



ORDINANCE O-35-2021

AN ORDINANCE TO AUTHORIZE THE CITY MANAGER TO EXECUTE AN AMENDMENT TO AN ENCROACHMENT EASEMENT PREVIOUSLY GRANTED BY THE VILLAGE OF NEW ALBANY FOR PROPERTIES LOCATED AT 3 AND 7 – 9 NORTH HIGH STREET AS REQUESTED BY RKM, LLC

WHEREAS, the City of New Albany, formerly known as the Village of New Albany (“Grantor”), and RKM, LLC (“Grantee”), entered into a certain Encroachment Easement dated May 9, 2007 and recorded on June 8, 2007 in as Document No. 200706080100273, of the official records of Franklin County, Ohio (the “Encroachment Easement”), with respect to certain real property located in Franklin County, Ohio, as such property is more particularly described on attached Exhibit A; and

WHEREAS, the Encroachment Easement permits the Grantee to maintain, repair, or replace the real property and/or improvements that encroach into the public right-of-way; and

WHEREAS, the Grantee requests an amendment to the original encroachment easement to facilitate a change of use on the site without triggering a termination clause in the original easement for such action and to eliminate a provision that allows the city to revoke the easement for any purpose; and

WHEREAS, the Grantor supports the request for a change in use and determines the use to be compatible with other uses in the Village Center and consistent with the adopted city plans.

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 city manager is authorized to enter into the “First Amendment to Encroachment Easement” attached hereto as Exhibit B, as relates to an encroachment easement granted by the then Village of New Albany on May 9, 2007, for properties located at 3 and 7-9 North High Street, attached hereto as Exhibit A, in order to facilitate a change of use on the site.

Section 2: The city manager is further authorized may make minor revisions to the aforementioned Exhibit B which are not adverse to the city in order to facilitate the change of use.

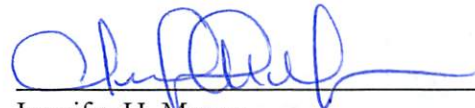
Section 3: It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this legislation were adopted in an open meeting of council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings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

Section 4: Pursuant to Article VI, Section 6.07(B) of the City of New Albany Charter, this ordinance shall take effect on and after the earliest period allowed by law.

CERTIFIED AS ADOPTED this 5 day of Oct, 2021.

Attest:


Sloan T. Spalding
Mayor


Jennifer H. Mason
Clerk of Council

Approved as to form:


Mitchell H. Banchevsky
Law Director

Legislation dates:

Prepared: 09/10/2021
Introduced: 09/21/2021
Revised: 09/16/2021 – exhibit B
Adopted: 10/05/2021
Effective: 11/04/2021

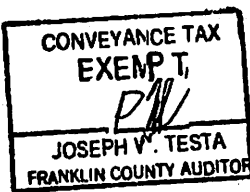


Exhibit A - O-35-2021

200706080100273
Pg: 6 \$60.00 T2007060807781
06/08/2007 10:52AM MLEP FERRIS A
Robert G. Montgomery
Franklin County Recorder

ENCROACHMENT EASEMENT

TRANSFERRED
NOT NECESSARY

JUN 08 2007
JOSEPH W. TESTA
AUDITOR
FRANKLIN COUNTY, OHIO

KNOW ALL MEN BY THESE PRESENTS that this Encroachment Easement (this "Agreement") is made as of this 9 day of May, 2007, by and between The Village of New Albany ("Grantor") and any future owner or owners of the right-of-way easement for the parcel described herein ("Right of Way"), and, RKM, LLC. ("Grantee") and any future owner or owners of the parcel defined below ("Real Property"). The Grantor for One Dollar (\$1.00) and other good and valuable consideration paid, the receipt of which is hereby acknowledged by Grantee, does hereby grant, so long as it is used for the purposes stated herein and subject to the conditions, restrictions, and limitations contained herein, an appurtenant, nonexclusive encroachment Easement for the real property which is described more fully in Exhibit "A" (Encroachment Easement Parcel 6-EN).

Prior Instrument Reference: Plat Book 1 Page 364
Parcel Number: 222-46

1. Grantor hereby grants a non-exclusive encroachment Easement for the sole purpose of allowing Grantee to maintain, repair, and replace the Real Property and/or Improvements and to allow the encroachment of same into Grantor's Right of Way within said Easement, and the Grantee, for itself and its successors and assigns, shall be deemed to have agreed to and accepted all such conditions, restrictions and limitations upon Grantee's use of the Easement and/or recordation of this instrument. Grantee agrees that they shall not grant any other Easements or rights in the Easement Area to any third party. Grantee may maintain and repair said Real Property and Improvements but shall not expand or enhance said Real Property or Improvements.

