



## **CANAL WINCHESTER CITY COUNCIL COVID-19 ANNOUNCEMENT**

Due to COVID-19 and social distancing requirements, Canal Winchester City Council Work Sessions and Regular City Council meetings will not be open to the public until further notice. The meetings will be hosted online using the GoToWebinar platform which can be accessed via computer, tablet, or smart phone. An email address is required to access the meeting.

To access the September 8, 2020 meeting, click the following link.

<https://attendee.gotowebinar.com/register/3546353118963689229>

Note: In this format, video and audio of the meeting will be available as the meeting takes place, however, viewers will not have microphone or webcam permissions.

# Canal Winchester

*Town Hall  
10 North High Street  
Canal Winchester, OH 43110*



## Meeting Agenda

September 8, 2020

6:00 PM

## Council Work Session

*Mike Coolman - Chair*

*Jill Amos*

*Will Bennett*

*Bob Clark*

*Patrick Lynch*

*Chuck Milliken*

*Mike Walker*

**A. Call To Order****B. Roll Call****C. Also In Attendance**

*Mayor Ebert, Matt Peoples, Lucas Haire, Amanda Jackson*

**D. Request for Council Action****RES-20-006**

*Finance*

A Resolution Accepting The Amounts And Rates As Determined By The Budget Commission And Authorizing The Necessary Tax Levies And Certifying Them To The County Auditor ([Resolution](#))

*- Request to move to full Council*

**ORD-20-038**

*Finance*

An Ordinance Approving The Editing And Inclusion Of Certain Ordinances As Parts Of The Various Component Codes Of The Codified Ordinances Of Canal Winchester, Ohio, And Declaring An Emergency ([Ordinance](#))

*- Request to move to full Council*

**ORD-20-039**

*Development*

An Ordinance Authorizing The Mayor To Enter Into A Clean Ohio Trail Fund Program State/Local Grant Agreement With The Ohio Department Of Natural Resources For The Proposed McGill Park Trail Connector And To Declare An Emergency ([Ordinance, Exhibit A](#))

*- Request to move to full Council*

**ORD-20-040**

*Development*

An Ordinance Authorizing The Mayor To Enter Into A Tax Increment Financing Agreement With The Mountain Agency Columbus, LLC ([Ordinance, Exhibit A](#))

*- Request to move to full Council*

**ORD-20-041**

*Development*

An Ordinance Authorizing The Mayor To Enter Into A Sign Easement Agreement With Crossroads Christian Life Center, Inc. To Provide For A Sign Easement On Parcel 184-002666 ([Ordinance, Exhibit A](#))

*- Request to move to full Council*

**ORD-20-042**

*Development*

An Ordinance To Authorize The Mayor Convey A Tract Of Land Consisting Of Approximately +-0.26 Acres On West Waterloo Street To The Canal Winchester Industry And Commerce Corporation To Provide For Its Subsequent Conveyance To Jay Jala Hospitality, L.L.C. ([Ordinance, Exhibit A](#))

*- Request to move to full Council*

**E. Reports**

*Matt Peoples -*

*Lucas Haire -*

*Amanda Jackson -*

**F. Items for Discussion**

**G. Old/New Business**

**H. Adjournment**

RESOLUTION NO. 20-006

RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR

(CITY COUNCIL)

OHIO REVISED CODE, SECTION 5705.34, 5705.35

The Council of the City of CANAL WINCHESTER, Franklin County

Ohio, met in session on the day of (Regular or Special)

2020, at the office of with the following members

present:

Blank lines for listing council members present.

moved the adoption of the following Resolution:

WHEREAS, This Council in accordance with the provisions of law has previously adopted a Tax Budget for the next succeeding fiscal year commencing January 1, 2021; and

WHEREAS, The Budget Commission of Franklin County, Ohio, has certified its action thereon to this Council together with an estimate by the County Auditor of the rate of each tax necessary to be levied by this Council, and what part thereof is without, and what part within, the ten mill tax limitation; therefore, be it

RESOLVED, By the Council of the City of CANAL WINCHESTER

Franklin County, Ohio, that the amounts and rates, as determined by the Budget

Commission in its certification, be and the same are hereby accepted: and be it further

RESOLVED, That there be and is hereby levied on the tax duplicate of said City the rate of each tax necessary to be levied within and without the ten mill limitation for tax year 2020 (collection year 2021) as follows:

**SCHEDULE A**

**SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY APPROVED BY THE  
BUDGET COMMISSION, AND COUNTY AUDITOR'S ESTIMATED TAX RATES**

<i>FUND</i>	<i>Amount to be Derived from Levies Outside 10 Mill Limitation</i>	<i>Amount Approved by Budget Commission Inside 10 Mill Limitation</i>	<i>County Auditor's Estimate of Full Tax Rate to Be Levied</i>	
			<i>Inside 10 Mill Limit</i>	<i>Outside 10 Mill Limit</i>
<i>General</i>		\$535,619.38	2.00	
<i>General Fund Charter</i>				
<i>Bond Retirement</i>				
<i>Bond Retirement Charter</i>				
<i>Police Pension</i>				
<i>Police Operating</i>				
<i>Fire Pension</i>				
<i>Fire Operating</i>				
<i>Police/Fire Pension</i>				
<i>Capital Improvement Charter</i>				
<i>Road &amp; Sidewalk Fund</i>				
<b>TOTAL</b>		<b>\$535,619.38</b>	<b>2.00</b>	

*and be it further*

*RESOLVED, That the Clerk of this Council be and is hereby directed to certify a copy of  
this Resolution to the County Auditor of said County.*

\_\_\_\_\_ *seconded the Resolution and the roll being  
called upon its adoption the vote resulted as follows:*

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

*Adopted the \_\_\_\_\_ day of \_\_\_\_\_, 2020.*

*Attest:*

\_\_\_\_\_  
*Clerk of Council*

\_\_\_\_\_  
*President of Council*

*CANAL WINCHESTER  
Franklin County, Ohio.*

**CERTIFICATE OF COPY  
ORIGINAL ON FILE**

*The State of Ohio, Franklin County, ss.*

I, \_\_\_\_\_, Clerk of the Council of the City of

CANAL WINCHESTER within and for said County, and in whose

custody the Files and Records of said Council are required by the Laws of State of Ohio to be kept

do hereby certify that the foregoing is taken and copied from the original \_\_\_\_\_

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now on file, that the foregoing has been compared by me with said original

document, and that the same is a true and correct copy thereof.

WITNESS my signature, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Clerk of Council

CANAL WINCHESTER

Franklin County, Ohio.

**ORDINANCE NO. 20-038**

**AN ORDINANCE APPROVING THE EDITING AND INCLUSION OF CERTAIN ORDINANCES AS PARTS OF THE VARIOUS COMPONENT CODES OF THE CODIFIED ORDINANCES OF CANAL WINCHESTER, OHIO, AND DECLARING AN EMERGENCY**

WHEREAS, Section 731.23 of the Ohio Revised Code provides for the publication and certification of ordinances in book form, and

WHEREAS, the Council of the Village of Canal Winchester, Ohio has had the matter of the updating and general revision of the ordinances before it for some time, and

WHEREAS, it has heretofore entered into a contract with the Walter H. Drane Company to prepare and publish such updating service, and

WHEREAS, the updating of such ordinances, together with the new matter to be adopted, the matters to be amended and those to be repealed are before the Council;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Canal Winchester, Ohio:

SECTION 1. That the editing, arrangement and numbering or renumbering of the ordinances of Canal Winchester, Ohio of a general and permanent nature, as revised, recodified, rearranged and consolidated into component codes, titles, chapters and sections within the 2020 Replacement Pages to the Codified Ordinances are hereby approved and adopted.

SECTION 2. The following sections of the Traffic and General Offenses Codes, as amended are hereby approved and adopted as amended or enacted so as to conform to enactments of the Ohio General Assembly.

Traffic Code

- 331.43 Wearing Earplugs or Earphones Prohibited. (Amended)
- 333.03 Maximum Speed Limits. (Amended)
- 335.09 Display of License Plates or Validation Stickers; Temporary License Placard. (Amended)
- 335.091 Operating Without Dealer or Manufacturer License Plates. (Added)
- 337.27 Drivers and Passengers Required to Wear Seat Belts. (Amended)
- 341.03 Prerequisites to Operation of a Commercial Motor Vehicle. (Amended)
- 373.02 Riding Upon Seats. (Amended)
- 373.03 Attaching Bicycle to Vehicle. (Amended)
- 373.10 Motorized Bicycle Operation. (Amended)

General Offenses Code

- 513.01 Drug Abuse Control Definitions. (Amended)
- 529.07 Open Container Prohibited. (Amended)
- 537.16 Illegal Distribution of Cigarettes, Other Tobacco Products, or Alternate Nicotine Products. (Amended)
- 549.01 Weapons Definitions. (Amended)

SECTION 3. That the Clerk of Council shall cause to be published in a manner required by law this Adopting Ordinance together with a brief summary of new matter contained in the 2020 Replacement Pages. Sections in the Codified Ordinances without any previous ordinance history indicate that section contains new matter enacted by this Adopting Ordinance.

SECTION 4. That this ordinance is hereby declared to be an emergency measure, necessary for the preservation of the public health, safety and welfare and specifically for the reason set forth in the preamble hereto; wherefore, this ordinance shall take effect and be in force from and after its passage.

DATE PASSED \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST \_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
MAYOR

DATE APPROVED \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

\_\_\_\_\_  
Finance Director/Clerk of Council

**ORDINANCE NO. 20-039**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A CLEAN OHIO TRAIL FUND PROGRAM STATE/LOCAL GRANT AGREEMENT WITH THE OHIO DEPARTMENT OF NATURAL RESOURCES FOR THE PROPOSED MCGILL PARK TRAIL CONNECTOR AND TO DECLARE AN EMERGENCY**

WHEREAS, the City of Canal Winchester desires to improve public parks and complete improvements contemplated in the approved Canal Winchester Parks Master Plan; and

WHEREAS, the City of Canal Winchester was authorized to apply for a Clean Ohio Trails Fund Grant by Resolution 19-002 administered by the Ohio Department of Natural Resources;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, OHIO:

Section 1. That the Mayor is hereby authorized to accept grant funds in the amount of \$450,828 from the Ohio Department of Natural Resources through the Clean Ohio Trail Fund Grant and to enter into a Clean Ohio Trail Fund State/Local Grant Agreement, in a form substantially similar to the agreement attached hereto as Exhibit A, to complete trail improvements to McGill Park.

Section 2. That this ordinance hereby is declared to be an emergency measure, necessary for the preservation of the public health, safety and welfare and specifically for the reasons set forth in the preamble hereto; wherefore, this ordinance shall take effect and be in force from and after its passage.

DATE PASSED \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST \_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
MAYOR

DATE APPROVED \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

\_\_\_\_\_  
Finance Director/Clerk of Council

**CLEAN OHIO TRAIL FUND  
ODNR/LOCAL PROJECT AGREEMENT**

Through this Clean Ohio Trail Fund ODNR/Local Project Agreement (the “Agreement”), entered under the authority of Ohio Revised Code Section 1519.05, ODNR of Ohio, represented by the Ohio Department of Natural Resources (“ODNR”), and **City of Canal Winchester** (“Grantee”) agree to the planning, development, acquisition, construction and/or maintenance of a Clean Ohio Trail Project (the “Project”) on the property or facilities (the “Property”) described as follows:

**Project Title: McGill Park Trail Connector**

**Total Project Cost: \$901,656**

**Total Funding Assistance: \$450,828**

**Total Local Contribution: \$450,828**

**Location of Project/Property: McGill Park connecting to James Kelley Preserve at Washington Street and Ashbrook Road.**

**Description of Project: The proposed trail would begin in the proposed McGill Park Phase One, and run along Little Walnut Creek for 0.76 mile, and connect to the existing multi-use trail in the city.**

1. **NOTICES.** All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) successfully sent by fax or email, and shall be respectively addressed as follows:

<p>(a) with respect to ODNR:</p> <p>Ohio Department of Natural Resources Office of Real Estate and Land Management 2045 Morse Road, E2 Columbus, Ohio 43229 Attn: Recreation Services Administration</p>	<p>(b) with respect to Grantee:</p> <p>City of Canal Winchester 36 S. High Street Canal Winchester, Ohio 43110 Attn: Lucas Haire, Development Director</p>
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Notices shall be deemed given upon receipt thereof and shall be sent to the addresses appearing above. The parties designated above shall each have the right to specify as their respective address for purposes of this Agreement any other address upon fifteen (15) days prior written notice thereof, as provided herein, to the other parties listed above. If delivery cannot be made at any address designated for notices, a notice shall be deemed given on the date on which delivery at such address is attempted.

