

**CITY OF OXFORD
STAFF SUMMARY REPORT**

Report to the City Manager

Community Development
Originating Department

Council Meeting Of: June 18, 2019

Sam Perry
Prepared By:

Account Code No. #:

Budgeted Amount:N/A

June 7, 2019
Date Prepared:

PC-2018-05 & 06, Tree Preservation and Protection Ordinance Revisions, new Chapter in Zoning Code
--

Recommendation: Denial

On March 19, 2019, City Council reviewed a proposed Tree Preservation Ordinance that was recommended by the Environmental Commission and the Planning Commission. The Planning Commission held the hearing in April 2018 followed by several months of work by the Environmental Commission.

Since the March 19th City Council meeting the item has remained tabled pending revisions that respond to concerns about the feasibility of implementing the ordinance.

There has been significant progress between the Community Development Director and the Environmental Commission that will result in a revised ordinance. In order to be able to re-start the process through the Planning Commission, the April 2018 recommendations from the Planning Commission need to be denied. This means that the City Council will not review the revisions until after a hearing has been held at Planning Commission. City Council also has the choice of reviewing the revisions and passing legislation without Planning Commission review. However, staff believes that the changes are significant enough that the process should re-start.

Approved By:

Department Head: City Manager:

DRE / *6/13/19*

CITY OF OXFORD

STAFF SUMMARY REPORT

Report to the City Manager

City Manager

Originating Department

Council Meeting Of: March 19, 2019

Doug Elliott

Account Code No. #: N/A

Prepared By

Budgeted Amount: N/A

March 14, 2019

Date Prepared

Agenda Title: An Ordinance Adopting Oxford Codified Ordinance Chapter 1111 Entitled Tree Preservation And Protection.

Recommendation: Review and consider the proposed Ordinance.

Discussion:

Included with this report is the amended and proposed Tree Preservation and Protection Ordinance. The original ordinance proposed by the Environmental Commission and reviewed by the Planning Commission in April of 2018 proposed language in the Planned Development Chapter 1145 and in the Design and Construction Standards in Section 1101.4 of the Subdivision Regulations Chapter 1101. In order to make the proposed regulations easy to find and understand the Environmental Commission was tasked with proposing a separate Chapter 1111. As written, the proposed ordinance applies to any privately owned parcel of land of 2 acres or more. This includes developed as well as undeveloped land. There are presently 108 privately owned parcels of land of 2 acres or more within the City of Oxford. However, the ordinance includes contiguous parcels of less than 2 acres owned by the same person. For example, Habitat for Humanity owns several parcels off of Hester Road and they would be required to comply with the proposed ordinance. The ordinance requires that before any protected tree or landmark tree is removed a tree survey and tree replacement plan must be approved either by the Community Development Director in the case of individual lots of 2 or more acres or by the Planning Commission for development projects. Developers must also submit a tree replacement plan. All trees to be removed must be marked. This will add to the cost of any new housing development in the City of Oxford including affordable housing for example, it is estimated that a tree survey for an acre of land with approximately 40 trees will cost \$2,500. The penalty for not complying is a minor misdemeanor for the first offense and a misdemeanor of the fourth degree for any subsequent offense. The Tree Authority as written in this ordinance is the Environmental Commission.

Approved By:

Initial Date

Department Head:

City Manager:

DRE \ 3/16/19

ORDINANCE NO.

AN ORDINANCE ADOPTING OXFORD CODIFIED ORDINANCE CHAPTER 1111 ENTITLED TREE PRESERVATION AND PROTECTION.

WHEREAS, Council hereby finds that the original language for Tree Preservation and Protection was proposed by the Environmental Commission and reviewed by the Planning Commission in April of 2018; and

WHEREAS, the original proposed language would be included in Oxford Codified Ordinance Chapter 1145 entitled Planned Developments, and in Chapter 1101 entitled Subdivision Regulations; and

WHEREAS, the Environmental Commission was tasked with proposing a separate Chapter 1111 to ensure the proposed regulations were easy to locate and understand within the Zoning Code of the Oxford Codified Ordinances.

WHEREAS, the City Manager recommends the adoption of Oxford Codified Ordinance Chapter 1111 entitled Tree Preservation and Protection as set forth below.

THE COUNCIL OF THE CITY OF OXFORD, OHIO, HEREBY ORDAINS THAT:

SECTION 1: Council hereby accepts the recommendation of the City Manager and adopts Oxford Codified Ordinance Chapter 1111 entitled Tree Preservation and Protection as follows:

CHAPTER 1111 Tree Preservation and Protection

Contents

CROSS REFERENCES	2
1111.01 PURPOSE	2
1111.03 DEFINITIONS	2
1111.05 DESIGNATION OF TREE AUTHORITY	2
1111.07 OPERATION	2
1111.09 STREET TREES IN NEW DEVELOPMENTS	3
1111.11 TREE PRESERVATION ON PRIVATE PROPERTY	3
1111.13 TREE APPROVAL FOR DEVELOPMENT PLANS	3
1111.15 ACCEPTABLE TREE REMOVAL AREAS	4
1111.17 TREE SURVEY AND TREE REPLACEMENT PLAN	4
1111.19 TREE SURVEY INSPECTION	5
1111.21 TREE MARKING	5
1111.23 TREE PROTECTION DURING CONSTRUCTION ACTIVITIES	5
1111.25 TREE DAMAGE	5
1111.27 TREE REPLANTING	6

1111.29	TREE PRESERVATION AND REPLANTING APPROVAL COMPLIANCE	6
1111.31	TREE MAINTENANCE REQUIREMENTS	6
1111.99	PENALTY	7

CROSS REFERENCES

- Power to regulate shade trees and shrubbery - see Ohio R.C. 715.20
 Assessments for tree planting and maintenance - see Ohio R.C. 727.011

1111.01PURPOSE

The purposes of the tree preservation standards and regulations established in this chapter are to promote clean air quality, to reduce noise, heat and glare, to improve surface drainage and minimize flooding, to provide visual buffers, to beautify and enhance both improved and undeveloped areas, to advance the aesthetic quality of the community, to maintain property values and the quality of life in the city and to promote the public health, safety and welfare through the preservation and replacement of trees. The regulations included in this chapter are intended to prevent and eliminate the ability for partial or complete deforestation of lands with the wanton removal of trees. As a recognized “Tree City USA” community by the national Arbor Day Foundation, the City of Oxford (City) demonstrates adherence to core standards of sound urban forest management, thus promoting a greener, healthier community.

1111.03DEFINITIONS

- A. All definitions found in Chapter 935 apply to this Chapter.
- B. “Caliper” means for the purpose of this chapter, the caliper of a tree is it’s diameter as measured at 4 1/2 feet (54 inches) above the adjacent surface grade, commonly known as Diameter at Breast Height (DBH).
- C. “Landmark Tree” means a tree entered in any of the lists maintained by Ohio Department of Natural Resources Champion Tree Program. A tree may also be designated as a Landmark Tree by the Community Development Director if the tree is 75% of the circumference of its species listed in the Ohio Department of Natural Resources Champion Tree Program’s Ohio Champion Tree Registry for Native and Non-native Species of the largest trees in Ohio.
- D. “New Development/Redevelopment Sites” means the development of property within the city that requires a building permit.
- E. “New Development/Redevelopment Tree Species” – a species of tree that is planted as part of a development project under Chapter 1101 Subdivision Regulations or Chapter 1145 Planned Developments.
- F. “Protected Tree” means any healthy tree with a Caliper equal to or greater than the “Minimum Protected Caliper” as specified here.
 - A certified arborist may be used to determine whether or not a tree is healthy.
 - The Minimum Protected Caliper for deciduous hardwoods is six caliper inches;
 - For needle bearing evergreens is eight caliper inches; and
 - For small trees as defined in the official comprehensive City Tree Plan of Chapter 935.05 is two caliper inches.
- G. “Tree Protection Zone” means the area around a tree corresponding to the drip line, or one foot away from each tree’s trunk for each inch of the trunk’s caliper diameter as measured at DBH as defined above.

1111.05DESIGNATION OF TREE AUTHORITY

The City of Oxford Tree Authority is designated in Chapter 935.

1111.07OPERATION

- A. The Community Development Director shall be responsible for implementation of the rules and regulations set forth in this chapter.