2. Grantee shall save, defend and hold Grantor harmless against any and all claims for damages, costs and expenses, and for injury to persons or property that may arise directly or indirectly out of the use and maintenance of the Easement Area by Grantee and its agents, employees, guests and invitees, or from any act or omission of Grantee or of any agent, employee, guest and invitee of Grantee with respect to its obligations hereunder as to the Easement Area. Grantee hereby acknowledges and agrees that Grantor may possess and use the Right of Way, including the Easement Area, and Grantee hereby expressly and knowingly waives and relinquishes any right it has or may have in law or in equity to prevent such usage or to receive any benefits or considerations therefor.

3. Grantor expressly reserves unto itself a reversionary interest in the herein described Easement. Upon the abandonment, disuse, or change of use of Easement rights granted herein, or the removal of the Real Property and Improvements, razing of the abutting structure or substantial destruction of the abutting structure without substantially similar replacement thereof within one (1) year of the date of any such action, this appurtenant Encroachment Easement shall cease and terminate and the Grantor may file an "Affidavit Relating to Title to Real Property" for the purpose of memorializing and giving public notice of such termination of said Easement..

4. Notwithstanding any other provision of this instrument, subsequent to the granting of this Easement, should the Village of New Albany Council determine that the herein described Easement Area is necessary for any public purpose inconsistent with or antagonistic to the purpose for which this grant is made, then the Grantor shall have the right and hereby

{110897.101 }

reserves the absolute right to terminate this Easement upon sixty (60) days notice to the Grantee. In the event of termination or reversion, the Grantee shall remove all Grantee Real Property and Improvements in the Easement Area from the Easement area and shall execute and deliver a recordable instrument of conveyance returning the herein described Easement rights to the Grantor and releasing any and all rights that may have been conveyed hereby.

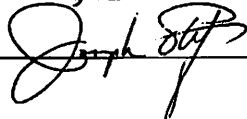
5. As soon as practicable after all entries made pursuant to the rights granted herein, Grantee shall cause the property of the Grantor located within the Easement herein described, or any property affected by such entry, to be restored to its former condition as nearly as is reasonably possible, or shall pay Grantor, at Grantor's option, for all damages to Grantor's Right of Way, which damage was occasioned by or resulted from the Grantee's maintenance, repair, or removal of the Real Property or any Improvements, or use of occupation of the Easement.

6. This Agreement is subject to the laws of the State of Ohio. The rights granted herein are nonexclusive and shall not be construed to interfere with or restrict the Grantor's paramount right to use the herein described Right of Way for all public purposes. Further, Grantor retains the paramount right to construct and maintain improvements over, under, and across the described Right of Way. The conditions hereof imposed on the granted encroachment Easement shall constitute covenants running with the above described parcels, providing the benefits and burdens described herein to the owners thereof, and their respective successors and assigns. This Agreement may be executed in counterparts. No waiver, amendment or modification of this Easement shall be valid unless in writing and duly executed by the party charged therewith.

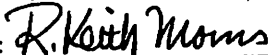
IN WITNESS WHEREOF, the parties executed this Agreement the day and year first written.

The Village of New Albany, Ohio

Its: Village Administrator

By: 

RKM, LLC

Its: 

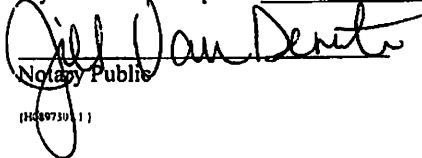
By: R. KEITH MORRIS

STATE OF OHIO.
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this 9 day of May, 2007, the foregoing instrument was acknowledged before me by Joseph Stearns, for the Village of New Albany, Ohio ("Grantor").

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

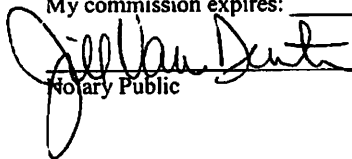

Notary Public
(1409730) 1

JILL VAN DEVENTER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 06-10-11

STATE OF OHIO.
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, that on this 9 day of May,
2007, the foregoing instrument was acknowledged before me by
R. Keith Morris, for RKM, LLC ("Grantee").

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires: JILL VAN DEVENTER
 NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES 06-10-11
Notary Public

**ENCROACHMENT EASEMENT
PARCEL 6-EN
0.002 ACRES (91.92 S.F.)**

Situated in the State of Ohio, County of Franklin, Village of New Albany, Township of Plain, being located in Township 2, Section 4, Range 16 of the United States Military Lands, and being part of the Main Street right-of-way as conveyed in Plat Book 1 Page 364, all references refer to Recorder's Office, Franklin County, Ohio.