- 2. PERFORMANCE OF PROJECT.** The Grantee shall perform its duties and responsibilities under this Agreement in compliance with the terms, promises, conditions, plans, specifications, estimates, procedures, maps, and assurances set forth in the Project Proposal, incorporated herein by reference as though fully, set out herein, and as well as the terms set forth in this Agreement. Grantee shall: (1) promptly submit to ODNR, such reports and documents as ODNR may request; (2) report any and all income obtained on the Property during the Project; (3) operate, maintain, and keep the Property for public recreation; (4) not change the use of the Property unless a proposed change is approved by ODNR; and (5) display a suitable sign acknowledging the Clean Ohio Trail Fund assistance.
- 3. COMMENCEMENT AND TERMINATION.** The Project shall commence on the earlier of the date that this Agreement is signed by an authorized official of ODNR or the date that a waiver of retroactivity is granted by ODNR (the earlier of the two dates shall be referred to as the “Effective Date”), and shall terminate on **December 31, 2021** or the date the Project is otherwise terminated by action of ODNR (the “Termination Date”). If Grantee fails to pursue performance of the Project within a reasonable period of time, ODNR, in the exercise of its sole discretion may terminate the Project. The period of time between the Effective Date and the Termination Date shall be referred to herein as the “Project Period.” The parties, by mutual written consent, may agree to extend the Termination Date, but in no event shall the Termination Date be more than fifteen (15) months after the Effective Date.
- 4. FUNDING ASSISTANCE.** ODNR hereby agrees to (1) obligate Grantee funding assistance **not to exceed \$450,828 .00** from ODNR fiscal allocations made available under the provisions of the Clean Ohio Trail Fund and Am. Sub. H. B. 3 (O.R.C. 1519.05); (2) upon receipt of acceptable proof of actual eligible costs incurred by Grantee in performing this Agreement, reimburse Grantee eligible costs equal to no more than seventy-five percent (75%) of such eligible costs.
- 5. OBM CERTIFICATION OF FUNDS.** Funds for the Project have been released by the Controlling Board as of January 27, 2020 and encumbered by Contract Encumbrance Record Number **000044726** and were so certified by the Director of Budget and Management on February 27, 2020. Performance by ODNR under this Agreement may be dependent upon the appropriation of funds by the Ohio General Assembly. Therefore, in accordance with R.C. § 126.07, it is understood that ODNR’s funds are contingent on the availability of such lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails at any time to continue funding for the payments due hereunder, this Agreement is hereby terminated as of the date that the funding expires without further obligation of ODNR.
- 6. COMPLIANCE WITH GUIDELINES.** ODNR and Grantee mutually agree to perform this Agreement in accordance with the policies and procedures set forth by ODNR and the guidelines set forth in the Clean Ohio Trail Fund Project Guidelines and Application Booklet. Failure to comply with or show sufficient progress in complying with such requirements may result in the termination of this Agreement. In the event of termination, all unused funds shall be retained by ODNR. ODNR may issue instructions, interpretations or additional guidelines as necessary for effective program performance. Project assistance may be terminated in whole or in part at any time within the Project Period if ODNR determines that Grantee has failed to comply with this Project Agreement. Grantee will be promptly notified in writing of such findings and given reasons for this action. Grantee shall follow its own requirements relating to bid guarantees, performance bonds and payment bonds, and insurance.

**7. COMPLIANCE WITH LAW.** Grantee shall comply with all applicable federal, ODNR, and local laws in the conduct of the work hereunder. Grantee and its employees are not employees of ODNR with regard to the application of the Fair Labor Standards Act, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, and ODNR revenue and tax laws. Grantee accepts full responsibility for payment of any and all taxes, insurance premiums, or payroll deductions required for all employees engaged by Grantee in the performance of the work authorized by this Agreement, including without limitation, unemployment compensation, workers' compensation, and all health care, income tax, social security, and Medicare deductions. ODNR is exempt from federal, ODNR, and local taxes and shall not be liable for any taxes under this Agreement.

**8. NO RESTRICTIONS OF RECORD.** Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the Property as described in Exhibit A (the Boundary Map) attached hereto, on which the Project will be located. Grantee represents that it is the fee simple owner of the Property, or has a lease or easement with a term longer than fifteen (15) years beyond the anticipated date of the closeout on the Project and that the only restrictions of record with respect to the Property are: (a) any state of facts which an accurate survey might show; (b) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any governmental agencies having jurisdiction over the Property; and (c) all matters of record pertaining to the Property, including dedicated public rights-of-way and the items identified on said Exhibit A,

**9. USE OF PROPERTY.** The Property shall be retained and used only for public recreation purposes. The Property shall be kept open for the general public's use during reasonable hours and during appropriate seasons of the year, according to the type of use occurring on the Property. The use of the Property shall not be changed from that approved when Clean Ohio Trail Fund assistance was obtained without prior written approval from ODNR. During the term of the bonds issued to provide funds for the Clean Ohio Trails Fund, the Property shall not be converted to another use other than public outdoor recreation use nor shall the Property be transferred through deed or easement without the approval of ODNR. Should Grantee convert the Property without the approval of ODNR, Grantee may become ineligible for further grant funding through ODNR until the condition of noncompliance is rectified to the satisfaction of ODNR. Grantee shall retain and use the Project and Property in a manner consistent with the purposes of Section 21, Article VIII of the Ohio Constitution

**10. MAINTENANCE OF PROPERTY.** The Property shall be operated and maintained so as to be safe, attractive, and inviting to the public. Sanitation and sanitary facilities shall be maintained to comply with applicable ODNR and local health standards. Buildings, recreation and support facilities, and other improvements shall be kept in reasonable repair throughout their estimated life expectancy to prevent undue deterioration.

**11. ACCESSIBILITY.** Any new facility constructed on the Property will, whenever possible, be designed to accommodate people with disabilities. The Property and facilities on the Property shall be made available to all persons regardless of race, color, religion, sex, national origin, handicap, military status, age or ancestry. Any modifications to existing structures shall also include design considerations for persons with disabilities. It is understood that this requirement is applicable to any construction occurring on the Property, regardless of the funding source for the improvement. Grantee will require any facility on the Property to be designed to comply with the Architectural Barriers Act of 1968 (Public Law 90-480), DOI Section 504 Regulations (43 CFR Park 17). Grantee will be responsible to ensure compliance with these specifications by the contractor.

**12. USER FEES.** User fees charged for the Property, if any, shall be reasonable for all users and shall not create unfair competition with private enterprises offering similar services. Excess revenues from user fees at the Project site shall be returned to the public in the form of expanded facilities or services at the funded site.

**13. SIGN.** A Clean Ohio Trails Fund acknowledgment sign shall be prominently displayed at the Property or facilities on the Property.

**14. QUALIFICATION TO RECEIVE GRANT.** Grantee affirms that it duly organized local political subdivision or nonprofit organization, qualified to receive grants under the Clean Ohio Trail Fund. Grantee further affirms that if at any time during the term of this Agreement, Grantee for any reason becomes disqualified from participating in the Clean Ohio Trail Fund, Grantee will immediately notify ODNR in writing and will immediately cease performance of the Project. Failure to provide such notice in a timely manner shall void this Agreement and may be sufficient cause for the State of Ohio to debar the Grantee from future state grant opportunities as may be permitted by law. Grantee represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. Section 153.02 or R.C. Section 125.25.

**15. PLANS; BIDDING.** If the Project requires plans and specifications, all construction plans and specifications shall be approved and stamped by a registered professional engineer and/or architect. Grantee shall require completion of the work in accordance with the approved construction plans and specifications. Grantee shall follow all applicable laws in determining whether the Project must be competitively bid, and if competitive bidding for the Project is not required by law, to the extent reasonable possible as determined by Grantee, Grantee shall employ an open and competitive process in the selection of its contractors. Bid documents designed to be so restrictive to exclude open competitive bidding and bid documents that do not allow for "or equal" provisions, may not be acceptable. Plans must reflect the intent of the Project as described in the authorizing legislation. Once approved by ODNR, plans and specifications should not be substantially modified. ODNR must be notified of any planned substantial changes, and only approved changes will be eligible for reimbursement.

**16. DISCRIMINATION PROHIBITED.** Discrimination on the basis of residence, including preferential fees, reservations, membership systems, is prohibited, except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence. Compliance with federal, state, and local laws pertaining to non-discrimination in employment practices, facility and area use, minimum wages, conflict of interest, solicitations for contract bids, bid awards, etc., will be met at all times. No person will be discriminated against or be excluded from participating in any program or activity on the grounds of race, color, religion, sex, national origin, handicap, military status, age or ancestry.

**17. RELOCATION ASSISTANCE.** Grantee shall comply with the terms of Ohio Revised Code Chap. 163 for all real property acquisitions, and where applicable shall assure that these requirements have been complied with for the Property to be developed with assistance under this Agreement.

**18. RELATIONSHIP OF THE PARTIES.**

**A. Expenses.** Grantee shall be responsible for all its own business expenses, including, but not limited to, computers, email and internet access, software, phone service, and office space. Grantee will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any.

**B. No Control Over Means and Methods.** While Grantee shall be required to perform its obligations described hereunder during the term of this Agreement, nothing herein shall be construed to imply, by reason of Grantee's obligations hereunder, that ODNR shall have or may exercise any right of control over Grantee with regard to the means or method of Grantee's performance of its obligations hereunder.

**C. No Right to Bind.** Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

**19. INDEPENDENT CONTRACTOR.** Grantee is an independent contractor as defined by the Internal Revenue Code. If Grantee is a Public Employees Retirement System (PERS) retirant, as defined by R.C. § 145.38, Grantee shall notify ODNR of such status in writing prior to the commencement of the Project. Notices pursuant to this Paragraph IV shall be sent to ODNR's Director of Human Resources by mail at 2045 Morse Rd., Building D-1, Columbus, Ohio 43229, by fax at (614) 265-7995, or by email at [HR@dnr.ODNR.oh.us](mailto:HR@dnr.ODNR.oh.us). ODNR shall not be responsible for any changes to Grantee's retirement benefits that may result from entering into this Agreement nor shall ODNR make any contributions to the PERS on behalf of any of the individuals employed by Grantee, or its contractors or other agents. Grantee acknowledges and agrees any individual providing personal services under this Agreement is not a public employee for purposes of R.C. Chapter 145. Grantee certifies that it is a business entity with five or more employees as defined at R.C. § 145.037 (A) for the purposes of the application of R.C. Chapter 145, or that Grantee has completed the necessary forms and returned it to ODNR of Ohio if Grantee is an employer with no more than four (4) employees.

**20. DRUG-FREE WORKPLACE.** Grantee shall comply with all applicable ODNR and federal laws regarding drug-free workplace. Grantee shall make a good faith effort to ensure that all of Grantee's employees, while working on the Property, shall not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

**21. PREVAILING WAGE.** Grantee shall comply with the prevailing wage requirements, as may be applicable, described under R.C. Chapter 4115. Grantee shall pay to laborers and mechanics performing work under this Agreement the prevailing wage rates of the locality where the work shall be performed, as determined by the Ohio Department of Commerce, Division of Industrial Compliance, Wage and Hour Bureau. Grantee shall submit payroll reports to the Ohio Department of Commerce that are certified by it that the payroll is correct and complete, and the wage rates shown are not less than those required by this Agreement. Grantee is responsible for submitting payroll reports of subcontractors to the appropriate Ohio regulatory agency.

**22. SELF-INSURANCE.** ODNR is self-insured for the indemnification of its officers and employees in the maximum aggregate amount of one million dollar per occurrence in accordance with section 9.87 of the Ohio Revised Code.

**23. LIABILITY FOR CLAIMS.** Grantee shall be solely responsible for any and all claims, demands, or causes of action arising from Grantee's obligations under this Agreement, including any costs, attorney fees or expenses, in any litigation that may arise from the performance of this Agreement. Grantee shall indemnify and hold ODNR and its officers, agents and employees harmless against any expenses (including attorney fees) and losses resulting from the publication of the content of the advertisements(s), including, without limitation, claims or suits for libel, violation of privacy, copyright infringement or plagiarism. It is specifically understood and agreed that ODNR does not indemnify Grantee. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. In no event shall ODNR be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits.

**24. REPORTS AND RECORDS.** The Grantee will keep and make all reports and records associated with the Project funded under this Agreement available to the State Auditor, or the Auditor's designee, and ODNR for a period of not less than eighteen (18) years after the Termination Date. These reports and records shall include a description of the Project, a detailed overview of the scope of work, and disbursement detail (including amount, date, nature/object of expenditure), and vendor information. Grantee acknowledges that the Auditor of State and other departments, agencies and officials of the State may audit the Project at any time, including before, during and after completion. Grantee agrees that any costs of audit by the Auditor of State or any other department, agency or official of the State will be borne exclusively by and paid solely by Grantee, and that the funds provided under this Agreement will not be used by Grantee for payment of any audit expenses for any reason at any time. Grantee will be solely responsible for all costs associated with audit. At any reasonable time, ODNR or its agents shall have the right to inspect the financial books and records relevant to the administration and operation of grant funds which shall be kept for three (3) years after the termination of this Agreement.

**25. GRANTEE'S REPRESENTATIONS AND WARRANTIES**

**A. Ethics Compliance.** Grantee, by signature on this document, certifies that Grantee: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. Grantee understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State of Ohio.

**B. Legal Status.** Grantee affirms that it has been properly formed, and properly exists, as a political subdivision or nonprofit organization in the State of Ohio. Grantee further represents and warrants that it has legal authority to undertake all requirements of this Agreement.

**C. Campaign Contributions.** Grantee hereby certifies that neither Grantee nor any of Grantee's officers, nor the spouse of any such person, has made contributions to the governor or the governor's campaign committees in excess of the limitations specified in Ohio Revised Code § 3517.13.