B. Requests to vary from requirements set forth in this Chapter, or from portions of the Tree Plan relevant to this Chapter, shall be presented to the Community Development Director or a designee for approval. Denial of such a request may be appealed in writing to the Tree Authority. The Tree Authority will consider the appeal and make recommendations to the Community Development Director. The Community Development Director may accept or reject the recommendations of the Tree Authority and shall provide written notification to the appellant and the Tree Authority of the decision made and the reasons supporting that decision.

1111.09 STREET TREES IN NEW DEVELOPMENTS.

Developers shall plant trees in tree lawns in all developments according to the specifications in Chapters 935.06 and 935.07. The Oxford Planning Commission shall require a landscaping plan for all subdivisions, planned developments, and commercial developments.

1111.11 TREE PRESERVATION ON PRIVATE PROPERTY

A. Consistent with the expressed purposes of this chapter, all persons shall make reasonable efforts to preserve and retain existing Protected Trees and Landmark Trees in the City of Oxford.

B. If any private lot is 2 or more acres, or a contiguous group of lots owned by substantially the same person or entity is 2 or more acres, then no person shall cut, destroy, cause to be destroyed, move or remove any Protected Tree or Landmark Tree on such lot or group of lots without first obtaining a permit from the Community Development Director.

C. A permit may be granted by the Community Development Director after review of a Tree Survey and a Tree Replacement Plan described in 1111.17.

1. The Community Development Director shall approve, deny, or require changes to the plan.
2. The Community Development Director may obtain input from the Tree Authority.
3. The Community Development Director may approve the removal of a Protected Tree or Landmark Tree without a Tree Survey and Tree Replacement Plan if the tree poses immediate danger to life or property.

D. The owner or owners have 12 months from the date of the permit to complete tree replacement, unless a different time is specified in the Tree Replacement Plan.

E. Any Protected Tree or Landmark Tree removed without a permit must be replanted as described in 1111.27, except that the replacement rate shall be one caliper inch replaced for each caliper inch removed.

1. Removal without prior approval constitutes a violation of this chapter, subject to the penalties described in 1111.99.

F. In any calendar year, removal of one Protected Tree per acre from a lot or lots as described in (B) is allowed without permit. Removal of any Landmark Tree requires a permit.

1111.13 TREE APPROVAL FOR DEVELOPMENT PLANS

A. No zoning permit, preliminary or final plan approval, or site development approval pursuant to Chapters 1101 or 1145 shall be granted or recommended without first obtaining tree approval from the Planning Commission. If no trees are to be removed as part of site development, tree approval from the Planning Commission is not needed. Trees that are outside of the development activities on a site and that will not be immediately affected by the site development do not have to be included in the provided items included in 1117.17 below.

B. When a person applies to the Planning Commission for a Preliminary Plan approval pursuant to Chapter 1101.4 or a Preliminary Plan approval pursuant to Chapter 1145.05, such person shall submit the following items for tree approval:

1. A complete tree survey, as described in 1111.17;
2. The proposed development plan shall be overlaid on the tree survey.

C. When a person applies to Planning Commission for Final Subdivision approval pursuant to Chapter 1101.4, or Final Plan approval pursuant to Chapter 1145.05, such person shall submit the following items for tree approval:

1. A complete tree survey, as described in 1111.17;
2. A complete Protected Tree and Landmark Tree removal plan clearly denoting trees to be removed;
3. A complete list of Protected Trees and Landmark Trees and associated calculations;
4. A landscape plan including tree placement and replanting schedule;
5. A description of proposed plans for tree protection and replacement in conformance with 1111.23, and 1111.27;
6. The proposed development plan shall be overlaid on the tree survey plan and the tree removal plan.

D. The Community Development Director shall review all plans and supporting data determining whether the requirements set forth in this chapter are complied with, and based on such determination make one of the following recommendations to the Planning Commission: recommend approval, recommend approval with conditions, or do not recommend approval.

1. The Community Development Director shall solicit comments from the Tree Authority as part of this review process.

E. The Planning Commission shall review all plans and supporting data and the recommendations of the Community Development Director and shall determine whether the purposes as set forth in this chapter are complied with, and based upon such determination take one of the following actions: recommend approval, recommend approval with conditions, or do not recommend approval. Tree approval does not authorize any development activity.

1111.15ACCEPTABLE TREE REMOVAL AREAS

A. Protected Tree removal is permitted within the area used or to be used by a permanent structure within the lot building area without replacement planting.

B. Protected Tree removal is permitted on the entire site for access roads, parking areas, canopies, patios, decks, sidewalks, utility installation, water retention and similar necessary development needs provided replacement trees are installed consistent with the provision of this chapter.

C. Every effort shall be made by the property owner/developer to protect and preserve any Landmark Tree located on the site. If a Landmark Tree cannot be preserved, the owner/developer shall provide replacement trees for any removed Landmark Tree consistent with the provisions in 1111.27, even if the Landmark Tree is within the area described in this section.

1111.17TREE SURVEY AND TREE REPLACEMENT PLAN

A. The tree survey shall be in the form of a to-scale map or a site plan prepared and certified by a registered land surveyor, qualified professional engineer, or an International Society of Arboriculture Certified Arborist and/or American Society of Consulting Arborists' Registered Consulting Arborist. The location of all Protected Trees or Landmark Trees within the area to be modified from its natural state and 25 feet beyond in each direction shall be noted. The tree survey map shall be drawn at the same scale as the development plan, site development plan or preliminary plan. This survey shall also identify all Protected Trees to genus level, as well as any Landmark Tree(s).

B. Areas of stands of trees can be outlined giving numbers, genera, and estimated ranges of DBH caliper and the estimated average DBH caliper of Protected Trees in the stand. Any Landmark Tree must be identified and located individually.

C. At the discretion of the Community Development Director, a recent aerial photograph may relieve the applicant of the requirement of submitting a complete Tree Survey map if number, caliper, and genera of Protected Trees are listed or indicated. Any Landmark Tree must be identified and located individually.

D. A schedule indicating the number, and caliper inches by genus, of Protected Trees to be removed shall be provided. Any Landmark Trees shall be identified individually.

E. A tree replacement plan shall include:

1. A schedule indicating the number, size and species of all replacement trees. A total shall be provided for each species.
2. The proposed location of all replacement trees within the proposed development or redevelopment.
3. A date by which tree replacement is to be completed.

1111.19 TREE SURVEY INSPECTION

Following the receipt of the completed tree survey map and supporting data, the Community Development Director, or a designee, shall schedule and conduct an inspection of the proposed development site. The applicant or a designee shall be advised as to the date and time of the inspection and given an opportunity to participate.

1111.21 TREE MARKING

Prior to commencement of construction or any tree removal on a site, a uniform colored painted "X" shall be used by the applicant to designate a tree to be removed, consistent with the approved plan. Red paint shall be used to designate the trees to be removed.

1111.23 TREE PROTECTION DURING CONSTRUCTION ACTIVITIES

A. The cleaning of equipment, storage of materials or dirt, disposal of waste material such as paint, oil solvents or other harmful substances, or any other such act which may be harmful to the continued vitality of the tree(s) within the tree protection zone shall be prohibited.

B. Prior to commencement of any grading, construction or tree removal, a tree protection zone will be established for all Protected Trees or Landmark Trees located within 25 feet of, or that has its drip line within any area of proposed grading, construction or tree removal. Trees marked for removal are exempt from this requirement.

C. New development/Redevelopment tree protection zones shall be consistent with those described for Street and Public Trees in 935.11(b). Tree protection shall be maintained during the entire construction period.

D. Changes in the normal drainage patterns shall be avoided and appropriate protection shall be provided for trees if a grade change is necessary in the surrounding area.

E. Vehicular, pedestrian and other traffic patterns should be kept away from trees to avoid soil compaction.

F. The size of the tree protection zone may be adjusted at the discretion of the Community Development Director and so noted on the tree approval.

G. Practices for the proper protection of trees on construction sites shall be in accordance with guidelines established by the Tree Authority.

H. Protected Trees or Landmark Trees to remain that are located within 25 feet of or that have a drip line within any proposed grading or construction area shall be watered with the equivalent of 1 inch of rain per week. Rain gage or NOAA local weather information may be used to verify actual rainfall and offset amount of watering required.