Commencing at found Franklin County Monument No. 9917B, said point being the intersection of High Street and Dublin-Granville Road, thence North 03° 00' 29" East, along the center line of High Street, a distance of 454.38 feet to a point, said point being the intersection of High Street and Main Street;

Thence North 86° 57' 20" West along the center line of Main Street a distance of 30.03 feet to a point;

thence North 03° 02' 40" East a distance of 30.00 feet to a point, said point being the intersection of the northerly right-of-way line of Main Street and the westerly right-of-way line of High Street, and the southeast corner of a tract of land as conveyed to RKM, LLC by Instrument Number 200206100143754;

thence North 86° 57' 20" West along said northerly right-of-way line and the south line of said RKM, LLC tract, a distance of 7.76 feet to a point, said point being on the east face of an existing building, and being the TRUE POINT OF BEGINNING:

thence South 02° 01' 44" West along the east face of said building a distance of 0.72 feet to a point, said point being the south east corner of said building;

thence North 87° 49' 09" West along the south face of said building a distance of 72.59 feet to a point, said point being on the southwest corner of said building;

thence North 02° 16' 03" East along the west face of said building a distance of 1.81 feet to a point, said point being on said northerly right-of-way line and said south line;

thence South 86° 57' 20" East, along said northerly right-of-way line and said south line, a distance of 72.59 feet to a point, said point being the TRUE POINT OF BEGINNING, containing 0.002 acres (91.92 S.F.) more or less.

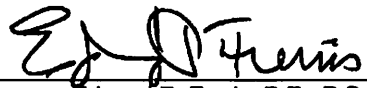
Subject to all legal right-of-way, easements and restrictions, if any, of previous record.

Basis of Bearings is the Ohio State Plane Coordinate System, South Zone, 1983 North American Datum, 1986 adjustment, as established by Franklin County, monuments FRANK 80 and 180. The bearing from Frank 80 to Frank 180 is N85°57'24"W.

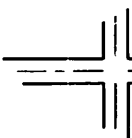
All set iron pins are 5/8" outside diameter rebar with a plastic cap stamped "EP FERRIS SURVEYOR 6027".

This description was prepared by Edward P. Ferris, Registered Surveyor No. 6027, E. P. Ferris & Associates, Inc. on March 5, 2007.




Edward P. Ferris, P.E., P.S.
Registered Surveyor No. 6027

3-7-07
Date



E. P. FERRIS & ASSOCIATES, INC.

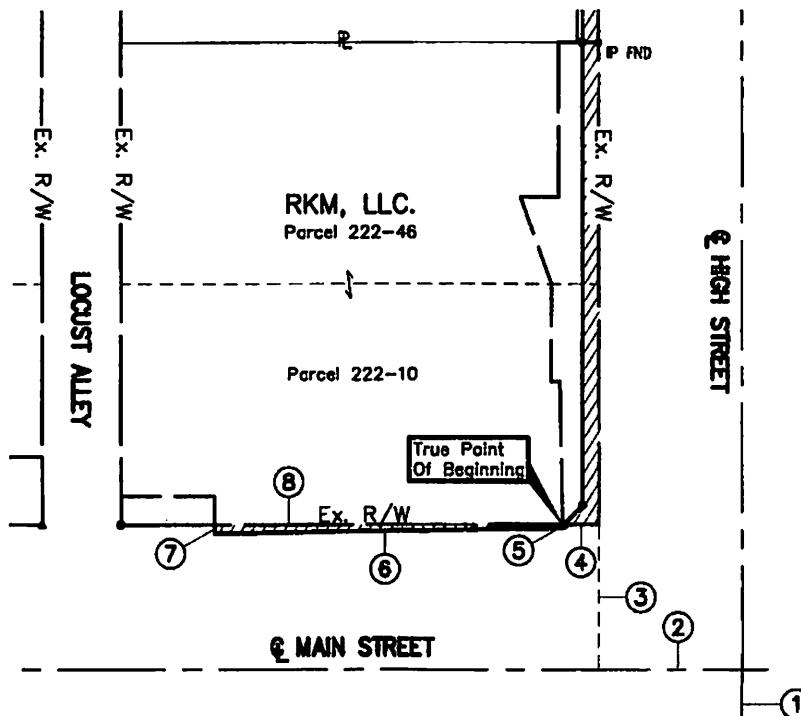
Consulting Civil Engineers and Surveyors
880 King Avenue, Columbus Ohio, 43212

(PH) 614-299-2999
(FX) 614-299-2992

EXHIBIT 'A', PARCEL 6-EN VILLAGE OF NEW ALBANY

ENCROACHMENT EASEMENT

Situated in the State of Ohio, County of Franklin, Village of New Albany, Township of Plain, being located in Township 2, Section 4, Range 16 of the United States Military Lands and being part of Main Street right-of-way, as conveyed in Plat Book 1, Page 364, all references refer to Recorder's Office, Franklin County, Ohio and being more particularly bounded and delineated as follows:



AREA

Encroachment Easement = 0.002 AC. (91.92 S.F.)