**D. Findings for Recovery.** Grantee affirmatively represents and warrants to ODNR that it is not subject to a finding for recovery under Ohio Revised Code §9.24, or that it has taken appropriate remedial steps required under Ohio Revised Code §9.24 or otherwise qualifies under that section. Grantee agrees that if this representation or warranty is deemed to be false, the Agreement shall be void *ab initio* as between the parties to this Agreement, and any funds paid by ODNR hereunder immediately shall be repaid to ODNR, or an action for recovery immediately may be commenced by ODNR for recovery of said funds. Grantee warrants that it is not subject to an "unresolved" finding for recovery under Ohio Revised Code § 9.24.

**E. Debarment.** Grantee affirms that if at any time during the term of this Agreement Grantee becomes disqualified from conducting business in the State of Ohio, or becomes debarred from doing business with the State of Ohio, Grantee will immediately notify ODNR, in writing, and will immediately cease performance of the work. Failure to provide such notice in a timely fashion shall void this agreement and may be sufficient cause for ODNR to debar Grantee from future state contracting opportunities as may be permitted by law. Grantee represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either Ohio Revised Code §§ 153.02 or 125.25.

**F. Boycotting.** Pursuant to Ohio Revised Code §9.76, Grantee hereby declares that it is not boycotting any jurisdiction with whom the State of Ohio can participate in open trade, including the nation of Israel, and will not do so during the term of this Agreement.

**G. Offshore Goods and Services.** Grantee affirms to have read and understands the terms of Executive Order No. 2019-12D issued by Ohio Governor Mike Dewine and has signed and completed the Standard Affirmation and Disclosure Form and shall abide by those requirements in the performance of this Agreement and perform no services required under this Agreement outside of the United States. The Executive Order and Affirmation and Disclosure Form are available at the following website: <https://governor.ohio.gov/wps/portal/gov/governor/media/executive-orders/2019-12d>

**26. TERMINATION BY ODNR.** Any time after signing this Agreement, ODNR may terminate the Agreement, in whole or in part, for any reason whatsoever upon written notification to the Grantee. If ODNR terminates this Agreement, the Grantee will be paid for any non-cancelable obligation properly incurred by the Grantee prior to termination. Grantee shall return any unused grants funds to ODNR within forty-five (45) days of termination.

**27. TERMINATION BY GRANTEE.** Grantee may, at any time after execution of this Agreement, terminate this Agreement for any reason whatsoever upon written notification to ODNR. If Grantee terminates this Agreement, Grantee shall not incur any new obligations using grant funds and shall make a good-faith effort to cancel as many outstanding obligations of grant funds as possible. Grantee shall return all unused grant funds to ODNR within forty-five (45) days of such termination.

**28. BREACH; CURE; DAMAGES.**

**A. Notice of Breach.** ODNR may, at any time after a breach, terminate this Agreement, upon written notice to Grantee. ODNR may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement.

**B. Opportunity to Cure.** ODNR, in its sole discretion, may permit Grantee to cure the breach. Such cure period shall be no longer than twenty-one (21) calendar days. Notwithstanding ODNR permitting a period of time to cure the breach or Grantee's cure of the breach, ODNR does not waive any of its rights and remedies provided ODNR in this Agreement, including, but not limited to, recovery of funds paid for goods or services Grantee receives in violation of Executive Order No. 2019-12D, costs associated with corrective action, and liquidated damages.

**29. MISCELLANEOUS**

**A. Controlling Law.** This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Grantee consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

**B. Waiver.** A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

**C. Successors and Assigns.** Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Grantee, without the prior written consent of ODNR. Any assignment or delegation not consented to may be deemed void by ODNR.

**D. Headings.** The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.

**E. Severability.** The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

**F. Entire Agreement.** This Agreement, along with documents incorporated herein by reference, contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements with respect to the subject matter hereof, whether written or oral, between the parties.

**G. Execution.** This Agreement is not binding upon ODNR unless executed in full and is effective as of the last date of signature by ODNR.

**H. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**I. Electronic Signatures.** Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to Ohio Revised Code Chap. 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives.

**ODNR:**  
Ohio Department of Natural Resources

**GRANTEE**  
City of Canal Winchester,

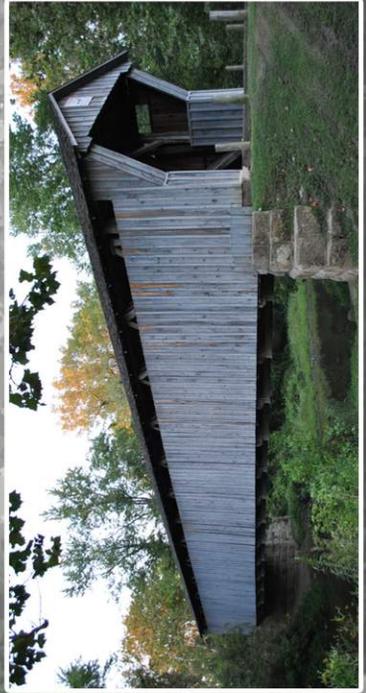
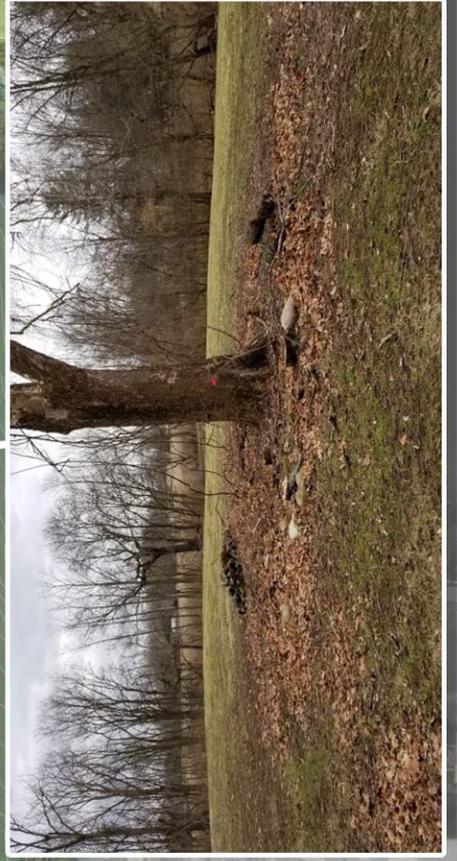
\_\_\_\_\_  
Mary Mertz, Director  
Ohio Department of Natural Resources

\_\_\_\_\_  
By: \_\_\_\_\_  
(Signed)

Date: \_\_\_\_\_

Title: \_\_\_\_\_

# Exhibit A



**ORDINANCE NO. 20-040**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A TAX INCREMENT FINANCING AGREEMENT WITH THE MOUNTAIN AGENCY COLUMBUS, LLC**

WHEREAS, this Council previously passed Ordinance 13-33 on November 5, 2013 (the "Gender Road Public Improvement TIF Ordinance"), declaring improvements to certain parcels of real property to be a public purpose and requiring the owners of such parcels to make service payments in lieu of taxes on the improvements to parcels to fund those public improvements described in the Gender Road Public Improvement TIF Ordinance, all as provided in Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code; and

WHEREAS, this Council previously amended Ordinance 13-33 on with the Ordinance 16-037 passed on December 19, 2016 adding certain acreage to the TIF area, defined by the TIF Ordinance; and

WHEREAS, this Council desires to enter into an agreement with the owners of certain parcels in the Gender Road Public Improvement TIF area who, conditioned upon reimbursement by the City of Canal Winchester through the Gender Road Public Improvement TIF, are willing to construct public water line facilities that substantially benefit the TIF area;

NOW THEREFORE BE IT ORDAINED BY THE CITY OF CANAL WINCHESTER, FRANKLIN COUNTY, OHIO AS FOLLOWS:

Section 1: That Council hereby authorizes and directs the Mayor to enter into a Tax Incentive Financing Agreement with The Mountain Agency Columbus, LLC, in a form substantially similar to the agreement attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Canal Winchester, Franklin County, Ohio.

Section 3: That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST \_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
MAYOR

DATE APPROVED \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

\_\_\_\_\_  
Finance Director/Clerk of Council

## **TAX INCREMENT FINANCING AGREEMENT**

**THIS TAX INCREMENT FINANCING AGREEMENT** (the “*Agreement*”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 (the “*Effective Date*”), by and between the **CITY OF CANAL WINCHESTER, OHIO** (“*City*”), a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (the “*State*”) and its Charter, and **THE MOUNTAIN AGENCY COLUMBUS, LLC.**, an Ohio limited liability company (the “*Developer*”) , under the circumstances summarized in the following recitals (the capitalized terms not defined in the recitals are being used therein as defined in Article I hereof). The City and Developer are hereinafter sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

### **RECITALS:**

**WHEREAS**, the Developer owns certain real property (the “*Property*”) as described and depicted in **EXHIBIT A** attached hereto and incorporated herein, and Developer plans to construct and/or has constructed the Private Improvements (as defined herein) on that real property; and

**WHEREAS**, the Parties have determined that certain Public Infrastructure Improvements (as defined herein) will need to be constructed to facilitate the development of the Private Improvements; and

**WHEREAS**, in accordance with the TIF Statutes and pursuant to Canal Winchester Ordinance No. 13-33, as amended by Canal Winchester Ordinance Nos. 16-037 and 17-059 (the “*TIF Ordinance*”) and Ordinance No. 20-\_\_ (the “*TIF Agreement Approval Ordinance*”), the Parties have entered into this Agreement to provide generally for the development and financing of the Public Infrastructure Improvements; and

**WHEREAS**, the City has determined pursuant to the TIF Agreement Approval Ordinance that it would be in the best interests of the City to contract with the Developer to provide for the construction and installation of the Public Infrastructure Improvements in the manner described herein;

**NOW, THEREFORE**, in consideration of the premises and covenants contained herein, the Parties hereto agree and obligate themselves as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.1. Use of Defined Terms.** In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, the words and terms set forth in Section 1.2 shall have the meanings set forth in Section 1.2 unless the context or use clearly indicates another meaning or intent.

**Section 1.2. Definitions.** As used herein:

“**Agreement**” means this Tax Increment Financing Agreement by and between the City and the Developer and dated as of the Effective Date.

“**Authorized City Representative**” means the Mayor of the City. The City may from time to time provide a written certificate to the Developer signed on behalf of the City by the Mayor designating an alternate or alternates who shall have the same authority, duties and powers as the Authorized City Representative.

“**Authorized Developer Representative**” means \_\_\_\_\_. The Developer may from time to time provide a written certificate to the City signed on behalf of the Developer by the President of the Developer designating an alternate or alternates or a substitute who shall have the same authority, duties and powers as the Authorized Developer Representative.

“**City**” means the City of Canal Winchester, Ohio, an Ohio municipality.

“**City Council**” means the City Council of City.

“**Code**” means the Internal Revenue Code of 1986, as amended, applicable Treasury Regulations (whether temporary or final) under the Code or the statutory predecessor of that Code, and any amendments of, or successor provisions to, the foregoing and any official rulings, announcements, notices, procedures and judicial determinations regarding the foregoing, all as and to the extent applicable.

“**Construction Documents**” means this Agreement and the Drawings and Specifications as such documents may be revised or supplemented from time to time with the approval of the Authorized City Representative and the Authorized Developer Representative, which Drawings and Specifications contain the detailed construction plans and specifications for the Public Infrastructure Improvements and when completed, will be placed on file with the Authorized City Representative on behalf of the City.

“**Cost of the Work**” means the actual costs of the construction and installation of the Public Infrastructure Improvements, estimates of which are reflected in **EXHIBIT B**, and the final costs of which shall be reflected in a written requisition in the form attached hereto as **Exhibit D**.

“**County**” means the County of Franklin, Ohio.

“**Developer**” means The Mountain Agency Columbus, LLC and Ohio limited liability company organized and existing under the laws of the State, including any successors or assigns thereof permitted under this Agreement.

“**Developer’s Completion Certificate**” shall have the meaning set forth in Section 4.3(a) hereof.

**“Developer TIF Reimbursement Amount”** means one hundred seventy-three thousand, six hundred thirty-seven dollars (\$173,637.00), or fifty percent (50%) of the Cost of the Work, whichever is less.

**“Drawings and Specifications”** shall have the meaning set forth in Section 5.1 hereof.

**“Effective Date”** means the date as defined in the preambles of this Agreement.

**“Engineer”** means McGill Smith Punshon, Inc. or any other architectural or engineering firm licensed to perform architectural and engineering services within the State of Ohio and appointed by the City with the consent of the Authorized Developer Representative, which consent shall not be unreasonably withheld or delayed.

**“Engineer’s Completion Certificate”** shall have the meaning set forth in Section 4.3(b) hereof.

**“Event of Default”** means an Event of Default under Section 7.1 hereof.

**“Force Majeure”** means acts of God; fires; epidemics; landslides; floods; strikes; lockouts or other industrial disturbances; acts of public enemies; acts or orders of any kind of any governmental authority; insurrections; riots; civil disturbances; arrests; explosions; breakage or malfunctions of or accidents to machinery, transmission pipes or canals; partial or entire failures of utilities; shortages of labor, materials, supplies or transportation; lightning, earthquakes, hurricanes, tornadoes, storms or droughts; periods of unusually inclement weather or excessive precipitation; or any other cause or event not reasonably within the control of the Developer or the City, as the case may be, excluding, however, the inability of the Developer to obtain financing for its obligations hereunder.