1111.25 TREE DAMAGE

Any remaining Protected Tree or Landmark Tree, damaged during construction, or damaged as a result of such construction, shall be repaired according to the most current version of ANSI Standard A300. If a tree is removed due to damage beyond repair during construction, replanting will be required pursuant to 1111.27, except that the replacement rate shall be one caliper inch replaced for each caliper inch removed.

1111.27 TREE REPLANTING

- A. With respect to developments subject to the provisions of this chapter, prior to the issuance of a Certificate of Code Compliance, supplemental and replacement trees shall be planted consistent with the requirements of the approval.
- B. Replanted trees shall have calipers of two (2) inches taken at the appropriate height above ground level (based upon their species), as outlined in the current edition of “American Standard for Nursery Stock” (ANSI Z60.1), with an appropriate height of branching for the tree’s species.
- C. It is desirable that the replanting of trees be compatible with the sites. Ideally, the species chosen for replanting shall be similar to those trees removed.
1. Tree species may be selected from those listed in the City Tree Plan, listed as the Ohio Department of Natural Resources (ODNR), Division of Forestry’s “Common Ohio Trees”, and/or listed in the ODNR Ohio Champion Tree Registry for Native Species. Other species may be planted consistent with the approved final tree replacement plan;
 2. Distribution of species should be as recommended in the City Tree Plan.
- D. Trees shall be planted replacing one inch caliper for every two inches of caliper of Protected Trees or Landmark Trees to be removed designated on the Tree Survey Map. If the site cannot physically accommodate this size requirement, Planning Commission may approve a “Tree Replacement Plan” in lieu of a specific number of caliper inches.
- E. On-Site Replacement - A minimum of fifty percent (50%) of the required replacement trees shall be replanted on the development or redevelopment sites from which the original trees were removed, to maintain the remaining natural distribution of tree cover in the City.
- F. Tree Fund Option - Although 100% on-site tree replacement is desired, if this is determined to be impossible or impractical, the replacement fee for each tree shall be allocated to the City General Fund according to the schedule of fees established by Council.

1111.29 TREE Preservation and Replanting APPROVAL COMPLIANCE

- A. Prior to the issuance of a Certificate of Code Compliance for the development site, the Community Development Director, or a designee, shall inspect the site to confirm that the development has satisfied the purposes, requirements and standards of this chapter as well as those in 1123.
- B. If all requirements have been satisfied, the Certificate of Code Compliance may be issued.
- C. If all requirements have not been satisfied, the Certificate of Code Compliance shall not be issued. A written notice shall be provided to the applicant stating the reason for denial. An applicant may submit revisions to a denied application to correct elements of the original application that do not satisfy these requirements or to provide more information that will ensure satisfaction of all requirements.
- D. If the development or re-development occurs in defined phases with specified timelines, then a Certificate of Code Compliance may be issued for each completed phase once each phase has been inspected and all requirements have been satisfied.

1111.31 TREE MAINTENANCE REQUIREMENTS

- A. The developer shall be required to maintain all replacement trees for one (1) year after the trees are planted and to replace any tree that dies within such one-year guarantee period, according to the following:
1. Upon completion of the tree planting, the developer shall contact the Community Development Director to initiate the guarantee period.
 2. The guarantee period shall begin after the approval of the Community Development Director.
 3. A final inspection shall be made at the end of the one-year guarantee period. All trees not exhibiting a healthy, vigorous, growing condition, as determined by the City’s inspection, shall be replaced at the expense of the developer.

- B. The developer shall notify the Community Development Director, within five (5) business days, of the end of the guarantee period to schedule the final inspection.
- C. If the City determines that replacement of a tree is required, such replacement shall occur within thirty (30) days of the date the City's inspection report is submitted to the developer, or during the next spring or fall tree planting season, whichever occurs first. The one-year guarantee period shall begin anew for each replacement tree.
- D. Preserved or replacement trees shall not subsequently be removed from a site unless approved pursuant to 1111.11 and 1111.13.
- E. Where applicable, the City may require the original owner of any property on which trees have been preserved or replaced according to the requirements of this Chapter, to add a restrictive covenant to the deed that shall inform subsequent purchasers, lessees or occupants of the site, that trees shall not subsequently be removed from a site except when approved pursuant to 1111.11 and 1111.13.

1111.99PENALTY

Whoever violates any provision of this chapter is guilty of a minor misdemeanor for the first offense and a misdemeanor of the fourth degree for any subsequent offense. A separate offense shall be deemed committed upon each day during or on which the violation occurs or continues.

SECTION 2: This Ordinance shall take effect at the earliest time allowed by law.

MAYOR

ADOPTED:

ATTEST:

CLERK OF OXFORD CITY COUNCIL

INTRODUCED BY: KATE ROUSMANIERE

PREPARED BY: LAW (STAFF)

**CITY OF OXFORD
STAFF SUMMARY REPORT**

Report to City Manager

Council Meeting Of :

6/18/2019

Account Code No. :

see below

Budgeted Amount :

Finance

Originating Department

Joe Newlin

Prepared By

6/12/2019

Date Prepared

Agenda Title: 2019 Supplemental Budget #6

Recommendation: Approve

Issue 1

To make adjustment to budget for Community Development Software from unencumbered balance \$12,435 and 2.5% contingency \$2,565

Action Needed:

Revenue Side

N/A

Expense Side

Capital Equipment Fund (140) 15,000.00 Increase for Community Development Software

Net Effect on Fund Balance/(s) (15,000.00)
Increase/(Decrease)

Total Net Effect on Fund Balance/(s) (15,000.00)
Increase/(Decrease)

Breakdown by Fund

Capital Equipment Fund (140) (15,000.00)

Net Effect on Fund Balance/(s) (15,000.00)
Increase/(Decrease)

Approved By:

Department Head:

City Manager:

Initials

Date

[Signature] 6/12/19
[Signature] 6/13/19

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE NO.3493. SUPPLEMENTAL BUDGET ORDINANCE NUMBER 6 TO MAKE SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2019.

WHEREAS, additional appropriations are needed for the current fiscal year and monies are available for appropriation in those funds, and changes to estimated revenues.

THE COUNCIL OF THE CITY OF OXFORD, OHIO, HEREBY ORDAINS THAT:

SECTION 1: Additional appropriations are needed for the current fiscal year and monies are available for appropriation in those funds, and changes to estimated revenues;

SECTION 2: The following increase/(decrease) in appropriations from unencumbered balances be made:

Capital Equipment Fund 140	15,000.00
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SECTION 3: In all other respects, Ordinance No. 3493 shall remain in full force and effect.

SECTION 4: This ordinance shall take effect immediately upon its adoption.

MAYOR

ADOPTED: _____

ATTEST:

CLERK OF OXFORD CITY COUNCIL

INTRODUCED BY: KATE ROUSMANIERE

PREPARED BY: LAW (STAFF)



Office of the Mayor

Proclamation

Whereas:

the Phi Delta Theta Fraternity was founded on December 26, 1848, at Miami University in Oxford, Ohio, and has grown into a prosperous, international organization in its 170 year existence; and

WHEREAS, the fraternity was founded upon the noble precepts of friendship, sound learning and rectitude; and

WHEREAS, there are 192 chapters and colonies of Phi Delta Theta in 42 states and 5 Canadian provinces; and

WHEREAS, there have been over 270,000 members initiated into Phi Delta Theta; and

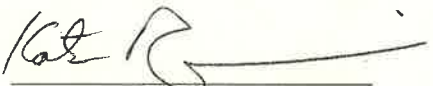
WHEREAS, the Fraternity holds its annual Kleberg Emerging Leaders Institute in Oxford, Ohio, to promote the ideas of scholarship, service to others, leadership, personal development, and fraternal values and ethics to its diverse membership.

NOW, THEREFORE, I, Kate Rousmaniere, Mayor of the City of Oxford, Ohio, do hereby proclaim the week of July 22 through July 26, 2019 to be:

'PHI DELTA THETA WEEK'

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Oxford to be affixed this 16th day of July, 2019.




KATE ROUSMANIERE, MAYOR

CITY OF OXFORD

STAFF SUMMARY REPORT

Report to the City Manager: Douglas Elliott, Jr.

