve the narrow nature of the corridors.

Rural Roadway



Rural Setback | 8' Leisure Trail | Ditch | 12' | 12' | Rural Streetscape | Rural Setback

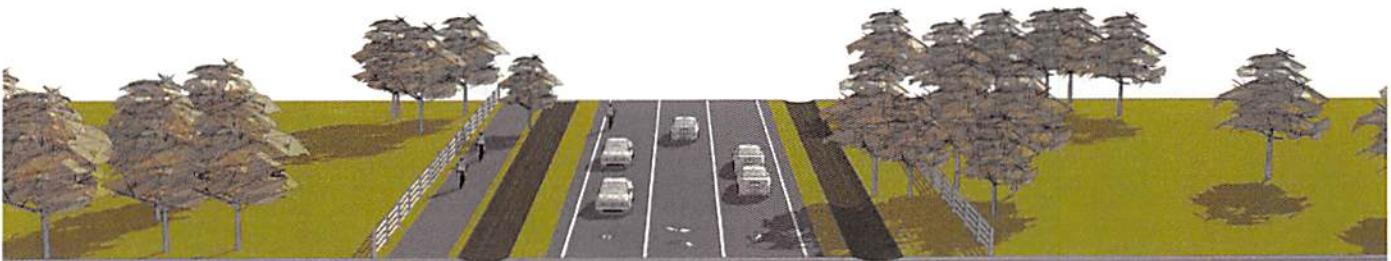
2 Travel Lanes
(24'-33.5' Total Pavement Width)

Semi-Rural Roadway

Semi-rural road corridors provide a transition from the developed areas of New Albany into the more rural areas. These corridors are also important because they help preserve the rural character of the area, while also accommodating increased traffic volumes. Semi-rural road corridors have two (or four) travel lanes with a center turn lane as needed. The presence of swales and natural tree clustering within the streetscape creates a more rural aesthetic. Leisure trails should be included along these corridors and on-street bicycle

facilities or shared road conditions may be appropriate, depending on traffic volumes. In this area south of SR 161, the southern two-thirds of Beech Road and Morse Road west of Beech are classified as semi-rural corridors. This will provide a transition from the more developed areas off SR 161 into the more rural areas south of Morse Road. If the character of the corridor changes over time, the City should consider a median for aesthetic and access management purposes.

Semi Rural Roadway



Setback | 8' Leisure Trail | Ditch | 12' | 11' | 12' | Rural Streetscape | Setback

2-4 Travel Lanes Plus Left Turn Lanes
(35'-57' Total Pavement Width)

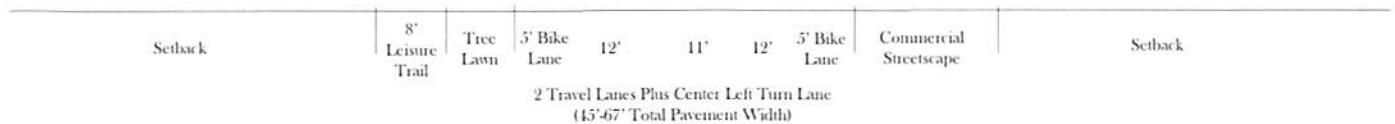
Interior Commercial Roads

Although newly identified, the interior commercial road typology has already been implemented in portions of the Personal Care and Beauty Campus, particularly along Innovation Campus Way. Interior commercial roads are similar to the commercial typology, however they are smaller in scale because their primary purpose is to provide interior connections within the Business Park. An important difference between commercial roads and semi-rural roads is the use of curbs and regularly spaced street trees in a tree lawn.

Interior commercial streets includes two travel lanes with a center turn lane (as needed), a semi-rural streetscape, and a 50-foot building setback. Because of truck use, it is important to balance this function with the recommended design aesthetic of the corridor.



Interior Commercial Roadway



Major Roadway

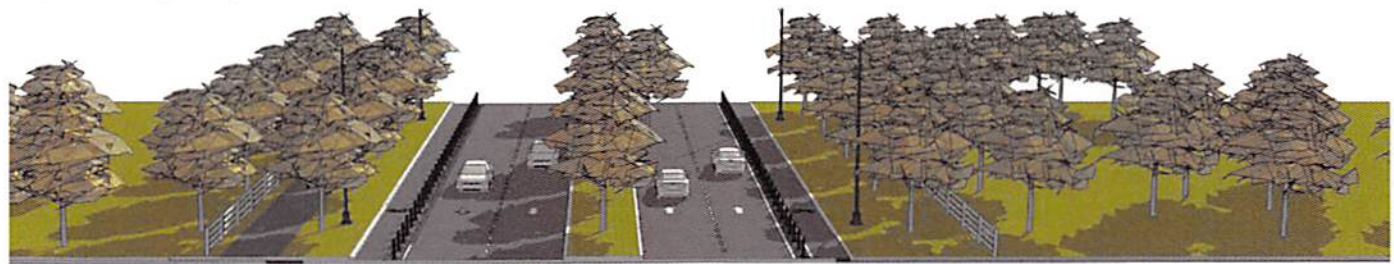
Major roadways carry significant traffic volumes and are found in segments of New Albany's road corridors which pass under State Route 161. These street sections are wider to accommodate the increased amount of traffic exiting and entering the interstate. Near this study area, this road typology applies to the portion of Beech Road which passes under State Route 161.

Major roadways include four to six lanes of traffic with a center turn lane. They are curbed and include tree lawns. Bicycle

accommodations include a potential leisure trail and/or protected bike lanes. Street trees can be regularly spaced or grouped in naturalized plantings depending on the character of the surrounding area. An important design component is the use of a landscaped median where possible to reduce the scale and width of the road and create an identifiable gateway into the area. Additional information can be found in the 2014 Strategic Plan.



Major Roadway with protected bike lane



LEISURE TRAILS/BIKE FACILITIES



As development occurs, bike facilities should be incorporated in the Harrison Road study area through both on-street and off-street facilities. Leisure trails should be included along Harrison Road, Morse Road and any future road connection that may be developed in this area. This will help continue to extend and connect New Albany's existing trail system while strengthening connections between the more developed areas of New Albany and this new addition to the Business Park. It will also encourage increased bicycle commuting and provide employees with an exercise/healthy living amenity. The trails should be eight (8) feet wide and conform to the recommendations for each street typology, as established in the 2014 Strategic Plan.

Leisure trails should also be considered for the South Fork Licking River. Future development along major stream corridors should include a greenway trail. The 2014 Strategic Plan identified stream corridors such as this as opportunities for new green corridor trails that connect residents and employees to the natural features within New Albany. In addition, the City is currently in the process of updating the Leisure Trail Master Plan and any additional recommendations from that process should be incorporated into future development.

Additionally, on-street bike facilities should be integrated into the existing and future roads within the Harrison Road study area. The increased development in the area will increase traffic volumes along these corridors. This will necessitate designated bicycle facilities to make these roads safe, comfortable, and inviting for cyclists. The street typologies identify the appropriate type of on-street bicycle facility that should be considered for new and improved roadways. These recommendations are based on the expected vehicular traffic volumes and speeds. Incorporating on-street bicycle facilities in the Harrison Road area will promote the goal of creating a city-wide bicycle network. Future traffic engineering studies will help to determine the best design for bike lanes along these corridors.

Rural Corridor



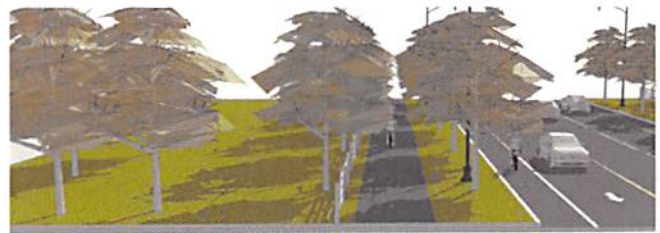
Setback | 8' Bike Path | Ditch | Street

Semi Rural Corridor



Setback | 8' Bike Path | Ditch | Bike Lane | Street

Interior Commercial Corridor



Setback | 8' Bike Path | Tree Lawn | Bike Lane | Street

Greenways Trail



South Licking Fork River Corridor | 8' Bike Path | Green Corridor

Major Corridor



Setback | 8' Bike Path | Tree Lawn | Protected Bike Lane | Street

NATURAL FEATURES & CORRIDOR STRATEGIES

Natural Features

The majority of the significant natural features of this area are adjacent to the South Fork Licking River. These features include tree cover and some small wetlands. This is also true for the unnamed creek on the southern end of the study area (see map below). Other significant natural features within the study area include tree rows between some of the existing farm fields.

Preservation of these areas — wooded stream corridors, tree rows, and green spaces — provides several benefits for the future development of the Harrison Road study area. First, it acts as an organizational greenspace for the orientation and layout of future development sites in this area. Preserving this area creates a stationary point around which development sites can be identified. The preservation of mature trees has had a positive impact on the overall character of the Business Campus South and should be continued in the Harrison Road area.

Second, these features can serve as unique amenities for employees in the Business Campus South. Introducing walking paths and pedestrian and bicycle connections through the Harrison Road study area, with an emphasis on creating connections to the natural areas, will allow employees to enjoy the rural character of this area. National trends show a growing desire by businesses to provide nearby recreational amenities for their employees. Having walking trails within the natural areas creates a unique feature for the Business Park.

Additionally, the natural features in the Harrison Road area will also serve as buffers between existing residential uses and future development. While the Office District is the desired future land use for the area, it is important to respect the existing residences, the majority of which are located along Harrison Road, Worthington Road, and Morse Road. Promoting the preservation of existing tree stands in this area will help buffer these homes from future office development introduced into the area.

It is important to note that while the preservation of the aforementioned natural features should be prioritized, if this becomes infeasible, mitigation efforts should be implemented. While this addendum identifies the desired future land use for the Harrison Road study area, how exactly the area will develop is unknown.



SOUTH FORK LICKING RIVER



RURAL CORRIDORS AND GREENWAY CORRIDORS



TYOLOGY	SETBACK REQUIREMENT
MAJOR COMMUTER STREET	185 FEET
COMMERCIAL STREET	185 FEET
INTERIOR COMMERCIAL <small>*From edge of right-of-way</small>	50 FEET
SEMI-RURAL STREET	185 FEET
RURAL STREET	250 FEET
VILLAGE CENTER STREET	0 FEET
STREAM CORRIDOR	150-FOOT MINIMUM PER SIDE

SETBACK REQUIREMENT CHART

Green Corridors

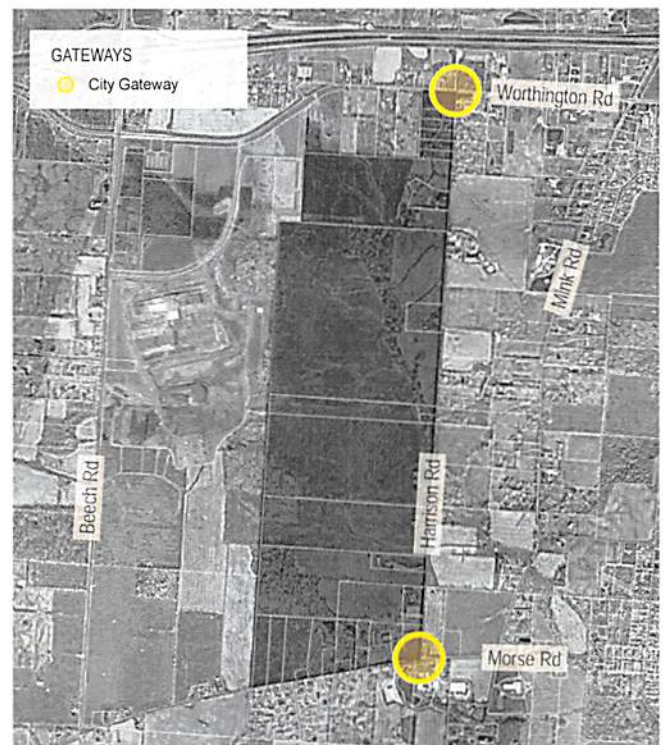
Along with the identified natural features, it is important New Albany continues to prioritize the preservation of the green corridors within the Harrison Road Study Area. This is accomplished in part by applying the city's setback requirements identified in the 2014 Strategic Plan. The Setback Requirement Chart above summarizes these setback recommendations. Note this chart adds Interior Commercial Streets to the original Strategic Plan list. This interior business park road is recommended to have a 50 foot setback, which is consistent with the zoning requirement established for interior roads in the New Albany Business Park.

The setback requirements apply to building (vertical) construction, but may allow pavement. These setbacks are important to preserving the rural character of New Albany's corridors. Introducing buildings closer to the street adds a vertical element that makes the corridor feel more developed than is desired in the areas where setbacks are applied. With the approval of city staff, pavement may be permitted in the setback to allow for uses such as parking. When this occurs, appropriate landscaping and mounding should also be applied to screen parking from the streets and preserve the rural character of the corridors.

Gateways

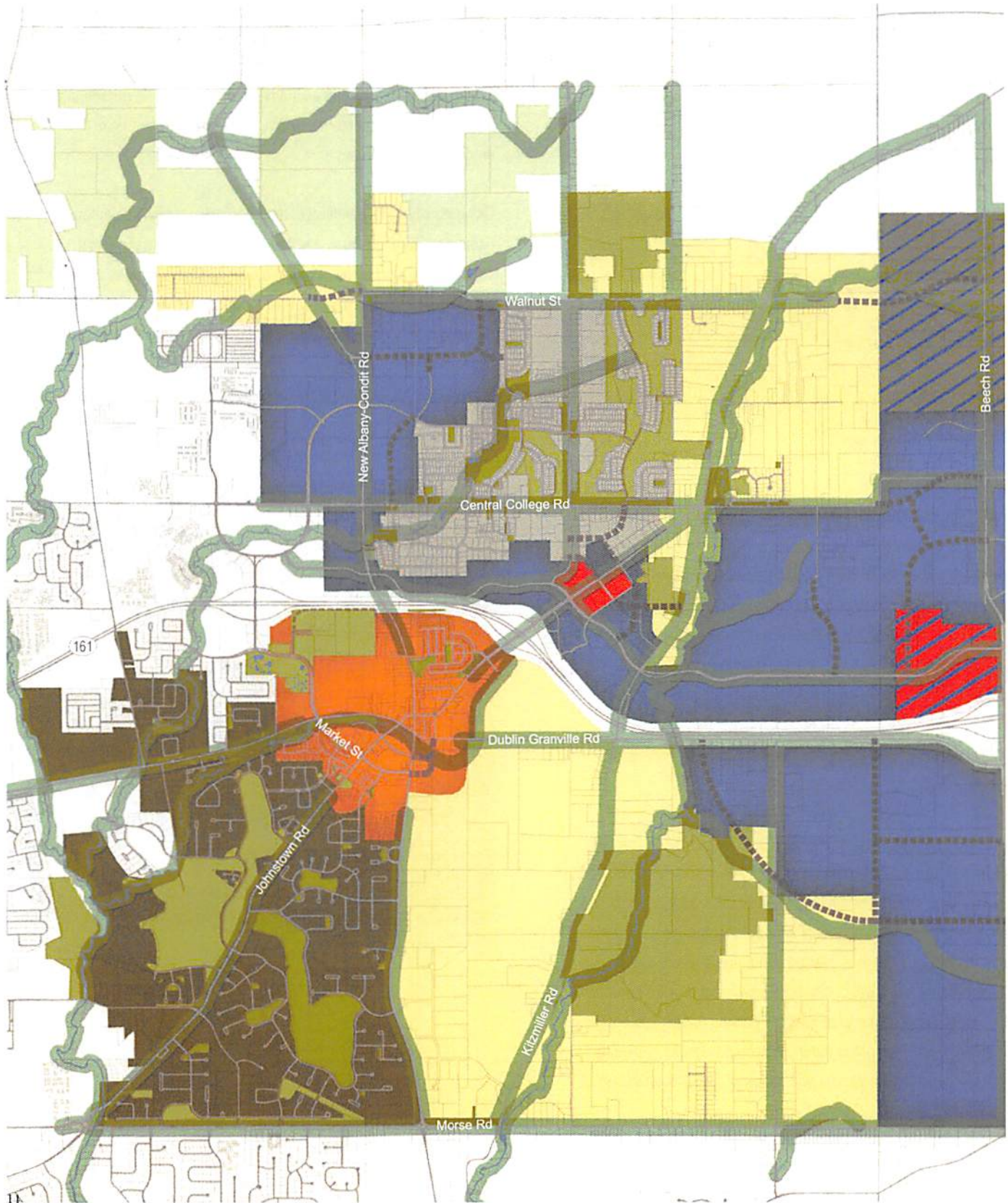
The Harrison Road area will be the point of entry into New Albany for people traveling from the east. As such, visual cues should be provided to indicate the transition into New Albany. The 2014 Strategic Plan identifies these transitions as moments or gateways — experiences that subtly inform a motorist, cyclist, or pedestrian when he or she has entered into New Albany.