REFERENCED DOCUMENTS:

Plat Book 1, Page 364

LINE TABLE		
LINE	LENGTH	BEARING
1	454.38'	N03°00'29"E
2	30.03'	N88°57'20"W
3	30.00'	N03°02'40"E
4	7.76'	N88°57'20"W
5	0.72'	S02°01'44"W
6	72.59'	N87°46'09"W
7	1.81'	N02°16'03"E
8	72.59'	S88°57'20"E

Legend

- Property Line
- R/W Right-of-Way
- Iron Pin Found
- Iron Pin Set
- ▲ "Mag" Nail Set

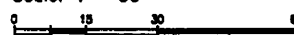
All iron pins found were in good condition except as noted. All iron pins set are 5/8" Rebar, plastic capped with "E.P. FERRIS SURVEYOR 6027" inscribed on top.

BASIS OF BEARING:

Bearings are the Ohio State Plane Coordinate System, South Zone, 1983 North American Datum, 1986 adjustment, as established by Franklin County, monuments FRANK 80 and 180. The bearing from Frank 80 to Frank 180 is N85°57'24"W.



Scale: 1" = 30'



BY *E. P. Ferris* 3-7-07
Edward P. Ferris, P.E., P.S.
Registered Surveyor No. 6027

DRWN BY CDM CHK BY EPF DATE 03-05-07
40520

Exhibit B - O-35-2021

**FIRST AMENDMENT TO
ENCROACHMENT EASEMENT**

This FIRST AMENDMENT TO ENCROACHMENT EASEMENT (this "Amendment") is entered into as of _____, 2021, by and between the **City of New Albany, Ohio**, (f.n.a. the Village of New Albany) an Ohio municipal corporation ("Grantor") and any future owner or owners of the right-of-way easement for the parcel described herein, and **RKM, LLC**, an Ohio limited liability company ("Grantee").

WITNESSETH:

WHEREAS, Grantor and Grantee entered into that certain Encroachment Easement dated May 9, 2007 and recorded on June 8, 2007 in as Document No. 200706080100273, of the official records of Franklin County, Ohio (the "Encroachment Easement"), with respect to certain real property located in Franklin County, Ohio, as such property is more particularly described on attached Exhibit A;

WHEREAS, Grantor and Grantee desire to amend the Encroachment Easement in order to extend the Term.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby agree that the Encroachment Easement shall be amended as follows:

1. **Recitals.** The foregoing recitals are hereby incorporated herein by this reference.
2. **Capitalized Terms.** Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Encroachment Easement.
3. **Modification of Third Paragraph.** The following sentence shall be added after the last sentence of the third paragraph of the Encroachment Easement:

Notwithstanding the foregoing, a change of use in the foregoing sentence shall not include any Grantor-approved alterations or

improvements, ordinary maintenance, or a variation of the type of usage of the Real Property.

4. **Deletion of Fourth Paragraph.** The fourth paragraph of the Encroachment Easement is hereby deleted in its entirety.

5. **Counterparts.** This Amendment may be executed in counterparts, with said counterparts being effective as originals when attached to the document with the other party's counterpart. Signatures which are delivered to either party by facsimile or other electronic transmission shall be considered originals and are enforceable as originals.

6. **Ratification.** Except as specifically set forth herein, all of the terms, conditions and covenants of the Encroachment Easement, and all rights and obligations of Grantor and Grantee thereunder, are hereby ratified and confirmed and shall remain in full force and effect.

[Signature Pages Follow]

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this Amendment as of the date first set forth above.

“Grantor”

The City of New Albany, Ohio,

By: _____
Name: Joseph F. Stefanov
Its: City Manager

STATE OF _____)

COUNTY OF _____) ss

The foregoing instrument was acknowledged before me, the undersigned notary public, this _____ day of _____ 2021, by Joseph F. Stefanov, the City Manager of the City of New Albany, Ohio, an Ohio body corporate and politic, on behalf of said political subdivision. In witness whereof I have subscribed my name and affixed my official seal on the date and year aforesaid.

[SEAL]

Notary Public
My Commission Expires: _____

[Grantee's Signature Page Follows]

“GRANTEE”

RKM, LLC,
an Ohio limited liability company

By: _____
Name: _____
Its: _____

STATE OF _____)

COUNTY OF _____) ss

The foregoing instrument was acknowledged before me, the undersigned notary public, this ____ day of _____, 2021, by _____, the _____ of RKM, LLC, an Ohio limited liability company, on behalf of said limited liability company. In witness whereof I have subscribed my name and affixed my official seal on the date and year aforesaid.