Fire
Originating Department

Council Meeting Of: July 16, 2019

John Detherage
Prepared By

Account Code No. #: 418.152.73122

Budgeted Amount: \$100,000.00

July 1, 2019
Date Prepared

Agenda Title: A Resolution authorizing the City Manager to enter into a Memorandum of Understanding with Liberty Twp, Butler County to apply for the 2019 Assistance to Firefighters Grant for the purchase of portable radios.

Recommendation: Adopt the Resolution.

Discussion: As in years past, the Fire Department requests permission to apply for the Federal Assistance to Firefighters Grant. The application will be for radios to replace the current units that are nearing the end of their service life. This year we will be part of a group application with several other Butler County fire departments with Liberty Twp. serving as the applicant and fiscal agent. This will be the first time a group application has been submitted from Butler County. Our hope is that this group application will be looked upon favorably by the grant reviewers as opposed to individual applications.

A ten percent match will be required. This match will come from the funds already appropriated in the CIP for radio replacement. The attached MOU was approved by the previous Law Director.

Approved By:

Department Head:
City Attorney:
City Manager:

Initial Date

JD 07-01-19

PRE 7/12/19

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE LIBERTY TOWNSHIP FIRE DEPARTMENT TO SUBMIT A JOINT APPLICATION FOR THE 2019 ASSISTANCE TO FIREFIGHTERS GRANT (AFG) AND TO FUNCTION AS THE FISCAL AGENT PROVIDED FUNDS ARE AWARDED. AFG FUNDS SHALL BE USED FOR THE PURCHASE AND INSTALLATION OF MOBILE RADIOS AND PORTABLE HANDHELD RADIOS AT PARTICIPATING FIRE STATIONS.

WHEREAS, the City of Oxford Fire Department wishes to partner with the Liberty Township Fire Department in a Memorandum of Understanding (MOU) for the joint submission of an application for the 2019 Assistance to Firefighters Grant (AFG) and to function as the Fiscal Agent provided funds are awarded. AFG funds shall be used for the purchase and installation of mobile radios and portable handheld radios at participating fire stations; and

WHEREAS, the City Manager and the Fire Chief recommend City Council authorize the City Manager to enter into a MOU in substantially the same form as Exhibit 'A' attached hereto and incorporated herein with the Liberty Township Fire Department for the joint submission of an application for the 2019 Assistance to Firefighters Grant (AFG) and to function as the Fiscal Agent provided funds are awarded. AFG funds shall be used for the purchase and installation of mobile radios and portable handheld radios at participating fire stations.

THE COUNCIL OF THE CITY OF OXFORD, OHIO, HEREBY RESOLVES THAT:

SECTION 1: Council hereby finds that entering into a MOU with the Liberty Township Fire Department will benefit the public and accepts the recommendation of the City Manager and the Fire Chief and further authorizes the City Manager to enter into a MOU in substantially the same form as Exhibit 'A' attached hereto and incorporated herein with the Liberty Township Fire Department for the joint submission of an application for the 2019 Assistance to Firefighters Grant (AFG) and to function as the Fiscal Agent provided funds are awarded. AFG funds shall be used for the purchase and installation of mobile radios and portable handheld radios at participating fire stations.

SECTION 2: This Resolution shall take effect at the earliest date allowed by law.

MAYOR

ADOPTED:

ATTEST:

CLERK OF OXFORD CITY COUNCIL

INTRODUCED BY: KATE ROUSMANIERE

PREPARED BY: LAW (STAFF)



Butler County Fire/EMS Agencies

Memorandum of Understanding

Between

Liberty Township Fire Department

And

Hamilton Fire Department

Hanover Township Fire Department

Madison Township Fire Department

Middletown Fire Department

Milford Township Fire Department

Monroe Fire Department

Morgan Township Fire Department

Oxford Fire Department

Reily Township Fire Department

Ross Township Fire Department

St Clair Township Fire Department

Trenton Fire Department

Wayne Township Fire Department

This Memorandum of Understanding ("MOU"), is effective as of 6/18/2019 (the "Effective Date"), by and between the Hamilton Fire Department, Hanover Township Fire Department, Madison Township Fire Department, Middletown Fire Department, Milford Township Fire Department, Monroe Fire Department, Morgan Township Fire Department, Oxford Fire Department, Reily Township Fire Department, Ross Township

Fire Department, St Clair Township Fire Department, Trenton Fire Department, and Wayne Township Fire Department (collectively referred to herein as the "Agencies" or the "Parties") and pertains to a joint application which will be submitted by the Liberty Township Fire Department on behalf of the Agencies for a grant from the Assistance to Firefighters Grant Program ("AFG"). The AFG funding will be used to purchase and install mobile radios and portable handheld radios at participating fire stations to ensure the Agencies are compliant with the public safety standards for Land Mobile Radio ("LMR") equipment in accordance with Project 25 (P25). The LMR equipment will be used throughout the regional service area for mission critical voice communications (the "Project"). Each Agency's participation in this Project is contingent on the receipt of a Federal Assistance to Firefighters Grant ("AFG") award.

RECITALS

WHEREAS, each Agency finds that its performance on the Project under this MOU is in its best interest, that entering into this MOU will benefit the public, and that the division of costs associated with the Project is fairly apportioned amongst all Agencies participating in the MOU;

WHEREAS, the Liberty Township Fire Department is responsible for the submission of the AFG joint application and will function as the Fiscal Agent on behalf of all the Agencies identified above;

NOW THEREFORE, the Parties agrees as follows:

Section 1. Project Responsibility

Contingent upon the award of an AFG grant to the Parties, and the Liberty Township Fire Department's receipt of funding, the Liberty Township Fire Department will act as the Fiscal Agent for the Project. In this role, the Liberty Township Fire Department will purchase and distribute the grant-funded assets identified in the attached spreadsheet (Attachment A) in accordance with the AFG conditions. Each Agency is responsible for communicating its change of use or disposal of equipment purchased using Grant Funds to the Fiscal Agent. Each Agency understands that it is solely responsible for ensuring any aforementioned change of use or disposal of equipment is carried out in accordance with all applicable laws and the AFG conditions and guidelines. All Parties to this MOU will comply with the AFG conditions and guidelines, as necessary. The Liberty Township Fire Department will also be responsible for complying with audit requirements associated with the AFG grant for this Project.

Section 2. Matching Funds

In the event the requested AFG funds are awarded for this Project, each Agency will provide a ten percent (10%) match of its portion of the grant award to the Liberty Township Fire Department as follows: **(Example based on radio numbers provided by jurisdiction. Actual match will be determined once the final radio purchase is awarded)**

Hamilton Fire Dept	\$ 25,777.50
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Hanover Township Fire Dept	\$ 21,661.20
Liberty Township Fire Dept	\$ 20,978.05
Madison Township Fire Dept	\$ 15,081.50
Middletown Fire Dept	\$ 34,962.45
Milford Township Fire Dept	\$ 17,683.85
Monroe Fire Dept	\$ 23,033.30
Morgan Township Fire Dept	\$ 9,326.80
Oxford Fire Dept	\$ 16,725.70
Reily Township Fire Dept	\$ 18,919.90
Ross Township Fire Dept	\$ 21,936.20
St Clair Township Fire Dept	\$ 12,612.30
Trenton Fire Dept	\$ 12,337.30
Wayne Township Fire Dept	<u>\$ 11,104.15</u>
Total Match	\$ 262,140.20

The Parties understand and knowledge that their contribution of matching funds under this MOU will be made from current revenues available to them.

Section 3. Term/Termination

The Term of this MOU commences on the Effective Date and will continue until the time the AFG funding has been received, goods purchased and distributed, and all obligations under this AFG MOU have been met by the Agencies. This MOU will terminate immediately if the Agencies do not receive funding under the AFG grant process. Once funding has been appropriated, all Agencies are committed to compliance with this MOU and the AFG conditions and AFG guidelines, and will become immediately responsible for all duties and obligations assigned to them under this MOU.

Section 4. Miscellaneous Provisions

A. Applicable Law: This MOU is governed by the laws of the State of Ohio. Any action brought based on or related to a dispute arising under this MOU shall be brought in a court of competent jurisdiction in Butler County, Ohio.

B. Cooperation/No Shared Liability: The Agencies agree to cooperate with each other in good

faith at all times during the Term of this MOU in further of the purposes and intent of this MOU. Each Party to this MOU acknowledges and represents that this MOU has been executed by a duly authorized representative of the same. Each Party expressly acknowledges and understands that it is solely responsible for its duties and obligations under this MOU and any actions taken with respect to this MOU. In no event shall any Party be held liable or responsible for the acts of any other Party hereto.

