



Prepared: 4/26/2019
Introduced: 5/07/2019
Revised:
Adopted: 05/21/2019
Effective: 06/21/2019

ORDINANCE O-14-2019

AN ORDINANCE TO AMEND CHAPTER 1179 "TELECOMMUNICATION FACILITIES", OF THE CITY OF NEW ALBANY, OHIO'S CODIFIED ORDINANCES TO ALIGN WITH THE RECENT UPDATES TO CHAPTER 907 RELATING TO SMALL CELL FACILITIES AND WIRELESS SUPPORT STRUCTURES

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, on December 4, 2018, Council adopted an amendment to codified ordinance Chapter 907 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, the city and its consultants have been working to draft this amendment in order to ensure Chapter 1179 is consistent with the definitions and regulations contained in the recent updates to small cell facilities and wireless support structures found in Chapter 907; and

WHEREAS, the Planning Commission has held a public hearing and received public input into the amendment of the Zoning Ordinance; and

WHEREAS, the Planning Commission recommended approval of the proposed amendments to the Zoning Ordinance.

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 1179 "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.

CERTIFIED AS ADOPTED this 21 day of May, 2019.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Mitchell H. Banchefsky
Law Director

Exhibit A – O-14-2019

CHAPTER 1179 - WIRELESS TELECOMMUNICATION FACILITIES^[33]

TABLE OF CONTENTS

1179.01 - PURPOSE.

1179.02 – APPLICABILITY.

1179.03 - DEFINITIONS.

1179.04 - GENERAL REQUIREMENTS.

1179.05 - NONRESIDENTIAL DISTRICTS.

1179.06 - RESIDENTIAL DISTRICTS AND USES.

1179.07 - CRITERIA FOR A CONDITIONAL USE.

1179.08 - CO-LOCATION REQUIREMENTS.

1179.09 - ABANDONMENT OF TOWER.

1179.10 - VARIANCES AND SPECIAL EXCEPTIONS.

1179.11 - MISCELLANEOUS PROVISIONS.

Footnotes:

--- (33) ---

Editor's note— Ord. O-37-2014 , passed Dec. 16, 2014, amended Ch. 1179, §§ 1179.01—1179.11, in effect repealing and reenacting said chapter as set out herein. Former Ch. 1179 pertained to similar subject matter and derived from Ord. 18-97, passed Oct. 6, 1998.

1179.01 - PURPOSE.

This chapter provides for the regulation of the placement, construction and modification of ~~tower~~Towers and ~~wireless-telecommunications-facilities~~Wireless Telecommunications Facilities in order to protect the health, safety and welfare of the public, while at the same time not unreasonably interfering with the development of the competitive wireless telecommunications marketplace in the City. Specifically:

- a) To direct the location of ~~tower~~Towers and ~~wireless-telecommunications-facilities~~Wireless Telecommunications Facilities in the City;
- b) To protect residential areas and land uses from potential adverse impacts of ~~tower~~Towers and ~~wireless-telecommunications-facilities~~Wireless Telecommunications Facilities;
- c) To minimize adverse visual impacts of ~~tower~~Towers and ~~wireless-telecommunications-facilities~~Wireless Telecommunications Facilities through careful design, siting, landscaping and innovative camouflaging techniques;
- d) To promote and encourage shared use/co-location of ~~tower~~Towers and ~~antenna-support~~

~~structure~~wireless support structures as a primary option rather than construction of additional single use ~~tower~~Towers;

- e) To avoid potential damage to adjacent properties caused by ~~tower~~Towers and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities by ensuring such structures are soundly and carefully designed, constructed, modified, maintained and removed;
- f) To the greatest extent feasible, ensure that ~~tower~~Towers and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities are compatible with surrounding land uses;
- g) To the greatest extent feasible, ensure that proposed ~~tower~~Towers and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities are designed in harmony with natural setting and in a manner consistent with current development patterns.

(Ord. O-37-2014 . Passed 12-16-14.)

1179.02 – APPLICABILITY.

- a) The provisions of this chapter shall apply to all ~~tower~~Towers, ~~antenna-support-structure~~wireless support structures and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities, unless such support structures or facilities are small cell facilities located in the City Rights-of-Way or wireless support structures located in the City Rights-of-Way, as such terms are defined by Code Section 907.01, located in the City Rights-of-Way, in such instance Chapter 907 of the Code shall apply. Nothing herein shall affect the applicability of Ohio Revised C-Code Chapter 4939 to small cell facilities and wireless support structures in City Rights-of-Way. Wireless Facilities Zoning shall not apply to small cell facilities located in the City Rights-of-Way and wireless support structures located in the City Rights-of-Way.
- b) Except as provided herein, any use being made of an existing ~~tower~~Tower or ~~antenna-support-structure~~wireless support structure subject to this chapter on the effective date of this chapter (herein "Non-conforming Structures") shall be allowed to continue, even if in conflict with the terms of this chapter. Any ~~tower~~Tower site that has received City approval in the form of either a variance or building permit, but has not yet been constructed or located, shall be considered a Non-conforming Structure so long as such approval is current and not expired.

(Ord. O-37-2014 . Passed 12-16-14.)

1179.03 - DEFINITIONS.

For purposes of this chapter, the following terms, phrases and their derivations shall have the meanings given herein. When not inconsistent with the context, words used 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.

- a) "Antenna" means any transmitting or receiving device used in communications that radiates or captures electromagnetic waves, digital signals, analog signals, radio frequencies, wireless communication signals, or other communication signals.
- ~~(2) "Antenna-support-structure" means any building, poles (utility poles, light poles or traffic signal poles) then currently in place having been previously constructed for a primary purpose other than supporting wireless telecommunications facilities~~Wireless Telecommunications Facilities, or other structure other than a tower which can be used for location of wireless telecommunications facilitiesWireless Telecommunications Facilities.
- b) "Applicant" means any person that applied for a conditional use permit pursuant to Section 1179.07.