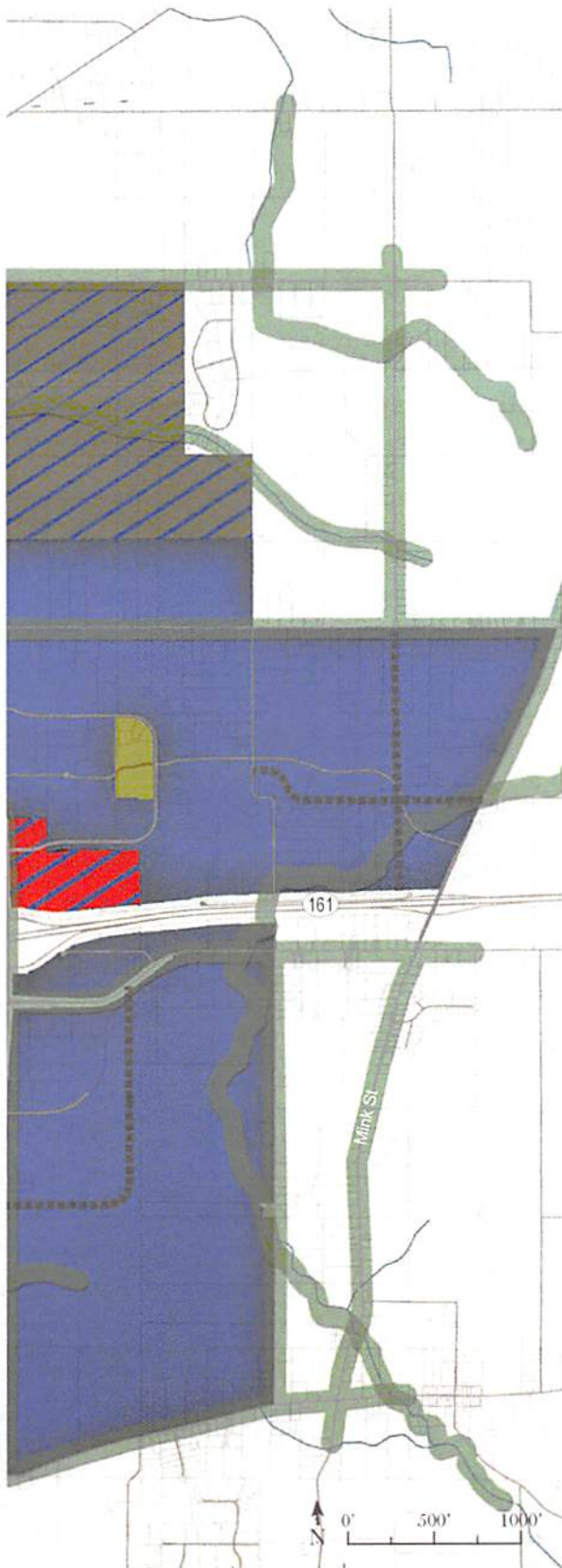
City gateways are identified at the intersections of Worthington Road and Harrison Road and Morse Road and Harrison Road. These gateways should fit with the overall New Albany aesthetic but be designed specifically for their location. Per the Strategic Plan, gateways can be natural spaces and/or contain built features as appropriate for the area.



GATEWAY LOCATIONS

FUTURE LAND USE PLAN
UPDATED TO INCLUDE THE HARRISON ROAD STUDY AREA



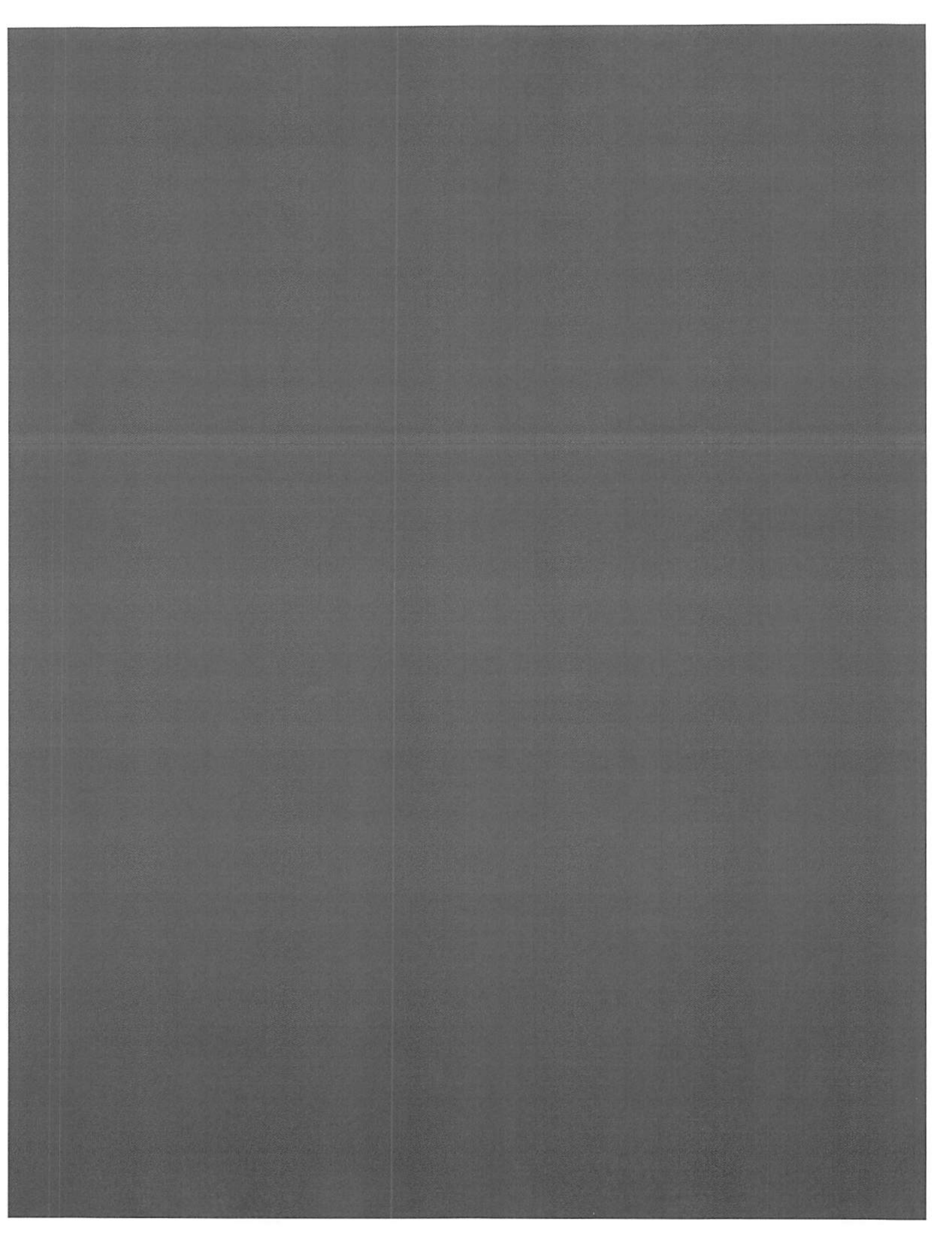


LEGEND

- RURAL RESIDENTIAL
- NEIGHBORHOOD RESIDENTIAL
- TOWN RESIDENTIAL
- VILLAGE CENTER MIXED USE
- OFFICE CAMPUS
- RETAIL COMMERCIAL
- RETAIL/OFFICE MIXED USE
- OFFICE CAMPUS/TRANSITIONAL AGRICULTURE
- TRANSITIONAL AGRICULTURE
- PARK / OPEN SPACE
- RURAL CORRIDOR / TRIBUTARY SETBACK
- ROCKY FORK METRO PARK
- COMMITTED STREET CONNECTION
- FUTURE STREET CONNECTION

PROPOSED LAND USE

DISTRICT	ACRES	% TOTAL
RESIDENTIAL		
RURAL ESTATE	3,965.5	27.5%
NEIGHBORHOOD	1,866.0	12.9%
TOWN	954.7	6.6%
SUBTOTAL	6,786.2	46.9%
OFFICE		
OFFICE	4,710.6	32.6%
OFFICE (HARRISON RD STUDY AREA)	475.5	3.3%
R AND I	628.3	4.4%
SUBTOTAL	5,814.4	40.3%
RETAIL		
NEIGHBORHOOD RETAIL	39.7	0.3%
MIXED USE COMMERCIAL	320.6	2.2%
SUBTOTAL	360.3	2.5%
VILLAGE CENTER		
SUBTOTAL	605.0	4.2%
OFFICE CAMPUS/TRANSITIONAL AGRICULTURE		
SUBTOTAL	877.7	6.1%
TOTAL	14,443.6	100.0%





Prepared: 10/22/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

RESOLUTION R-43-2018

A RESOLUTION TO APPROVE AND AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO AN ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT WITH UBS FINANCIAL SERVICES INC.

WHEREAS, it has been and remains in the best interests of the city to designate certain areas for commercial and other business development and offer economic incentives in those areas; and

WHEREAS, the creation of economic incentives has resulted in more than 11.5 million square feet of commercial development in the New Albany Business Park and 15,000 employment opportunities for the community since 1998; and

WHEREAS, the city's Economic Development Strategic Plan recommends that the city seek to attract a diversity of cluster industries utilizing non-traditional incentive programs; and

WHEREAS, in 2010, UBS Financial Services Inc. ("the Company") leased 11,000 square feet of office space and created an annual payroll of \$5,000,000 and an actual annualized city income tax of at least \$100,000; and after a comprehensive examination of office space requirements and workforce resources within the city, and induced by and in reliance on the economic development incentive agreement executed November 30, 2010, the Company desires to relocate its office within the city, to make a significant capital improvement, and create new employment opportunities within the city; and

WHEREAS, the city has determined to offer certain economic development incentives described herein and more fully set forth in the Economic Development Agreement ("the Agreement") to induce the Company to lease office space within the business park, to attract employees, retain employment opportunities within the city and to improve the economic welfare of the people of the State of Ohio and the City of New Albany, all as authorized in the Ohio Constitution and Revised Code.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of New Albany, counties of Franklin and Licking, State of Ohio that:

Section 1. Council hereby approves and authorizes the city manager to extend the economic incentive agreement that expires December 31, 2019 by an additional six years.

Section 2. The general terms of this Agreement are as follows:

- (a) The Company shall make a \$2,200,000 capital investment in office space and/or facilities located in the Village Enter during the period commencing on the date hereof and ending on or before December 31, 2019.
- (b) The Company agrees effective January 1, 2020, the Retention Benchmark shall be \$150,000 in annual collected income tax.

- (c) Effective January 1, 2020, in addition to the Retention Benchmark, the Company shall also meet an annual Growth Benchmark in the amount of \$5,000 in additional annual collected income tax.
- (d) This incentive includes an annual payment for seven (6) years beginning in tax year 2021 in the amount equal to 25% of the Retention Benchmark income tax and 25% of the income taxes over and above the Growth Benchmark. Provided however, that the total amount of any such Incentive Payments paid by the city during any Agreement Year shall not exceed the real estate property tax attributable to the Company's location within the city for that Agreement Year.

Section 3. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 4. Effective Date. Pursuant to Article VI, Section 6.07(A) of the Charter of the City of New Albany, this resolution shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS RESOLVED this ____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

**FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF NEW ALBANY AND UBS FINANCIAL SERVICES INC.**

This First Amendment (the "Amendment") made and entered into by and among the City of New Albany, Ohio (the "City" and formerly known as the "Village of New Albany"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio, with its main offices located at 99 West Main Street, New Albany, Ohio, and UBS Financial Services Inc., (the Company), a Delaware corporation, with its main office located in Weehawken New Jersey.

RECITALS:

WHEREAS, the City and the Company have previously entered into an Economic Development Agreement, dated November 30, 2010 (the "Agreement"), a copy of which is attached hereto as "Exhibit A" with respect to the Company's commitment to remain in the City and retain employment.

WHEREAS, the Agreement expires on or about December 31, 2019.

WHEREAS, based on the results of the Company's recent comprehensive re-examination of its office space requirements and workforce assets within the City, and induced by and in reliance on the economic development incentives provided in this Amendment, the Company desires to relocate its office within the City, to make a significant capital improvement, and create new employment opportunities within the City.

WHEREAS, the Company and the City desire to execute an Amendment to the Agreement to extend the Agreement for an additional six years and revise the Agreement to reflect new retention benchmarks.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree that the following provisions shall replace and/supplement the corresponding subsections of the Agreement as follows:

1. Company's Agreement to Remain in the City and Retain Employment

(a) Capital Investment.

The Company shall make a \$2,200,000 capital investment in office space and/or facilities located in the Village Center during the period commencing on the date hereof and ending on or before December 31, 2019.

(b) Retention Benchmark.

Effective January 1, 2020, the Retention Benchmark shall be \$150,000 in annual collected income tax.

(c) Growth Benchmark.

Effective January 1, 2020, in addition to the Retention Benchmark, the Company shall also meet an annual growth benchmark in the amount of \$5,000 in additional annual collected income tax.

2. City's Agreement to Provide Financial Incentive.

(b) Six Year Economic Incentive Program. Provided that the Company meets the criteria set forth in Sections 1(a), 1(b) and 1(c) of this Agreement, the City shall pay to the Company, solely from non-tax revenues as defined in Section 2(c) of this Agreement, the amounts set forth below. This Incentive shall commence on January 1, 2020 (the "*Incentive Commencement Date*") and terminate no later than six Agreement Years (as defined below) from such Incentive Commencement Date. However, in the event the City does not have sufficient non-tax revenues to pay the Company annual incentive payments as defined and set forth herein, any such deficiency shall be made up as soon as sufficient non-tax revenues become available in subsequent Agreement Years, regardless of whether the Company is eligible to receive an Incentive Payment, retains employees or leases space in the City during such subsequent Agreement Year or Years. If at the end of this Agreement a deficiency still exists, this Agreement shall be extended for the sole purpose of providing the City more time to accrue additional non-tax revenues for payment of the balance of any unpaid incentive payments which may have accrued on or before December 31, 2025. In no case shall any additional incentive accrue pursuant to this Agreement after December 31, 2025.