C. **Severability:** Should any provision in this MOU be found or deemed to be invalid, this MOU will be construed as not containing such provision without affecting the validity of any other provision herein and all other provisions which are otherwise lawful will remain in full force and effect.

D. **Public Information Act:** The Parties understand that Ohio Public Records law, as it may be amended, will apply to this MOU. This MOU and all written information generated under this MOU may be subject to release under the Act.

E. **Binding Effect:** This MOU will take effect immediately upon execution by all Parties hereof and will inure to the benefit and be binding upon the representatives, agents, employees, administrators, successors, and assigns of the Parties hereto. No Agency will assign, sublet or transfer any interest in this MOU without the written consent of all other Parties. Each Party shall reserve its constitutional, statutory and common law rights, privileges, immunities and defenses.

F. **Entire Agreement/Amendments:** This MOU, including appendices and referenced attachments, represents the entire and integrated MOU between the Parties and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the Parties. This MOU may be amended only by a separate written instrument signed by all Parties hereto.

G. **Obligations/Rights in Third Parties:** By entering into this MOU, the Parties do not intend to create any obligations express or implied other than those set out herein; this MOU does not create any rights in any party who is not a signatory hereto.

H. **Notice:** Unless otherwise specified, written notice will be deemed to have been duly served if delivered in person or sent by certified mail to the business addresses of each Party listed below.

I. **Applicable Law:** This MOU is governed by the laws of the State of Ohio. Any action brought based on or related to a dispute arising under this MOU shall be brought in a court of competent jurisdiction in Butler County, Ohio.

J. **Cooperation/No Shared Liability:** The Agencies agree to cooperate with each other in good faith at all times during the Term of this MOU in further of the purposes and intent of this MOU. Each Party to this MOU acknowledges and represents that this MOU has been executed by a duly authorized representative of the same. Each Party expressly acknowledges and understands that it is solely responsible for its duties and obligations under this MOU and any actions taken with respect

to this MOU. In no event shall any Party be held liable or responsible for the acts of any other Party hereto.

K. Severability: Should any provision in this MOU be found or deemed to be invalid, this MOU will be construed as not containing such provision without affecting the validity of any other provision herein and all other provisions which are otherwise lawful will remain in full force and effect.

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N. Entire Agreement/Amendments. This MOU, including appendices and referenced attachments, represents the entire and integrated MOU between the Parties and supersedes all prior proposals, negotiations, representations or agreements either written or oral between the Parties. This MOU may be amended only by a separate written instrument signed by all Parties hereto.

O. Obligations/Rights in Third Parties. By entering into this MOU, the Parties do not intend to create any obligations express or implied other than those set out herein; this MOU does not create any rights in any party who is not a signatory hereto.

P. Notice. Unless otherwise specified, written notice will be deemed to have been duly served if delivered in person or sent by certified mail to the business addresses of each Party listed below.

Liberty Township Fire Department:

Hamilton Fire Department:

345 High St
Hamilton, Ohio 45011

Hanover Township Fire Department:

1775 Morman Rd
Hamilton, Ohio 45013

Madison Township Fire Department

5610 West Alexandria Rd
Middletown, Ohio 45042

Middletown Fire Department:

2300 Roosevelt Blvd
Middletown, Ohio 45044

Milford Township Fire Department:

P.O Box 68
Collinsville, Ohio 45044

Monroe Fire Department:

P.O. Box 330
Monroe, Ohio 45050

Morgan Township Fire Department:

5654 Cincinnati Brookville Rd
Okeana, Ohio 45053

Oxford Fire Department:

217 South Elm St
Oxford, Ohio, 45056

Reily Township Fire Department:

6093 Reily Millville Rd
Reily, Ohio 45056

Ross Township Fire Department:

4055 Hamilton-Cleves Rd
Fairfield, Ohio 45014

St. Clair Township Fire Department:

3900 Hamilton-Trenton Rd
Hamilton, Ohio 45011

Trenton Fire Department:

300 North Miami St
Trenton, Ohio 45067

Wayne Township Fire Department:

4575 Oxford Middletown Rd
Trenton, Ohio 45067

[SIGNATURE PAGE]

This Agreement is hereby accepted by the Parties hereto and effective as of the date of the last Party's signature herein.

Liberty Township Fire Department

By: _____

Printed Name and Title

Hamilton Fire Department

By: _____

Printed Name and Title

Hanover Township Fire Department:

By: _____

Printed Name and Title

Madison Township Fire Department

By: _____

Printed Name and Title

Middletown Fire Department:

By: _____

Printed Name and Title

Milford Township Fire Department

By: _____

Printed Name and Title

Monroe Fire Department

By: _____

Printed Name and Title

Morgan Township Fire Department

By: _____

Printed Name and Title

Oxford Fire Department:

By: _____

Printed Name and Title

Reily Township Fire Department

By: _____

Printed Name and Title

Ross Township Fire Department:

By: _____

Printed Name and Title

St Clair Township Fire Department

By: _____

Printed Name and Title

Trenton Fire Department:

By: _____

Printed Name and Title

Wayne Township Fire Department

By: _____

Printed Name and Title

**CITY OF OXFORD
STAFF SUMMARY REPORT**

Report to the City Manager

Community Development
Originating Department

Council Meeting Of: July 16, 2019

Sam Perry
Prepared By:

Account Code No. #:

Budgeted Amount:

July 2, 2019
Date Prepared:

Contract for new Permitting Software Service and Data Migration

Recommendation: Approval

Background: The Community Development Department originally contracted with View Point Cloud in 2017. The contract was terminated in 2018 because it did not meet the needs of the city.

The Community Development Department processes approximately 5,000 permits and zoning cases per year. A transparent, collaborative, financially integrative and paper-saving system to track these permits is a timely upgrade for our city operations. Funds were budgeted from multiple departments in FY2019 to start a new contract with a different company. A Request for Proposals was advertised on the city website and in the Journal News on February 24 and March 3, 2019. Seven responses were opened on March 11, 2019, which resulted in proposals in the amounts of:

Vendor	Upfront Cost	Annual
Davenport Group	\$97,408.00	\$29,484.00
BS&A	\$102,435.00	\$6,405.00
MaintStar	\$120,000.00	\$40,000.00
Citizenserve	\$149,500.00	\$52,500.00
Tyler Technologies Inc	\$180,380.00	\$67,830.00
Vision33	\$209,277.00	\$76,440.00
Etech Consulting LLC	\$370,215.00	\$76,440.00

The city received two proposals that were close to the budgeted amount, only one of which met requirements for integration with existing systems. The recommended vendor, BS&A also has a lower annual cost than all other vendors. Staff recommends that City Council authorize the City Manager to enter into an agreement with BS&A Software for \$104,995.87 which includes a 2.5% contingency for any unforeseen costs.

Approved By:

Department Head:
City Manager:

[Signature] 7-12-19

RESOLUTION NO.

A RESOLUTION ACCEPTING THE PROPOSAL AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH BELLEFEUIL, SZUR & ASSOCIATES (BSA) TO FURNISH CERTAIN LICENSED PERMITTING SOFTWARE AND CERTAIN SERVICES FOR THE COMMUNITY DEVELOPMENT DEPARTMENT AS SET FORTH ON EXHIBIT "A" ATTACHED HERETO AT A COST OF \$102,435.00 PLUS A CONTINGENCY IN THE AMOUNT OF 2.5% OF THE AGREEMENT PRICE OR \$2,560.87 FOR A TOTAL COST NOT TO EXCEED \$104,995.87.

WHEREAS, the City published a Request for Proposals for Permitting Software on the City's website and in the *Journal News* on February 24, 2019 and on March 3, 2019. Seven (7) sealed proposals were opened and publicly read on March 11, 2019. The lowest and best proposal meeting all of the City's needs was submitted by BSA in the amount of \$102,435.00; and

WHEREAS, the City Manager and the Community Development Director recommend Council accept the proposal of BSA as the lowest and best proposal meeting all of the City's needs for certain licensed permitting software and certain services for the Community Development Department as set forth on Exhibit "A" attached hereto at a cost of \$102,435.00 plus a contingency in the amount of 2.5% of the agreement price or \$2,560.87 for a total cost not to exceed \$104,995.87; and

WHEREAS, the City Manager and the Community Development Director further recommend Council authorize the City Manager to enter into an agreement with BSA to furnish certain licensed permitting software and certain services for the Community Development Department as set forth on Exhibit "A" attached hereto at a cost of \$102,435.00 plus a contingency in the amount of 2.5% of the agreement price or \$2,560.87 for a total cost not to exceed \$104,995.87.