- c) "Application" means the process by which an applicant submits a request and indicates a desire to be granted a conditional use permit under the provisions of this chapter. An application includes all written documentation, verbal statements and representations, in whatever form or forms made by an applicant to the City concerning such a request.
- ~~(5) "Cable Microcell Network" or "CMN" means a wireless telecommunications facility~~Wireless Telecommunications Facility ~~characterized by small antennas and equipment cabinets, and typically located on a small diameter monopole; on an existing or replacement street light, power pole, sign, or other suitable structure; or on an existing building.~~
- d) "Code" means City Codified Ordinances.
- e) "Co-location" means the use of a ~~wireless telecommunications facility~~Wireless Telecommunications Facility by more than one wireless telecommunications provider.
- f) "Council" means the Municipal Council.
- ~~(9) "Distributed Antenna System" or "DAS" means a network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure which also may or may not contain fiber optic transport and/or landline components.~~
- g) "Emergency" means a reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.
- h) "Engineer" means any engineer licensed by the State of Ohio.
- i) "Equipment Shelter" means a structure in which the electronic receiving and relay equipment for a ~~wireless telecommunications facility~~Wireless Telecommunications Facility is housed.
- j) "FCC" means the Federal Communications Commission or any legally appointed, designated or elected agent or successor.
- k) "Height" means, when referring to a ~~tower~~Tower or other ~~antenna support structure~~wireless support structure, the distance measured from the finished grade at the base of the ~~tower~~Tower or wireless support structure structure to the highest point on the ~~tower~~Tower or wireless support structure structure, including the base pad and any ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities, but not including lightning arrest devices.
- l) "Monopole" means a support structure constructed of a single, self-supporting hollow metal tube or other appropriate pole like structure securely anchored to a foundation.
- m) "City" means the City of New Albany, a municipal corporation, in the State of Ohio, acting by and through its Council.
- n) "Open Space" means land devoted to conservation of recreational purposes and/or land designated by the City to remain undeveloped (may be specified on a zoning map).
- o) "Person" means any natural persons, firm, partnership, association, corporation, company or other legal entity, private or public, whether for profit or not for-profit.
- p) "Right(s)-of-Way" means the public ~~Rights-of-way~~Way within the City as defined by Code Section 907.01(c)62.
- ~~(q) "Small Cell Facility" means the same as defined by Code Section 907.01(c)67.~~
- r) "Tower" means a self-supporting lattice, guyed, monopole, or other structure constructed from grade which is built for the sole or primary purpose of supporting ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities. The term "~~tower~~Tower" shall not include amateur radio operators' equipment, as licensed by the FCC or poles (utility poles, light poles or traffic signal poles) then currently in place having been previously constructed for a primary purpose other than supporting ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities.

(s) "Wireless Support Structure" means the same as defined by Code Section 907.01(c)87.

(t) "Wireless telecommunications facilitiesWireless Telecommunications Facilities" means any cables, wires, lines, wave guides, antennas and any other equipment or facilities associated with the transmission or reception of communications as authorized by the FCC which a person seeks to locate or has installed upon a towerTower or antenna support structurewireless support structure. However, the term "wireless telecommunications facilitiesWireless Telecommunications Facilities" shall not include:

- (1). Any satellite earth station antenna two (2) meters in diameter or less which are located in an area zoned industrial or commercial;
- (2) Any satellite earth station antenna one meter or less in diameter, regardless of zoning category; or
- (3) Antennas used by amateur radio operators ~~are excluded from this definition.~~

(Ord. O-37-2014 . Passed 12-16-14.)

1179.04 - GENERAL REQUIREMENTS.

(a) Permitted, Conditional and Prohibited Use . Wireless telecommunications facilitiesWireless Telecommunications Facilities subject to this Chapter 1179 are either permitted uses, conditional uses or prohibited uses in a variety of zoning districts contingent upon a number of requirements being met. These criteria are in place in an attempt to minimize adverse health, safety, public welfare or visual impacts through buffering, siting, design and construction, and reduction of the need for new towerTowers.

(b) Requirements of Wireless Telecommunications FacilitiesWireless Telecommunications Facilities . The following requirements apply to all wireless telecommunications facilitiesWireless Telecommunications Facilities subject to this Chapter 1179 regardless of the zoning district in which they are to be located. These general standards are to be supplemented with the specific regulations for nonresidential districts as set forth in Sections 1179.05 and 1179.06. Small cell facilities and wireless support structures located in City Rights-of-Way and subject to the requirements of Chapter 907 of the Code are not subject to zoning ~~review or~~ approval; and therefore do not require a zoning permit.

(1) Each Applicant for a wireless telecommunications facilityWireless Telecommunications Facility and/or towerTower subject to this chapter shall provide to the City an inventory of its existing towerTowers, wireless telecommunications facilitiesWireless Telecommunications Facilities, or sites planned and/or approved for towerTowers or wireless telecommunications facilitiesWireless Telecommunications Facilities, including its existing small cell facilities and wireless support structures, that are either within the jurisdiction of the City or within two (2) miles of the border thereof, including specific information about the location, height and design of each towerTower and wireless telecommunications facilityWireless Telecommunications Facilityies. The City may share such information with other applicants Applicants seeking to locate antennas within the jurisdiction of the City, provided, however, that the City is not, by sharing such information, in any way representing or warranting that such sites are available or suitable.

(2) Towers and wireless telecommunications facilitiesWireless Telecommunications Facilities subject to this chapter shall meet the following requirements:

- A. Towers are a prohibited use/structure in the Right(s) ~~of of~~-Way in all zoning districts within the City.
- B. Tower color and finish . Towers shall either maintain a non-contrasting gray or similar neutral color or have a galvanized steel finish unless otherwise required by the City or any applicable standards of the Federal Aviation Administration ("FAA") or the Ohio

Department of Transportation)"ODOT"(.