**“Notice Address”** means:

as to City:                      City of Canal Winchester  
   36 S. High St.  
   Canal Winchester, Ohio 43110  
   Attention: Mayor

as to Developer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

“*Person*” shall mean an individual, a corporation, a partnership, an association, a limited liability company, a joint stock company, a joint venture, a trust, an unincorporated organization, or a government or any agency or political subdivision thereof.

“*Private Improvements*” means the project proposed to be constructed by the Developer consisting of approximately eight hundred thousand square feet of industrial buildings.

“*Property*” means the real property described and depicted in **EXHIBIT A**.

“*Public Infrastructure Improvements*” means the public infrastructure improvements as generally described on **EXHIBIT B** and depicted on **EXHIBIT C**, attached hereto and incorporated herein by reference and which will be more specifically described in the Construction Documents.

“*Public Infrastructure Improvements Site*” means the real property depicted on **EXHIBIT C** attached hereto and incorporated herein by reference.

“*Service Payments*” means service payments in lieu of taxes as defined in the TIF Ordinance.

“*State*” means the State of Ohio.

“*TIF Exemption*” means exemption from taxation as defined in the TIF Ordinance.

“*TIF Fund*” means the Gender Road Public Improvement Tax Increment Equivalent Fund created in Section 3 of the TIF Ordinance.

“*TIF Ordinance*” means Ordinance No. 13-33, passed on November 4, 2013, as amended by Ordinance No. 16-037, passed on December 19, 2016, and by Ordinance No. 17-059, passed on December 18, 2017, by the City Council.

“*TIF Statutes*” means collectively, Sections 5709.40, 5709.42 and 5709.43 of the Ohio Revised Code, as those sections may be amended from time to time.

“*Work*” means the construction of the Public Infrastructure Improvements in accordance with this Agreement.

**Section 1.3. Interpretation.** Any reference in this Agreement to City or to any officers of City includes those entities or officials succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State, or to a section, provision or chapter of the Ohio Revised Code shall include such section, provision or chapter as modified, revised, supplemented or superseded from time to time; provided, that no amendment, modification, revision, supplement or superseding section, provision or chapter shall be applicable

solely by reason of this paragraph if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Unless the context indicates otherwise, words importing the singular number include the plural number, and vice versa; the terms “*hereof*”, “*hereby*”, “*herein*”, “*hereto*”, “*hereunder*” and similar terms refer to this Agreement; and the term “*hereafter*” means after, and the term “*heretofore*” means before the date of this Agreement. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise. References to articles, sections, subsections, clauses, exhibits or appendices in this Agreement, unless otherwise indicated, are references to articles, sections, subsections, clauses, exhibits or appendices of this Agreement.

**Section 1.4. Captions and Headings.** The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit or describe the scope of the intent of any article, section, subsection, clause, exhibit or appendix of this Agreement.

**Section 1.5. Conflicts among the TIF Ordinance, TIF Agreement and Construction Documents.** Where there is a conflict between the TIF Ordinance, this Agreement and the Construction Documents, the conflict shall be resolved by providing the better quality or greater quantity and compliance with the more stringent requirement.

If an item is shown on the Drawings but not specified, the Developer shall provide the item of the same quality as similar items specified, as reasonably determined by the Engineer. If an item is specified but not shown on the Drawings, it shall be located as reasonably directed by the Engineer.

## ARTICLE II

### GENERAL AGREEMENT AND TERM

**Section 2.1. General Agreement Among Parties.** For the reasons set forth in the Recitals hereto, which Recitals are incorporated herein by reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties, the Parties shall cooperate in the manner described herein to facilitate the construction of the Public Infrastructure Improvements.

**Section 2.2. Term of Agreement.** This Agreement shall become effective as of the Effective Date and shall continue until the Parties have satisfied their respective obligations as set forth in this Agreement, unless sooner terminated in accordance with the provisions set forth herein.

**Section 2.3. Compensation to School Districts.** As provided in the TIF Ordinance, the Canal Winchester City School District and the Eastland-Fairfield Joint Vocational School District (collectively, the “School Districts”) shall receive from the Service Payments, prior to deposit of any of those Service Payments into the TIF Fund, an amount equal to the amount the respective School Districts would otherwise have received as real property tax payments derived from the increase in the assessed value of the Property but for the TIF Exemption.

### ARTICLE III

#### **REPRESENTATIONS AND COVENANTS OF THE PARTIES**

**Section 3.1. Representations and Covenants of City.** City represents and covenants that:

(a) It is a municipal corporation duly organized and validly existing under the Constitution and applicable laws of the State and its Charter.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to City which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of City, that execution, delivery and performance do not and will not violate or conflict with any provision of law applicable to City, including its Charter, and do not and will not conflict with or result in a default under any agreement or instrument to which City is a party or by which it is bound. Among other things, it has determined that it is appropriate to enter into this Agreement in lieu of constructing the Public Infrastructure Improvements pursuant to a competitive bidding process because the Developer's payment therefor is limited to the Developer TIF Reimbursement Amount.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by City and all steps necessary to be taken by City have been taken to constitute this Agreement, and the covenants and agreements of City contemplated herein are valid and binding obligations of City, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by City wherein an unfavorable ruling or decision would materially and adversely affect City's ability, to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor public body.

(g) The TIF Ordinance has been duly passed and is in full force and effect.

**Section 3.2. Representations and Covenants of the Developer.** The Developer represents and covenants that:

(a) It is a limited liability company duly organized and validly existing under the applicable laws of the State of Ohio\_\_\_\_\_.

(b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the Developer which would impair its ability to carry out its obligations contained in this Agreement.

(c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the knowledge of the Developer, the execution, delivery and performance of this Agreement does not and will not violate or conflict with any provision of law applicable to the Developer, and do not and will not conflict with or result in a default under any agreement or instrument to which the Developer is a party or by which it is bound.

(d) This Agreement to which it is a Party has, by proper action, been duly authorized, executed and delivered by the Developer and all steps necessary to be taken by the Developer have been taken to constitute this Agreement, and the covenants and agreements of the Developer contemplated herein are valid and binding obligations of the Developer, enforceable in accordance with their terms.

(e) There is no litigation pending or to its knowledge threatened against or by the Developer wherein an unfavorable ruling or decision would materially and adversely affect the Developer's ability to carry out its obligations under this Agreement.

(f) It will do all things in its power in order to maintain its existence or assure the assumption of its obligations under this Agreement by any successor entity.

(g) The Developer hereby agrees to make the Service Payments due with respect to any parcel of the Property owned by it during its period of ownership, all pursuant to and in accordance with the requirements of the TIF Statutes, the TIF Ordinance, the provisions of Ohio law relating to real property tax collections and any subsequent amendments or supplements thereto. Service Payments will be made semiannually to the County Treasurer (or to that Treasurer's designated agent for collection of the Service Payments) on or before the final dates for payment of real property taxes for the Property, until expiration of the TIF Exemption. Any late payments will bear penalties and interest at the then current rate established under Sections 323.121 and 5703.47 of the Ohio Revised Code or any successor provisions thereto, as the same may be amended from time to time. Service Payments will be made in accordance with the requirements of the TIF Statutes and the TIF Ordinance and, for each parcel of the Property, will be in the same amount as the real property taxes that would have been charged and payable but for the TIF Exemption, including any penalties and interest. The Developer will not, under any circumstances, be required (i) for any tax year to pay both real property taxes and Service Payments with respect to any increase in assessed value of the Property, whether pursuant to Section 5709.42 of the Ohio Revised Code or this Agreement, and (ii) to make Service Payments as to any portion of a structure for any period it is subject to an exemption pursuant to Sections 3735.65 through 3635.70 of the Ohio Revised Code.

(i) Enforcement of Obligation to Make Service Payments; Priority of Lien. The Developer acknowledges that the provisions of Section 5709.91 of the Ohio Revised Code, which

specify that the Service Payments for each parcel within the Property will be treated in the same manner as taxes for all purposes of the lien described in Section 323.11 of the Ohio Revised Code, including, but not limited to, the priority of the lien and the collection of Service Payments, will apply to this Agreement and to the parcels within the Property and any improvements thereon.

(ii) Failure to Make Payments. Should the Developer fail to make any payment required hereunder, the Developer shall pay, in addition to the Service Payments it is required to pay hereunder, such amount as is required to reimburse the City for any and all reasonably and actually incurred costs, expenses and amounts (including reasonable attorneys' fees) required by the City to enforce the provisions of this Agreement against the Developer.

## ARTICLE IV

### CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS

**Section 4.1. General Considerations.** In consideration of the Developer's promise to construct or cause to be constructed the Public Infrastructure Improvements, the City agrees, subject to Section 4.4 hereof, to reimburse and/or otherwise pay the Developer the Developer TIF Reimbursement Amount in accordance with Section 6.2 and/or any other applicable provisions of this Agreement.

**Section 4.2. Construction of the Public Infrastructure Improvements.** The Developer covenants and agrees that it will cause to be constructed and installed all of the Public Infrastructure Improvements in accordance with this Agreement and the Construction Documents.

The Developer shall supervise, perform and direct the Work utilizing qualified personnel, and in accordance with the standards of care normally exercised by construction organizations performing similar work. The Developer shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures for coordinating all portions of the Work.

Prior to the commencement of the Public Infrastructure Improvements, the Developer shall submit the names of the subcontractors it proposes to use. Under no circumstances will the Developer use any subcontractor who is not previously disclosed to the City. The City will promptly reply, but in any event, not more than five (5) business days after receipt of notice of the same, to the Developer in writing stating whether or not the City has reasonable objection to any such proposed person or entity.

The Developer agrees that the Public Infrastructure Improvements, including all rights-of-way and easements associated therewith, including those identified on **EXHIBIT C** (which is attached hereto and incorporated herein by reference), shall be dedicated for public use upon completion and acceptance as provided in Sections 4.3 and 4.4 hereof.

**Section 4.3. Completion of the Public Infrastructure Improvements.** The Public Infrastructure Improvements shall be deemed completed upon fulfillment of the following conditions:

(a) Receipt of written notice (the “*Developer’s Completion Certificate*”) from the Authorized Developer Representative that the Public Infrastructure Improvements have been completed and are ready for final acceptance by the City, which notice shall (i) generally describe all property acquired or installed as part of the Public Infrastructure Improvements; (ii) state the Cost of the Work, and (iii) state and shall constitute the Developer’s representation that the construction, improvement and equipping of the Public Infrastructure Improvements have been completed substantially in accordance with the Construction Documents, all costs then due and payable in connection therewith have been paid, there are no mechanics’ liens or to its knowledge, after reasonable inquiry, any basis for such liens, and all obligations, costs and expenses in connection with the Public Infrastructure Improvements have been paid or discharged.

(b) Receipt from the Engineer of a final Certificate of Completion (the “*Engineer’s Completion Certificate*”) stating that to the best of the Engineer’s knowledge, information and belief, and on the basis of the Engineer’s on-site visits and inspections, that the Public Infrastructure Improvements have been satisfactorily completed in accordance with the terms and conditions of the Construction Documents, including all punch list items, that the construction, improvement and equipping of the Public Infrastructure Improvements have been accomplished in a manner that conforms to all then applicable governmental laws, rules and regulations; and that the Public Infrastructure Improvements have been approved by the applicable governmental authorities. Such Engineer’s Completion Certificate shall be delivered to both Developer and City no more than five (5) calendar days after Engineer confirms all of the foregoing requirements.

**Section 4.4. Acceptance of the Public Infrastructure Improvements.** The City shall have no obligation to accept the Public Infrastructure Improvements until (a) the Public Infrastructure Improvements have been satisfactorily completed in accordance with the Construction Documents, as evidenced by the Engineer’s Completion Certificate and properly dedicated as public rights-of-way and easements to the City; (b) the City has received the Developer’s Completion Certificate, the Engineer’s Completion Certificate, copies of the approval letters issued by the public authorities as referenced in Section 4.3 herein, and all documents and instruments to be delivered to the City pursuant to the Construction Documents; and (c) the City has received evidence reasonably satisfactory to it that all liens on the Public Infrastructure Improvements, including, but not limited to, tax liens, the lien of any mortgage, and any mechanics’ liens, have been or shall be released, or, with respect to mechanics’ liens, security therefor has been provided pursuant to Section 5.8 hereof. The City agrees to accept the Public Infrastructure Improvements, the easements and the rights-of-way allocable thereto within thirty (30) days after the satisfaction of the conditions listed in (a) though (c) of the immediately preceding sentence. The acceptance by the City of the Public Infrastructure Improvements shall not relieve the Developer of its responsibility for defects in material or workmanship as set forth in Section 5.10. hereof.

**Section 4.5. Extensions of Time.** If the Developer or the City is delayed in the commencement or progress of its obligations hereunder by a breach by the other Party of its obligations hereunder, or by failure of the Engineer to act as provided in this Agreement, or by Force Majeure, then the time for performance under this Agreement by the Party so delayed shall be extended for such time as is commercially reasonable under the circumstances.