[SEAL]

Notary Public
My Commission Expires: _____

**Prepared by and
after recordation, return to:**
Dickinson Wright PLLC
Brian F. Kocak, Jr., Esq.
150 E. Gay Street, 24th Floor
Columbus, Ohio 43215

Exhibit A

Description of the Property

**ENCROACHMENT EASEMENT
PARCEL 6-EN
0.002 ACRES (91.92 S.F.)**

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Thence North 86° 57' 20" West along the center line of Main Street a distance of 30.03 feet to a point;

thence North 03° 02' 40" East a distance of 30.00 feet to a point, said point being the intersection of the northerly right-of-way line of Main Street and the westerly right-of-way line of High Street, and the southeast corner of a tract of land as conveyed to RKM, LLC by Instrument Number 200206100143754;

thence North 86° 57' 20" West along said northerly right-of-way line and the south line of said RKM, LLC tract, a distance of 7.76 feet to a point, said point being on the east face of an existing building, and being the TRUE POINT OF BEGINNING:

thence South 02° 01' 44" West along the east face of said building a distance of 0.72 feet to a point, said point being the south east corner of said building;

thence North 87° 49' 09" West along the south face of said building a distance of 72.59 feet to a point, said point being on the southwest corner of said building;

thence North 02° 16' 03" East along the west face of said building a distance of 1.81 feet to a point, said point being on said northerly right-of-way line and said south line;

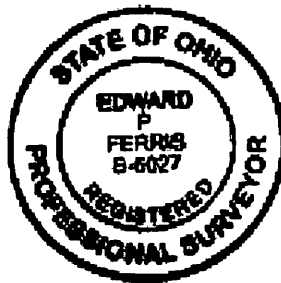
thence South 86° 57' 20" East, along said northerly right-of-way line and said south line, a distance of 72.59 feet to a point, said point being the TRUE POINT OF BEGINNING, containing 0.002 acres (91.92 S.F.) more or less.

Subject to all legal right-of-way, easements and restrictions, if any, of previous record.

Basis of Bearings is the Ohio State Plane Coordinate System, South Zone, 1983 North American Datum, 1986 adjustment, as established by Franklin County, monuments FRANK 80 and 180. The bearing from Frank 80 to Frank 180 is N85°57'24"W.

All set iron pins are 5/8" outside diameter rebar with a plastic cap stamped "EP FERRIS SURVEYOR 6027".

This description was prepared by Edward P. Ferris, Registered Surveyor No. 6027, E. P. Ferris & Associates, Inc. on March 5, 2007.




Edward P. Ferris, P.E., P.S.
Registered Surveyor No. 6027

3-7-07
Date

E. P. FERRIS & ASSOCIATES, INC.

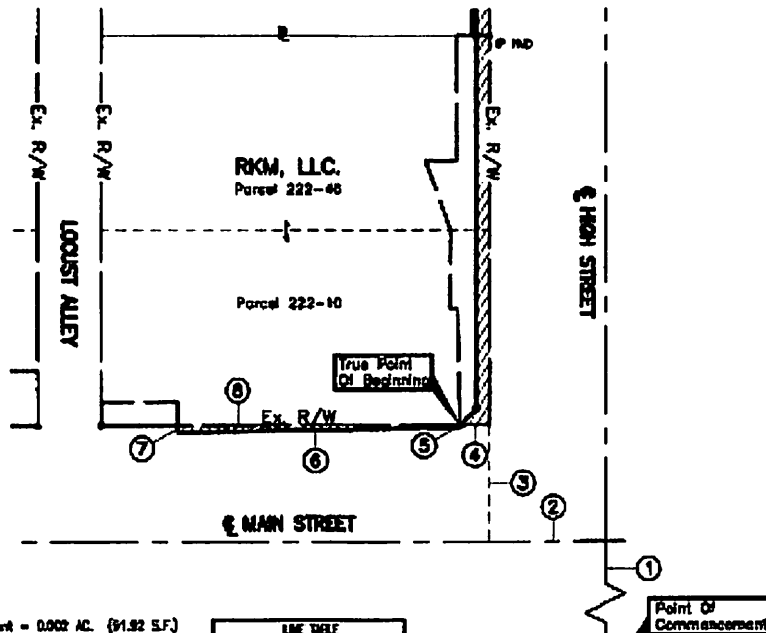
Consulting Civil Engineers and Surveyors
880 King Avenue, Columbus Ohio, 43212

(PH) 614-298-2998
(FX) 614-298-2962

EXHIBIT 'A', PARCEL G-EN VILLAGE OF NEW ALBANY

ENCROACHMENT EASEMENT

Situated in the State of Ohio, County of Franklin, Village of New Albany, Township of Plain, being located in Township 2, Section 4, Range 16 of the United States Military Lands and being part of Main Street right-of-way, as conveyed in Plat Book 1, Page 364, all references refer to Recorder's Office, Franklin County, Ohio and being more particularly bounded and delineated as follows:



AREA

Encroachment Easement = 0.002 AC. (91.92 S.F.)

REFERENCED DOCUMENTS:

Plat Book 1, Page 364

LINE	LENGTH	BEARING
1	454.37'	N00°00'00"E
2	30.00'	N00°00'00"E
3	30.00'	N00°00'00"E
4	7.75'	N00°00'00"E
5	0.72'	N00°00'00"E
6	7.25'	N00°00'00"E
7	1.85'	N00°00'00"E
8	7.25'	N00°00'00"E

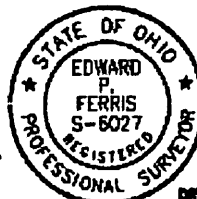
Legend

- Property Line
- R/W Right-of-Way
- Iron Pin Found
- Iron Pin Set
- ▲ "Neg" Nail Set

All iron pins found were in good condition except as noted. All iron pins set are 3/8" Rebar, plastic capped with "E.P. FERRIS SURVEYOR 6027" inscribed on top.