- C. Compatible design . At a ~~tower~~Tower site, the design of the buildings and related structures shall use materials, colors, textures and screening so as to be aesthetically and architecturally compatible with the surrounding environment, as approved by the City. All equipment shall be within a shelter or be screened by landscaping, subject to staff review and in accordance with Code section 1171.05, from all public Rights-of-Way and residentially zoned properties, subject to staff review.
- D. Antenna color . If a ~~wireless telecommunications facility~~Wireless Telecommunications Facility is installed on an ~~antenna support structure~~wireless support structure or ~~tower~~Tower, the ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities and supporting electrical and mechanical equipment must be a neutral color that is identical to, or closely compatible with the color of the ~~antenna support structure~~wireless support structure or ~~tower~~Tower so as to make the ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities as visually unobtrusive as possible, as determined by the City.
- E. Fencing . Any fencing shall comply with the City's Code.
- F. Lighting . Towers and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities shall not be artificially lighted, unless required by the FAA or other applicable authority. If lighting is required, the lighting alternatives and design chosen must cause the least disturbance to the surrounding views.
- G. State or federal requirements . All ~~tower~~Towers must meet or exceed current standards and regulations for the FAA, the FCC and any other agency of the state or federal government with the authority to regulate ~~tower~~Towers and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities. If such standards and regulations are changed, then the owners of the ~~tower~~Towers and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities governed by the Chapter shall bring such ~~tower~~Towers and antennas into compliance with such revised standards within six (6) months of the effective date of such standards and regulations, unless a different compliance schedule is mandated by the controlling state or federal agency. Failure to bring ~~tower~~Towers and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities into compliance with such revised standards and regulations shall constitute grounds for the removal of the ~~tower~~Tower and/or ~~wireless telecommunications facility~~Wireless Telecommunications Facility at the owner's expense.
- H. Building codes; safety standards . To ensure the structural integrity of ~~tower~~Towers, the owner of a ~~tower~~Tower shall ensure that it is maintained in compliance with standards contained in applicable state or local building codes and the applicable standards for ~~tower~~Towers that are published by the Electronics Industries Association, as amended from time to time. If, upon inspection, the City concludes that a ~~tower~~Tower fails to comply with such codes and standards and constitutes a danger to persons or property, then upon notice being provided to the owner of the ~~tower~~Tower, the owner shall have thirty (30) days to bring such ~~tower~~Tower into compliance with such standards. Failure to bring such ~~tower~~Tower into compliance within said thirty (30) days shall constitute grounds for the removal of the ~~tower~~Tower or antenna at the owner's expense.
- I. Nonessential services . Towers and ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities shall be regulated and permitted pursuant to this ~~c~~Chapter and shall not be regulated or permitted as essential services, public utilities or private utilities.
- J. License to operate . Owners and operators of ~~tower~~Towers or ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities shall submit copies of all franchises, certifications, licenses and permits required by law for the

design, construction, location and operation of wireless communications in the City. Owners and/or operators shall be required to maintain same and to provide evidence of removal or extension thereof when granted.

- K. Signs. No signs shall be allowed on a ~~wireless telecommunications facility~~ Wireless Telecommunications Facility or ~~tower~~ Tower. A notification sign shall be posted indicating the emergency contact phone number. Any such emergency notification signage shall be non-illuminated and not larger than two (2) feet x three (3) feet.
 - L. Historic register/district. Any application to locate a ~~tower~~ Tower or a ~~wireless telecommunications facility~~ Wireless Telecommunications Facility that is subject to this ~~c~~Chapter and is on a parcel that contains a building or structure that is listed on a historic register, or is in a historic district, or is attached to building or structure that is listed on a historic register acting as an ~~antenna-support-structure~~ wireless support structure, shall require the filing of a Certificate of Appropriateness application for review by the City's Architectural Review Board, as such terms are defined in Code section 1157.03, in addition to any other required review process.
 - M. Underground equipment shelters. Underground equipment shelters ~~shall~~ will be required where appropriate screening of shelter cannot be accomplished.
 - N. Accommodation. All ~~tower~~ Towers shall be constructed or reconstructed to accommodate multiple users.
 - O. Maximum height. No ~~tower~~ Tower shall exceed two hundred (200) feet, in height.
- (c) Permitted Ancillary Use. Any ~~wireless telecommunications facilities~~ Wireless Telecommunications Facilities ~~subject to this chapter that which~~ are not attached to a ~~tower~~ Tower shall be a permitted ancillary use (permitted use) to any commercial, industrial, office, community facilities, institutional, or multi-family structure, or other ~~antenna-support-structure~~ wireless support structure, regardless of the zoning restrictions applicable to the zoning district where the structure is located and without having to obtain any prior authorization from the City; provided that the person making such ancillary use files a written certification with the City establishing the following:
- (1) That the total height of the ~~antenna-support-structure~~ wireless support structure and ~~wireless telecommunications facility~~ Wireless Telecommunications Facility does not exceed the structural height limitations in the applicable zoning district more than twenty (20) feet;
 - (2) That the ~~antenna-support-structure~~ wireless support structure and ~~wireless telecommunications facilities~~ Wireless Telecommunications Facilities comply with the Ohio Basic Building Code, as incorporated in Code chapter 1321;
 - (3) That any ~~wireless telecommunications facilities~~ Wireless Telecommunications Facilities and their appurtenances, located on the roof of a building, are set back one (1) foot from the edge of the roof, not including for the penthouse, for each one (1) foot in height of the ~~wireless telecommunications facilities~~ Wireless Telecommunications Facilities. However, this setback requirement shall not apply to antennas less than two (2) inches in thickness, which are mounted to the sides of ~~antenna-support-structure~~ wireless support structures, but which do not protrude more than six (6) inches from the side of such an ~~antenna-support-structure~~ wireless support structure. This requirement is subject to change by the ~~City~~ Planning Commission upon review of the photo simulation provided in compliance with this subsection.
 - (4) That the ~~wireless telecommunications facilities~~ Wireless Telecommunications Facilities will utilize camouflaging techniques or will be side-mounted to an ~~antenna-support-structure~~ wireless support structure ~~in-order-so~~ that the ~~wireless telecommunications facilities~~ Wireless Telecommunications Facilities harmonize with the character and environment of the area in which they are located.

(Ord. O-37-2014 . Passed 12-16-14)

1179.05 - NONRESIDENTIAL DISTRICTS.

Towers and wireless telecommunication facilities proposed for the following zoning districts - industrial, commercial and community facilities - with the exception of small cell facilities and wireless support structures governed by Chapter 907, are subject to the following conditions:

- a) Tower-Sole Use on a Lot . A Tower is permitted as a sole use on a lot subject to the following:
- (1) Minimum yard requirements . Tower: ~~Unless the A tower~~ Tower is equal to or less ~~greater than fifty (50) feet in height and being used solely for DAS or CMN, the~~ shall be set back a ~~minimum distance to any single-family or two- family residential use or district lot line~~ shall be of ~~two hundred (200) feet. A. A DAS or CMN tower~~ Tower that is equal to or less than fifty (50) feet in height shall be set back a minimum distance to any single-family or two-family residential use or district lot line equal to the height of the tower Tower plus twenty (20) feet.
 - (2) Maximum size of equipment shelter . Four hundred (400) square feet for a single shelter, or, if there is more than one, eight hundred (800) total square feet.
- b) Tower-Combined Tower On a Property with Another Use . A ~~tower~~ Tower is permitted on a property with ~~another existing~~ use subject to the following conditions:
- (1) The existing or future use on the property may be any permitted use in the district or any lawful non-conforming use, and need not be affiliated with the wireless telecommunications provider. The ~~tower~~ Tower will not be considered an addition to the structure or value of a non-conforming use.
 - (2) The ~~tower~~ Tower and all ~~wireless—telecommunications—facilities~~ Wireless Telecommunications Facilities shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance (except during construction or an emergency).
 - (3) Minimum lot area . The minimum lot area shall be the area needed to accommodate the ~~tower~~ Tower (and guy wires, if used), the equipment shelter, security fencing and buffer planting.
 - (4) Minimum yard requirements . Tower: ~~Unless the A tower~~ Tower is equal to or less ~~greater than fifty (50) feet in height and being used solely for DAS or CMN, the~~ shall be set back a ~~minimum distance to any single-family or two-family residential use or district lot line~~ shall be ~~of by e~~ two hundred (200) feet. A. A DAS or CMN tower Tower that is equal to or less than fifty (50) feet in height shall be set back a minimum distance to any single-family or two-family residential use or district lot line equal to the height of the tower Tower plus twenty (20) feet.
 - (5) Access . The service to the equipment shelter shall, whenever feasible, be provided along the circulation driveways of the existing use.
 - (6) Maximum size of equipment shelter . Four hundred (400) square feet for a single shelter, or if there is more than one, eight hundred (800) square feet.
- c) Wireless Telecommunications Facilities ~~Wireless Telecommunications Facilities-Combined with an~~ Facilities Attached to an Existing Structure . A ~~wireless telecommunications facility~~ Wireless Telecommunications Facility ~~shall be attached to an existing structure or building~~ shall be permitted subject to the following conditions:
- (1) Maximum height . Twenty (20) feet or twenty percent (20%) of the building height above the existing building or structure, whichever is greater.
 - (2) If the ~~applicant~~ Applicant proposes to locate the ~~wireless—telecommunications facility~~ Wireless Telecommunications Facility in a separate equipment shelter (not located on,

or attached to the building or structure), the equipment shelter shall comply with all of the following:

- A. A minimum setback of fifty (50) feet from all property lines.
- B. A buffer yard shall be planted in accordance with this Code.
- C. Vehicular access to the shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.
- D. That maximum size of the equipment shelter shall not exceed four hundred (400) square feet, or, if there is more than one, eight hundred (800) square feet.

(Ord. O-37-2014 . Passed 12-16-14)

1179.06 - RESIDENTIAL DISTRICTS AND USES.

~~)a(Wireless telecommunications facilities~~Wireless Telecommunications Facilities that include ~~tower~~Towers and are subject to this ~~Chapter~~chapter are not permitted in single-family or two-family residential districts, including single-family and two-family residential districts within Planned Unit Development districts in accordance with Code chapter 1159, and any property with a residential use, or within mixed-residential districts.

~~)b(, with the exception of placement~~Wireless telecommunications facilitiesWireless Telecommunications Facilities that include ~~tower~~Towers, and are subject to this ~~c~~Chapter, are permitted aser-a conditional use on any property with an Agricultural Use, as defined by Code section 1129.02, or institutional use (e.g., ~~church~~religious, education, recreation, government, park, library, municipal government, hospital, school, utility).

~~)c(However, w~~Wireless telecommunications facilitiesWireless Telecommunications Facilities attached to existing buildings or ~~antenna support structure~~wireless support structures within such residential zoning districts may be allowed as a conditional use. In applying for a conditional use approval in any district, the ~~applicant~~Applicant must present sufficient evidence as to why it is not technically feasible to locate in a more appropriate nonresidential zone. Once those efforts have been exhausted, a ~~wireless telecommunications facility~~Wireless Telecommunications Facility may be located in a residential district subject to the following conditions:

~~)d(The wireless telecommunications facility~~Wireless Telecommunications Facility shall be fully automated and unattended on a daily basis, and shall be visited only for periodic and necessary maintenance. This shall apply to (b), (c), (d) and (e) below.

~~)e(Wireless Telecommunications Facilities~~Wireless Telecommunications Facilities-Combined with a Nonresidential UseFacilities Attached to an Agricultural or Institutional Use Structure. Wireless telecommunications facilitiesWireless Telecommunications Facilities may be attached to an nonresidential buildin agricultural use structure or ginstitutional use structure (e.g., church, school, library, park) or an antenna support structurewireless support structure with approval of a conditional use application by the Ceity's pPlanning Ccommission, that it is a permitted use in the district; including, but not limited to, ~~a church~~religious, a municipal or governmental building or facility, agricultural buildingschool building, and a building or structure owned by a utility. In addition, Tthe following conditions shall be met:

(1) Maximum height: twenty (20) feet above the existing building or structure.

(2) If the ~~applicant~~Applicant proposes to locate any ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities in a separate equipment shelter, the equipment shelter shall comply with all of the following:

- A. The equipment shelter shall comply with the minimum property line setback of thirty (30) feet from any property line.
- B. The maximum size of the equipment shelter shall not exceed four hundred (400) square

feet, or, if there is more than one, eight hundred (800) square feet.

- C. A buffer yard shall be planted in accordance with this chapter.
- D. Vehicular access to the equipment shelter shall not interfere with the parking or vehicular circulation on the site for the principal use.

f) Tower-Located on a Nonresidential Agricultural Use or Institutional Use Property. A ~~tower~~Tower to support a ~~wireless telecommunications facility~~Wireless Telecommunications Facility may be constructed on a property with an ~~nonresidential agricultural use or institutional use~~ that is a permitted use within the district, including but not limited to ~~religious a church, hospital, school, and a~~ municipal or government building, facility or structure, ~~agricultural use and a utility use~~, subject to the following conditions and approval of a conditional use application by the City's Planning Commission:

- (1) ~~Unless the A tower~~Tower ~~is equal to or less~~greater than fifty (50) feet in height ~~and being used solely for DAS or CMN, the tower~~Tower shall be ~~set back~~set back from any property line abutting a single-family or two-family residential lot by two hundred (200) feet. A ~~DAS or CMN tower~~Tower that is equal to or less than fifty (50) feet in height shall be set back from any property line abutting a single-family or two-family residential lot by an amount equal to the height of the ~~tower~~Tower plus twenty (20) feet.
- (2) The maximum size of the equipment shelter shall not exceed four hundred (400) square feet, or, if there is more than one, eight hundred (800) square feet.
- (3) Vehicular access to the ~~tower~~Tower and equipment shelter shall, whenever feasible, be provided along the circulation driveway of the existing use.
- (4) In order to locate a ~~tower~~Tower on a property that is vacant or with an agricultural use, the tract shall be at least two and one-half (2.5) acres, or as otherwise determined by the ~~pPlanning~~ Commission, unless the ~~tower~~Tower is equal to or less than fifty (50) feet in height ~~and being used solely for DAS or CMN~~, then the tract shall be at least one-quarter ~~.25~~ acres, or as otherwise determined by the ~~pPlanning~~ Commission.