**Section 4.6. Changes in the Work.** After the execution of this Agreement, and without invalidating this Agreement, the Developer, the City and the Engineer by written agreement (a “*Change Order*”) may agree to changes in the Work. Changes in the Work shall be performed under applicable provisions of this Agreement and the Construction Documents, unless otherwise provided in the Change Order.

A Change Order shall be in the form of a written instrument prepared by the Engineer and signed by the Authorized City Representative, the Authorized Developer Representative and the Engineer, stating their agreement upon (a) the change in the Work, (b) any adjustment of the Cost of the Work and Developer TIF Reimbursement Amount, and (c) any extension of the time for performance under this Agreement. A Change Order shall be prepared by the Engineer and presented to the City and Developer within three (3) business days after all necessary cost and time information associated with the change is provided to the Engineer by the Developer. The Owner, Developer and Engineer shall have a reasonable amount of time to review and approve or reject the Change Order not to exceed five (5) business days after the Change Order is presented to each of them. The Developer shall have no obligation to perform any change in the Work prior to receipt of a fully-executed Change Order nor delay the completion of the Work as originally contemplated in the previously-approved Drawings and Specifications, hereinafter defined, on account of a pending Change Order. Any costs or time extension made necessary due to the pendency of a Change Order shall be added to the Change Order and Developer TIF Reimbursement Amount.

**Section 4.7. Engineer.** Whenever this Agreement requires an action by or response from the Engineer, the same shall be provided within three (3) business days of Developer’s request for the same. When Developer believes it has completed all punch list items, it shall notify the City and Engineer, and the Engineer shall visit the site and confirm the punch list has been completed within three (3) business days of Developer’s notice or otherwise provide Developer with a detailed list of all items the Engineer believes are not in accordance with the Construction Documents as well as a list of any approvals or documents needed in order for issuance of the Engineer’s Certificate of Completion.

## ARTICLE V

### **FURTHER PROVISIONS RELATING TO THE CONSTRUCTION OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS**

**Section 5.1. Construction Documents.** The Developer is causing to be prepared the Construction Documents, which shall be in a form reasonably satisfactory to the Authorized City Representative and the Developer. Any working drawings, plans and specifications prepared in connection with the Work (collectively, the “*Drawings and Specifications*”) and that comprise the Construction Documents are instruments of service through which the Work to be executed is described. The Developer may retain one record set. The design professionals that create the Drawings and Specifications shall own the copyrights on the Drawings and Specifications and will

retain all common law, statutory and other reserved rights, in addition to the copyrights; provided, however, that the Developer shall ensure that the agreements with each of the design professionals grant a non-exclusive, irrevocable, perpetual, and unlimited license to the City to use and reproduce the Drawings and Specifications solely and exclusively for the construction and maintenance of the Public Infrastructure Improvements. All copies of the Drawings and Specifications, except the record set of the Developer, shall be returned or suitably accounted for to the City, on request, upon final completion of the Public Infrastructure Improvements, and the copy thereof furnished to the Developer is for use solely with respect to the Public Infrastructure Improvements. They are not to be used by the Developer on other projects without the specific written consent of the City. The Developer is authorized to use and reproduce applicable portions of the Drawings and Specifications appropriate to the execution of obligations with respect to the Public Infrastructure Improvements; provided, however, that any reproduction and distribution of copies of the Drawings and Specifications by the Developer to the extent necessary to comply with official regulatory requirements or obligations of law shall not be construed as an infringement of the copyrights or other reserved rights of the City with respect to the Drawings and Specifications. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings and Specifications.

**Section 5.2. Prevailing Wage.** The City designates its Finance Director as the prevailing wage coordinator for the Public Infrastructure Improvements (the “*Prevailing Wage Coordinator*”). The Developer acknowledges and agrees that the Public Infrastructure Improvements are subject to the prevailing wage requirements of Chapter 4115 of the Ohio Revised Code and all wages paid to laborers and mechanics employed on the Public Infrastructure Improvements shall be paid at not less than the prevailing rates of wages of laborers and mechanics for the classes of work called for by the Public Infrastructure Improvements, which wages shall be determined in accordance with the requirements of that Chapter 4115. The Developer shall comply, and the Developer shall require compliance by all contractors and shall require all contractors to require compliance by all subcontractors working on the Public Infrastructure Improvements, with all applicable requirements of that Chapter 4115, including any necessary posting requirements. The Developer (and all contractors and subcontractors thereof) shall cooperate with the Prevailing Wage Coordinator and respond to all reasonable requests by the Prevailing Wage Coordinator when the Prevailing Wage Coordinator is determining compliance by the Developer (and all contractors and subcontractors thereof) with the applicable requirements of that Chapter 4115.

The Prevailing Wage Coordinator shall notify the Developer of the prevailing wage rates for the Public Infrastructure Improvements. The Prevailing Wage Coordinator shall notify the Developer of any change in prevailing wage rates within seven working days of receiving notice of such change from the Director of the Ohio Department of Commerce. The Developer shall immediately upon such notification: (a) insure that all contractors and subcontractors receive notification of any change in prevailing wage rates as required by that Chapter 4115; (b) make the necessary adjustment in the prevailing wage rates and pay any wage increase as required by that Chapter 4115; and (c) insure that all contractors and subcontractors make the same necessary adjustments.

The Developer shall, upon beginning performance of this Agreement, notify the Prevailing Wage Coordinator of the commencement of Work and supply to the Prevailing Wage Coordinator the schedule of the dates during the life of this Agreement on which the Developer (or any

contractors or subcontractor thereof) is required to pay wages to employees. The Developer (and each contractor or subcontractor thereof) shall also deliver to the Prevailing Wage Coordinator a certified copy of its payroll within two weeks after the initial pay date, and supplemental reports for each month thereafter and in connection with any Written Requisition, as illustrated in **EXHIBIT D** attached hereto and incorporated herein, which shall exhibit for each employee paid any wages, the employee's name, current address, social security number, number of hours worked during each day of the pay periods covered and the total for each week, the employee's hourly rate of pay, the employee's job classification, fringe payments and deductions from the employee's wages. The certification of each payroll shall be executed by the Developer (or contractor, subcontractor, or duly appointed agent thereof, if applicable) and shall recite that the payroll is correct and complete and that the wage rates shown are not less than those required by this Agreement and Chapter 4115 of the Ohio Revised Code.

The Developer shall provide to the Prevailing Wage Coordinator a list of names, addresses and telephone numbers for any contractors or subcontractors performing any Work on the Public Infrastructure Improvements as soon as they are available, and the name and address of the bonding/surety company and the statutory agent (if applicable) for those contractors or subcontractors. The Developer shall not contract with any contractor or subcontractor listed with the Ohio Secretary of State for violations of Chapter 4115 of the Ohio Revised Code pursuant to Section 4115.133 of the Ohio Revised Code.

Prior to final payment under this Agreement, the Developer (and any contractor or subcontractor thereof) shall submit to the Prevailing Wage Coordinator the affidavit required by Section 4115.07 of the Ohio Revised Code.

**Section 5.3. Traffic Control Requirements.** The Developer shall be responsible for ensuring the provision, through contractors or otherwise, of all traffic control devices, flaggers and police officers or sheriff's deputies required to properly and safely maintain traffic during the construction of the Public Infrastructure Improvements. All traffic control devices shall be furnished, erected, maintained and removed in accordance with the Ohio Department of Transportation's "Ohio Manual of Uniform Traffic Control Devices" related to construction operations and in consultation with the City's Engineer.

**Section 5.4. Equal Opportunity Clause.** The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that the Developer is an equal opportunity employer. The Developer shall require all contractors and shall require all contractor's subcontractors to include in each contract a summary of this equal opportunity clause.

**Section 5.5. Insurance Requirements.** The Developer shall furnish proof to the City at the time of commencing construction of the Work of possession of comprehensive general liability insurance naming the City and its authorized agents as an additional insured. The minimum limits of liability for the required insurance policies shall not be less than the following unless a greater amount is required by law:

- (a) Commercial General Liability ("CGL"): Bodily injury (including death) and property damage with a combined single limit of \$1,000,000 each occurrence, with a

\$2,000,000 aggregate; \$100,000 for damage to rented premises (each occurrence); \$5,000 for medical expenses (person); and \$1,000,000 for personal and advertising injury. CGL shall include (i) premises-operations, (ii) explosion and collapse hazard, (iii) underground hazard, (iv) independent contractors' protective, (v) broad form property damage, including completed operations, (vi) contractual liability, (vii) products and completed operations, with \$2,000,000 aggregate and to be maintained for a minimum period of one (1) year after acceptance of the Public Infrastructure Improvements pursuant to Section 2.4, (viii) personal injury with employment exclusion deleted, (ix) owned, non-owned, and hired motor vehicles, and (x) stopgap liability for \$100,000 limit. The general aggregate shall be endorsed to provide that it applies to the Work only.

(b) Automobile liability, covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death) and property damage with a combined single limit of \$1,000,000 per person and \$1,000,000 each occurrence.

(c) Such policies shall be supplemented by an umbrella policy, also written on an occurrence basis, to provide additional protection to provide coverage in the total amount of \$5,000,000 for each occurrence and \$5,000,000 aggregate. The Developer's insurance shall be primary to any insurance maintained by the City.

(d) The Developer shall obtain an additional named insurance endorsement for the CGL and automobile liability coverage with the following named insureds for covered claims arising out of the performance of the Work under the Construction Documents:

- (i) the City of Canal Winchester; and
- (ii) Canal Winchester City Council members, executive officers, and employees;

Each policy of insurance and respective certificate of insurance shall expressly provide that no less than 30 days prior written notice shall be given to City in the event of cancellation or non-renewal of the coverage contained in such policy.

(e) Insurance policies shall be written on an occurrence basis only.

(f) Products and completed operations coverage shall commence with the certification of the acceptance of the Public Infrastructure Improvements pursuant to Section 4.4 and shall extend for not less than two years beyond that date.

(g) The Developer shall require all contractors and subcontractors to provide workers' compensation, CGL, and automobile liability insurance with the same minimum limits specified herein, to the extent reasonably practicable.

**Section 5.6. City Income Tax Withholdings.** The Developer shall withhold and pay, shall require all contractors to withhold and pay, and shall require all contractors to require all subcontractors to withhold and pay, all City income taxes due or payable with respect to wages,

salaries, commissions and any other income subject to the provisions of Chapter 181 of the Canal Winchester Codified Ordinances.

**Section 5.7. Compliance with Occupational Health and Safety Act of 1970.** The Developer and all contractors and subcontractors shall be solely responsible for their respective compliance with the Occupational Safety and Health Act of 1970 under this Agreement.

**Section 5.8. Provision of Security for Mechanics' Liens.** To the extent any material supplier, contractor, or subcontractor files and records a mechanics' lien against the Public Infrastructure Improvements, the Developer shall, or shall require the appropriate contractor to, provide any security permitted by Section 1311.11(C)(1) of the Ohio Revised Code to cause that mechanics' lien to be released of record with respect to the Public Infrastructure Improvements.

**Section 5.9. Security for Performance.** The Developer shall furnish or require all contractors performing Work to furnish prior to commencement of construction of the Public Infrastructure Improvements a performance and payment bond that shall name the Developer and the City as obligees in the form provided by Section 153.57 of the Ohio Revised Code. The bond shall cover all Costs of the Work, including a guarantee period of one (1) year set forth in Section 5.10 hereof.

Any bond shall be executed by sureties that are licensed to conduct business in the State as evidenced by a Certificate of Compliance issued by the Ohio Department of Insurance. All bonds signed by an agent must be accompanied by a power of attorney of the agent signing for the surety. If the surety of any bond so furnished by a contractor declares bankruptcy, become insolvent or its right to do business is terminated in Ohio, the Developer, within five (5) days thereafter, shall substitute another bond and surety or cause the contractor to substitute another bond and surety, both of which shall be acceptable to the City and the Developer. The Developer shall provide to the City prior to commencement of any Work by any contractor a copy the security for performance provided by the Developer or contractor pursuant to this Section.

**Section 5.10. Further Developer Guaranties Relating to the Public Infrastructure Improvements.** The Developer guarantees that it will cause to be exercised in the performance of the Work the standard of care normally exercised by well-qualified engineering and construction organizations engaged in performing comparable services in Central Ohio. The Developer further warrants that the Work and any materials and equipment incorporated into the Work will be free from defects, including defects in the workmanship or materials (without regard to the standard of care exercised in its performance) for a period of one (1) year after final written acceptance of the Work by City (the "Guarantee Period"). The performance and payment bond of the contractor(s) shall remain in effect until the expiration of the Guarantee Period. The guarantee provided in this Section shall be in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or the Construction Documents.

If defective Work becomes apparent within the warranty or Guarantee Period, the City shall promptly notify the Developer in writing and provide a copy of said notice to the Engineer. Within ten (10) days of receipt of said notice, the Developer shall visit the project in the company of one or more representatives of the City to determine the extent of the defective work and agree

upon the repairs necessitated thereby. The Developer shall, within a reasonable time frame, repair or replace (or cause to be repaired or replaced) the defective Work, including all adjacent Work damaged as a result of such defective Work or as a result of remedying the defective Work. If the defective Work is considered by the City to be an emergency (i.e., it threatens exposure to personal injury, death or significant property damage to the City or the public), the City may require the Developer to visit the project within one (1) day of receipt of said notice. The Developer shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work.