BASIS OF BEARING:

Bearings are the Ohio State Plane Coordinate System, Sixth Zone, 1983 North American Datum, 1986 adjustment, as established by Franklin County, monuments FRANK 60 and 100. The bearing from Frank 60 to Frank 100 is N85°57'24"W.



Scale: 1" = 30'



BY *E. P. Ferris* 3-7-07
Edward P. Ferris, P.E., P.S.
Registered Surveyor No. 6027 Date

DRAWN BY CDM CHK BY EPF DATE 03-06-07
40620

4839-8193-1256 v3 [56863-6]



RESOLUTION R-51-2021

A RESOLUTION TO AUTHORIZE THE CITY MANAGER TO GRANT CONSENT AND COOPERATE WITH THE FRANKLIN COUNTY ENGINEER'S OFFICE REGARDING THE MORSE ROAD AND BABBITT ROAD (PID 109494) IMPROVEMENT PROJECT

WHEREAS, the Franklin County Engineer's office has identified the need to improve the intersection of Morse Road and Babbitt Road; and

WHEREAS, the subject intersection is located proximate to New Albany's corporate boundary and is within the city's designated future expansion area; and

WHEREAS, the improvement project will include the construction of a single lane modern roundabout; and

WHEREAS, the improvement project will be fully funded by the Franklin County Engineer's office; and

WHEREAS, the city is requesting the county to extend +/- 350 feet of 16" water main as a part of the subject improvement project in order to facilitate the future northern extension of waterline along Babbitt Road; and

WHEREAS, the city agrees to reimburse the Franklin County Engineer's office for this water main extension at a total cost not to exceed \$85,000; and

WHEREAS, the city desires to have New Albany standard street lights and signage installed with the improvement project; and

WHEREAS, in exchange for the Franklin County Engineer's office installing New Albany standard street lights and signage with the improvement project, the city agrees to participate in and perform certain tasks related to the maintenance of the roundabout; and

WHEREAS, the city grants consent and agrees to cooperate with Franklin County Engineer's Office for the Morse Road and Babbitt Road (PID 109494) improvement project as identified in Exhibit A; 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: The city grants consent and agrees to cooperate with Franklin County Engineer's office for the Morse Road and Babbitt Road (PID 109494) improvements project as set forth on the attached Exhibit A.

Section 2. The city agrees to reimburse the Franklin County Engineer's office for the extension of a 16" water main at a cost not to exceed \$85,000; and

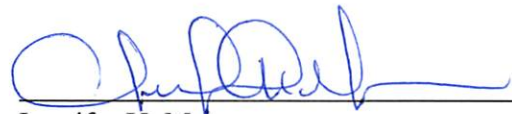
Section 3. It is hereby found and determined that all formal actions of council concerning and relating to the adoption of this legislation were adopted in an open meeting of the council, and that all deliberations of the council and or any of its committees that resulted in such formal action were in meetings open to the public, in compliance with 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 5 day of Oct, 2021.

Attest:


Sloan T. Spalding
Mayor


Jennifer H. Mason
Clerk of Council

Approved as to form:


Mitchell H. Banchefsky
Law Director

Legislation dates:

Prepared:	09/24/2021
Introduced:	10/05/2021
Revised:	
Adopted:	10/05/2021
Effective:	10/05/2021

Exhibit A - R-51-2021

**COOPERATIVE AGREEMENT
BETWEEN
FRANKLIN COUNTY ENGINEER
AND
THE CITY OF NEW ALBANY
FOR
IMPROVEMENT TO MORSE ROAD AT BABBITT ROAD**

This Cooperative Agreement is made and entered into this ____ of September, 2021 by and between Franklin County, Ohio, acting through the Franklin County Engineer (the "COUNTY") and the City of New Albany ("NEW ALBANY") for the construction and maintenance of a roundabout at the intersection of the Morse Road and Babbitt Road, as well as for the contribution for the construction of a new 16" waterline.