g) Wireless Telecommunications Facility~~Wireless Telecommunications Facility-Located on a Facility Attached to a Multi-family Residential Building~~. A ~~wireless telecommunications facility~~Wireless Telecommunications Facility may be attached to a mid-rise or high-rise ~~multi-family~~ apartment building subject to the following conditions and approval of a conditional use application by the City's Planning Commission:

- (1) Maximum height: ~~twenty~~ (20) feet above the existing building.
- (2) If the ~~applicant~~Applicant proposes to locate the ~~wireless telecommunications facility~~Wireless Telecommunications Facility in a separate equipment shelter (not located in, or attached to the building), the equipment shelter shall comply with the all of following:
 - A. The shelter shall comply with the minimum property line setback of thirty (30) feet from any property line.
 - B. The maximum size of the equipment shelter shall not exceed four hundred (400) square feet, or, if there is more than one, eight hundred (800) square feet.
 - C. A buffer yard shall be planted in accordance with this chapter.
 - D. Vehicular access to the equipment shelter shall, if at all possible, use the existing circulation system.

h) Tower Located in Park and Open Space. A ~~tower~~Tower is permitted on land that has been established as a permanent Open space~~Space~~, or park subject to the following conditions:

- (1) The Open Space shall be owned by the City, county or state government, a homeowners association, charitable organization, or a private non-profit conservation organization.
- (2) The maximum size of the equipment shelter shall not exceed four hundred (400) square

feet, or, if there is more than one, eight hundred (800) square feet.

- (3) ~~Unless the~~A tower~~Tower is equal to or less~~greater than fifty (50) feet in height ~~and being used solely for DAS or CMN, the tower~~Tower shall be ~~set back~~set back from any single-family or two-family property line two hundred (200) feet. A ~~DAS or CMN tower~~Tower that is equal to or less than fifty (50) feet in height shall be set back from any single-family or two-family property line by an amount equal to the height of the ~~tower~~Tower plus twenty (20) feet.

(Ord. O-37-2014 . Passed 12-16-14)

1179.07 - CRITERIA FOR A CONDITIONAL USE.

- (a) ~~Wireless Telecommunications Facility~~Wireless Telecommunications Facility - Tower. A ~~wireless telecommunications facility~~Wireless Telecommunications Facility which ~~that~~ includes a ~~T~~tower~~Tower~~ and is subject to this ~~C~~chapter may be permitted as a conditional use in a residential or commercial district. In order to be considered for review, the ~~applicant~~Applicant must prove that a newly constructed ~~tower~~Tower is necessary because co-location ~~or on~~ an existing ~~tower~~Tower is not feasible in accordance with Section 1179.08. The following steps must also be taken for the application to be considered for review in this category:
- (1) The Applicant shall demonstrate that the Tower must be located where it is proposed in order to ~~service~~ the ~~applicant's~~Applicant's service area. There shall be an explanation of why a Tower and this proposed site is technically necessary.
 - (2) Where the ~~wireless telecommunications facility~~Wireless Telecommunications Facility is located on a property with another principal use, the ~~applicant~~Applicant shall present documentation that the owner of the property supports the application and that ~~the~~ vehicular access is provided to the facility.
 - (3) The ~~A~~applicant shall present a site/landscaping plan showing the specific placement of the ~~wireless telecommunications facility~~Wireless Telecommunications Facilityies on the site; showing the location of existing structure~~(s)~~, trees and other significant site features; and indicating type and locations of plant materials used to screen the facility~~ies~~, and the proposed color of the facility~~ies~~.
 - (4) Applicant shall present a signed statement indicating:
 - A. The ~~A~~applicant agrees to allow for the potential co-location of additional ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities by other providers on the ~~A~~applicant's structure or within the same ~~site~~Wireless Telecommunication Facility location; and
 - B. That the ~~applicant~~Applicant agrees to remove the facility within one hundred eighty (180) days after the ~~Wireless Telecommunication Facility's~~site's use is discontinued.
- (b) A conditional use permit must be approved by the ~~City Planning~~planning Commission with a subsequent building permit issued for construction of new Towers in nonindustrial districts. Co-location of antennas on a single ~~tower~~Tower, antennas attached to existing structures/buildings, ~~tower~~Towers located in industrial districts, or replacement ~~tower~~Towers to be constructed at the site of a current ~~tower~~Tower are permitted uses and will not be subject to the conditional use permitting process.
- (c) Any decision to deny a request to place, construct or modify a ~~wireless telecommunications facility~~Wireless Telecommunications Facility and/or ~~tower~~Tower shall be in writing and supported by evidence contained in a written record of the proceedings of the ~~City~~ pPlanning Commission~~commission~~.

(Ord. O-37-2014 . Passed 12-16-14.)

1179.08 - CO-LOCATION REQUIREMENTS.

(a) Public Property First.

- (1) In order to encourage the location of ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities on publicly-owned property, the City shall undertake an identification of publicly-owned properties that the City determines are suitable for such use. The City shall regularly update such identification and make the results of such identification available to the public.
 - (2) Persons locating ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities upon such identified publicly-owned properties shall be exempt from the requirements herein regarding presentation of proof that co-location of facilities on ~~tower~~Towers or structures owned by other Persons or in other locations is not available. However, persons locating ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities subject to this ~~C~~chapter on publicly owned properties shall continue to be subject to the requirements contained in subsection (b) hereof. Persons locating small cell facilities on publicly owned properties in the City Right-of-way are subject to Chapter 907 of the Code.
 - (3) In addition, persons locating ~~wireless telecommunications facilities~~Wireless Telecommunications Facilities subject to this ~~c~~Chapter on publicly-owned properties identified by the City to be suitable for such purposes shall be exempt from the requirements of Sections 1179.01 and 1179.07 (a)(2).
- (b) No new ~~tower~~Tower, unless the ~~tower~~Tower is equal to or less than fifty (50) feet in height ~~and being used solely for DAS or CMN~~, shall be constructed in the City unless such ~~tower~~Tower is capable of accommodating at least one additional ~~wireless telecommunications facility~~Wireless Telecommunications Facility owned by other persons.
- (c) A conditional use permit shall be issued only if there is not technically suitable space reasonably available on an existing ~~tower~~Tower or structure within the coverage area to be served. With the permit application, the Applicant shall list the location of every ~~tower~~Tower or ~~antenna support~~wireless support structure, or structure within the coverage area that could support the proposed antenna. The Applicant must demonstrate that a technically suitable location is not reasonably available on an existing ~~tower~~Tower or ~~antenna support structure~~wireless support structure. If another ~~tower~~Tower or ~~antenna support structure~~wireless support structure is technically suitable, Applicant must show that it has ~~offered to allow the owner~~reasonably attempted to co-locate the ~~wireless telecommunications facility~~Wireless Telecommunications Facility on ~~the another tower or wireless support structure~~ within the City ~~owned by Applicant on reciprocal terms, and the offer was not accepted, or the other tower is presumed to be~~but co-location was not reasonably available ~~on the tower or wireless support structure~~.