If the Developer does not repair or replace defective Work within a reasonable time frame, the City shall repair or replace such defective Work and charge the cost thereof to the Developer or the Developer's surety; provided, however, that Developer shall have no less than thirty (30) days in which to effectuate the repairs after agreement on the scope of such repairs is reached by Developer and City (or, in the event of an emergency, no less than twenty-four hours after visiting the project to implement sufficient temporary measures). Work which is repaired or replaced by the Developer shall be inspected and accepted by the Engineer and City within seven (7) calendar days of Developer's notification that the same has been completed and shall be guaranteed by the Developer for one (1) year from the date of acceptance of the corrective work by the City.

## ARTICLE VI

### PAYMENT OF COST OF THE WORK

**Section 6.1. Deposit of Monies in the TIF Fund.** Pursuant to the TIF Ordinance, the City has established the TIF Fund for, inter alia, the payment of the Cost of the Work. Upon the execution of this Agreement, the City covenants and agrees to deposit monies into the TIF Fund as such funds are received from the Franklin County Auditor from Service Payments, and thereafter to deposit into the TIF Fund all Service Payments required to be deposited therein pursuant to the TIF Ordinance.

**Section 6.2. Disbursements from the TIF Fund.** The City agrees to pay the Developer TIF Reimbursement Amount within thirty (30) days of the Developer's submission of a Written Requisition in substantially the form set forth and attached hereto as **Exhibit D**. The Developer shall not submit its Written Requisition for the TIF Reimbursement Amount until the City has accepted the Public Infrastructure Improvements.

**Section 6.3. Lien Waivers.** Upon final completion of the Work and acceptance by the City, Developer shall deliver to City copies of conditional final lien waivers executed by all subcontractors, suppliers or lien claimants.

**Section 6.4. Tax Covenants.** The obligation of the City to make payments to the Developer pursuant to this Agreement is not an obligation or pledge of any moneys raised by taxation and does not represent or constitute a debt or pledge of the faith and credit of the City. Except for the payments from the TIF Fund and in the aggregate amount described in this Agreement, the Developer shall receive no other monies from the City in connection with the construction of the Public Infrastructure Improvements.

## ARTICLE VII

### **EVENTS OF DEFAULT AND REMEDIES**

**Section 7.1. General.** Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement, or any of its terms or conditions, by either Party hereto, such Party shall, upon written notice from the other, proceed promptly to cure or remedy such default or breach, and, in any event, within thirty (30) days after receipt of such notice. In the event such default or breach is of such nature that it cannot be cured or remedied within said thirty (30) day period, then in such event the Party shall, upon written notice from the other, commence its actions to cure or remedy said breach within said thirty (30) day period, and proceed diligently thereafter to cure or remedy said breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, which shall be no less than thirty (30) days, the following remedies may be pursued: (i) the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations; and (ii) in addition, if the default or breach is a failure of the Developer to achieve final completion of the Work by the date set forth in Section 4.2 herein, as adjusted by Change Order, then the City may proceed to perform the Developer's obligations under this Agreement, and pay the costs thereof from the TIF Fund up to the amount designated for the Cost of the Work. The Developer and its surety shall be responsible for any deficiency in paying for curing the breach that cannot be covered out of the TIF Fund.

**Section 7.2. Other Rights and Remedies; No Waiver by Delay.** The Parties shall each have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of, and its remedies under, this Agreement; provided, that any delay by either Party in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights or to deprive it of or limit such right in any way (it being the intent of this provision that neither Party should be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Agreement because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by either Party with respect to any specific default by the other Party under this Agreement be considered or treated as a waiver of the rights of such party with respect to any other defaults by the other Party to this Agreement or with respect to the particular default except to the extent specifically waived in writing.

**Section 7.3. Force Majeure.** Notwithstanding anything contained in Sections 7.1 and 7.2 to the contrary and except as otherwise provided herein, no Party shall be considered in default in its obligations to be performed hereunder, if delay in the performance of such obligations is due to unforeseeable causes beyond its control and without its fault or negligence, including but not limited to, Force Majeure; it being the purpose and intent of this paragraph that in the event of the occurrence of any such enforced delay, the time or times for performance of such obligations shall be extended for the period of the enforced delay; provided, however, that the Party seeking the benefit of the provisions of this Section 7.3 shall, within fourteen (14) days after the beginning of

such enforced delay, notify the other Party in writing thereof and of the cause thereof and of the duration thereof or, if a continuing delay and cause, the estimated duration thereof, and if the delay is continuing on the date of notification, within ten (10) days after the end of the delay, notify the other Party in writing of the duration of the delay.

## ARTICLE VIII

### **DISPUTE RESOLUTION PROVISIONS AS TO AMENDMENTS AND CLAIMS**

**Section 8.1. Notice and Filing of Requests.** Any request by the City or the Developer for amendment of the terms of this Agreement, including without limitation, for additional funds or time for performance, shall be made in writing and given prior to final completion of the Public Infrastructure Improvements.

**Section 8.2. Request Information.** In every written request given pursuant to Section 8.1 hereof, the Party giving notice shall provide the nature and amount of the request; identification of persons, entities and events responsible for or related to the request; and identification of the activities on the applicable schedule affected by the request.

**Section 8.3. Meeting.** Within ten (10) days of receipt of the request given pursuant to Section 8.1 hereof, the Parties shall schedule a meeting in an effort to resolve the request and shall attempt in good faith to reach a decision on the request promptly thereafter or reach a decision on the request without a meeting, unless a mutual agreement is made to extend such time limit. The meeting shall be attended by persons expressly and fully authorized to resolve the request on behalf of the City and the Developer. Any decision on the request shall be made to the mutual reasonable satisfaction of the Parties.

**Section 8.4. Mediation.** If no decision is reached within thirty (30) days of the date of the meeting held pursuant to Section 8.3 hereof, the Parties may submit the matter to mediation, upon written agreement between them, or exercise any other remedy permitted to them at law or in equity. All costs of mediation shall be split evenly between the Parties except that each Party shall pay its own attorneys' fees and preparation costs.

**Section 8.5. Performance.** The City and the Developer shall proceed with their respective performance of this Agreement during any dispute resolution process, unless otherwise agreed by them in writing.

## ARTICLE IX

### **MISCELLANEOUS**

**Section 9.1. Notice.** Except as otherwise specifically set forth in this Agreement, all notices, demands, requests, consents or approvals given, required or permitted to be given hereunder shall be in writing and shall be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid

and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. Any process, pleadings, notice of other papers served upon the Parties shall be sent by registered or certified mail at their respective Notice Address, or to such other address or addresses as may be furnished by one party to the other.

**Section 9.2. Extent of Covenants; No Personal Liability.** All covenants, obligations and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future member, officer, agent or employee of any Party other than his or her official capacity, and neither the members of the legislative body of City nor any official executing this Agreement shall be liable personally under this Agreement or be subject to any personal liability or accountability by reason of the execution thereof or by reason of the covenants, obligations or agreements of the Parties contained in this Agreement.

**Section 9.3. Severability.** If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained herein. That invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

**Section 9.4. Binding Effect Against Successors and Assigns.** The provisions of this Agreement shall be binding upon the successors or assigns of the Parties.

**Section 9.5. Recitals.** The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

**Section 9.6. Entire Agreement.** This Agreement embodies the entire agreement and understanding of the Parties relating to the subject matter herein and therein and may not be amended, waived or discharged except in an instrument in writing executed by the Parties.

**Section 9.7. Executed Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed to constitute an original, but all of which together shall constitute but one and the same instrument. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

**Section 9.8. Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes and other matters in question between any of the Parties and their respective agents and

employees, arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Franklin County, Ohio.

**Section 9.9. Assignment.** Except from the Developer to an entity controlling, controlled by, or under common control with the Developer, this Agreement may not be assigned without the prior written consent of all non-assigning Parties.

**Section 9.10. Survival of Representations and Warranties.** All representations and warranties of the Parties in this Agreement shall survive the execution and delivery of this Agreement.

**[SIGNATURE PAGES TO FOLLOW]**

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

**CITY OF CANAL WINCHESTER, OHIO**

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to Form:

By: \_\_\_\_\_

Printed: Eugene L. Hollins

Title: Director of Law

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

**DEVELOPER:**

\_\_\_\_\_

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

**FISCAL OFFICER'S CERTIFICATE**

The undersigned, Director of Finance of the City of Canal Winchester, Ohio under the foregoing Agreement, certifies hereby that the moneys required to meet the obligations of the City during the year 2019 under the foregoing Agreement have been appropriated lawfully for that purpose, and are in the Treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

City of Canal Winchester, Ohio

EXHIBIT A

[Description and Depiction of the Property]

## EXHIBIT B

### PUBLIC INFRASTRUCTURE IMPROVEMENTS

The Public Infrastructure Improvements include:

- Installation of water and associated facilities as set forth in further detail in the attached plans. (Exhibit C).

The City will reimburse the developer based on the Cost of the Work as set forth in Section 6.2 of the Agreement.

EXHIBIT C

SITE PLAN

EXHIBIT D

WRITTEN REQUISITION

No. \_\_\_\_\_

City of Canal Winchester, Ohio  
36 S. High St.  
Canal Winchester, Ohio 43110  
Attention: Finance Director

Subject: Certificate and Request for Disbursement of Funds

You are hereby requested to disburse from the TIF Fund, which was created by Ordinance No. 13-34, and in accordance with the provisions of Section 6.2 of the Tax Increment Financing Agreement, dated \_\_\_\_\_, 2020 (the “*Agreement*”) by and between the City and \_\_\_\_\_ (the “*Developer*”), the amount of \$ \_\_\_\_\_ as more fully set forth on Schedule A attached hereto to be paid pursuant to this Written Requisition to the Developer at \_\_\_\_\_. All capitalized terms not otherwise defined in this Written Requisition have the meanings assigned to them in the Agreement.

The undersigned Authorized Developer Representative does hereby certify in compliance with Section 6.2 of the Agreement that:

(i) I have read the Agreement and definitions relating thereto and have reviewed appropriate records and documents of Developer relating to the matters covered by this Written Requisition;

(ii) The amount and nature of the portion of the Cost of the Work requested to be paid are shown on Schedule A attached hereto;

(iii) The disbursement herein requested is for an obligation properly incurred, is a proper charge against the TIF Fund as a Cost of the Work, has not been the basis of any previous payment to the Developer from the TIF Fund, and was made in accordance with the Construction Documents;

(iv) The Public Infrastructure Improvements have not been materially injured or damaged by fire or other casualty in a manner which, if not repaired or replaced, would materially impair the ability of the Developer to meet its obligations under the Agreement;

(v) To the best of the Developer’s knowledge, the Developer is in material compliance with all provisions and requirements of the Agreement, including, but not limited to, all prevailing wage requirements;

(vi) To the best of the Developer's knowledge, no Event of Default set forth in Article VII of the Agreement, and no event which, but for the lapse of time or the giving of notice or both, would be such an Event of Default has occurred and is continuing;

(vii) Attached hereto as Schedule B are conditional lien waivers from any material suppliers, contractors and subcontractors who have provided services or materials to the Public Infrastructure Improvements as required by the Agreement, and the Developer further acknowledges its obligation to require, or require provision of, certain security pursuant to Section 5.8 of the Agreement in the event any mechanics' liens are filed in connection with the Public Infrastructure Improvements;

(viii) The Public Infrastructure Improvements are being and have been installed substantially in accordance with the Construction Documents for the Public Infrastructure Improvements and all materials for which payment is requested have been delivered to and remain on the Public Infrastructure Improvements Site;

(ix) The payment requested hereby does not include any amount which is not entitled to be retained under any holdbacks or retainages provided for in any agreement;

(x) The Developer has asserted its entitlement to all available manufacturers' warranties to date upon acquisition of possession of or title to such improvements or any part thereof which warranties have vested in Developer and shall be wholly transferable to the City.

EXECUTED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
Authorized Developer Representative

**ORDINANCE NO. 20-041**

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO A SIGN EASEMENT AGREEMENT WITH CROSSROADS CHRISTIAN LIFE CENTER, INC. TO PROVIDE FOR A SIGN EASEMENT ON PARCEL 184-002666**

WHEREAS, Crossroads Christian Life Center, Inc. has developed a building at 6600 Bigerton Bend; and

WHEREAS, the City of Canal Winchester owns an adjacent parcel for public purposes; and

WHEREAS, Crossroads Christian Life Center, Inc. desires to erect a sign on the City owned parcel directing people to their location and the location of an adjacent commercial outparcel where visibility from the street is restricted; and

NOW THEREFORE BE IT ORDAINED BY THE CITY OF CANAL WINCHESTER, FRANKLIN COUNTY, OHIO AS FOLLOWS:

Section 1: That Council hereby authorizes and directs the Mayor to enter into a Sign Easement Agreement with the Crossroads Christian Life Center, Inc., in a form acceptable to the Director of Law and with terms and conditions substantially similar to the Sign Easement Agreement attached hereto as Exhibit "A" and incorporated herein by reference.