(i) Calculation of Actual Company Taxes. Within sixty (60) days from the anniversary of the Incentive Commencement Date in years 2021, 2022, 2023, 2024, 2025 and 2026 the City shall calculate the Actual Company Taxes (as defined in Section 2(b)(ii) below) collected with respect to compensation for services performed by the Company's and its affiliates employees and Contractors working in the Company's location in the preceding calendar twelve (12) month period (each an "*Agreement Year*"). For the purposes of this Agreement, only those individuals employed by the Company or its affiliates or employed by contractors of the Company, and working within the City shall be included in the calculation of the Incentive Payments (as defined below).

(ii) Incentive Payments to the Company. During the term of this Agreement, if on the anniversary of the Incentive Commencement Date in years 2021, 2022, 2023, 2024, 2025 and 2026 the actual income taxes paid to the City meet or exceed the criteria set forth in Sections 1(b) and 1(c), net of refunds ("*Actual Company Taxes*"), the City shall, within ninety (90) days from the Incentive Commencement Date anniversary, pay to the Company an incentive payment (each an "*Incentive Payment*" and collectively the "*Incentive Payments*") in an amount equal to 25% of the Retention Benchmark income tax and 25% of the income taxes over and above the Growth Benchmark, both as set forth in Sections 1(b) and 1(c). Provided however, that the total amount of any such Incentive Payments paid by the City during any Agreement Year

shall not exceed the real estate property tax attributable to the Company's location within the City for that Agreement Year.

(iii) **Forfeiture of Right to Receive Payment.** The Company agrees and acknowledges that the payments set forth herein are being made by the City to the Company in consideration of the Company's agreement to maintain its location in the City and to meet the criteria set forth in Section 1 of this Amendment. The Company further agrees that if the Actual Company Taxes paid to the City fall below the Retention and Growth Benchmarks set forth in Section 1(b) and 1(c) of this agreement for any Agreement Year, the City shall not be obligated to make an annual Incentive Payment to the Company for that Agreement Year. Failure to meet the Minimum Section 1 criteria with respect to any Agreement Year shall not constitute a default under this Agreement or subject the Company to any remedy hereunder, and the Company shall have the right to receive an annual Incentive Payment for any subsequent Agreement Year in accordance with the payment formula set forth in Subsection 2(ii). In amplification and not in limitation of the foregoing, the City agrees that, in the event that the Section 1 criteria amount is not met in any Agreement Year, for any reason, including, without limitation, reduced employment at the Company's location, the closing of the Company's location, or the termination, or non-extension of the lease for the Company's location, the City shall not be entitled to, or seek, the repayment of any sums made to the Company under this Agreement.

All other terms and conditions of the Agreement not amended by this Amendment shall remain in full force and effect.

This Amendment may be executed in one or more counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same document, and shall be binding on the signatories. Each party hereto may rely upon a telecopy (fax) or pdf of a counterpart of this Agreement or detached signature page therefrom that has been executed by any other party hereto, as if the same were the executed original thereof, and the other parties shall be bound thereby

IN WITNESS WHEREOF, the City and the Company have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

CITY OF NEW ALBANY, OHIO

By: _____

Printed: Joseph Stefanov

Title: City Manager

UBS FINANCIAL SERVICES INC.

By: _____

Printed: _____

Title: _____

By: _____

Printed: _____

Title: _____

Approved as to Form:

By: _____

Printed: Mitchell H. Banchefsky

Title: Director of Law

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DRAFT

FISCAL OFFICER'S CERTIFICATE

The undersigned, Finance Director of the City under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: _____, 2018

Bethany Staats
Finance Director
City of New Albany

Exhibit A

DRAFT



Prepared: 10/25/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

RESOLUTION R-44-2018

A RESOLUTION TO ACCEPT A 1.268 ACRE, A 0.573 ACRE, AND 3.791 ACRE TRACT OF LAND FROM MBJ HOLDINGS LLC FOR THE PURPOSE OF PUBLIC RIGHT OF WAY

WHEREAS, the tracts of land are generally located along the east side of Babbitt Road, north of Morse Road; and along north side of Morse Road, west of Beech Road; and

WHEREAS, the land parcels currently extend to the centerline of the Babbitt Road and Morse Road and have historically been served by way of a highway easement. The property owner requests to dedicate the highway easement area to the city as public right-of-way; and

WHEREAS, the city engineer has reviewed the newly created lots and commented this dedication is appropriate; and

WHEREAS, the city will benefit from this dedication of right of way.

NOW, THEREFORE, BE IT RESOLVED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. The city manager is hereby authorized to accept a 1.268 acre, a 0.573 acre, and 3.791 acre donation of land from MBJ Holdings LLC for the purpose of public right of way as depicted on Exhibit A.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this resolution were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 3. Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, this resolution shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

PROPOSED

**LIMITED WARRANTY DEED
(O.R.C. 5302.07 - 5302.08)**

KNOW ALL MEN BY THESE PRESENTS that MBJ HOLDINGS, LLC, a Delaware limited liability company (the "**GRANTOR**"), whose tax mailing address is 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054, for good and valuable consideration paid, grants, with limited warranty covenants, to THE CITY OF NEW ALBANY, OHIO, an Ohio municipal corporation (the "**GRANTEE**"), whose tax-mailing address is 99 West Main Street, New Albany, Ohio 43054, the following real property, consisting of approximately 1.268 acres, more or less (the "**PREMISES**"):

See legal description attached as Exhibit A and depiction attached as Exhibit B.

Prior Instrument References: Office of the Recorder, Franklin County, Ohio
Instrument Nos. _____

Auditor's Parcel No.: _____

**THE PREMISES IS INTENDED BY GRANTEE TO BE HELD FOR USE AS
PUBLIC RIGHT-OF-WAY.**

The conveyance hereunder is made subject to all covenants, conditions, easements, restrictions, reservations, and other matters of record in the Office of the Recorder, Franklin County, Ohio.

[SIGNATURE AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed by its duly authorized signatory this _____ day of _____, 2018.

MBJ HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Brent B. Bradbury, Treasurer

STATE OF OHIO,
COUNTY OF _____, ss:

BE IT REMEMBERED, that on this _____ day of _____, 2018, before me, the subscriber, a Notary Public in and for said county, personally came the above named Brent B. Bradbury, the Treasurer of MBJ HOLDINGS, LLC, a Delaware limited liability company, and acknowledged the signing of the same to be his voluntary act and deed for and as the voluntary act and deed of said company.

Notary Public
My commission expires: _____

This instrument prepared by:
AARON L. UNDERHILL, ESQ.
UNDERHILL & HODGE LLC
8000 WALTON PARKWAY, SUITE 260
NEW ALBANY, OHIO 43054
(614) 335-9320

EXHIBIT A
1.268 ACRES

Situated in the State of Ohio, County of Franklin, City of New Albany, lying in Lots 2 and 3, Quarter Township 4, Township 2, Range 16, United States Military District, and being part of that 52.996 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 2018072020014909 and part of those 1.000, 2.508, 6.16, 8.04, 7.34, and 5.49 acre tracts conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807270100579 (all references are to the records of the Recorder's Office, Franklin County, Ohio) and being more particularly described as follows:

BEGINNING, at Franklin County Geodetic Survey Monument 1214, at the corner common to said Lots 2 and 3 and Lots 14 and 15, in the centerline of Babbitt Road (Width Varies), at the northwesterly corner of said 2.508 acre tract, at a southwesterly corner of said 52.996 acre tract;

Thence North 03° 47' 20" East, with the line common to said Lots 3 and 14, with said centerline, with the westerly line of said 52.996 acre tract, a distance of 854.13 feet to a magnetic nail set at the corner common to said 52.996 acre tract and that 34.262 acre tract conveyed to James L. Doran, II and Michele Gutridge Doran by deed of record in Official Record 31033F14;

Thence South 86° 07' 46" East, across said Babbitt Road, with the line common to said 52.996 acre and 32.262 acre tracts, a distance of 30.00 feet to an iron pin set;

Thence across said MBJ Holdings, LLC tracts, the following courses and distances:

South 03° 47' 20" West, a distance of 854.15 feet to an iron pin set; and

South 04° 02' 31" West, partially with the easterly line of that un-recorded Easement for Highway Purposes from IVA Smith and Dalton E. Smith to County of Franklin Dated June 10, 1974 on file with the Franklin County Engineers Office, a distance of 986.44 feet to a 3/4 inch iron pipe found in the easterly right-of-way line of said Babbitt Road, in the southerly line of said 5.49 acre tract, at the corner common to that 0.549 acre tract conveyed to Jordan M. King by deed of record in Instrument Number 200710220183530 and that 0.307 acre tract conveyed to Franklin County by deed of record in Deed Book 3109, Page 288;

Thence North 86° 34' 40" West, across said Babbitt Road, with the line common to said 5.49 acre and 0.307 acre tracts, a distance of 30.00 feet to a railroad spike found in the line common to said Lots 2 and 15, in the centerline of said Babbitt Road, at a corner common to said 5.49 acre and 0.307 acre tracts;

Thence North 04° 02' 31" East, with the line common to said Lots 2 and 15, with said centerline, with the westerly line of said 5.49, 7.34, 8.04, 6.16, 1.000, and 2.508 acre tracts, partially with the westerly line of said un-recorded Easement for Highway Purposes, (passing a 1/2 inch rebar found at 285.39 feet, a railroad spike found at 428.83 feet, and a 1/2 inch rebar found at 485.39 feet) a total distance of 986.70 feet to the POINT OF BEGINNING, containing 1.268 acres, more or less, of which 0.891 acre is located within the road right-of-way.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings herein are based on the Ohio State Plane Coordinate System, South Zone per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK 80 and FRANK 180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.

This description was prepared using documents of record, prior plats of survey, and observed evidence located by an actual field survey in 1999, 2001, 2002, 2015, 2017, and 2018.

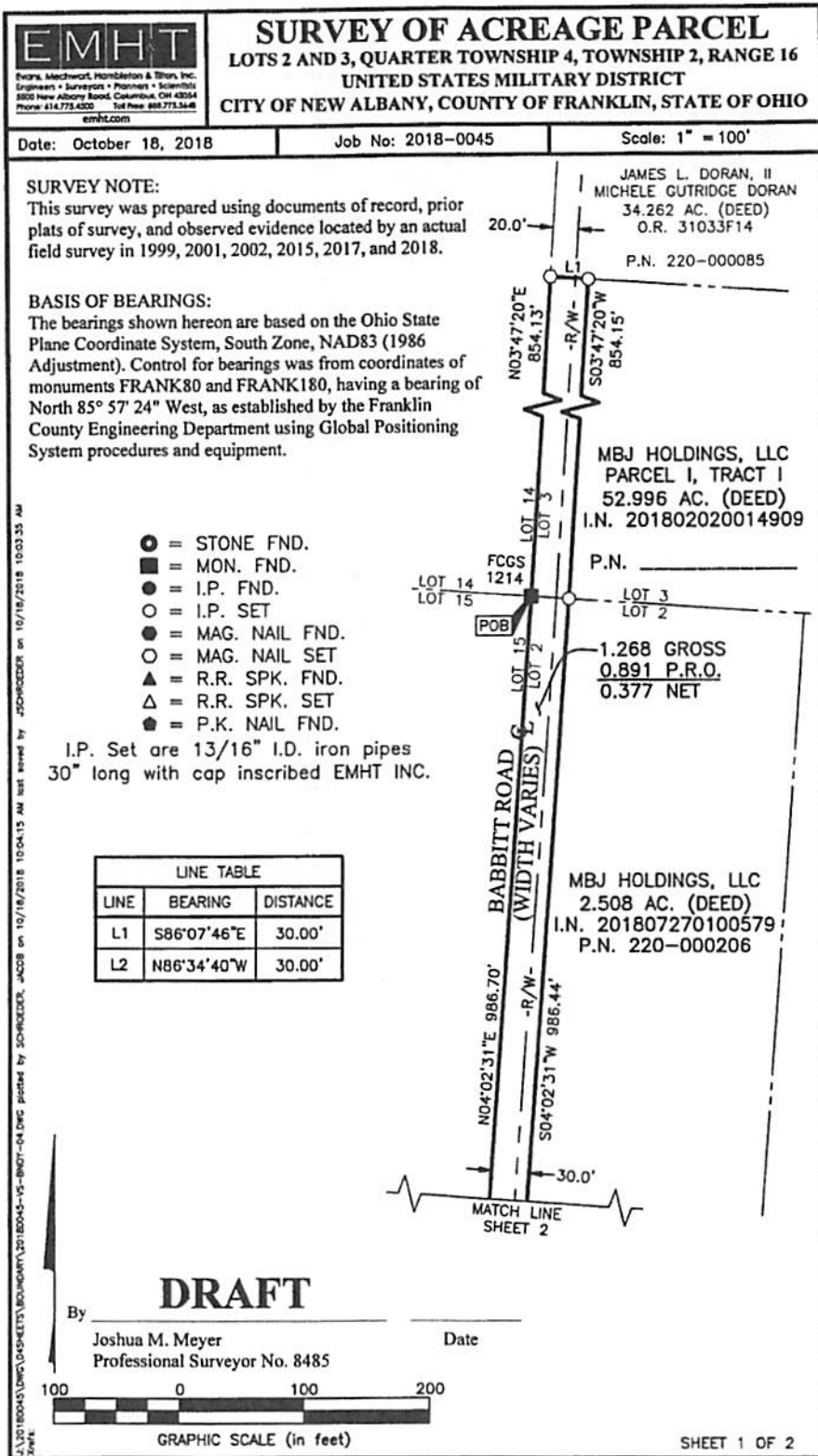
EVANS, MECHWART, HAMBLETON & TILTON, INC.