(Ord. O-37-2014 . Passed 12-16-14.)

1179.09 ABANDONMENT OF TOWER.

- (a) All providers utilizing ~~tower~~Towers subject to this ~~c~~Chapter shall present a report to the city manager or designee notifying him/ ~~her~~ of any ~~wireless telecommunications facility~~Wireless Telecommunications Facility located in the City whose use will be discontinued and the date this use will cease. If at any time the use of the ~~wireless telecommunications facility~~Wireless Telecommunications Facility is decommissioned for one hundred eighty (180) days, the city manager or designee may declare the ~~wireless telecommunications facility~~Wireless Telecommunications Facility abandoned. ~~)This~~this excludes any dormancy period between construction and the initial use of the ~~wireless telecommunications facility~~Wireless Telecommunications Facility). The ~~wireless telecommunications facility~~Wireless Telecommunications Facility.

~~Telecommunications Facility~~'s owner/operator will receive written notice from the city manager and be instructed to either reactivate the ~~wireless-telecommunications-facility~~Wireless Telecommunications Facility's use within one hundred eighty (180) days, or dismantle and remove the ~~wireless-telecommunications-facility~~Wireless Telecommunications Facility. If reactivation or dismantling does not occur, the City will remove or will contract to have removed the ~~wireless-telecommunications-facility~~Wireless Telecommunications Facility and assess the owner/operator the costs.

- (b) The City must provide the ~~tower~~Tower owner three (3) months' notice and an opportunity to be heard before the Council before initiating such action. After such notice has been provided, the City shall have the authority to initiate proceedings to either acquire the ~~tower~~Tower and any appurtenances attached thereto at the then fair market value, or in the alternative, order the demolition of the ~~tower~~Tower and all appurtenances.
- (c) The City shall provide the ~~tower~~Tower owner with the right to a public hearing before Council, which public hearing shall follow the three (3) month notice required in Section 1179.09(b). All interested parties shall be allowed an opportunity to be heard at the public hearing.
- (d) After a public hearing is held pursuant to Section 1179.09(c), the Council may order the acquisition or demolition of the ~~tower~~Tower. The City may require Licensee to pay for all expenses necessary to acquire or demolish the ~~tower~~Tower.

(Ord. O-37-2014 . Passed 12-16-14.)

1179.10 - VARIANCES AND SPECIAL EXCEPTIONS.

Any request to deviate from any requirements of this ~~c~~Chapter shall require variance approval in conformance with the procedures set forth in the Zoning Code, unless otherwise required by state or federal law, rule or regulation.

(Ord. O-37-2014 . Passed 12-16-14.)

1179.11 - MISCELLANEOUS PROVISIONS.

- (a) Non-Waiver. Nothing in this chapter shall preclude the City from exercising any right or remedy it may have in law or equity to enforce the terms and conditions of this chapter.
- (b) Severability. If any provision of this chapter or the application of any provision of this chapter to any person is, to any extent, held invalid or unenforceable by a tribunal of competent jurisdiction, the remainder of this chapter and the application of such provision to other persons or circumstances shall not be affected by such holding. In case of such an event, this chapter and all of its remaining provisions shall, in all other respects, continue to be effective. In the event the law invalidating such a ~~Chapter-chapter~~ provision subsequently repealed, rescinded, amended or is otherwise changed so that the provision ~~which-that~~ had previously been held invalid or unenforceable, no longer conflicts with the laws, rules or regulations then in effect, the previously invalid or unenforceable provision shall return to full force and effect.
- (c) Performance Bond.
 - (1) All Tower owners subject to this ~~Chapter-chapter~~ shall purchase for the benefit of the City, a performance bond to assure that the terms and conditions of this ~~c~~Chapter are complied with, including repair and removal. The performance bond shall be in a form approved by the ~~m~~Municipal ~~Attorney-attorney~~ and shall be in an amount no less than ten percent (10%) of the construction value of the ~~tower~~Towers as estimated by the City at the time of issuance of a building permit.
 - (2) The City may draw upon the performance bond for recovery of any cost or damages it incurs

arising from a ~~tower~~Tower-owner's violation of this chapter, or the abandonment or discontinuance of use of a ~~tower~~Tower.

- (3) The requirement to maintain a performance bond under this subsection shall cease only upon a written determination by the City that the maintenance of the bond is no longer necessary.

(Ord. O-37-2014 . Passed 12-16-14.)



Prepared: 04/18/2019
Introduced: 05/21/2019
Revised:
Adopted: 05/21/2019
Effective: 05/21/2019

RESOLUTION R-27-2019

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF AN AMENDED AND RESTATED COMMUNITY REINVESTMENT AREA AGREEMENT, AN AMENDMENT TO A TAX INCREMENT FINANCING AGREEMENT AND AN AMENDMENT TO A DEVELOPMENT AND SUPPLY AGREEMENT, ALL WITH SIDECAT LLC

WHEREAS, Sidecat LLC (the "Company") previously acquired land in the City of New Albany (the "Project Site") for development of data centers and related facilities (the "Project"), and in support of the development of the Project the City and the Company entered into a Community Reinvestment Area Agreement dated August 14, 2017 (the "Original CRA Agreement"), a Tax Increment Financing Agreement dated August 14, 2017 (the "Original TIF Agreement"), and a Development and Supply Agreement dated August 14, 2017 (the "Original Development and Supply Agreement"), all pursuant to City Resolution No. R-32-2017 adopted July 31, 2017; and

WHEREAS, the Company intends to acquire additional land (the "Additional Land") for the Project and the City and the Company desire to amend the Original CRA Agreement, the Original TIF Agreement and the Original Development and Supply Agreement to reflect and incorporate this Additional Land; and