Section 2: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and any of its committees which resulted in such formal actions were in meetings so open to the public in compliance with all legal requirements of the City of Canal Winchester, Franklin County, Ohio.

Section 3: That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST \_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

DATE APPROVED \_\_\_\_\_

\_\_\_\_\_  
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

\_\_\_\_\_  
Finance Director/Clerk of Council

## **SIGN EASEMENT AGREEMENT**

**THIS SIGN EASEMENT AGREEMENT** (this “Agreement”) is made as of \_\_\_\_\_, 2020 (the “Effective Date”), by and between the **CITY OF CANAL WINCHESTER**, a municipal corporation organized under the laws of Ohio (“Grantor”), and **X CHURCH, INC**, an Ohio corporation not for profit (“Grantee”).

### **RECITALS:**

A. Grantor is the owner of certain real property located in Canal Winchester, Franklin County, Ohio, as more particularly described in Exhibit A (the “Grantor Property”).

B. Grantee operates a church adjacent to Grantor’s Property located on Exhibit A and wishes to display a multi-tenant sign, as depicted on Exhibit B (the “Sign”), with its name and address and the same for a tenant of the adjacent parcel on land owned by Grantor.

C. Grantee desires to obtain from Grantor, and Grantor desires to grant to Grantee, certain easements upon the Grantor Property for the benefit of the Grantee Property, subject to the terms and conditions set forth below.

### **STATEMENT OF AGREEMENT:**

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

#### **1. Grant of Easements.**

(a) Sign Easement. Grantor hereby grants and declares a nonexclusive easement on, over and across the portion of the Grantor Property shown and more particularly described in Exhibit C, to place, install, maintain, repair and replace the Sign (the “Sign Easement”). Grantor shall not construct any improvements, including landscaping, in the Sign Easement Area, if such improvements would adversely affect the visibility of the Sign.

(b) Temporary Easement. The Sign Easement granted hereunder shall include a temporary, nonexclusive access easement over the remainder of the Grantor Property, as is reasonably necessary for Grantee to exercise the installation, maintenance and replacement rights and obligations granted under the Sign Easement (the “Temporary Easement” and, together with the Sign Easement, collectively, the “Easements”).

(c) Expiration of Easements. The Easements granted hereunder shall expire on the date on which the Canal Winchester Human Services is no longer operated on an adjacent parcel. These Easements are not transferable with the building and are only for the current Grantee.

## **2. Maintenance Covenants.**

(a) Maintenance of Sign. Grantee, at its sole cost and expense, covenants to perform all work required to operate, maintain, repair and replace the Sign, from time to time, in a good and workmanlike manner and in compliance with all applicable laws, rules and regulations.

(b) Maintenance of Sign Easement Area. Grantee covenants to maintain the Sign Easement Area, at its sole expense. Without limiting the generality of the foregoing, such maintenance responsibilities shall include the maintenance, weeding and trimming of any landscaping within the Sign Easement Area determined necessary by Grantee, in its reasonable discretion, to keep the Sign Easement Area in a neat and presentable condition at all times.

(c) Grantor’s Property. In connection with Grantee’s use of the Grantor’s property, Grantee agrees to maintain all turf areas of the property including turf areas in adjacent right-of-way of Gender Road and Bigerton Bend. Including regular mowing of grass turf and weeds. All turf shall be maintained so as to be in compliance with all ordinances of the City of Canal Winchester as they relate to developed parcels. Grantee shall have no rights or ability to alter any landscaping on the parcel other than turf or weeds in connection with this agreement.

In connection with Grantee’s use of the Grantor’s property in the Temporary Easement from time to time, Grantee shall use reasonable efforts to minimize damage and inconvenience to Grantor and its business operations on the balance of the Grantor Property. Upon completion of any work pursuant to this Agreement, Grantee, at its sole cost and expense, shall promptly restore any portion(s) of the Grantor Property disturbed by such work to the same condition as immediately prior to such work, including but not limited to the re-seeding of any disturbed grass.

(d) Liens. Grantee shall not permit or suffer any lien to be placed of record against the Sign Easement Area or the Grantor Property in favor of any person or persons, individual or corporate, furnishing either labor or material in connection with any work undertaken by Grantee pursuant to the rights herein granted.

As used in this Section 2, the term “maintenance” includes the making of any and all required repairs as well as replacements.

**3. Insurance and Indemnity.** Grantor and Grantee will each continuously maintain policies of commercial general liability insurance providing coverage against any claims arising out of or relating to their respective negligent acts or omissions in connection with the use of the Easements granted herein. Grantee agrees to indemnify, defend and hold the Grantor harmless from and against all claims, liabilities, reasonable costs and expenses, including, without limitation, claims for property damage or injury to or death of persons, arising out of or relating to the negligent acts or omissions of the Grantee or its employees, agents, representatives, contractors, or licensees in connection with the use of the Easements granted herein.

**5. Non-Performance.** Notwithstanding anything to the contrary herein, if Grantee fails to perform its maintenance obligations hereunder, and such default continues for 30 days after written notice from Grantor, then Grantor may, upon 10 days’ prior written notice to Grantee, undertake to perform such obligations and may recover from the Grantor the costs thereof, plus interest thereon from the date of payment by Grantor until paid at a rate equal to eight percent (8%) per annum.

**6. Notices.** Any notice, request or other communication to be given by any party hereunder shall be in writing and shall be sent by overnight courier guaranteeing overnight delivery (in which case, notice shall be deemed effective when deposited with the overnight courier) or by email to the email addresses shown below (in which case, notice shall be deemed effective when transmitted by email); *provided, however*, in the case of email notice, such notice shall not be effective unless a copy of such notice is also deposited with an overnight courier on the date of email transmission.

To Grantor:                      City of Canal Winchester  
   Attn: Mayor  
   36 S. High St.  
   Canal Winchester, Ohio 43110

Copy to:                              Eugene L. Hollins  
   Frost Brown Todd LLC  
   10 West Broad St., Suite 2300  
   Columbus, Ohio 43215  
   [Ghollins@fbtlaw.com](mailto:Ghollins@fbtlaw.com)

To Grantee: X Church, Inc.  
Attn: Tim Moore, Director  
1635 River Valley Circle, S.  
Lancaster, Ohio 43130

Any party hereto may change the name of the person or address to which notices and other communications are to be given by so notifying the other parties.

7. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect or impair the validity or enforceability of any other provision or term hereof.

8. **Entire Agreement.** This Agreement, including the attached Exhibits, contains the entire agreement between the parties and all of the terms and conditions to which the parties have agreed and supersedes all prior oral or written agreements or understandings concerning the subject matter.

9. **Waiver of Default.** No waiver of any obligation by any party to this Agreement shall be implied from any omission by any other party to take any action in respect of such obligation.

10. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Ohio.

11. **Injunctive Relief.** In the event of any violation or threatened violation of any of the terms, covenants, and conditions herein contained, in addition to the other remedies herein provided, the owner of the property whose rights are threatened, shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The court costs and the reasonable fees of the attorneys for the prevailing party in any legal proceedings seeking relief shall be paid by the party against whom judgment is entered in said legal proceedings.

*[Signature Pages Follow]*





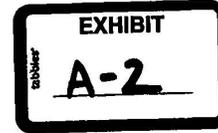
# Exhibit A

FRANKLIN COUNTY, OH

Recorded: 05/23/2019 02:49:43 PM

Instrument #: 201905230061002

Page: 7 of 25



## PARCEL 4 1.200 ACRE

Situated in the State of Ohio, County of Franklin, ~~City~~ of Canal Winchester, being located in Section 25, Township 11, Range 21, Congress Lands and being all out of that 68.985 acre tract as conveyed to Trine Street Investors, Ltd. by deed of record in Instrument Number 200302260056380 (all references refer to the records of the Recorder's Office, Franklin County, Ohio) and described as follows:

Beginning, for reference at Franklin County Geodetic Survey Monument Number 2270 in the common line between Sections 24 and 25, being in the centerline of Gender Road;

thence South 04° 44' 36" West, with said centerline, a distance of 1196.93 feet to a point;

thence South 85° 15' 24" East, across said Gender Road, a distance of 80.00 feet to an iron pin set in the easterly right-of-way line of said Gender Road, being the easterly line of Parcel No. 3 as conveyed to The Village of Canal Winchester by deed of record in Official Record 34797E20, being the True Point of Beginning;

thence across said 68.985 acre tract, being the southerly right-of-way line of proposed Canal Street, the following courses:

South 85° 40' 02" East, a distance of 226.91 feet to an iron pin set at a point of curvature of a curve to the right; and

southeasterly, with the arc of said curve (Delta = 12° 20' 21", Radius = 565.00 feet) a chord bearing and distance of South 79° 29' 51" East, 121.44 feet to an iron pin set in the easterly terminus of said Canal Street;

thence South 20° 33' 57" East, across said 68.985 acre tract, a distance of 23.95 feet to an iron pin set in the northerly line of that 27.834 acre tract as conveyed to Trine Street Investors, Ltd. by deed of record in Instrument Number 200302260056382;

thence South 69° 26' 03" West, with the northerly line of said 27.834 acre tract, a distance of 43.67 feet to an iron pin set;

thence South 61° 26' 36" West, continuing with said northerly line, a distance of 380.00 feet to an iron pin set in the easterly right-of-way line of said Gender Road, being the easterly line of said Parcel No. 3;

thence with said easterly right-of-way line, being the easterly line of said Parcel 3, the following courses:

North 00° 27' 15" East, a distance of 145.56 feet to an iron pin set;

North 07° 36' 20" East, a distance of 100.12 feet to an iron pin set;

1.200 ACRE  
-2-

North 31° 18' 30" East, a distance of 11.18 feet to an iron pin set; and

North 04° 44' 36" East, a distance of 4.36 feet to the True Point of Beginning, and containing 1.200 acre of land, more or less.

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

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

Bearings are based on the Ohio State Plane Coordinate System as per NAD83. Control for bearings was from coordinates of monuments FCGS 2270 & FCGS 4452 established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.

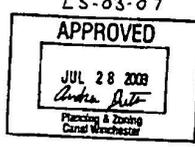
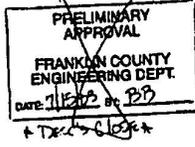
EVANS, MECHWART, HAMBLETON & TILTON, INC.

*Clark E. White 7/11/03*

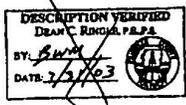
Clark E. White  
Registered Surveyor No. 7868



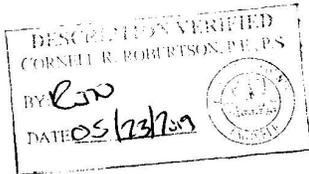
*Parcel A-2  
0-0416-E  
AUL OF  
(184)  
002666*



*SPLIT  
1.200 ac  
out of  
(184)  
2625*



*PARCEL A-2  
AUL OF  
(184)  
002666*



# Exhibit B

**INTERNATIONAL & C CORPORATION**  
DBA: SIGN-A-PRESS

**INTERNATIONAL Sign**  
A SIGN SPECIALTY COMPANY

10831 Canal Street  
Largo, FL 33777  
1-727-541-5573  
Fax: 1-727-544-7745  
LIC. #ES 19000419  
www.intsign.com

**Client:**  
CHURCH X  
CANAL WINCHESTER  
LITROPOLIS, OH

**Date:**  
AUGUST 16, 2019

**Drawing Number:**  
119127-5093-CHURCH

**Revisions:**

Rev	Date	Description
1	10-29-18	QUOTE/PROOF
2	10-30-18	CHANGE DESIGN
3	11-04-18	
4	02-02-19	
5	02-02-19	
6	02-02-19	
7	02-02-19	
8	02-02-19	
9	02-02-19	
10	02-02-19	

**Sales Person:**  
JOE RUSSELL

**Scale:**  
AS NOTED

**Drawn By:**  
O. BARNITZ

**Checked By:**  
O. BARNITZ

**CLIENT AND/OR APPROVAL:**  
 APPROVED AS NOTED  
 APPROVED  
 APPROVED AND REVISIONS  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_

Drawings are prepared for all projects on a non-warranted basis. The client is responsible for obtaining all necessary permits and approvals. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.