DRAFT

Joshua M. Meyer
Professional Surveyor No. 8485

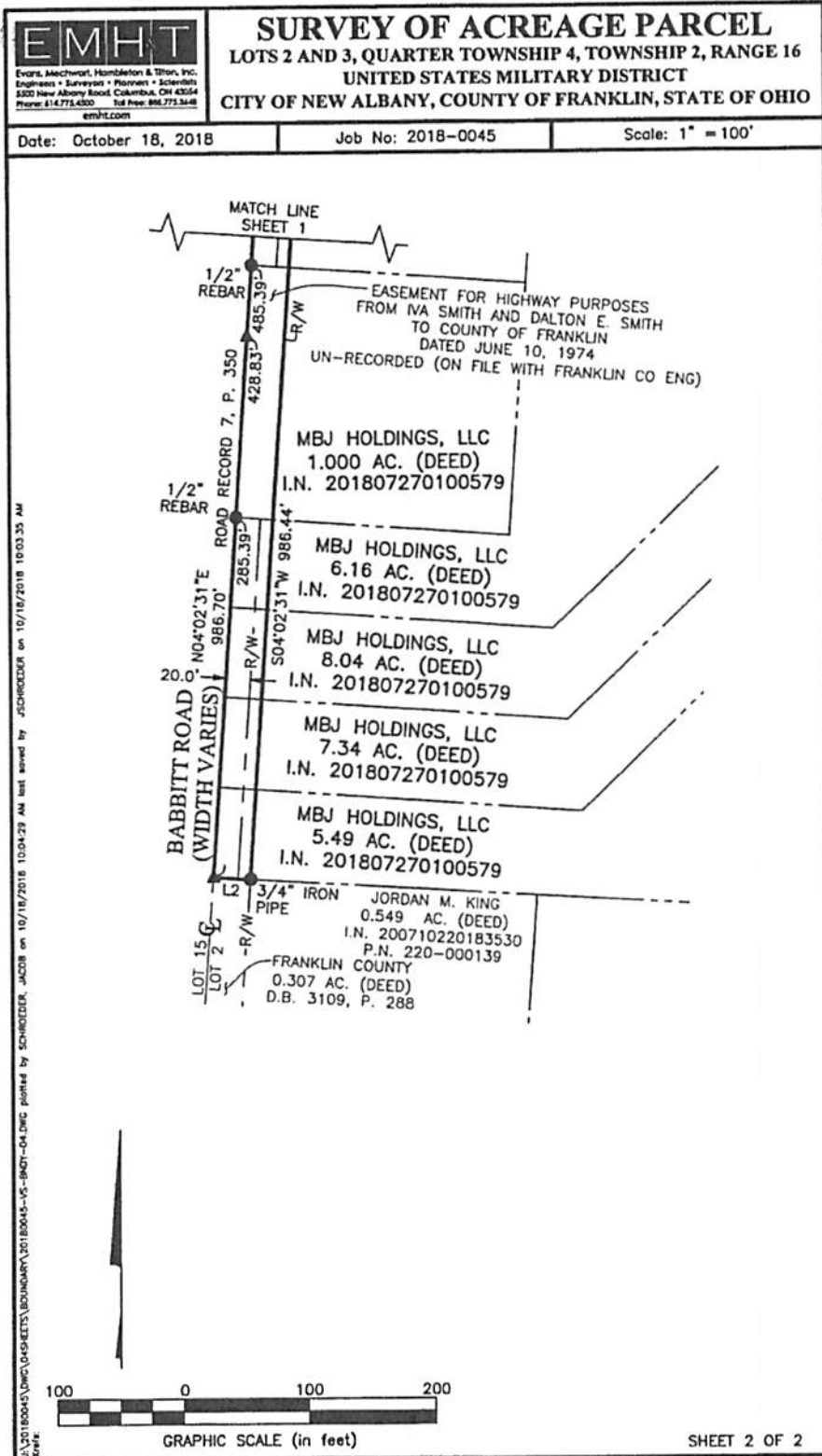
Date

Exhibit "B"



J:\20180045\DWG\049KELT3\BOUNDARY\20180045-15-BM07-04.DWG plotted by SCHROEDER on 10/18/2018 10:04:15 AM last saved by SCHROEDER on 10/18/2018 10:03:35 AM

Exhibit "B"



**LIMITED WARRANTY DEED
(O.R.C. 5302.07 - 5302.08)**

KNOW ALL MEN BY THESE PRESENTS that MJB HOLDINGS, LLC, a Delaware limited liability company (the "GRANTOR"), whose tax mailing address is 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054, for good and valuable consideration paid, grants, with limited warranty covenants, to THE CITY OF NEW ALBANY, OHIO, an Ohio municipal corporation (the "GRANTEE"), whose tax-mailing address is 99 West Main Street, New Albany, Ohio 43054, the following real property, consisting of approximately 0.573 acres, more or less (the "PREMISES"):

See legal description attached as Exhibit A and depiction attached as Exhibit B.

Prior Instrument References: Office of the Recorder, Franklin County, Ohio
Instrument Nos. _____

Auditor's Parcel No.: _____

**THE PREMISES IS INTENDED BY GRANTEE TO BE HELD FOR USE AS
PUBLIC RIGHT-OF-WAY.**

The conveyance hereunder is made subject to all covenants, conditions, easements, restrictions, reservations, and other matters of record in the Office of the Recorder, Franklin County, Ohio.

[SIGNATURE AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed by its duly authorized signatory this _____ day of _____, 2018.

MBJ HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Brent B. Bradbury, Treasurer

STATE OF OHIO,
COUNTY OF _____, ss:

BE IT REMEMBERED, that on this ____ day of _____, 2018, before me, the subscriber, a Notary Public in and for said county, personally came the above named Brent B. Bradbury, the Treasurer of MBJ HOLDINGS, LLC, a Delaware limited liability company, and acknowledged the signing of the same to be his voluntary act and deed for and as the voluntary act and deed of said company.

Notary Public
My commission expires: _____

This instrument prepared by:
AARON L. UNDERHILL, ESQ.
UNDERHILL & HODGE LLC
8000 WALTON PARKWAY, SUITE 260
NEW ALBANY, OHIO 43054
(614) 335-9320

EXHIBIT A

0.573 ACRE

Situated in the State of Ohio, County of Franklin, City of New Albany, lying in Lot 1, Quarter Township 4, Township 2, Range 16, United States Military District, and being part of that 109.456 acre tract conveyed to MBI Holdings, LLC by deed of record in Instrument Number 201808010103027, (all references are to the records of the Recorder's Office, Franklin County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at Franklin County Geodetic Survey Monument 2208, at the intersection of the centerline of Morse Road (width varies) with the common County Line of Franklin and Licking Counties, at the southwest corner of Section 25, Township 2, Range 15, at the northwest corner of Section 5, Quarter Township 2, Township 1, Range 15, at the northeast corner of Quarter Township 1, Township 1, Range 16, at the southeast corner of said Lot 1, at the southwesterly corner of that 98.756 acre tract conveyed to MBI Holdings, LLC by deed of record in Licking County Instrument Number 200107200026097, at the southeasterly corner of said 109.456 acre tract;

Thence North $86^{\circ} 23' 36''$ West, with the centerline of said Morse Road, with the southerly line of said 109.456 acre tract, in the southerly line of said Lot 1, in the northerly line of said Quarter Township 1, a distance of 499.31 feet to an magnetic nail set in at the corner common to said 109.456 acre tract and the remainder of that tract conveyed as First Parcel to David L. Haegeler, Trustee of the David L. Haegeler Trust dated August 1, 2007, an undivided one-half (1/2) interest and Deborah S. Haegeler, Trustee of the Deborah S. Haegeler Trust dated August 1, 2007, an undivided one-half (1/2) interest by deed of record in Instrument Number 200708070138359;

Thence North $03^{\circ} 36' 24''$ East, with the line common to said 109.456 acre tract and said Haegeler tract, a distance of 50.00 feet to an iron pin set;

Thence South $86^{\circ} 23' 36''$ East, across said 109.456 acre tract, a distance of 499.20 feet to an iron pin set in said common County Line, in the line common to said Lot 1 and said Section 25, in the line common to said 109.456 acre and 98.756 acre tracts;

Thence South $03^{\circ} 28' 23''$ West, with said common lines, a distance of 50.00 feet to the POINT OF BEGINNING, containing 0.573 acre, more or less, of which 0.344 acre is located within the existing road right-of-way.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings herein are based on the Ohio State Plane Coordinate System, South Zone per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK 80 and FRANK 180, having a bearing of North $85^{\circ} 57' 24''$ West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.

This description was prepared using documents of record, prior plats of survey, and observed evidence located by an actual field survey in 1999, 2001, 2002, 2015, 2017, and 2018.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

DRAFT

Joshua M. Meyer
Professional Surveyor No. 8485

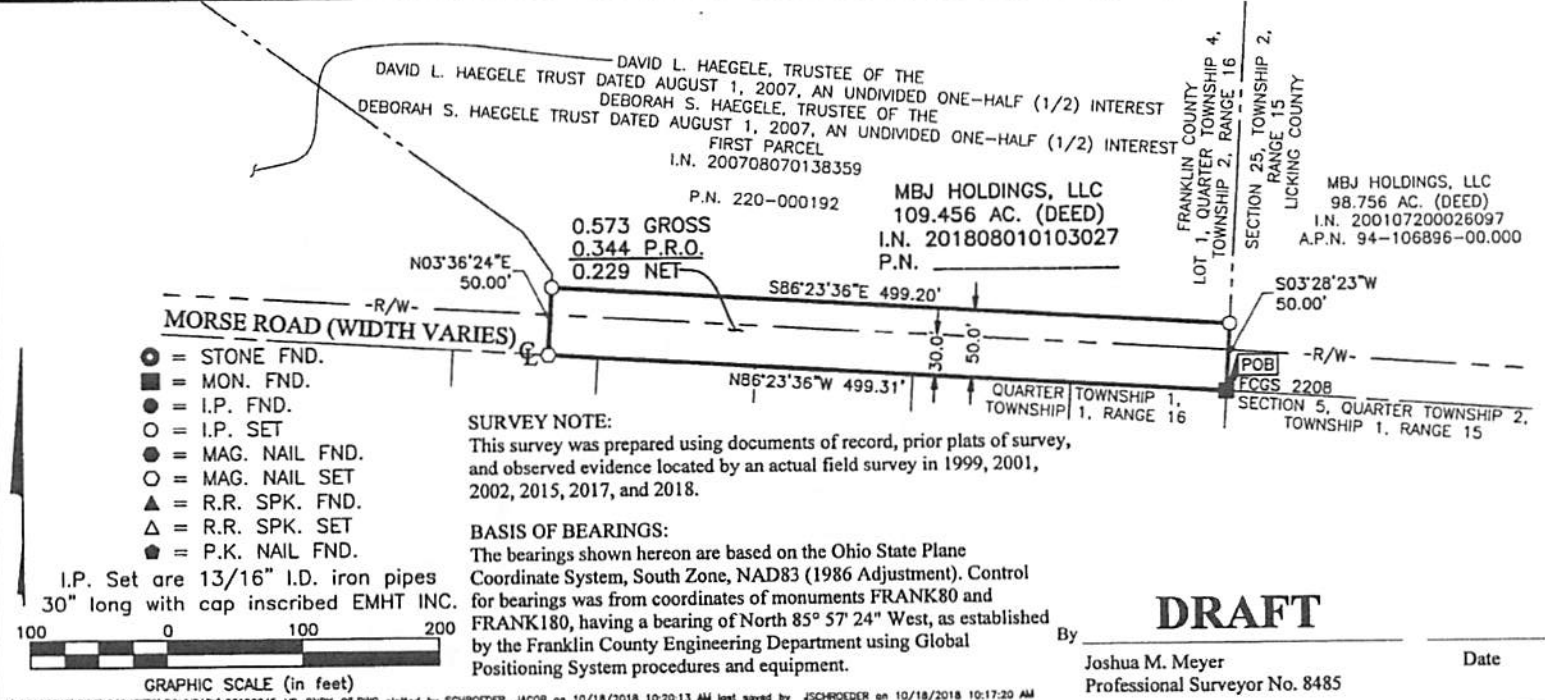
Date

Exhibit "B"

EMHT
 Evans, Mechwart, Hambleton & Tilton, Inc.
 Engineers • Surveyors • Planners • Scientists
 5500 New Albany Road, Columbus, OH 43054
 Phone: 614.775.4500 Toll Free: 888.775.3648
 emht.com

SURVEY OF ACREAGE PARCEL
LOT 1, QUARTER TOWNSHIP 4, TOWNSHIP 2, RANGE 16
UNITED STATES MILITARY DISTRICT
CITY OF NEW ALBANY, COUNTY OF FRANKLIN, STATE OF OHIO

Date:	October 18, 2018
Scale:	1" = 100'
Job No:	2018-0045



J:\20180045\DWG\04SHEETS\BOUNDARY\20180045-V5-BNDY-05.DWG plotted by SCHRÖDER, JACOB on 10/18/2018 10:20:13 AM last saved by J.SCHRÖDER on 10/18/2018 10:17:20 AM
 Xref:

**LIMITED WARRANTY DEED
(O.R.C. 5302.07 - 5302.08)**

KNOW ALL MEN BY THESE PRESENTS that MBI HOLDINGS, LLC, a Delaware limited liability company (the "GRANTOR"), whose tax mailing address is 8000 Walton Parkway, Suite 120, New Albany, Ohio 43054, for good and valuable consideration paid, grants, with limited warranty covenants, to THE CITY OF NEW ALBANY, OHIO, an Ohio municipal corporation (the "GRANTEE"), whose tax-mailing address is 99 West Main Street, New Albany, Ohio 43054, the following real property, consisting of approximately 3.791 acres, more or less (the "PREMISES"):

See legal description attached as Exhibit A and depiction attached as Exhibit B.

Prior Instrument References: Office of the Recorder, Licking County, Ohio
Instrument Nos. _____

Auditor's Parcel No.: _____

**THE PREMISES IS INTENDED BY GRANTEE TO BE HELD FOR USE AS
PUBLIC RIGHT-OF-WAY.**

The conveyance hereunder is made subject to all covenants, conditions, easements, restrictions, reservations, and other matters of record in the Office of the Recorder, Licking County, Ohio.

[SIGNATURE AND ACKNOWLEDGMENT ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, Grantor has caused this Limited Warranty Deed to be executed by its duly authorized signatory this _____ day of _____, 2018.

MBJ HOLDINGS, LLC,
a Delaware limited liability company

By: _____
Brent B. Bradbury, Treasurer

STATE OF OHIO,
COUNTY OF _____, ss:

BE IT REMEMBERED, that on this _____ day of _____, 2018, before me, the subscriber, a Notary Public in and for said county, personally came the above named Brent B. Bradbury, the Treasurer of MBJ HOLDINGS, LLC, a Delaware limited liability company, and acknowledged the signing of the same to be his voluntary act and deed for and as the voluntary act and deed of said company.

Notary Public
My commission expires: _____

This instrument prepared by:
AARON L. UNDERHILL, ESQ.
UNDERHILL & HODGE LLC
8000 WALTON PARKWAY, SUITE 260
NEW ALBANY, OHIO 43054
(614) 335-9320

EXHIBIT A
3.791 ACRES

Situated in the State of Ohio, County of Licking, City of New Albany, lying in Section 25, Township 2, Range 15, United States Military District, and being part of that 98.756 acre tract conveyed to MBI Holdings, LLC by deed of record in Licking County Instrument Number 200107200026097, part of that 0.38 acre tract conveyed as Parcel I and that 0.62 acre tract conveyed as Parcel II to MBI Holdings, LLC by deed of record in Instrument Number 201807310015614, and part of that 90.389 acre tract conveyed to MBI Holdings, LLC by deed of record in Instrument Number 200002020003279, (all references are to the records of the Recorder's Office, Licking County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at Franklin County Geodetic Survey Monument 2208, at the intersection of the centerline of Morse Road (width varies) with the common County Line of Franklin and Licking Counties, at the southwest corner of said Section 25, at the northwest corner of Section 5, Quarter Township 2, Township 1, Range 15, at the northeast corner of Quarter Township 1, Township 1, Range 16, at the southeast corner of Lot 1, Quarter Township 4, Township 2, Range 16, at the southwesterly corner of said 98.756 acre tract, at the southeasterly corner of that 109.456 acre tract conveyed to MBI Holdings, LLC by deed of record in Franklin County Instrument Number 201808010103027;

Thence North 03° 28' 23" East, with said common County Line, with the line common to said Lot 1 and said Section 25, with the line common to said 109.456 acre and 98.756 acre tracts, a distance of 50.00 feet to an iron pin set;

Thence South 85° 59' 31" East, across said 98.756 acre, 0.38 acre, 0.62 acre, and 90.389 acre tracts, a distance of 3274.12 feet to an iron pin set in an easterly line of said 90.389 acre tract, in the westerly line of that 10.505 acre tract conveyed to The City of New Albany by deed of record in Instrument Number 201801240001484, in the westerly right-of-way line of Beech Road (T.R. 88, 60 feet wide);

Thence South 03° 34' 11" West, with said westerly right-of-way line, with the line common to said 90.389 acre and 10.505 acre tracts, a distance of 20.00 feet to an iron pin set in the northerly right-of-way line of said Morse Road, at the corner common to said 90.389 acre and 10.505 acre tracts;

Thence South 85° 59' 31" East, continuing with the line common to said 90.389 acre and 10.505 acre tracts, a distance of 48.00 feet to a magnetic nail set in the centerline of said Beech Road, at the corner common to said 90.389 acre tract, said 10.505 acre, that 1.787 acre tract conveyed to The City of New Albany by deed of record in Instrument Number 201709290020862, and that 78.359 acre tract conveyed to MBI Holdings, LLC by deed of record in Instrument Number 200001250002500;

Thence South 03° 34' 11" West, with the centerline of said Beech Road, with the line common to said 90.389 acre and 78.359 acre tracts, a distance of 30.00 feet to a magnetic nail set in the centerline intersection of said Morse Road and said Beech Road, in the line common to said Section 5 and said Section 25, at a corner common to said 90.389 acre and 78.359 acre tracts;

Thence North 85° 59' 31" West, with the line common to said Section 5 and said Section 25, with the centerline of said Morse Road, with the southerly line of said 90.389 acre, 0.62 acre, 0.38 acre, and 98.756 acre tracts, a distance of 3322.04 feet to the POINT OF BEGINNING, containing 3.791 acres, more or less, of which 2.288 acres is located within the road right-of-way. Of the total 3.791 acres, 1.693 acres lies within Parcel Number 94-106896-00.000, 0.207 acre lies within Parcel Number 94-108942-00.000, and 1.891 acres lies within Parcel Number 94-107502-00.000.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings herein are based on the Ohio State Plane Coordinate System, South Zone per NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK 80 and FRANK 180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.