WITNESSETH:

WHEREAS, Morse Road at Babbitt Road has utility to the general public, as well as to the citizens of both parties to this Agreement, as it functions as an important intersection in the regional roadway system for through traffic; and

WHEREAS, the COUNTY will be undertaking construction of a roundabout at the intersection of Morse Road and Babbitt Road, in Plain Township and Jefferson Township, Ohio; and,

WHEREAS, the NEW ALBANY corporate limits are in close proximity to this improvement; and

WHEREAS, NEW ALBANY desires to have special street lights, and special signage assemblies at, and in advance of the roundabout using decorative wood supports installed as part of the initial roundabout construction; and

WHEREAS, NEW ALBANY also requires a new 16" water main and other miscellaneous maintenance improvements to be constructed as a part of the work to be performed; and,

WHEREAS, NEW ALBANY agrees to reimburse the COUNTY for the total cost of the waterline improvement as set forth herein; and

WHEREAS, in exchange for the COUNTY including the streetlights and special signage as part of the initial roundabout construction, NEW ALBANY agrees to participate in and perform certain tasks related to the maintenance of the roundabout; and

WHEREAS, the COUNTY and NEW ALBANY do hereby mutually agree to cooperate in the maintenance of the roundabout and the waterline as set forth herein;

NOW, THEREFORE, the Parties agree to the following responsibilities:

1. Waterline Portion of the WORK:

- 1.1. The COUNTY agrees to provide engineering design and construction bidding services for the construction and installation of a roundabout at the intersection of Morse Road and Babbitt Road, as well as a 16" waterline serving the residents of NEW ALBANY (the "WORK").
 - 1.1.1. The current engineer's estimate for the construction cost of the waterline portion of the WORK is attached hereto as "Exhibit A" and incorporated herein by reference.
 - 1.1.2. The COUNTY, following public bidding of the WORK in accordance with Ohio law, shall provide the construction cost bid prices for the waterline portion of the WORK to NEW ALBANY for its timely review and approval.
 - 1.1.3. Following approval of the waterline portion of the construction bid by NEW ALBANY, the COUNTY shall invoice NEW ALBANY for fifty percent (50%) of the approved waterline portion of the construction bid. NEW ALBANY shall pay said invoice in a timely manner.
- 1.2. The COUNTY agrees to provide construction contract administration, inspection, and testing services for the WORK at COUNTY'S sole cost. Further, the COUNTY shall obtain all waterline easements required, if any, and assign the same to NEW ALBANY upon completion of the WORK.
 - 1.2.1. The COUNTY agrees to notify NEW ALBANY when WORK is scheduled for supplemental inspection.
 - 1.2.2. The COUNTY shall also provide to NEW ALBANY any anticipated costs that will exceed the original bid prices for the waterline portion of the WORK for prior approval.
- 1.3. The COUNTY shall maintain a financial accounting of the construction activities during the construction phase of the WORK. Said accounting shall be available to NEW ALBANY upon request.
- 1.4. The COUNTY shall invoice NEW ALBANY for the total construction costs associated with the waterline portion of the WORK, less the 50% paid by pursuant to Section 1.1.3 of this Agreement. The maximum financial obligation of NEW ALBANY with respect to the waterline portion of the WORK shall not exceed Eighty-five Thousand Dollars (\$85,000) unless and until an appropriate modification of this Agreement is entered into by the Parties hereto.
- 1.5. NEW ALBANY shall respond to all COUNTY requests for plans, cost reviews, and/or approval in a timely manner.
- 1.6. Following completion of the WORK and final payment by NEW ALBANY pursuant to Section 1.4 of this Agreement, NEW ALBANY shall thereafter own, operate, maintain, repair, and/or replace all facilities and appurtenances constructed as part of the waterline portion of the WORK.
2. Maintenance of the WORK
 - 2.1. Title: The Parties acknowledge and agree that the title in and to all features installed by NEW ALBANY, or by the COUNTY at NEW ALBANY's request, within the public rights of way as a part of the WORK and all improvements, additions or alterations thereto, if any, shall remain the sole property of the

COUNTY.

2.2. COUNTY duties: The COUNTY shall:

2.2.1. Be responsible for the design and construction of alterations to the roundabout to accommodate changes in traffic flow and volume conditions, if and when needed.

2.2.2. Include the signage desired by NEW ALBANY in the roundabout plans.

2.2.3. Be responsible for the following maintenance aspects of the intersection:

- a. Street lighting infrastructure, including energy costs.
- c. Pavement and pavement markings
- d. Post-construction storm water detention/sediment basins.
- e. Snow removal of roadway approaching and around the roundabout.

2.3 NEW ALBANY duties: NEW ALBANY shall be responsible for the following maintenance aspects of the intersection as delineated in the attached Exhibit B:

- a. Signage including sign faces, backing and wood supports. Provide a 2-hour response time goal for all emergency signage and 72-hour response time goal for all other signage. Any replacement signage shall meet all breakaway standards (NCHRP350 or MASH) that duplicates the shape and duplicates, or exceeds, the size and color of the existing signage.
- b. Landscaping, including mowing of grass and tree replacement and maintenance.
- c. Granite around the center island of the roundabout.
- d. Debris and dead animal removal.

3. General Provisions.

- 3.1. Notice: Any notice required by this Agreement shall be in writing, shall be signed by the party giving the same and shall be deemed given when the same is delivered to the party to which it is addressed at such party's notice address determined as follows:

CITY OF NEW ALBANY

Office of the City Manager
99 W. Main Street
New Albany, OH 43054

or such other address of which NEW ALBANY shall have given notice.