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**Sales Person:**  
JOE RUSSELL

**Scale:**  
AS NOTED

**Drawn By:**  
O. BARNITZ

**Checked By:**  
O. BARNITZ

**CLIENT AND/OR APPROVAL:**  
 APPROVED AS NOTED  
 APPROVED  
 APPROVED AND REVISIONS  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_

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**INTERSECTION OF GENDER RD. / BIGGERTON BEND**

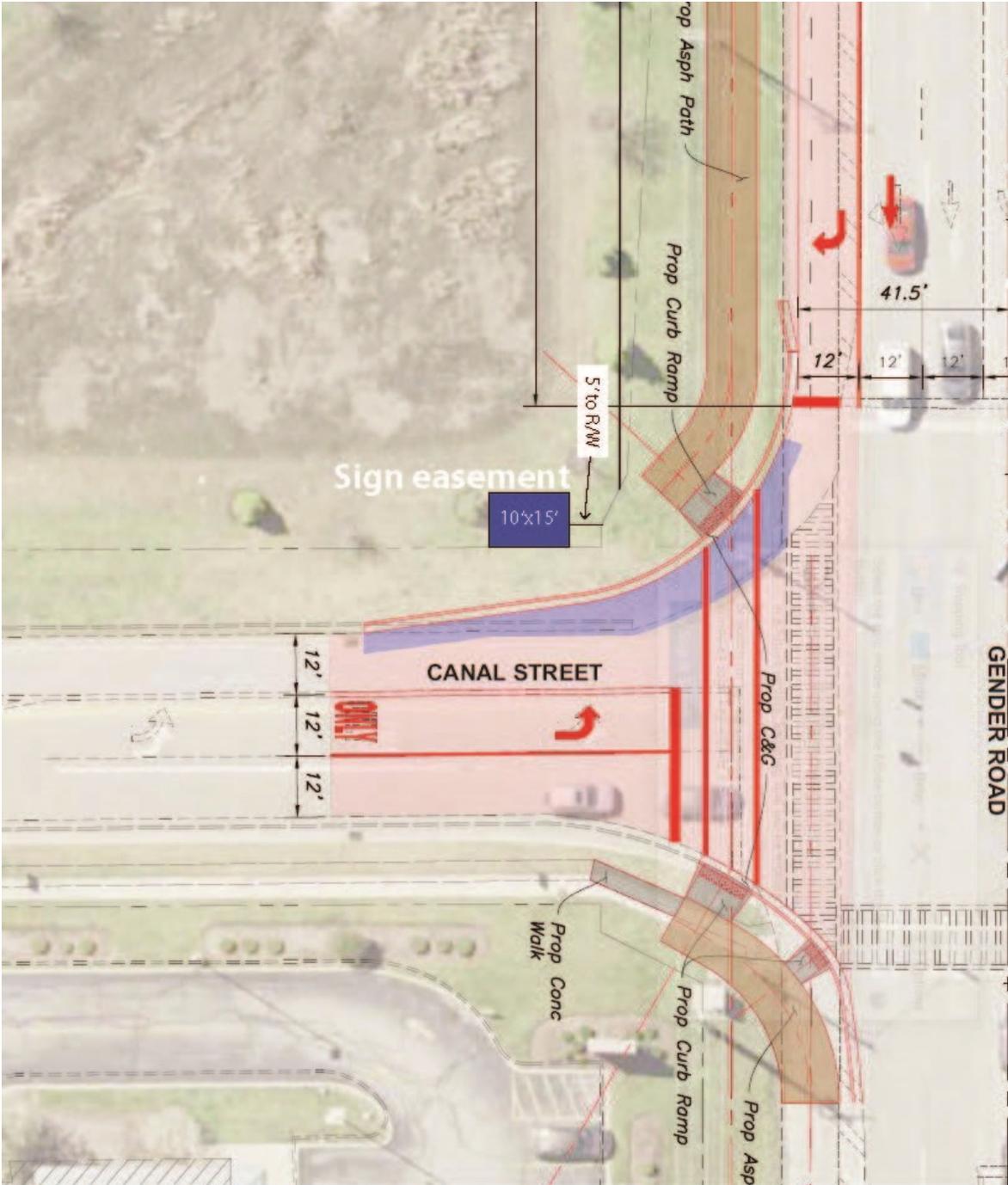
**MONUMENT SIGN FRONT ELEVATION**  
SCALE: 3/8" = 1'-0"  
TOTAL SQUARE FEET = 172.80

**MONUMENT SIGN SIDE ELEVATION**  
SCALE: 3/8" = 1'-0"

**Notes:**

- X TO BE 2" DEEP INTERNALLY ILLUMINATED CHANNEL LETTER CABINET. CABINET TO HAVE BLACK ALUMINUM REFRIGERS. 1" BLACK BEVELLED. WHITE PLASTIC FACES WITH WHITE LED. ALL LED STRIPS AND CABINETS TO BE INTERNALLY ILLUMINATED WITH WHITE LED STRIPS AND 120 VOLT POWER SUPPLIES.
- TOP FACES TO BE 1/8" ALUMINUM
- "CHURCH" COPY TO BE ROUTED OUT WITH 1/2" WHITE ACRYLIC PUSH THRU LETTERS. BACKGROUND TO BE PAINTED BLACK.
- BRANT CABINET TO HAVE ALUMINUM OVER INTERNAL ANGLE. ALL WELDED FRAME
- ALUMINUM ANGLE FACE BEZELERS
- CABINET TO BE INTERNALLY ILLUMINATED WITH WHITE LED STRIPS AND 120 VOLT POWER SUPPLIES.
- FACES TO BE 1/8" ALUMINUM. BACKGROUND TO BE PAINTED BLACK.
- DISCONNECT SWITCH AT BASE OF SIGN. POWER TO SIGN TO BE BY OTHERS. ONE (1) 20 AMP. 120 VOLT CIRCUIT REQUIRED. DEDICATED TO SIGN ONLY.
- BASE TO HAVE ALUMINUM SIDES OVER INTERNAL ANGLE. ALL WELDED FRAME.
- SUPPORTS, SIZE AND TYPE TO BE DETERMINED BY STATE CERTIFIED ENGINEER.
- CONCRETE FOUNDATION. SIZE TO BE DETERMINED BY STATE CERTIFIED ENGINEER.

Exhibit C



**ORDINANCE NO. 20-042**

**AN ORDINANCE TO AUTHORIZE THE MAYOR CONVEY A TRACT OF LAND CONSISTING OF APPROXIMATELY +-0.26 ACRES ON WEST WATERLOO STREET TO THE CANAL WINCHESTER INDUSTRY AND COMMERCE CORPORATION TO PROVIDE FOR ITS SUBSEQUENT CONVEYANCE TO JAY JALA HOSPITALITY, L.L.C.**

WHEREAS, Jay Jala Hospitality, LLC. desires to acquire approximately 0.26 acres of land which is owned by the City of Canal Winchester for construction of new facilities; and

WHEREAS, the City has obtained a fee simple absolute interest in said land, thereby extinguishing the easement for highway purposes previously assigned to the City of Canal Winchester; and

WHEREAS, such transfer is authorized and permitted by the Charter and Ordinances of the City of Canal Winchester and pursuant to Chapters 1724 and 1761 of the Ohio Revised Code.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CANAL WINCHESTER, OHIO:

Section 1. That the Mayor be and hereby is authorized and directed to execute an agreement by and among the Canal Winchester Industry and Commerce Corporation and Jay Jala Hospitality, L.L.C. for the sale of the 0.26 acres of land on West Waterloo Street as more fully described in Exhibit A attached hereto, as well as a suitable deed of conveyance to convey to the Canal Winchester Industry and Commerce Corporation the approximately 0.26 acres of land, and any further instruments necessary to provide for performance of said agreement.

Section 2. That upon closing of the sale and conveyance of the 0.26 acres of land, any remaining public rights in such land conveyed are extinguished.

Section 3. The City hereby finds and determines that the approximately 0.26 acres of land on West Waterloo Street is not required by the City for its purposes, and the conveyance of such land to the Canal Winchester Industry and Commerce Corporation will promote the welfare of the residents of the City, stabilize the economy, provide additional opportunities for their gainful employment, and assist in the development of industrial, commercial, distribution and research activities to the benefit of the residents of the City.

Section 4. This conveyance is hereby authorized without advertisement and receipt of bids, and any generally applicable ordinance or resolution to the contrary is waived for purposes of the agreement and conveyance authorized by this Ordinance.

Section 5. That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

DATE PASSED \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT OF COUNCIL

ATTEST \_\_\_\_\_  
CLERK OF COUNCIL

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

DATE APPROVED \_\_\_\_\_

\_\_\_\_\_  
LEGAL COUNSEL

I hereby certify that the ordinance as set forth above was published for a period of not less than fifteen days after passage by the Council, by posting a copy thereof in not less than three (3) public places in the municipal corporation, as determined by Council and as set forth in the Canal Winchester Charter.

---

Finance Director/Clerk of Council

June 24, 2020

**DESCRIPTION OF A 0.260 ACRE TRACT  
BEING A PORTION OF W. WATERLOO STREET, EAST OF GENDER ROAD  
CITY OF CANAL WINCHESTER, FRANKLIN CO., OHIO**

Situated in the State of Ohio, County of Franklin, City of Canal Winchester, in Section 24, Township 11 North, Range 21 West, Congress Lands, and being a portions of the following two (2) tracts of land:

1. a portion of a 0.463 acre tract of land conveyed to the City of Canal Winchester, by deed of record in Instrument No. 202006170085133, and
2. a portion of a 2.391 acre tract of land conveyed to City of Canal Winchester, by deed of record in Instrument No. 202006190087959,

all references being to the Recorder's Office, Franklin County, Ohio, and bounded and described as follows:

Beginning at a 3/4" I.D. iron pipe set in the north line of said 0.463 acre tract, also known as the north right-of-way line of W. Waterloo Street, in the south line of an original 4.363 acre tract of land conveyed to ALDI, Inc., by deed of record in Instrument No. 201610200143787, and at the southwest corner of a 2.045 acre tract of land conveyed, out of said original 4.363 acre tract, to JAY JALA Hospitality LLC, by deed of record in Instrument No. 201711270167335, said iron pipe being N 79° 00' 07" E a distance of 188.43 feet from a 1/2" Solid iron pin found at the intersection of the centerline of W. Waterloo Street (variable width) with the centerline of Waterloo Street (70 feet in width), as shown upon the plat entitled Winchester Boulevard, Waterloo Street and Canal Street Dedication and Easements, of record in Plat Book 102, Pages 38-40;

thence S 85° 36' 35" E along a portion of the north line of said 0.463 acre tract and along a portion of the south line of said 2.045 acre tract a distance of 241.23 feet to a 3/4" I.D. iron pipe found at the southeast corner of said 2.045 acre tract and at the southwest corner of a 1.418 acre tract of land conveyed to State Savings Bank, by deed of record in Official Record 29529, Page G 01;

thence S 04° 23' 25" W crossing said 0.463 acre tract and crossing a portion of said 2.391 acre tract a distance of 41.80 feet to a 3/4" I.D. iron pipe set in the curved northwesterly line of Waterloo Street, extended northeasterly, as shown upon said plat entitled Winchester Boulevard, Waterloo Street and Canal Street Dedication and Easements;

thence southwesterly, crossing a portion of said 2.391 acre tract, along the curved northwesterly line of Waterloo Street, extended northeasterly, as shown upon said plat entitled Winchester Boulevard, Waterloo Street and Canal Street Dedication and Easements and with a curve to the left, data of which is: radius = 700.00 feet, and delta = 07° 27' 08", arc length = 91.05 feet, a chord distance of 90.98 feet bearing S 69° 27' 00" W to a 3/4" I.D. iron pipe set;

thence N 04° 23' 25" E crossing a portion of said 2.391 acre tract a distance of 26.17 to a 3/4" I.D. iron pipe set;

thence N 85° 36' 35" W crossing a portion of said 2.391 acre tract a distance of 93.50 to a 3/4" I.D. iron pipe set;

thence N 04° 23' 25" E crossing a portion of said 2.391 acre tract a distance of 20.10 to a 3/4" I.D. iron pipe set at a point of curvature;

thence northwesterly crossing a portion of said 2.391 acre tract and with a non-tangent curve to the right, data of which is: radius = 44.00 feet, and delta = 54° 18' 42" W, arc length = 41.71 feet, a chord distance of 40.16 feet bearing N 54° 32' 41" W to a 3/4" I.D. iron pipe set at a point of non-tangency, in the north line of said 2.391 acre tract and in the south line of said 0.463 acre tract;

thence N 85° 25' 21" W along a portion of the north line of said 2.391 acre tract and along a portion of the south line of said 0.463 acre tract a distance of 30.83 feet to a 3/4" I.D. iron pipe set;

thence N 04° 23' 25" E crossing said 0.463 acre tract a distance of 13.07 to the place of beginning;

June 24, 2020

containing 0.260 acre of land, more or less, and being subject to all highways, easements and restrictions of record. Of said 0.260 acre, 0.075 acre is within P.N. 184-003483 and 0.185 acre is within P.N. 184-003484.

The above description was prepared by Kevin L. Baxter, Ohio Surveyor No. 7697, of C.F. Bird & R.J. Bull, Inc., Consulting Engineers & Surveyors, Columbus, Ohio from an actual field survey, performed under his supervision, in October, 2017 and April, 2020. 3/4" I.D. iron pipe set are 30" in length with a plastic cap stamped "BIRD & BULL, INC.". Basis of bearings is the centerline of W. Waterloo Street ~ Relocated S.R. 674, being S 85° 36; 35" W, derived from VRS observations referencing monument, PID designation of AJ7184 and CORS\_ID of COLB, Ohio South Zone, NAD 83 (2011 Adj.), and all other bearings are based upon this meridian.

---

Kevin L. Baxter ~ Ohio Surveyor #7697





# COUNCIL UPDATE

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September 8, 2020

Development  
Amanda Jackson, Finance Director/Clerk of  
Council

**Request for Council Action:**

**Project Status:**