This description was prepared using documents of record, prior plats of survey, and observed evidence located by an actual field survey in 1999, 2001, 2002, 2015, 2017, and 2018.

EVANS, MECHWART, HAMBLETON & TILTON, INC.

DRAFT

Joshua M. Meyer
Professional Surveyor No. 8485

Date



Event, Mechwart, Hordleton & Tilton, Inc.
 Engineers • Surveyors • Planners • Scientists
 5300 New Albany Road, Columbus, OH 43054
 Phone: 614.775.4500 Toll Free: 888.775.2448
 emht.com

SURVEY OF ACREAGE PARCEL

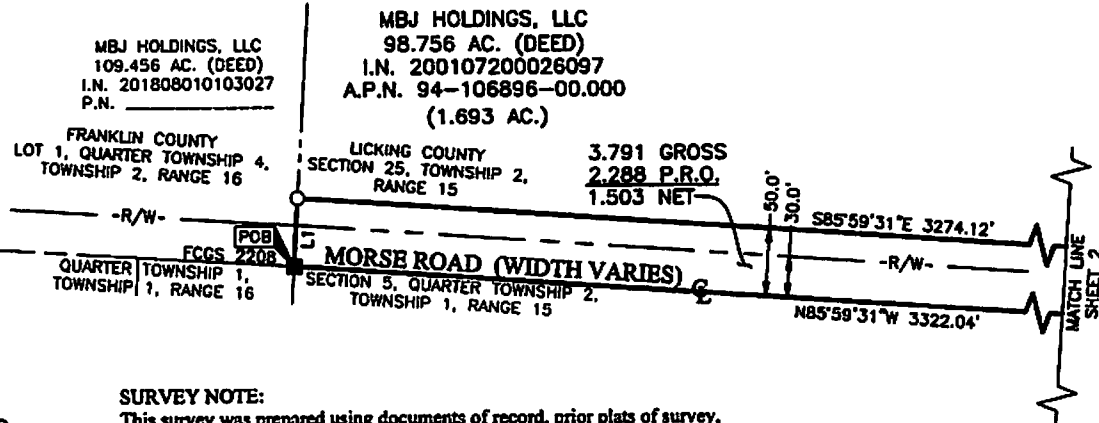
SECTION 25, TOWNSHIP 2, RANGE 15
 UNITED STATES MILITARY LANDS
 CITY OF NEW ALBANY, COUNTY OF LICKING, STATE OF OHIO

Date: October 18, 2018

Scale: 1" = 100'

Job No: 2018-0045

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N03°28'23"E	50.00'
L2	S03°34'11"W	20.00'
L3	S85°59'31"E	48.00'
L4	S03°34'11"W	30.00'



- = STONE FND.
- = MON. FND.
- = I.P. FND.
- = I.P. SET
- = MAG. NAIL FND.
- = MAG. NAIL SET
- ▲ = R.R. SPK. FND.
- △ = R.R. SPK. SET
- ◆ = P.K. NAIL FND.

I.P. Set are 13/16" I.D. iron pipes
 30" long with cap inscribed EMHT INC.



GRAPHIC SCALE (in feet)

SURVEY NOTE:

This survey was prepared using documents of record, prior plats of survey, and observed evidence located by an actual field survey in 1999, 2001, 2002, 2015, 2017, and 2018.

BASIS OF BEARINGS:

The bearings shown hereon are based on the Ohio State Plane Coordinate System, South Zone, NAD83 (1986 Adjustment). Control for bearings was from coordinates of monuments FRANK80 and FRANK180, having a bearing of North 85° 57' 24" West, as established by the Franklin County Engineering Department using Global Positioning System procedures and equipment.

DRAFT

Joshua M. Meyer
 Professional Surveyor No. 8485

Date

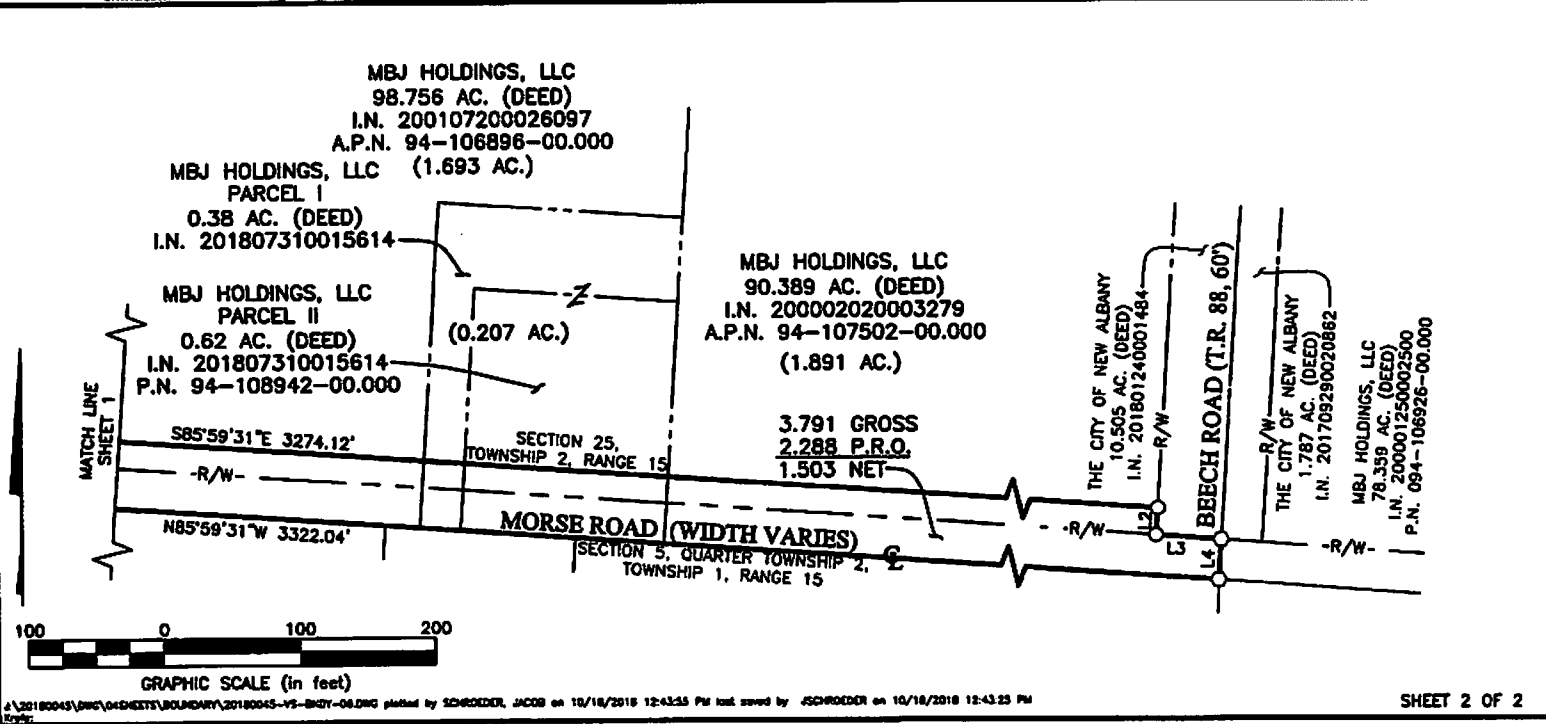
Exhibit "B"

EMHT
 Evans, Mechwart, Hambleton & Tibon, Inc.
 Engineers • Surveyors • Planners • Scientists
 3300 New Albany Road, Columbus, OH 43034
 Phone: 614.775.4300 Fax: 614.773.3446
 emht.com

SURVEY OF ACREAGE PARCEL
 SECTION 25, TOWNSHIP 2, RANGE 15
 UNITED STATES MILITARY LANDS
 CITY OF NEW ALBANY, COUNTY OF LICKING, STATE OF OHIO

Date:	October 18, 2018
Scale:	1" = 100'
Job No:	2018-0045

Exhibit "B"





Prepared: 10/25/2018
Introduced: 11/06/2018
Revised:
Adopted:
Effective:

RESOLUTION R-45-2018

A RESOLUTION TO ACCEPT AN 8.964 AND A 33.957 ACRE CONSERVATION EASEMENT FROM MBJ HOLDINGS LLC, AS REQUESTED BY THE NEW ALBANY COMPANY

WHEREAS, the New Albany Company and MBJ Holdings LLC have obtained permits from the Ohio EPA and U.S. Army Corps of Engineers that require the protection of certain wetlands and watercourses in the general vicinity of the city of New Albany; and

WHEREAS, to protect these environmentally sensitive land areas, the permits require them to be encumbered within a conservation easement; and

WHEREAS, a public entity must be the recipient (grantee) of such easements in order to ensure that the purposes of the easements are fulfilled; and

WHEREAS, the city will be the recipient (grantee) of conservation easements totaling 42.921 acres, and;

WHEREAS, the city will benefit from this dedication of conservation easement.

NOW, THEREFORE, BE IT RESOLVED by Council for the City of New Albany, Counties of Franklin and Licking, State of Ohio, that:

Section 1. The city manager is hereby authorized to accept an 8.964 acre and a 33.957 acre conservation easement from MBJ Holdings LLC as depicted on Exhibit A and Exhibit B.

Section 2. It is hereby found and determined that all formal actions of this council concerning and relating to the adoption of this resolution were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements, including Section 121 of the Ohio Revised Code.

Section 3. Pursuant to Article VI, Section 6.07(A) of the charter of the City of New Albany, this resolution shall be in effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this _____ day of _____, 2018.

Attest:

Sloan T. Spalding
Mayor

Jennifer H. Mason
Clerk of Council

Approved as to form:

Mitchell H. Banchefsky
Law Director

PROPOSED

EXHIBIT A - R-45-2018

Exhibit A

STREAM CONSERVATION EASEMENT 8.964 ACRES

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Sections 16 and 25, Township 2, Range 15, and being on that 50.663 acre tract and that 99.571 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015615, and that 40.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201009130017863, (all references are to the records of the Recorder's Office, Licking County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at the northwesterly corner of said 99.571 acre tract, in the Licking County line;

Thence North 03° 44' 01" East, with said county line, a distance of 102.30 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 81° 32' 08" East, a distance of 399.53 feet to a point;

North 61° 28' 39" East, a distance of 97.36 feet to a point;

South 83° 19' 02" East, a distance of 74.60 feet to a point;

South 52° 51' 54" East, a distance of 25.64 feet to a point;

South 52° 51' 54" East, a distance of 82.64 feet to a point;

South 75° 27' 06" East, a distance of 129.32 feet to a point;

South 55° 59' 54" East, a distance of 127.60 feet to a point;

South 60° 16' 44" East, a distance of 134.43 feet to a point;

South 73° 32' 17" East, , a distance of 146.74 feet to a point;

South 55° 35' 23" East, a distance of 116.79 feet to a point;

South 11° 38' 42" East, a distance of 108.67 feet to a point;

South 21° 59' 17" East, a distance of 279.89 feet to a point;

South 26° 02' 53" East, a distance of 184.62 feet to a point;

South 38° 12' 55" East, a distance of 265.23 feet to a point;

South 23° 15' 24" East, a distance of 74.95 feet to a point;

South 57° 50' 22" East, a distance of 91.85 feet to a point;

South 71° 18' 21" East, a distance of 1534.35 feet to a point in the westerly right-of-way line of Beech Road;

Thence South 03° 34' 11" West, with said westerly right-of-way line, a distance of 103.59 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 71° 18' 21" West, a distance of 1573.18 feet to a point;

North 57° 50' 22" West, a distance of 164.73 feet to a point;

North 23° 15' 24" West, a distance of 131.93 feet to a point;

North 38° 12' 55" West, a distance of 196.90 feet to a point;

North 26° 02' 53" West, a distance of 241.19 feet to a point;

North 21° 59' 17" West, a distance of 233.79 feet to a point;

North 11° 38' 42" West, a distance of 94.08 feet to a point;

North 55° 35' 23" West, a distance of 60.65 feet to a point;

North 73° 32' 17" West, a distance of 157.33 feet to a point;

North 60° 16' 44" West, a distance of 90.21 feet to a point;

North 55° 59' 54" West, a distance of 138.66 feet to a point;

North 68° 04' 53" West, a distance of 54.23 feet to a point;

North 75° 27' 06" West, a distance of 98.07 feet to a point;

North 52° 51' 54" West, a distance of 101.04 feet to a point;

North 83° 19' 02" West, a distance of 15.66 feet to a point;

South 61° 28' 39" West, a distance of 83.29 feet to a point;

South 81° 32' 08" West, a distance of 438.86 feet to the POINT OF BEGINNING,
containing 8.964 acres, more or less.