FRANKLIN COUNTY

Franklin County Engineer's Office
970 Dublin Road
Columbus, Ohio 43215

or such other address of which the COUNTY shall have given notice.

- 3.2. Counterparts: This Agreement may be executed in two or more counterparts each of which shall constitute a duplicate original and all of which shall constitute one and the same agreement.
- 3.3. Assignment: This Agreement shall be binding upon and inure to the benefit of the parties hereto. Neither the COUNTY nor NEW ALBANY may assign its rights, duties or obligations under this Agreement to any other person, partnership, corporation or other entity, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
- 3.4. Governing Law and Venue: This Agreement is governed by, and shall be construed in accordance with, the laws of the State of Ohio and the venue shall be in Franklin County Common Pleas Court, Ohio.
- 3.5. Construction: If any portion of this Agreement proves to be invalid or unconstitutional, the same shall not be held to invalidate or impair the validity, force, or effect of any other portion of this Agreement unless it clearly appears that such other portion is wholly or necessarily dependent for its operation upon the portion so held invalid or unconstitutional.
- 3.6. Waiver: The waiver by either party of a breach or violation of any provision of this Agreement shall not operate or be construed to be a waiver of any subsequent breach thereof.
- 3.7. Entire Agreement, Modification: This Agreement contains the entire agreement of the parties. It may not be modified orally, but only by agreement in writing signed by both parties. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. This Agreement represents a negotiated agreement in which the parties all participated in its drafting, and as such, is not to be construed against or for any individual party.
- 3.8. Termination: This Agreement may only be terminated as follows:
- 3.8.1 By written mutual agreement of the Parties hereto with sixty (60) days' notice, such agreement not to be unreasonably withheld by any Party.
- 3.8.2. In the event of a material breach of this Agreement by the COUNTY, this Agreement shall terminate sixty (60) days following delivery of a notice of such material breach (a "Termination Notice") from NEW ALBANY to the COUNTY, unless such material breach is cured by the COUNTY prior to the expiration of such sixty (60) day period; provided, however, if the material breach is not susceptible of a cure within such sixty (60) day period, and the COUNTY has commenced and diligently pursues such a cure, then the COUNTY shall have an additional thirty (30) days to cure the material breach prior to termination.
- 3.8.3. In the event of a material breach of this Agreement by NEW ALBANY, this Agreement shall terminate sixty (60) days following delivery of a notice of such material breach (a "Termination Notice") from the COUNTY to NEW ALBANY, unless such material breach is cured prior to the expiration of such sixty (60) day period; provided, however, if the material breach is not susceptible of a cure within such sixty (60) day period, and NEW ALBANY has commenced and diligently pursues such a cure, then NEW ALBANY shall have an additional thirty(30) days to cure the material breach prior to termination.

- 3.8.4. In the event termination occurs in accordance with the provisions of this section as a result of a breach of this Agreement by NEW ALBANY, NEW ALBANY shall abandon in place all landscape features and traffic control signs and supports if notified to do so by the COUNTY within twenty (20) business days after the Termination Date.
- 3.8.5. In the event termination occurs in accordance with the provisions of this section as a result of a breach of this Agreement by the COUNTY, NEW ALBANY may, elective as of the Termination Date, abandon all features and improvements in place, in which case NEW ALBANY shall have no further obligations regarding such features and improvement.

In witness whereof, the parties hereto have set their signatures:

FRANLIN COUNTY

Witness: _____

By: _____
Cornell R. Robertson, P.E., P.S.
Franklin County Engineer

Date: _____

CITY OF NEW ALBANY

Witness: _____

By: _____
Joseph Stefanov
City Manager

Date: _____

Approved as to form:

Law Director – City of New Albany

EXHIBIT A

Estimated Construction Cost							
Morse Road at Babbitt Road							
9/2/2021							
Category	Reference #	Item #	Description	Quantity	Unit	Unit Price	Total
Water Work	470	COL801	16" Water Main Ductile Iron Pipe and Fittings, Class 52	342	FT	\$175.00	\$59,850.00
Water Work	475	COL802	6" Valve and Appurtenances	1	EA	\$900.00	\$900.00
Water Work	480	COL802	16" Valve and Appurtenances	1	EA	\$3,000.00	\$3,000.00
Water Work	485	638E98000	Water Work, Misc.: Hydra-Shield V-Lock	1	EA	\$500.00	\$500.00
Water Work	490	638E98100	Water Work, Misc.: Water Survey Coordinate Table	1	LS	\$1,000.00	\$1,000.00
Water Work	N/A	SPEC	Contingency	1	LS	\$19,750.00	\$19,750.00
				Grand Total			\$85,000.00

EXHIBIT B

Morse Road and Babbitt Road Roundabout Improvement Plans and Bid Documents