THE COUNCIL OF THE CITY OF OXFORD, OHIO, HEREBY RESOLVES THAT:

SECTION 1: City Council accepts the recommendation of the City Manager and the Community Development Director and hereby accepts the proposal of BSA and further authorizes the City Manager to enter into an agreement with BSA to furnish certain licensed permitting software and certain services for the Community Development Department as set forth on Exhibit "A" attached hereto at a cost of \$102,435.00 plus a contingency in the amount of 2.5% of the agreement price or \$2,560.87 for a total cost not to exceed \$104,995.87.

SECTION 2: This Resolution shall take effect at the earliest date allowed by law.

MAYOR

ADOPTED:

ATTEST:

CLERK OF OXFORD CITY COUNCIL

INTRODUCED BY: KATE ROUSMANIERE

PREPARED BY: LAW (STAFF)

SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement that includes attached Exhibits ("Agreement") is between Bellefeuil, Szur & Associates, Inc. ("BSA"), a Michigan corporation and the City of Oxford, Butler County OH ("Customer"), effective the date of the signature of the last Party to sign the Agreement ("Effective Date"). Each party to the Agreement is referred to as a "Party" and the parties, collectively, are referred to as "Parties."

This Agreement sets the terms and conditions under which BSA will furnish certain licensed software and certain services described herein to Customer.

SECTION A – SOFTWARE LICENSE**1. License Grant.**

1.1. Upon the Effective Date, subject to the terms of this Agreement and Customer's ongoing compliance therewith, BSA hereby grants to Customer a perpetual, non-exclusive, non-transferable, and non-assignable license to install and use the BSA Software Products for Customer's internal business purposes only (and not, for example, as a data center, reseller, or service bureau for third parties), only on servers owned by Customer and located at Customer's facilities, and otherwise in accordance with this Agreement. "BSA Software Product(s)" means, the: (i) BSA software products set forth in **Schedule 1 to Exhibit A**; (ii) related interfaces and customizations; (iii) BSA manuals, BSA official specifications, and BSA user guides provided in or with BSA software products set forth in **Schedule 1 to Exhibit A** ("Documentation"); and (iv) all modifications to the BSA software products set forth in **Schedule 1 to Exhibit A**, including, but not limited to, fixes, new versions, new releases, updates, upgrades, corrections, patches, work-arounds (collectively, "Modifications"). For the avoidance of doubt, Documentation does not include advertising, other general statements about products, or statements by sales or other staff members. Customer may make and keep (securely) one archival copy of each BSA Software Product solely for use as backup.

1.2. Customer will not sublicense, modify, adapt, translate, or otherwise transfer, reverse compile, disassemble or otherwise reverse engineer BSA Software Products or any portion thereof without prior written consent of the BSA. Without limiting the foregoing, the BSA Software Products may not be modified by anyone other than BSA. If Customer modifies the BSA Software Products without BSA's prior written consent, any BSA obligation to provide support services on, and the warranty for, the BSA Software Products will be void. All rights not expressly granted are reserved.

2. License Fees. Customer agrees to pay BSA, and BSA agrees to accept from Customer as payment in full for the license granted herein, the software fees set forth in **Schedule 1 to Exhibit A**.

3. Limited Software Warranty.

3.1. BSA warrants and represents for a period of one (1) year from the installation of BSA Software Product that: (i) such BSA Software Product will perform substantially in the same manner as official demonstration versions and in accordance with BSA's authorized online tutorials and videos that may have been made available as part of the sales and negotiation process leading up to this Agreement; and (ii) the BSA Software Product shall conform to the Documentation and be free of material defects in workmanship and materials. Any claim under this Limited Software Warranty must be made within one (1) year from the installation of the applicable BSA Software Product. Customer's exclusive remedy in the event of a breach of this warranty shall be to have BSA use reasonable efforts to repair or replace the non-conforming BSA Software Product so as to render it conforming to the warranty, or in the event that is not possible to render it conforming with reasonable efforts, to receive a refund of the amount paid for the BSA Software Product.

3.2. THE FOREGOING LIMITED SOFTWARE WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING IN ANY WAY TO THE BSA SOFTWARE PRODUCTS, INCLUDING, *BUT NOT LIMITED TO*, THEIR FEATURES, ATTRIBUTES, FUNCTIONALITY, AND PERFORMANCE. THE FOREGOING LIMITED SOFTWARE WARRANTY IS IN LIEU OF ALL SUCH REPRESENTATIONS OR WARRANTIES WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM THE COURSE OF DEALING OR USAGE OF TRADE. BSA DOES NOT REPRESENT OR WARRANT THAT THE BSA SOFTWARE PRODUCTS

WILL MEET ANY OR ALL OF CUSTOMER'S PARTICULAR REQUIREMENTS, THAT THE OPERATION OF THE BSA SOFTWARE PRODUCTS WILL OPERATE ERROR-FREE OR UNINTERRUPTED, OR THAT ALL PROGRAMMING ERRORS IN THE BSA SOFTWARE PRODUCT(S) CAN BE FOUND IN ORDER TO BE CORRECTED.

4. Ownership of BSA Software Products/Proprietary Information.

- 4.1.** BSA shall retain ownership of, including all intellectual property rights in and to, the BSA Software Products. Customer agrees not to challenge such rights and hereby assigns any and all copyrights and other intellectual property rights in and to the BSA Software Products to BSA and agrees to execute any and all documents necessary to effect the purposes of this paragraph. "Intellectual property rights" means all trademarks, copyrights, patents, trade secrets, moral rights, know-how, and all other proprietary rights.

SECTION B – PROFESSIONAL SERVICES

- 5. Professional Services.** BSA shall provide the services ("Professional Services") set forth in **Schedule 2 to Exhibit A**, for the prices indicated, provided Customer fulfills its obligations set forth in this Agreement. The Parties may enter into future Statements of Work, which shall become part of this Agreement.

- 6. Change Orders.** If Customer requires the performance of professional services not covered by the existing Agreement, or requires a change to the existing Professional Services, Customer shall deliver to BSA's Project Manager a written change order and specify in such change order the proposed work with sufficient detail to enable BSA to evaluate it ("Change Order"). BSA may, at its discretion, prescribe the format of the Change Order. BSA shall provide the Customer with an evaluation of the Change Order, which may include a written proposal containing the following: (i) implementation plans; (ii) the timeframe for performance; and (iii) the estimated price for such performance. Upon execution, all Change Orders shall be governed by the terms and conditions of this Agreement, unless mutually agreed upon otherwise in writing. Customer acknowledges that such Change Orders may affect the implementation schedule and Go-Live Dates.

7. License and Ownership.

- 7.1.** All rights, including all intellectual property rights, in and to work product delivered as a result of Professional Services under this Agreement shall be owned by BSA. For the avoidance of doubt, work product that constitutes a BSA Software Product or portion thereof shall be governed by Section A including Section 1.1 thereof.

- 7.2.** Subject to Section 7.1 and Customer's compliance with this Agreement (including payment in full), BSA grants to Customer a perpetual, non-exclusive, non-transferable, and non-assignable license to use the work product and the intellectual property rights therein for Customer's internal business purposes only.

- 8. Cancellation.** In the event Customer cancels or reschedules Professional Services, and without prejudice to BSA's other rights and remedies, Customer is liable to BSA for: (i) all expenses incurred by BSA on Customer's behalf; and (ii) daily fees associated with the canceled Professional Services (in accordance with the daily fee rate), if less than thirty (30) days advance notice is given regarding the need to cancel or reschedule and BSA cannot reasonably reassign its affected human resources to other projects where comparable skills are required.