~~EVANS, MECHWART, HAMBLETON & TILTON, INC.~~

Edward J. Miller
Professional Surveyor No. 8250





Evans, Mechwart, Hambleton & Tilton, Inc.
 Engineers • Surveyors • Planners • Scientists
 5500 New Albany Road, Columbus, OH 43054
 Phone: 614.775.4500 Toll Free: 888.775.3448
 emh.com

STREAM CONSERVATION EASEMENT

SECTIONS 16 & 25, TOWNSHIP 2, RANGE 15
 UNITED STATES MILITARY LANDS
 TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO

Date: October 25, 2018
 Scale: 1" = 400'
 Job No: 2018-0045

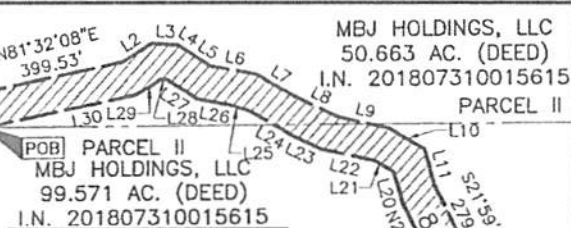
LINE TABLE		
LINE	BEARING	DISTANCE
L1	N03°44'01"E	102.30'
L2	N61°28'39"E	97.36'
L3	S83°19'02"E	74.60'
L4	S52°51'54"E	25.64'
L5	S52°51'54"E	82.64'
L6	S75°27'06"E	129.32'
L7	S55°59'54"E	127.60'
L8	S60°16'44"E	134.43'
L9	S73°32'17"E	146.74'
L10	S55°35'23"E	116.79'
L11	S11°38'42"E	108.67'
L12	S26°02'53"E	184.62'
L13	S38°12'55"E	265.23'
L14	S23°15'24"E	74.95'
L15	S57°50'22"E	91.85'
L16	S03°34'11"W	103.59'
L17	N23°15'24"W	131.93'
L18	N38°12'55"W	196.90'

MBJ HOLDINGS, LLC
 177.497 AC. (DEED)
 I.N. 201803070105494

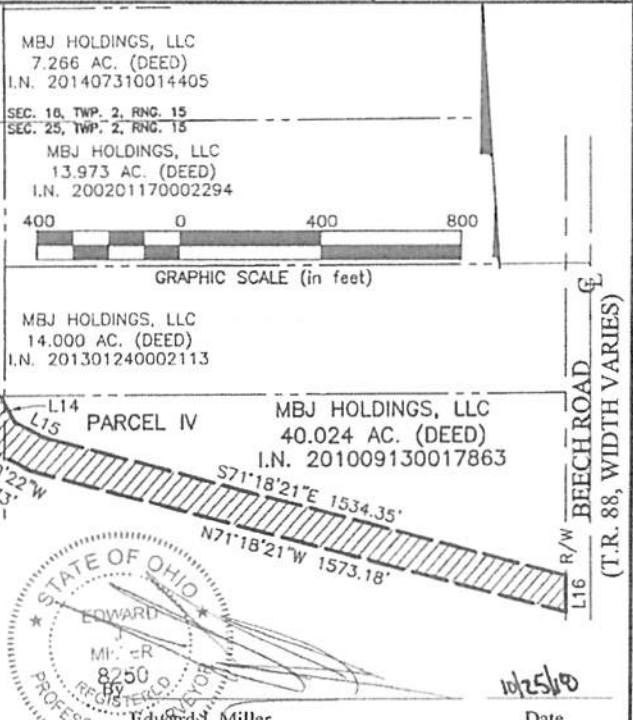
PARCEL II
 TRACT II
 M.B.J. HOLDINGS, LLC
 12.950 AC. (DEED)
 I.N. 201802020014909

PARCEL I
 TRACT I
 M.B.J. HOLDINGS, LLC
 52.996 AC. (DEED)
 I.N. 201802020014909

JERSEY TOWNSHIP
 PLAIN TOWNSHIP
 FRANKLIN COUNTY
 LICKING COUNTY



LINE TABLE		
LINE	BEARING	DISTANCE
L19	N26°02'53"W	241.19'
L20	N11°38'42"W	94.08'
L21	N55°35'23"W	60.65'
L22	N73°32'17"W	157.33'
L23	N60°16'44"W	90.21'
L24	N55°59'54"W	138.66'
L25	N68°04'53"W	54.23'
L26	N75°27'06"W	98.07'
L27	N52°51'54"W	101.04'
L28	N83°19'02"W	15.66'
L29	S61°28'39"W	83.29'
L30	S81°32'08"W	438.86'



STATE OF OHIO
 EDWARD J. MILLER
 MI. #R 8250
 REGISTERED PROFESSIONAL SURVEYOR
 Edward J. Miller
 Professional Surveyor No. 8250

J:\20180045\DWG\04SHEETS\EASEMENTS\20180045-VS-ESMT-CONS-01.DWG plotted by YOUSSEF, SHEHRI on 10/25/2018 7:28:31 AM last saved by SYOUSSEF on 10/25/2018 7:27:39 AM

AGREEMENT:

1. **Grant of Easement:** MBJ hereby grants and conveys to City an estate, interest, and easement in and to the Conservation Easement Area of the nature and character and to the extent hereinafter expressed (the "**Conservation Easement**"), to be and to constitute a servitude upon that portion of the Property located within the boundaries of the Conservation Easement Area, which estate, interest, and easement will result from the covenants and restrictions set forth herein. To this end and for the purpose of accomplishing the intent of the parties hereto, MBJ covenants with and for the benefit of City on behalf of itself, its heirs, successors and assigns, to do and refrain from doing, severally and collectively, upon the Conservation Easement Area, the various acts hereinafter described.

2. **Term of Easement:** The Conservation Easement granted hereunder shall be perpetual to the extent permitted by law and shall have no expiration date. Notwithstanding the foregoing, future stream crossings for the purpose of extending private access drives, utility crossings and storm water drainage piping (each individually a "**Crossing**" and collectively the "**Crossings**") and the areas subject to any Crossing shall not be included in the Conservation Easement. At such time or from time to time as any Crossing is identified the City and the then-owner(s) of the real property on which a Crossing is to be constructed shall execute and record in the office of the Recorder of Licking County, Ohio an amendment to this Conservation Easement terminating this Conservation Easement as to the portion of the Conservation Easement utilized for the Crossing. In no event shall any single stream crossing remove from this Conservation Easement more than one hundred fifty lineal feet (150 LF) of stream and the aggregate of such stream crossings shall not remove more than four hundred fifty lineal feet (450 LF) of stream. All Crossing shall cross the stream in an approximately perpendicular manner in so far as is reasonably practicable

3. **Conservation Values:** The Conservation Easement Area possesses substantial value in conserving and protecting the physical, biological, chemical and overall ecological integrity of the real property that it encompasses and is important in the protection of the existing or designed use of the waters of the State of Ohio pursuant to Section 303 of the Clean Water Act, 33 U.S.C Section 1313 and Section 6111.041 of the Ohio Water Pollution Control Act.

4. **Prohibited Actions:** Any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited within the Conservation Easement Area, except as permitted or required by the Permits:

- a. **Commercial Activities:** Commercial development or industrial activity;
- b. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots;

- c. **Cutting Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides;
- d. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials, or doing any act that would alter the topography of the Conservation Easement Area;
- e. **Dumping:** The placement of waste, garbage and unsightly or offensive materials;
- f. **Water Courses:** Dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering any natural water courses, streams and adjacent riparian buffers located within the Conservation Easement Area;
- g. **Utilities:** The installation of new transmission lines for electric power, communications, and natural gas or petroleum products, except as contemplated is Section 2 above;
- h. **Other Activities:** Each and every other activity or construction project, which endangers the natural, scenic, biological, or ecological integrity of the Conservation Easement Area.

5. **Rights of City and MBJ:** MBJ confers upon the City and, to the extent required under any Future Permit, reserves unto itself, the following rights to perpetually maintain the conservation values of the Conservation Easement Area:

- a. **Right to Enter:** City and MBJ have the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Agreement, provided that such entry shall occur after prior reasonable notice is provided to the owner of the Conservation Easement Area and appropriate consideration is given to the reasonable security requirement of the owner. To the extent reasonably possible entry shall be made from a public right-of-way. City may not enter upon or unreasonably interfere with the quiet enjoyment of the Property by its owner. City or MBJ have no right to permit others to enter the Conservation Easement Area. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.
- b. **Right to Preserve:** City has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of the Conservation Easement. However, nothing herein is intended to place any restrictions on the use or development of those portions of the Property located outside of the boundaries of the Conservation Easement Area.

- c. **Right to Require Restoration:** City shall have the right to require the restoration of the areas or features of the Conservation Easement Area which are damaged by any activity inconsistent with the requirements of this Agreement. City's rights under this paragraph shall include, and not be limited to, the right to initiate any proceedings and actions in law or equity as are necessary to enforce the terms of this Agreement or facilitate the restoration of the Conservation Easement Area.

- d. **Signs:** City shall have the right to place signs within the Conservation Easement Area which identify the land as being protected by the Conservation Easement. The number, size and content of any such signs are subject to the prior approval of the owner of the Conservation Easement Area, which shall not be unreasonably delayed or withheld. City reserves the right to post or clearly mark the boundaries of the Conservation Easement Area at locations that are mutually agreed upon with the owner of the Conservation Easement Area.

- e. **Right to Comply with Future Permits:** MBJ shall have the right to take any action within the Conservation Easement Area as may be required to comply with the terms of any Future Permit, including but not limited to installing signs as provided in Section 5.d above, removing dead or diseased trees, removing invasive species, making improvements or modifications to the stream, planting new vegetation, and conducting periodic compliance inspections.

Notwithstanding the removal of any portion of the Conservation Easement Area from this Conservation Easement as contemplated by Section 2 above each of City and MBJ shall have a license to enter upon any Crossing for the limited purpose of accessing any portion of the remaining Conservation Easement Area as may be necessary to the exercise of the rights set forth in this Section 5.

6. **Permitted Uses:** MBJ reserves to itself, and to its successors and assigns, with respect to that portion of the Property that includes that Conservation Easement Area, all rights accruing from its ownership of the Conservation Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Area that are not expressly prohibited herein and are not inconsistent with the purposes of this Agreement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. **Right to Convey:** The right to sell, mortgage, bequeath, donate or otherwise convey any or all portions of the Property, including, without limitation, the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Agreement and the

subsequent interest holder shall be bound by the terms and conditions hereof.

- b. **Right to Access:** The right to unimpeded access to the Conservation Easement Area over portions of the Property located outside of the Conservation Easement Area so as to provide a means of ingress and egress to and from the Conservation Easement Area and a public street, provided, however, that the route of such access shall be mutually agreed upon by City and the owner of the portion of the Property through which such access is proposed to occur prior to each entry by the City thereupon. In addition, vehicular and pedestrian crossings of the Conservation Easement Area shall be permitted, but only if all relevant permits and permissions are first obtained from the Ohio Environmental Protection Agency and/or the U.S. Army Corps of Engineers.

- c. **Use of Property:** Except as provided in the last paragraph of Section 5 above, the portions of the Property located outside of the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. MBJ and its successors and assigns shall be permitted to use and develop all portions of the Property under its ownership which are located outside of the boundaries of the Conservation Easement Area without restriction.

7. **City's Remedies:** In the event of a breach of this Agreement, City shall have the following remedies and shall be subject to the following limitations:

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of City's rights to enforce the terms of this Agreement.

- b. **Acts Beyond Grantor's Control:** City may not bring an action against MBJ or its successors or assigns for modifications to the Conservation Easement Area which result from causes beyond their control. Examples include, without limitation, unintentional fires, storms, natural earth movement, trespassers, or a party's well-intentioned actions in response to an emergency which result in changes to the Conservation Easement Area. MBJ and its successors and assigns shall have no responsibility under this Agreement for such unintended modifications. City may, however, bring an action against another party for modifications that impair the conservation values identified in this Agreement.

- c. **Notice and Demand:** If City determines that a person or entity is in violation of the terms of the Conservation Easement or this Agreement, or that a violation is threatened, then it shall provide written notice via

certified mail to such person or entity. The written notice shall identify the violation and request corrective action to cure the violation or restore the relevant real property.

- d. **Failure to Act:** If, for a thirty (30) day period after the date of written notice provided pursuant to subparagraph c. above, the person or entity continues violating the terms of the Conservation Easement or this Agreement, or if the person or entity does not abate the violation or begin to implement corrective measures within the foregoing thirty (30) day period requested by City, or fails to continue diligently to cure such violation until finally cured, City shall be permitted to bring an action in law or in equity to enforce the terms of the Conservation Easement or this Agreement and recover any damages for the loss of the conservation values protected hereunder. City is also entitled to bring an action to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Conservation Easement Area. If a court determines that the person or entity has failed to comply with the terms of the Conservation Easement or this Agreement, then City may seek an order requiring the person or entity to reimburse all reasonable costs and attorney fees incurred by City in compelling such compliance.
- e. **Unreasonable Litigation:** If City initiates litigation against MBJ or its successors or assigns to enforce this Agreement, and if the court determines that the litigation was without reasonable cause or in bad faith, then City is to reimburse such parties' reasonable costs and attorneys' fees incurred in defending the action.
- f. **Grantor's Absence:** If City determines that the terms of the Conservation Easement or the Agreement is, or is expected to be, violated, then City will make a good faith effort to notify the then-owner of the Conservation Easement Area. If, through reasonable efforts, the owner cannot be notified, and if City determines that emergency circumstances exist that justify prompt action to mitigate or prevent impairment of the Conservation Easement, then City may pursue its lawful remedies without prior notice and without awaiting a response from such owner.
- g. **Cumulative Remedies:** The preceding remedies of City are cumulative. Any or all of the remedies may be invoked by City if there is an actual or threatened violation of this Agreement.

8. **Ownership Costs and Liabilities:** Except as otherwise required by this Agreement, in accepting the Conservation Easement City shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Conservation Easement Area. City and its

administrators, officers, employees, and shall have no liability arising from injury or death to any person or from physical damage to any other property located within the Conservation Easement Area or otherwise.

9. **Remediation:** If, at any time, there occurs, or has occurred, a release in, on, or about the Conservation Easement Area of any substance now or hereafter defined, listed, or otherwise classified, and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirement or in an amount that is hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, then each owner (with respect to the portion of the Property that it owns) shall take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by City, in which case City shall be responsible therefor.

10. **Cessation of Existence:** If City shall cease to be authorized to acquire and hold conservation easements, then this Agreement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law, upon the consent of the owner of the Conservation Easement Area and the Ohio EPA. MBJ or its successors or assigns shall execute and deliver such documents and instruments as may be necessary to properly reflect the substitution or replacement of the City hereunder.

11. **Termination:** The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain. If subsequent circumstances render the purposes of the Conservation Easement impossible to fulfill, then the Conservation Easement and this Agreement may be partially or entirely terminated only by judicial proceedings initiated by the owner of the Conservation Easement Area or City.

12. **Recordation:** MBJ shall record this instrument in a timely fashion in the official records of Licking County, Ohio, and City may re-record it at any time as may be required to preserve its rights in this Easement.

13. **Assignment:** This Agreement is transferable, but City may assign its rights and obligations hereunder only to an organization mutually agreed to by the fee simple owners of the Property, Ohio EPA, and the transferee, provided that the organization is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended, (or any successor provision then applicable) and authorized to acquire and hold conservation easements under Ohio law. As a condition of such transfer, City shall require that the transferee organization must agree in writing to assume all of City's obligations and duties hereunder and to carry out the conservation purposes that this grant is intended to advance. City agrees to give written notice to the owner(s) of the Property of a transfer or an assignment at least (20) days prior to the date of such transfer or assignment and to furnish promptly to such owner(s) an executed copy of the assignment and assumption agreement to be recorded by City after the expiration of such 20-day notice period in the official records of Licking County, Ohio. The

failure of City to give such notice shall not affect the validity of this Agreement nor limit its enforceability in any way.

14. **Liberal Construction:** This Agreement shall be liberally construed in favor of maintaining the conservation values of the Conservation Easement Area. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

15. **Notices:** For purposes of this Agreement, notices shall be provided to the parties, by personal delivery or by mailing a written notice via certified mail, return receipt requested, to that party at the address shown at the outset of this Agreement, or with respect to any successors or assigns of MBI, to the tax mailing address of the relevant party as evidenced in the records of the Office of the Auditor of Licking County, Ohio. Notice is deemed given upon (i) personal delivery or (ii) two days after depositing the properly addressed notice with the U.S. Postal Service.

16. **Severability:** If any portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

17. **Successors:** This Agreement and the Conservation Easement created hereunder shall be a covenant running with the land and shall constitute a burden on the Conservation Easement Area and shall run to the benefit of the parties hereto and their respective successors or assigns in interest. All subsequent owners of the Conservation Easement Area shall be bound to all provisions of this Agreement to the same extent as the current parties.