WHEREAS, Council previously created the current Oak Grove II Community Reinvestment Area by its Resolution No. R-17-09 adopted March 3, 2009, as supplemented by its Resolutions No. R-41-10 adopted July 6, 2010, No. R-72-10 adopted November 16, 2010, No. R-53-12 adopted October 12, 2012, No. R-26-13 adopted July 16, 2013, No. R-72-14 adopted September 9, 2014, No. R-49-2015 adopted November 17, 2015, No. R-45-16 adopted November 1, 2016, and No. R-02-17 adopted February 7, 2017; and

WHEREAS, Council adopted Resolution No. R-05-2019 on February 19, 2019 to further amend and supplement the designation of the Oak Grove II Community Investment Area Original Area to include the Additional Land, and the Ohio Development Services Agency (as successor to the Ohio Department of Development) has determined and certified that the aforementioned Area, amended to include the Additional Land, contains the characteristics set forth in Ohio Revised Code Section 3735.66 and confirmed that Area, including the Additional Land, as a "Community Reinvestment Area" pursuant to that Section 3735.66; and

WHEREAS, the Company has submitted to the City an application for the Amended and Restated CRA Agreement referred to in Section 1 of this Resolution (the "Agreement Application") and has remitted with the Agreement Application the required State application fee of to be forwarded to the Ohio Development Services Agency with a copy of the final Amended and Restated CRA Agreement; and

WHEREAS, the City's Housing Officer, duly designated under Ohio Revised Code Section 3735.65, has reviewed the Agreement Application and has recommended the same to City Council on the basis that the Company is qualified by financial responsibility and business experience to create and preserve employment opportunities in the Area and improve the economic climate of the City; and

WHEREAS, the City, having the appropriate legal authority, desires to provide certain property tax incentives to encourage the development the Project on the Additional Land; and

WHEREAS, the Additional Land is located in the Licking County Joint Vocational School District (C-TEC) and the Licking Heights Local School District, and (i) the Board of Education of the Licking County Joint Vocational School District (C-TEC) has been given notice of the Amended and Restated CRA Agreement and the Amended TIF Agreement in accordance with Section 5709.83 of the Revised Code, and (ii) the Board of Education of the Licking Heights Local School District has waived its right to both receive notice under Section 5709.83 of the Revised Code and approve the Amended and Restated CRA Agreement and the Amended TIF Agreement; and

WHEREAS, to further support and facilitate the Project on the Additional Land the City also desires make certain infrastructure improvements and provide for their financing; and

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

Section 1. Amended and Restated Community Reinvestment Area Agreement. The Amended and Restated Community Reinvestment Area Agreement by and between the City and the Company, in the form presently on file with the Clerk of the Council, is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, with the advice of the Director of Law, is hereby authorized to execute that Amended and Restated Community Reinvestment Area Agreement and approve the character of any changes and any amendments thereto as consistent with this Resolution and not substantially adverse to the City, as evidenced conclusively by his execution of that Community Reinvestment Area Agreement.

Section 2. Amendment to Tax Increment Financing Agreement. The Amended Tax Increment Financing Agreement by and between the City and the Company, in the form presently on file with the Clerk of the Council, is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, with the advice of the Director of Law, is hereby authorized to execute that Tax Increment Financing Agreement and approve the character of any changes and any amendments thereto as consistent with this Resolution and not substantially adverse to the City, as evidenced conclusively by his execution of that Tax Increment Financing Agreement.

Section 3. Amendment to Development and Supply Agreement. The First Amendment to the Development Agreement by and between the City and the Company, in the form presently on file with the Clerk of the Council, is hereby approved and authorized with any changes therein and amendments thereto not inconsistent with this Resolution and not substantially adverse to this City and which shall be approved by the City Manager. The City Manager, for and in the name of this City, with the advice of the Director of Law, is hereby authorized to execute that Development and Supply Agreement and approve the character of any changes and any amendments thereto as consistent with this Resolution and not substantially adverse to the City, as evidenced conclusively by his execution of that Development and Supply Agreement.

Section 4. Further Authorizations. Council further hereby authorizes and directs the City Manager, the Director of Law, the Director of Finance, the Community Development Director, the Clerk of Council, 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 Resolution and the transactions referenced or contemplated in this Resolution, the Amended and Restated Community Reinvestment Area Agreement, the Amendment to the Tax Increment Financing Agreement and the Amendment to the Development and Supply Agreement authorized and approved in this Resolution.

Section 5. Compliance with the Law. Council finds and determines that all formal actions of Council and any of its committees concerning and relating to the adoption of this resolution were taken in an open meeting of Council and any of 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 6. Effective Date. This resolution is declared to be in full force and effect from and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this 21 day of May 2019.

Attest:



Sloan T. Spalding
Mayor



Jennifer H. Mason
Clerk of Council

Approved as to form:



Mitchell H. Banchefsky
Law Director



Prepared: 5/10/2019
Introduced: 5/21/2019
Revised:
Adopted: 05/21/2019
Effective: 05/21/2019

RESOLUTION R-29-2019

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO ENTER INTO A ROAD MAINTENANCE AGREEMENT WITH THE FRANKLIN COUNTY BOARD OF COMMISSIONERS FOR THE MAINTENANCE OF A SECTION OF CENTRAL COLLEGE ROAD BETWEEN EVANS ROAD AND THE FRANKLIN COUNTY LINE

WHEREAS, Section 5535.01 of the Ohio Revised Code requires that county roads be maintained by the board of county commissioners; and

WHEREAS, Section 301.15 of the Ohio Revised Code provides that a board of county commissioners may enter into agreements with the legislative authority of any municipal corporation whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board of county commissioners, to exercise any power, perform any function, or render any service, on behalf of the county or the board, that the county or the board may exercise, perform or render; and

WHEREAS, the Franklin County Engineer requires municipalities to enter into a Road Maintenance Agreement when the annexation of land to the municipality causes a roadway or a section thereof to be divided between two political jurisdictions along its center line; and

WHEREAS, the pending annexation of approximately 63.5 +/- acres of land located north of Central College Road, causes a section of Central College Road to be divided between the City of New Albany and Franklin County along the center line of the roadway.

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 enter into a Roadway Maintenance Agreement; (substantially similar in its effect as that which is attached hereto as Exhibit A) with the Franklin County Board of Commissioners.

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 VI, Section 6.07(B) of the charter of the City of New Albany, this ordinance shall be effective immediately upon passage.

CERTIFIED AS ADOPTED this 21 day of May, 2019.