9. Limited Professional Services Warranty.

- 9.1.** BSA warrants that its Professional Services will be performed in a professional and workmanlike manner. In the event of a breach of the foregoing warranty and a claim in accordance with the next sentence, BSA's sole obligation and Customer's exclusive remedy with respect to such claim will be to have BSA re-perform the portion of the Professional Services with respect to which the warranty has been breached, to bring it into compliance with such warranty. Any claim for breach of the foregoing warranty must be made by notice to BSA within thirty (30) days of performance of the portion of the Professional Services with respect to which the claim is made, or said claim shall be deemed waived.
- 9.2.** THE FOREGOING LIMITED PROFESSIONAL SERVICES WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS OR WARRANTIES RELATING TO THE PROFESSIONAL SERVICES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR REPRESENTATIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW, OR FROM THE COURSE OF DEALING OR USAGE OF TRADE.

SECTION C – MAINTENANCE AND SUPPORT

10. Maintenance and Support Generally.

- 10.1.** For a one-year period, commencing on the installation of the BSA Software Products, and subject to Customer's compliance with the Agreement, BSA will provide, at no charge to Customer, "Maintenance and Support," meaning the following: (i) Modifications (such as patches, corrections, and updates) as are generally provided at no additional charge (beyond the cost of annual Maintenance and Support) by BSA to BSA customers; and (ii) technical support, as further described in Section 11, during BSA's normal business hours.
- 10.2.** Commencing one (1) year from the installation of the BSA Software Products, Maintenance and Support will be provided on an annual basis, subject to compliance with the terms of the Agreement and payment of the annual Maintenance and Support fees outlined in **Exhibit B**. Maintenance and Support will be renewed annually unless either Party notifies the other at least sixty (60) days prior to the anniversary of installation of its intent to terminate.
- 10.3.** BSA guarantees that the Maintenance and Support annual fee set forth in **Exhibit B** will not change for two (2) years from the date of the installation of the BSA Software Products. After that date, BSA reserves the right each year to increase the fee over the previous year by no more than an amount that is proportionate to the increase (measured from the beginning of such previous year) in the Consumer Price Index as set forth by the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index – All Urban Consumers – U.S. City Average (the "Annual Renewal Fee").

11. Support.

- 11.1.** With respect to Errors following expiration of the Limited Software Warranty, BSA's sole obligation and Customer's sole remedy are set forth in this section 11. Subject to Customer's compliance with the terms of the Agreement and purchase of Maintenance and Support, BSA shall use commercially reasonable efforts, commensurate with the severity level, to achieve its support response and resolution targets with respect to Errors as set forth in **Exhibit C**. An "Error" means a verifiable and reproducible failure of a BSA Software Product to operate in accordance with the Documentation) under conditions of normal use and where the Error is directly attributable to the BSA Software Product as updated with current Modifications. If the customer modifies the BSA Software Products without BSA's written consent, BSA's obligation to provide support services on the BSA Software Products will be void.
- 11.2.** Support does not include the following: (i) installation or implementation of the BSA Software Products; (ii) onsite training/support, remote training, application design, and other consulting services; (iii) support of an operating system, hardware, or support outside of BSA's normal business hours; (iv) support or support time due to a cause external to the BSA Software Products adversely affecting their operability or serviceability, which shall include but not be limited to water, fire, wind, lightning, other natural calamities, transportation, misuse, abuse, or neglect; (v) repair of the BSA Software Products modified in any way other than modifications made by BSA or its agents; (vi) support of any other third-party vendors' software, such as operating system software, network software, database managers, word processors, etc.; and (vii) support of the BSA Software Products that have not incorporated current Modifications. All such excluded Maintenance and Support Services performed by BSA at Customer's request shall be invoiced to Customer on a time and materials basis, plus reasonable expenses associated therewith.
- 11.3.** Notwithstanding anything to the contrary, in order to maintain the integrity and proper operation of the Software, Customer agrees to use commercially reasonable efforts to implement, in the manner instructed by BSA, all Modifications in a timely manner. Customer's failure to implement any Modifications may limit or restrict the ability of Customer to implement future Modifications. Customer shall provide prompt notice of any Errors discovered by Customer, or otherwise brought to the attention of Customer. Proper notice may include, without limitation, prompt telephonic and written (either via e-mail or postal mail) notice to BSA of any purported Error. If requested by BSA, Customer agrees to provide written documentation of Errors to substantiate those Errors and to otherwise assist BSA in the detection and correction of said Errors. BSA will use its commercial reasonable judgment to determine if an Error exists.
- 11.4.** Customer acknowledges and agrees that BSA and product vendors may require online access to the BSA's system in order for BSA to provide Maintenance and Support Services hereunder. Accordingly, Customer shall provide a connection to the Internet to facilitate BSA's remote access to BSA's system. BSA shall provide remote connection software, which may require installation of a software component on a workstation or server computer.

SECTION D – GENERAL TERMS AND CONDITIONS

- 12. Customer Assistance.** Customer acknowledges that the implementation of the BSA Software Products is a cooperative process requiring time and resources of Customer personnel. Customer shall, and shall cause Customer personnel to, use all reasonable efforts to cooperate with and assist BSA as may be reasonably required to meet the project deadlines and other milestones agreed to by the Parties for implementation. BSA shall not be liable for failure to meet such deadlines and milestones when such failure is due to force majeure (as defined in Paragraph 26. below) or to the failure by Customer personnel to provide such cooperation and assistance (either through action or omission).
- 13. BSA Proprietary Information.**
- 13.1.** Customer acknowledges that the information associated with or contained in the BSA Software Products and information used in the performance of Professional Services include trade secrets and other confidential and proprietary information of BSA (the "Proprietary Information").
- 13.2.** The Customer shall maintain in confidence and not disclose Proprietary Information, directly or indirectly, to any third party without BSA's prior written consent. Customer shall safeguard the Proprietary Information to the same extent that it safeguards its own most confidential materials or data, but in no event shall the standard implemented be less than industry standard. Proprietary Information shall be used by Customer solely to fulfill its obligations under this Agreement. Customer shall limit its dissemination of such Proprietary Information to employees within the Customer's business organization who are directly involved with the performance of this Agreement and have a need to use such Proprietary Information. Customer shall be responsible for all disclosures by any person receiving Proprietary Information, by or through it, as if Customer itself disseminated such information.
- 13.3.** Proprietary Information shall not include any information that: (a) is or becomes publicly known through no wrongful act or breach of any obligation of confidentiality by Customer; (b) was lawfully known to Customer prior to the time it was disclosed to or learned by Customer in connection with this Agreement, provided that such information is not known to Customer solely because of its prior business relationship with BSA; (c) was received by Customer from a third party that is not under an obligation of confidentiality to BSA; or (d) is independently developed by Customer for a party other than BSA without the use of any Proprietary Information. The following circumstances shall not cause Proprietary Information to fall within any of exceptions (a) through (d) above: (i) a portion of such Proprietary Information is embraced by more general information said to be in the public domain or previously known to, or subsequently disclosed to, the Customer; or (ii) it is a combination derivable from separate sources of public information, none of which discloses the combination itself.
- 13.4.** If Customer is required, or anticipates that it will be required, to disclose any Confidential Information pursuant to a court order or to a government authority, Customer shall, at its earliest opportunity, provide written notice to BSA so as to give BSA a reasonable opportunity to secure a protective order or take other actions as appropriate. Customer shall at all times, cooperate with BSA so as to minimize any disclosure to the extent allowed by applicable law.
- 14. Limitation on Liability and Damages.** BSA'S ENTIRE LIABILITY AND RESPONSIBILITY FOR ANY AND ALL CLAIMS, DAMAGES, OR LOSSES ARISING FROM THE BSA SOFTWARE PRODUCTS (INCLUDING BUT NOT LIMITED TO THEIR USE, OPERATION, AND/OR FAILURE TO OPERATE), PROFESSIONAL SERVICES, MAINTENANCE AND SUPPORT, ANY THIRD-PARTY PERFORMANCE OR LACK THEREOF, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, SHALL BE ABSOLUTELY LIMITED TO DIRECT DAMAGES NOT IN EXCESS OF THE PURCHASE PRICE OF BSA SOFTWARE PRODUCTS PLUS, TO THE EXTENT APPLICABLE, THE PURCHASE PRICE OF ANY PROFESSIONAL SERVICE SET FORTH IN THIS AGREEMENT THAT GIVES RISE TO THE CLAIM. NOTWITHSTANDING ANY PROVISION CONTAINED HEREIN, BSA SHALL NOT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR CONTINGENT DAMAGES OR EXPENSES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS AGREEMENT, BSA SOFTWARE PRODUCTS, ANY THIRD-PARTY PERFORMANCE, OR LACK THEREOF, OR BSA'S PERFORMANCE, OR LACK THEREOF, UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LOSS OF REVENUE, PROFIT, OR USE. TO THE EXTENT THAT APPLICABLE LAW DOES NOT PERMIT THE LIMITATIONS SET FORTH HEREIN, THE LIABILITY AND DAMAGES SHALL BE LIMITED AND RESTRICTED TO THE EXTENT PERMITTED BY LAW.