18. **Termination of Rights and Obligations:** MBI's future rights and obligations under this Agreement shall terminate upon the transfer of its interest in the Conservation Easement Area. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

19. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflict of law provisions.

20. **"As Is" Condition:** City has examined the Conservation Easement Area and agrees to accept the "as is" condition of the same for purposes of this Agreement.

21. **Site Monitoring:** The Conservation Easement Area shall be inspected by City at a minimum of one time annually.

22. **No Merger:** The Conservation Easement provided under this Agreement is intended to facilitate the perpetual protection of the Conservation Easement Area as provided herein. No easement granted or enjoyed hereunder shall be eliminated through the doctrine of merger as the result of City holding title to and/or having ownership of the Conservation Easement Area.

IN WITNESS WHEREOF, MBJ and City have set their respective hands to this Agreement as of the dates written below, to be effective as of the Effective Date.

MBJ:

**MBJ HOLDINGS, LLC,
a Delaware limited liability company**

By: _____
Brent B. Bradbury, Treasurer

Date: _____

**STATE OF OHIO
COUNTY OF FRANKLIN**

The foregoing instrument was acknowledged before me this ____ day of December, 2018, by Brent B. Bradbury, the Treasurer of **MBJ Holdings, LLC**, a Delaware limited liability company, on behalf of the company.

Notary Public

CITY:

**CITY OF NEW ALBANY,
an Ohio municipal corporation**

By: _____

Name: _____

Title: _____

Date: _____

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of the City of New Albany, Ohio, an Ohio municipal corporation, on behalf of said municipal corporation.

Notary Public

Approved as to Form:

Mitchell Banchefsky, City Law Director

This instrument prepared by:
Aaron L. Underhill, Esq.
Underhill & Hodge LLC
8000 Walton Parkway, Suite 260
New Albany, Ohio 43054
(614) 335-9320

Exhibit A – Depiction of Conservation Easement Area

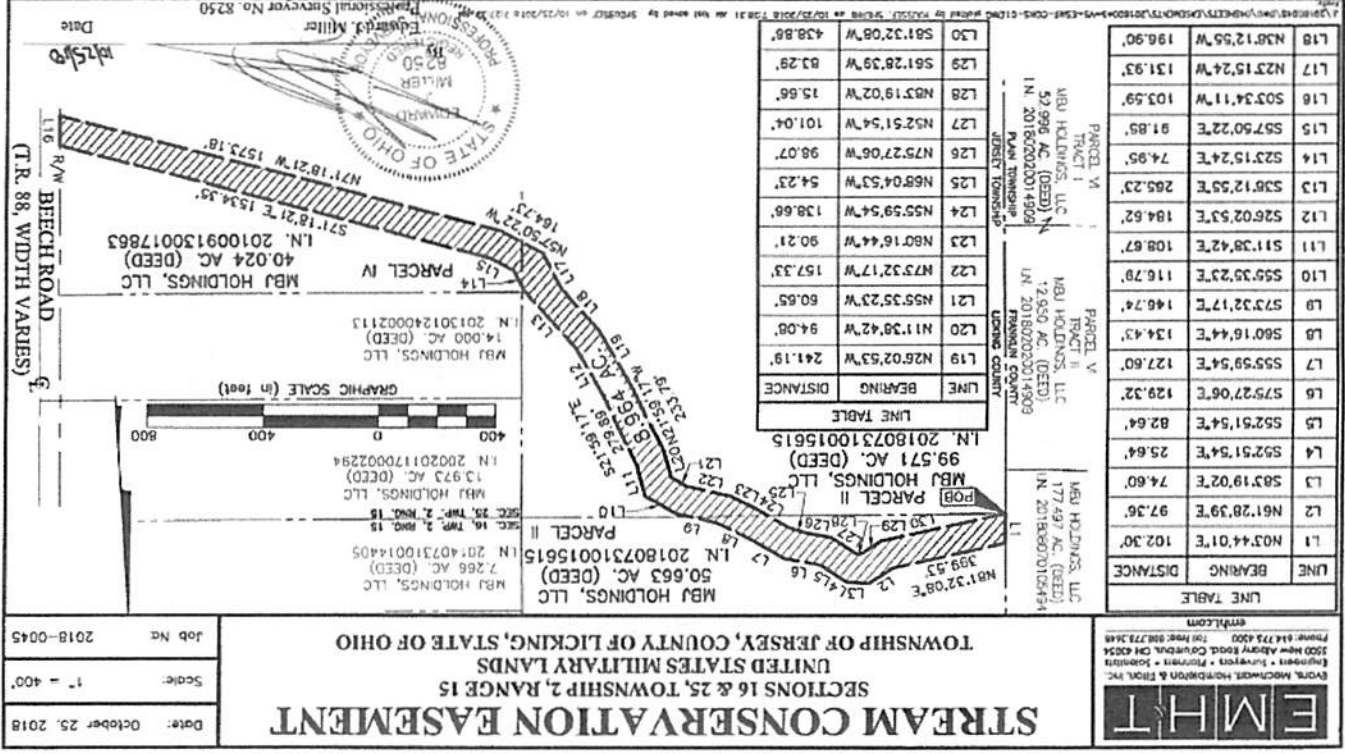


EXHIBIT B - R-45-2018

Exhibit B – Legal Description of Easement Area

STREAM CONSERVATION EASEMENT 8.964 ACRES

Situated in the State of Ohio, County of Licking, Township of Jersey, lying in Sections 16 and 25, Township 2, Range 15, and being on that 50.663 acre tract and that 99.571 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015615, and that 40.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201009130017863, (all references are to the records of the Recorder's Office, Licking County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at the northwesterly corner of said 99.571 acre tract, in the Licking County line;

Thence North 03° 44' 01" East, with said county line, a distance of 102.30 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 81° 32' 08" East, a distance of 399.53 feet to a point;

North 61° 28' 39" East, a distance of 97.36 feet to a point;

South 83° 19' 02" East, a distance of 74.60 feet to a point;

South 52° 51' 54" East, a distance of 25.64 feet to a point;

South 52° 51' 54" East, a distance of 82.64 feet to a point;

South 75° 27' 06" East, a distance of 129.32 feet to a point;

South 55° 59' 54" East, a distance of 127.60 feet to a point;

South 60° 16' 44" East, a distance of 134.43 feet to a point;

South 73° 32' 17" East, a distance of 146.74 feet to a point;

South 55° 35' 23" East, a distance of 116.79 feet to a point;

South 11° 38' 42" East, a distance of 108.67 feet to a point;

South 21° 59' 17" East, a distance of 279.89 feet to a point;

South 26° 02' 53" East, a distance of 184.62 feet to a point;

South 38° 12' 55" East, a distance of 265.23 feet to a point;

South 23° 15' 24" East, a distance of 74.95 feet to a point;

South 57° 50' 22" East, a distance of 91.85 feet to a point;

South 71° 18' 21" East, a distance of 1534.35 feet to a point in the westerly right-of-way line of Beech Road;

Thence South 03° 34' 11" West, with said westerly right-of-way line, a distance of 103.59 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 71° 18' 21" West, a distance of 1573.18 feet to a point;

North 57° 50' 22" West, a distance of 164.73 feet to a point;

North 23° 15' 24" West, a distance of 131.93 feet to a point;

North 38° 12' 55" West, a distance of 196.90 feet to a point;

North 26° 02' 53" West, a distance of 241.19 feet to a point;

North 21° 59' 17" West, a distance of 233.79 feet to a point;

North 11° 38' 42" West, a distance of 94.08 feet to a point;

North 55° 35' 23" West, a distance of 60.65 feet to a point;

North 73° 32' 17" West, a distance of 157.33 feet to a point;

North 60° 16' 44" West, a distance of 90.21 feet to a point;

North 55° 59' 54" West, a distance of 138.66 feet to a point;

North 68° 04' 53" West, a distance of 54.23 feet to a point;

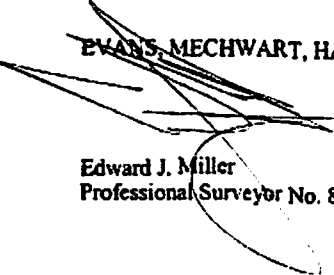
North 75° 27' 06" West, a distance of 98.07 feet to a point;

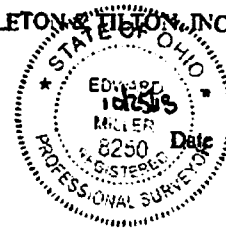
North 52° 51' 54" West, a distance of 101.04 feet to a point;

North 83° 19' 02" West, a distance of 15.66 feet to a point;

South 61° 28' 39" West, a distance of 83.29 feet to a point;

South 81° 32' 08" West, a distance of 438.86 feet to the POINT OF BEGINNING,
containing 8.964 acres, more or less.

~~EVANS, MECHWART, HAMBLETON & ELLISON, INC.~~

Edward J. Miller
Professional Surveyor No. 8250



EMJ:ry
8_964 ac 20180043-VS-ESMT-CONS-01.doc

Exhibit B

CONSERVATION EASEMENT
33.957 ACRES

Situated in the State of Ohio, County of Licking, City of New Albany and Township of Jersey, lying in Section 25, Township 2, Range 15, and being out of that 30.204 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 200201170002294, that 99.571 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201807310015615, and that 40.024 acre tract conveyed to MBJ Holdings, LLC by deed of record in Instrument Number 201009130017863, (all references are to the records of the Recorder's Office, Licking County, Ohio, unless otherwise noted) and being more particularly described as follows:

BEGINNING at the southwesterly corner of said 30.204 acre tract;

Thence North 86° 05' 37" West, with the southerly line of said 99.571 acre tract, a distance of 50.00 feet to a point;

Thence across said Grantor's tracts, the following courses and distances:

North 03° 39' 34" East, a distance of 887.67 feet to a point;

South 86° 25' 30" East, a distance of 1641.33 feet to a point in the westerly right-of-way line of Beech Road;

Thence with said westerly right-of-way line, the following courses and distances:

South 00° 12' 44" West, a distance of 371.72 feet to a point;

South 03° 34' 11" West, a distance of 524.09 feet to a point in the southerly line of said 30.204 acre tract;

Thence North 86° 10' 08" West, with said southerly line, a distance of 1614.51 feet to the POINT OF BEGINNING, containing 33.957 acres, more or less.

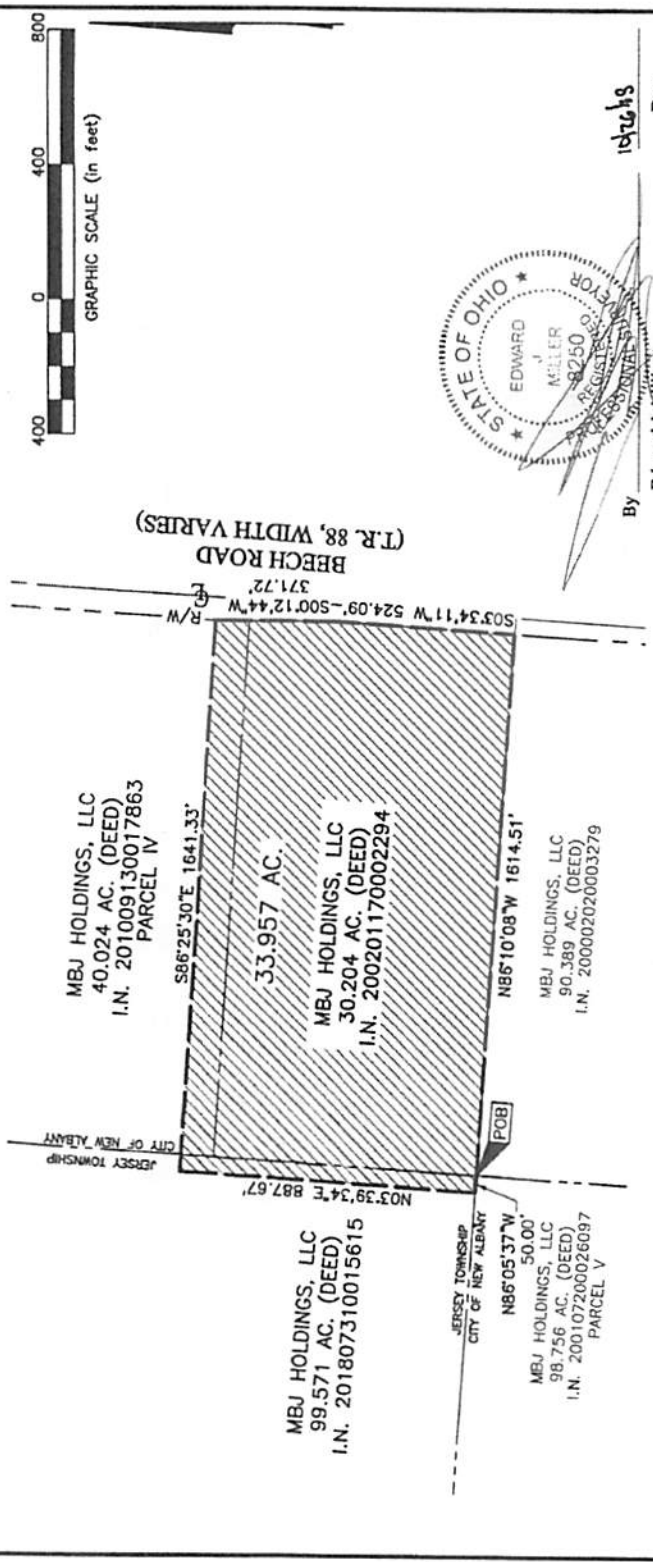
EVANS, SCHWARTZ, HAMBLETON & TILTON, INC.
EDWARD J. MILLER
Professional Surveyor No. 8250
10/26/15
Date

EJM: sy
33_957 ac 20180045-VS-ESMT-CONS-02.doc

EMHT
 Evans, Mechwart, Hambleton & Blinn, Inc.
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CONSERVATION EASEMENT
 SECTION 25, TOWNSHIP 2, RANGE 15
 UNITED STATES MILITARY LANDS
 CITY OF NEW ALBANY AND TOWNSHIP OF JERSEY, COUNTY OF LICKING, STATE OF OHIO

Date: October 26, 2018
 Scale: 1" = 400'
 Job No: 2018-0045



By *Edward J. Miller*
 Edward J. Miller
 Professional Surveyor No. 8250

Date

A:\2018045\DWG\DWG\EMHT\EMHT\2018045-VS-ESMT-CONS-02.DWG plotted by YOUSSEF on 10/26/2018 7:37:35 AM sheet no. 4 of 4 by SYRUSSEF on 10/26/2018 7:36:58 AM
 MMS: 2018045-VS-ALB-02.DWG, A: 89107425.DWG, A: 89107425.DWG, A: 89107425.DWG, A: 89107425.DWG

Exhibit B

CONSERVATION EASEMENT AGREEMENT

This Conservation Easement Agreement ("Agreement") is made to be effective on the last date of signature below (the "Effective Date"), by and between **MBJ Holdings, LLC**, a Delaware limited liability company ("Grantor"), and the **City of New Albany**, a municipal corporation existing under the laws of the State of Ohio, having its address at 99 W. Main Street, New Albany, Ohio 43054 ("Grantee").