Attest:


Sloan T. Spalding
Mayor


Jennifer H. Mason
Clerk of Council

Approved as to form:


Mitchell H. Banchefsky
Law Director

EXHIBIT A – R-29-2019

AGREEMENT

FOR MAINTENANCE AND IMPROVEMENT OF CENTRAL COLLEGE ROAD

THIS ROAD MAINTENANCE AGREEMENT (“Agreement”) is made and entered into on this ____ day of May, 2019, by and between the City of New Albany, Ohio, an Ohio Municipal Corporation (“New Albany”) and the Board of Commissioners of Franklin County, Ohio, a political subdivision of the State of Ohio (“Franklin County”). New Albany and Franklin County are referred to individually herein as “Party” and collectively as “Parties.”

WITNESSETH

In consideration of the terms and conditions hereinafter stated, the Parties agree as follows:

SECTION 1: AUTHORITY

Section 5535.01 of the Ohio Revised Code requires that county roads be maintained by the board of county commissioners.

Section 307.15 of the Ohio Revised Code provides that a board of county commissioners may enter into agreements with the legislative authority of any municipal corporation whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board of county commissioners, to exercise any power, perform any function, or render any service, on behalf of the county or the board, that the county or the board may exercise, perform, or render.

The County authorized the execution of this Agreement on _____, via Resolution _____.

SECTION 2: PURPOSE

Central College Road is a county road located in Franklin County. Pursuant to upcoming annexation of real property located in Plain Township, Franklin County to the City of New Albany, the Parties desire to address the maintenance of certain portions of Central College Road, which upon finalization of the aforementioned annexations will be adjacent to and partially within the City’s corporate boundary. Accordingly, this Agreement shall set forth the responsibility for maintenance and improvement of a portion of Central College Road by the respective Parties for the mutual benefit of all Parties and for the convenience and welfare of the public.

SECTION 3: RESPONSIBILITY OF THE PARTIES

NEW ALBANY shall be responsible for maintenance and improvements of the portion of the Central College Road right of way, now and as may be altered in the future, between the Tidewater Subdivision and the Franklin County Line. Provided however that funding for any

such future improvements must be approved in advance by New Albany Council. The City shall provide the County the opportunity to review construction plans and provide input relative to the design of the improvements within the right of way. The County shall maintain final authority over the design, construction and inspection of the improvements.

NEW ALBANY shall be responsible for snow plowing and road maintenance for Central College Road between the Tidewater Subdivision and the Franklin County Line. FRANKLIN COUNTY shall be responsible for ditch maintenance and the mowing of Central College Road, between the Tidewater Subdivision and the Franklin County Line.

Franklin County shall cooperate with the City through the support of grant applications and may, at the request of the City, provide supplemental, in-house engineering services to facilitate improvements to Central College Road.

Nothing in this Agreement shall be construed as to alter the reported inventory mileage of Central College Road to other agencies.

SECTION 4: ACQUISITION OF ADDITIONAL RIGHT OF WAY

The Parties shall cooperate to acquire necessary rights of way for any project undertaken pursuant to this Agreement. Each Party shall be responsible for acquiring necessary rights of way within the bounds of their respective jurisdictions unless otherwise specified in a separate agreement. As Central College Road is designated as a county road it is understood that the Franklin County Commissioners have underlying ownership of the right of way.

SECTION 5: NOTICE OF IMPROVEMENT

If one Party desires to perform maintenance or make an improvement to Central College Road that requires closing to traffic of the road, said Party shall notify the other Party of the planned action at the earliest date practicable. The plans for the maintenance project or the improvement shall provide for the maintenance of traffic as set forth by Section 5543.17 of the Ohio Revised Code.

SECTION 6: TERM

This Agreement shall become effective on the date first written above. The term shall terminate on December 31, 2029, unless the Parties mutually agree to an extension prior to that date.

SECTION 7: TERMINATION OF AGREEMENT

For the benefit of both Parties and the convenience and welfare of the public, this Agreement shall not be unilaterally terminated or suspended except for good cause shown, as determined in

the sole and exclusive discretion of the Party seeking termination or suspension. Any such unilateral termination shall require the requesting party to provide written notice to the other Party at least one year in advance of any such termination. The Parties may mutually agree to terminate or suspend this Agreement at any time for any reason by action of both Parties. The agreement will automatically terminate if and at such time that the entire portion of Central College Road that is the responsibility of New Albany pursuant to this Agreement, is annexed by New Albany and is within the New Albany corporate boundary.

SECTION 8: MISCELLANEOUS TERMS AND CONDITIONS

- 8.1 Entire Agreement: This Agreement, and those documents incorporated by reference herein, shall constitute the entire understanding and agreement between the Parties, shall supersede all prior understandings and agreements relating to the subject matter hereof, and may only be amended in writing with the mutual consent and agreement of the Parties, except as provided in Section 9 of this Agreement.
- 8.2 Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio. Any and all legal disputes arising from this Agreement shall be filed in and heard before the courts of Franklin County, Ohio.
- 8.3 Headings: The subject headings of the Sections and Subsections in this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This Agreement shall be deemed to have been drafted by both Parties and no purposes of interpretation shall be made to the contrary.
- 8.4 Waivers: No waiver of breach of any provision of this Agreement shall in any way constitute a waiver of any prior, concurrent, subsequent, or future breach of this Agreement or any other provision hereof. No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such a waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver or consent is expressly made in writing and signed by the party claimed to have waived or consented. Such waiver shall not constitute and shall not in any way be interpreted as a waiver of any other term or provision or future breach unless said waiver expressly states an intention to waive another specific term or provision or future breach.
- 8.5 Severability: If any item, condition, portion, or section of this Agreement or the application thereof to any person, premises, or circumstance shall to any extent, be held to be invalid or unenforceable, the remainder hereof and the application of such term, condition, provision, or section to persons, premises, or circumstances other than those as to whom it shall be held invalid or unenforceable shall not be affected thereby, and this Agreement and all the terms, conditions, provisions, or sections hereof shall, in all other respects, continue to be effective and to be complied with.

{SIGNATURES ON THE FOLLOWING PAGE}

ATTEST:

IN EXECUTION WHEREOF, the Parties have caused this Agreement to be executed in their names by their respective duly authorized representatives on the date first written above.

CITY OF NEW ALBANY:

SIGNATURE: _____

NAME: Joseph Stefanov

TITLE: New Albany City Manager

DATE: _____

STATE OF OHIO)
COUNTY OF FRANKLIN) ss:

APPROVED AS TO FORM:

Mitchell H. Banchefsky, Law Director

FRANKLIN COUNTY BOARD OF COMMISSIONERS:

County Commissioner

County Commissioner

County Commissioner

STATE OF OHIO)
COUNTY OF FRANKLIN) ss:

APPROVED AS TO FORM:

Franklin County Prosecutor's Office