Parcel Number: Licking County Auditor Parcel Nos. _____
and _____

Prior Instrument
References: Instrument Nos. _____ and
_____, Office of the Recorder of
Licking
County, Ohio

RECITALS:

WHEREAS, Grantor is the sole owner in fee simple of certain real property situated in Licking County, Ohio that is more particularly identified and described in Instrument Numbers _____ and _____, which are of record with the Office of the Recorder of Licking County, Ohio (together, the "Property"); and

WHEREAS, Grantor intends, as the owner of the Property, to convey to Grantee the right to preserve and protect, in perpetuity, the conservation values of that limited portion of the Property that is more particularly described and depicted in Exhibit A, which is attached hereto and incorporated herein by reference (the "Conservation Easement Area"); and

WHEREAS, this Agreement and the Conservation Easement (as such term is defined below) created hereby is required by a Level 3 Isolated Wetlands Permit # _____ issued by the Ohio Environmental Protection Agency on _____, 2018 and by a Section 404 Water Quality Certification Permit No. _____ dated _____, 2018, as issued by the U.S. Army Corps of Engineers. As a

condition of these permits, preserved wetland areas must be protected by a conservation easement, and this Agreement is intended to satisfy this condition. In addition, the Conservation Easement Area established under this Agreement may be used to satisfy similar wetlands preservation requirements pursuant to similar permits issued or to be issued in the future to Grantor.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree as follows:

AGREEMENT:

1. **Grant of Easement:** Grantor hereby grants and conveys to Grantee, its successors and assigns, an estate, interest, easement and servitude in and to the Conservation Easement Area of the nature and character and to the extent hereinafter expressed (the "**Conservation Easement**"), to be and to constitute a servitude upon that portion of the Property located within the boundaries of the Conservation Easement Area, which estate, interest, easement and servitude will result from the covenants and restrictions set forth herein. To this end and for the purpose of accomplishing the intent of the parties hereto, Grantor covenants with and for the benefit of Grantee on behalf of itself, its heirs, successors and assigns, to do and refrain from doing, severally and collectively, upon the Conservation Easement Area, the various acts hereinafter described.

2. **Term of Easement:** The Conservation Easement granted hereunder shall be perpetual to the extent permitted by law and shall have no expiration date.

3. **Conservation Values:** The Conservation Easement Area possesses substantial value in conserving and protecting the physical, biological, chemical and overall ecological integrity of the real property that it encompasses and is important in the protection of the existing or designed use of the waters of the State of Ohio pursuant to Section 303 of the Clean Water Act, 33 U.S.C Section 1313 and Section 6111.041 of the Ohio Water Pollution Control Act.

4. **Prohibited Actions:** Any activity on or use of the Conservation Easement Area that is inconsistent with the purposes of the Conservation Easement or detrimental to the conservation values expressed herein is expressly prohibited. By way of example, and not of limitation, the following activities and uses are explicitly prohibited within the Conservation Easement Area:

- a. **Commercial Activities:** Commercial development or industrial activity;

- b. **Construction:** The placement or construction of any man-made modifications such as buildings, structures, fences, roads and parking lots;
- c. **Cutting of Vegetation:** Any cutting of trees, ground cover or vegetation, or destroying by any means of herbicides or pesticides, except as allowed under relevant permits;
- d. **Land Surface Alteration:** The removal of soil, sand, gravel, rock, minerals or other materials, or doing any act that would alter the topography of the Conservation Easement Area;
- e. **Dumping:** The placement of waste, garbage and unsightly or offensive materials;
- f. **Water Courses:** Dredging, straightening, filling, channeling, impeding, diverting, or otherwise altering any natural water courses, streams and adjacent riparian buffers located within the Conservation Easement Area, except as allowed under the relevant permits;
- g. **Utilities:** The installation of new transmission lines for electric power, communications, natural gas or petroleum products;
- h. **Other Activities:** Each and every other activity or construction project which endangers the natural, scenic, biological, or ecological integrity of the Conservation Easement Area.

5. **Rights of Grantee:** Grantor confers the following rights upon Grantee to perpetually maintain the conservation values of the Conservation Easement Area:

- a. **Right to Enter:** Grantee has the right to enter upon the Conservation Easement Area at reasonable times to monitor or to enforce compliance with this Agreement, provided that such entry shall occur after prior reasonable notice is provided to Grantor. To the extent reasonably practicable, entry shall be made from a public right-of-way. Grantee may not enter upon or unreasonably interfere with the Grantor's use and quiet enjoyment of the Property. Grantee has no right to permit others to enter the Conservation Easement Area. The general public is not granted access to the Conservation Easement Area or the Property under this Agreement.

- b. **Right to Preserve:** Grantee has the right to prevent any activity on or use of the Conservation Easement Area that is inconsistent with the terms or purposes of the Conservation Easement. However, nothing herein is intended to place any restrictions on the use or development of those portions of the Property located outside of the boundaries of the Conservation Easement Area.

- c. **Right to Require Restoration:** Grantee shall have the right to require the restoration of the areas or features of the Conservation Easement Area which are damaged by any activity inconsistent with the requirements of this Agreement. Grantee's rights under this paragraph shall include, and not be limited to, the right to initiate any proceedings and actions in law or equity as are necessary to enforce the terms of this Agreement or facilitate the restoration of the Conservation Easement Area.

- d. **Signs:** Grantee shall have the right to place signs within the Conservation Easement Area which identify the land as being protected by the Conservation Easement. The number, size and content of any such signs are subject to the Grantor's prior approval, which shall not be unreasonably delayed or withheld. Grantee reserves the right to post or clearly mark the boundaries of the Conservation Easement Area at mutually agreed upon locations within the Conservation Easement Area.

6. **Permitted Uses:** Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Conservation Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Conservation Easement Area that are not expressly prohibited herein and are not inconsistent with the purposes of the Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. **Right to Convey:** Grantor retains the right to sell, mortgage, bequeath, donate or otherwise convey the Property, including, without limitation, the Conservation Easement Area. Any conveyance shall remain subject to the terms and conditions of this Agreement and the subsequent interest holder shall be bound by the terms and conditions hereof. Notwithstanding any conveyance of all or any portion of the Property, Grantor shall retain the right to enter upon the Conservation Easement Area as otherwise provided herein for the purpose of complying with the provisions of any applicable permits, provided that to the extent reasonably practicable such entry shall be made from other real property owned by Grantor or from a public right-of-way.

- b. **Right to Access:** Grantor shall retain the right to unimpeded access to the Conservation Easement Area, subject to the provisions of Section 6.a above.

- c. **Limited Encroachment:** Grantor may temporarily encroach into the wetland buffer portion of the Conservation Easement Area in order to facilitate the construction of buildings to be located on that portion of the Property that is found outside of the boundaries of the Conservation Easement Area. Limited removal of trees within the Conservation Easement Area shall be permitted in association with such temporary encroachment. Grantor shall replace any trees within the Conservation Easement Area that have been damaged or removed during construction of these buildings and/or during the permitted temporary encroachment, as follows:
 - i. Trees having a trunk diameter of 4 inches up to 18 inches will be replaced on a one-for-one basis;
 - ii. Trees having a trunk diameter of 18 inches up to 30 inches are to be replaced on a three-for-one basis;
 - iii. Trees having a trunk diameter of 30 inches and over are to be replaced on a five-for-one basis; and
 - iv. Trees with a trunk diameter of less than 4 inches are not required to be replaced.

- c. **Use of Property:** The portions of the Property located outside the boundaries of the Conservation Easement Area are not subject to the restrictions of the Conservation Easement created hereunder. Grantor shall be permitted to use and develop all portions of the Property located outside the boundaries of the Conservation Easement Area without restriction.

7. **Grantee's Remedies:** In the event of a breach of this Agreement, Grantee shall have the following remedies and shall be subject to the following limitations:

- a. **Delay in Enforcement:** A delay in enforcement shall not be construed as a waiver of Grantee's rights to enforce the terms of this Agreement.

- b. **Acts Beyond Grantor's Control:** Grantee may not bring an action against Grantor for modifications to the Conservation

Easement Area which result from causes beyond Grantor's control. Examples include, without limitation, unintentional fires, storms, natural earth movement, trespassers or the Grantor's well-intentioned actions in response to an emergency which result in changes to the Conservation Easement Area. Grantor has no responsibility under this Agreement for such unintended modifications. Grantee may, however, bring an action against another party for modifications that impair the conservation values identified in this Agreement.

- c. **Notice and Demand:** If Grantee determines that a person or entity is in violation of the terms of the Conservation Easement or this Agreement, or that a violation is threatened, then it shall provide written notice via certified mail to such person or entity. The written notice shall identify the violation and request corrective action to cure the violation or restore the relevant real property.

- d. **Failure to Act:** If, for a thirty (30) day period after the date of written notice provided pursuant to subparagraph c. above, the person or entity continues violating the terms of the Conservation Easement or this Agreement, or if the person or entity does not abate the violation or begin to implement corrective measures within the foregoing thirty (30) day period requested by Grantee, or fails to continue diligently to cure such violation until finally cured, Grantee shall be permitted to bring an action in law or in equity to enforce the terms of the Conservation Easement or this Agreement and recover any damages for the loss of the conservation values protected hereunder. Grantee is also entitled to bring an action to enjoin the violation through injunctive relief, seek specific performance, declaratory relief, restitution, reimbursement of expenses or an order compelling restoration of the Conservation Easement Area. If a court determines that the person or entity has failed to comply with the terms of the Conservation Easement or this Agreement, then Grantee may seek an order requiring the person or entity to reimburse all reasonable costs and attorney fees incurred by Grantee in compelling such compliance.

- e. **Unreasonable Litigation:** If Grantee initiates litigation against the Grantor to enforce this Agreement, and if the court determines that the litigation was without reasonable cause or in bad faith, then Grantee is to reimburse the Grantor's reasonable costs and attorneys' fees incurred in defending the action.

- f. **Grantor's Absence:** If Grantee determines that the terms of the Conservation Easement or the Agreement is, or is expected to be, violated, then Grantee will make a good faith effort to notify Grantor. If, through reasonable efforts, Grantor cannot be notified, and if Grantee determines that emergency circumstances exist that justify prompt action to mitigate or prevent impairment of the Conservation Easement, then Grantee may pursue its lawful remedies without prior notice and without awaiting a response from Grantor.
- g. **Cumulative Remedies:** The preceding remedies of Grantee are cumulative. Any, or all, of the remedies may be invoked by Grantee if there is an actual or threatened violation of this Agreement.

8. **Ownership Costs and Liabilities:** Except as otherwise required by this Agreement, in accepting the Conservation Easement Grantee shall have no liability or other obligation for costs, liabilities, taxes or insurance of any kind related to the Conservation Easement Area. Grantee and its administrators, officers, employees, and shall have no liability arising from injury or death to any person or from physical damage to any other property located within the Conservation Easement Area or otherwise.

9. **Remediation:** If, at any time, there occurs, or has occurred, a release in, on, or about the Conservation Easement Area of any substance now or hereafter defined, listed, or otherwise classified, and in excess of any amount permitted pursuant to any federal, state, or local law, regulation, or requirement or in an amount that is hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee, in which case Grantee shall be responsible therefor.

10. **Cessation of Existence:** If Grantee shall cease to be authorized to acquire and hold conservation easements, then this Agreement shall become vested in another qualified entity that is eligible to acquire and hold a conservation easement under Ohio law, upon the mutual consent of Grantor and the Ohio Environmental Protection Agency ("Ohio EPA"). Grantor agrees to execute and deliver such documents and instruments as may be necessary to properly reflect the substitution of the replacement Grantee hereunder.

11. **Termination:** The Conservation Easement may be extinguished only by an unexpected change in condition which causes it to be impossible to fulfill the Conservation Easement's purposes, or by exercise of eminent domain. If subsequent circumstances render the purposes of the Conservation Easement impossible to fulfill,

then the Conservation Easement and this Agreement may be partially or entirely terminated only by judicial proceedings initiated by either Grantor or Grantee.

12. **Recordation:** Grantor shall record this instrument in a timely fashion in the official records of Licking County, Ohio, and Grantee may re-record it at any time as may be required to preserve its rights in this Easement.

13. **Assignment:** This Agreement is transferable, but Grantee may assign its rights and obligations hereunder only to an organization mutually agreed to by the fee simple owner of the Property, Ohio EPA, and the transferee, provided that the organization is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code of 1986, as amended, (or any successor provision then applicable) and authorized to acquire and hold conservation easements under Ohio law. As a condition of such transfer, Grantee shall require that the transferee organization must agree in writing to assume all of Grantee's obligations and duties hereunder and under and to carry out the conservation purposes that this grant is intended to advance. Grantee agrees to give written notice to Grantor of a transfer or an assignment at least (20) days prior to the date of such transfer or assignment and to furnish promptly to Grantor an executed copy of the assignment and assumption agreement to be recorded by Grantee after the expiration of such 20-day notice period in the official records of Licking County, Ohio. The failure of Grantee to give such notice shall not affect the validity of this Agreement nor limit its enforceability in any way.

14. **Liberal Construction:** This Agreement shall be liberally construed in favor of maintaining the conservation values of the Conservation Easement Area. The section headings and subheadings identified herein are for reference purposes only and shall not be used to interpret the meaning of any provision hereof.

15. **Notices:** For purposes of this Agreement, notices may be provided to either party, by personal delivery or by mailing a written notice via certified mail, return receipt requested, to that party at the address shown at the outset of this Agreement, or at the last known address of a party. Notice is deemed given upon (i) personal delivery or (ii) two days after depositing the properly addressed notice with the U.S. Postal Service.

16. **Severability:** If any portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force and effect.

17. **Successors:** This Agreement and the Conservation Easement created hereunder shall be a covenant running with the land and shall constitute a burden on the Conservation Easement Areas and shall run to the benefit of the parties hereto and their respective successors or assigns in interest. All subsequent owners of the Conservation Easement Areas shall be bound to all provisions of this Agreement to the same extent as the current parties.

18. **Termination of Rights and Obligations:** A party's future rights and obligations under this Agreement shall terminate upon the transfer of that party's interest in the Conservation Easement Area. Liability for acts or omissions occurring prior to transfer shall survive any such transfer.

19. **Applicable Law:** This Agreement shall be governed by and construed in accordance with the substantive law of the State of Ohio, irrespective of its conflict of law provisions.

20. **"As Is" Condition:** Grantee has examined the Conservation Easement Area and agrees to accept the "as is" condition of the Property for purposes of this Agreement.

21. **Site Monitoring:** Grantee shall develop a site-monitoring program to ensure the terms of the easement are being upheld. The Conservation Easement Area shall be inspected by Grantee at a minimum of one time annually.

22. **No Merger:** The conservation easement provided under this Agreement is intended to facilitate the perpetual protection of the Conservation Easement Area as provided herein. No easement granted or enjoyed hereunder shall be eliminated through the doctrine of merger as the result of Grantee holding title and/or having ownership of the Conservation Easement Area.

IN WITNESS WHEREOF, Grantor has set its hand to this Agreement as of the dates written below, to be effective as of the Effective Date.

GRANTOR:

MBJ Holdings, LLC, a Delaware limited liability company

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of **MBJ Holdings, LLC**, a Delaware limited liability company, on behalf of said company.

Notary Public

IN WITNESS WHEREOF, Grantee has set its hand to this Agreement as of the dates written below, to be effective as of the Effective Date.

GRANTEE:

CITY OF NEW ALBANY, OHIO,
a municipal corporation

By: _____

Name: _____

Title: _____

Date: _____

STATE OF OHIO
COUNTY OF FRANKLIN

The foregoing instrument was acknowledged before me this ____ day of _____, 2018, by _____, the _____ of the **CITY OF NEW ALBANY, OHIO**, a municipal corporation, on behalf of said municipal corporation.

Notary Public

Approved as to Form:

Mitchell Banchefsky, City Law Director

This instrument prepared by:
Underhill & Hodge LLC
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