15. Customer is solely responsible for its data, its database, and for maintaining suitable back-ups of the data and database to prevent data loss in the event of any hardware or software malfunction. Customer covenants and agrees to undertake all necessary measures to protect and secure its data, including implementation of technical, administrative and physical protections. BSA SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DATA LOSS REGARDLESS OF THE REASONS FOR SAID LOSS. To the maximum extent authorized by law, Customer agrees to defend, indemnify and hold BSA harmless for any claim by any person or entity arising out of any loss or compromise of data or data security or arising out of Customer's breach of this Agreement.
16. **Additional Disclaimer.** SUPPLIER PROVIDES NO WARRANTY FOR ANY THIRD-PARTY SOFTWARE AND/OR HARDWARE. EXCEPT AS SET FORTH IN THIS AGREEMENT, SUPPLIER WILL NOT BE RESPONSIBLE FOR ANY THIRD-PARTY SOFTWARE, THIRD-PARTY SERVICES AND/OR HARDWARE.
17. **Indemnification for Intellectual Property Infringement.** If a claim is made or an action is brought alleging that a BSA Software Product infringes on a U.S. patent, or any copyright, trademark, trade secret or other proprietary right, BSA will defend Customer against such claim and will pay resulting costs and damages finally awarded, provided that: (a) Customer promptly notifies BSA in writing of the claim; (b) BSA has sole control of the defense and all related settlement negotiations; (c) Customer reasonably cooperates in such defense at no expense to BSA; and (d) Customer remains in compliance with the Agreement and has continued to purchase Maintenance and Support Services. The obligations of BSA under this Section are conditioned on Customer's agreement that if the applicable BSA Software Product, in whole or in part, or the use or operation thereof, becomes, or in the opinion of BSA is likely to become, the subject of such a claim, BSA may at its expense either procure the right for Customer to continue using the BSA Software Product or, at the option of BSA, replace or modify the same so that it becomes non-infringing (provided such replacement or modification maintains the same material functionality and does not adversely affect Customer's use of the Update as contemplated hereunder).
18. **No Intended Third-Party Beneficiaries.** This Agreement is entered into solely for the benefit of BSA and Customer. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement.
19. **Termination.** Without prejudice to other rights and remedies, and except as otherwise provided in this Agreement, either Party may terminate this Agreement for the other Party's material breach upon failure to cure such breach after thirty (30) days' written notice identifying with specificity the nature of the breach. Upon termination of this Agreement: (a) Customer shall promptly pay all amounts payable to BSA for Services rendered up to the date of termination; and (b) Customer shall return or destroy, at the direction of the BSA, BSA's Proprietary Information in its possession. The termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either Party existing under this Agreement at the time of termination. Sections 1.2, 4.1, 7.1, 13 through 16, 18, 20 through 29, and the provisions of this Agreement, which by their nature extend beyond the termination of this Agreement, will survive termination of the Agreement. No action arising out of this Agreement, regardless of the form of action, may be brought by Customer more than one (1) year after the date the action occurred.
20. **Payment Terms.** Customer shall pay BSA for all amounts in accordance with this Agreement and **Exhibit A**.
21. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the state of Michigan, without regard to its choice of law rules. BSA and the Customer agree that the exclusive venue for any legal or equitable action shall be the Courts of the County of Clinton, State of Michigan, or in any court of the United States of America lying in the Western District of Michigan.
22. **Entire Agreement.** This Agreement represents the entire agreement of Customer and BSA with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Customer hereby acknowledges that in entering into this Agreement, it did not rely on any information not explicitly set forth in this Agreement.
23. **Export.** Customer will comply with all applicable laws, including applicable export control laws that prohibit export or diversion of certain products and technology to certain countries or individuals, including foreign nationals in the United States. Customer undertakes to determine any export licensing requirements and to comply with such obligations. The BSA Software Products are deemed to be commercial computer software as defined in FAR 12.212 and subject to restricted rights as defined in FAR Section 52.227-19 "Commercial Computer Software-Restricted Rights" and DFARS 227.7202, "Rights in Commercial Computer Software or Commercial Computer Software Documentation", as applicable, and any successor regulations. Any use, modification, reproduction release, performance, display, or disclosure of BSA's Software Products by the U.S. Government shall be solely in accordance with the terms of this Agreement.

- 24. Severability.** If any term or provision of this Agreement, or the application thereof, to any extent, is held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.
- 25. Successors and Assigns.** This Agreement shall be binding upon the successors, permitted assigns, representatives, and heirs of the Parties hereto. For avoidance of doubt, any expanded use by Customer of the Program, for example, in the event of annexation or desired shared services, shall require the consent of BSA.
- 26. Force Majeure.** "Force Majeure" is defined as an event beyond the reasonable control of a Party, including governmental action, war, riot or civil commotion, fire, natural disaster, problematic weather, lack of availability of Customer provided technology, labor disputes, restraints affecting shipping or credit, delay of carriers or any other cause that could not, with reasonable diligence, be foreseen, controlled or prevented by the Party. Neither Party shall be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure.
- 27. Notice.** All notices, requests, demands, and determinations under the Agreement (other than routine operational communications), shall be in writing and shall be deemed duly given: (i) when delivered by hand; (ii) one (1) business day after being given to a nationally recognized overnight delivery service for next-business-day delivery, all fees prepaid; (iii) when sent by confirmed facsimile with a copy sent by another means specified in this provision; or (iv) six (6) calendar days after the day of mailing, when mailed by United States mail, *via* registered or certified mail, return receipt requested, postage prepaid, and in each case addressed as shall be set forth below. A Party may from time-to-time change its address or designee for notification purposes by giving the other prior written notice of the new address or designee and the date upon which it will become effective.

If to BSA:

BSA Software
14965 Abbey Lane
Bath, MI 48808
Attn: Contracts Manager
Telephone: 517-641-8900

If to Customer:

City of Oxford
15 South College Avenue
Oxford, OH 45056
Telephone No.: 513-524-5200

- 28. Independent Contractor.** This is not an agreement of partnership or employment of BSA or any of BSA's employees by Customer. BSA is an independent contractor for all purposes under this Agreement.
- 29. Contract Documents and Order of Precedence.** The text of the Agreement without any Exhibits and Schedules shall control over any inconsistent text in any of the Exhibits or Schedules. This Agreement includes the following Exhibits and Schedules:

Exhibit A – Payment Terms Generally

Schedule 1 to Exhibit A - License/Interface/Customization Fees

Schedule 2 to Exhibit A – Professional Services Fees

Exhibit B – Maintenance and Support Fees

Exhibit C – Support Call Process

IN WITNESS THEREOF, the Parties hereto have executed this Agreement as of the dates set forth below.

BSA SOFTWARE, INC.

By: _____

Name: _____

Title: _____

Date: _____

CUSTOMER

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

Payment Terms

1. Customer shall pay BSA within thirty (30) days of invoice. Payments not received within fifteen (15) days of the due date shall be subject to a one and one-half percent (1.5%) per month interest charge (or, if lower, the highest amount chargeable at law) assessed against the unpaid balance from the date due until the date payment is received
2. Any amount not subject to good faith dispute and not paid within fifteen (15) days of the due date of each invoice shall, without prejudice to other rights and remedies, be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by Customer in good faith will be deemed approved and accepted by Customer. For purposes of this Agreement, a good faith dispute regarding amounts owed exists only if Customer provides in writing at least ten (10) days prior to due date of payment on the invoice, notification of such dispute, the specific portion of the invoice in dispute, and the specific grounds of the dispute (which must be asserted in good faith), and Customer pays in timely fashion such portions that are not subject to such dispute.
3. BSA shall invoice Customer \$27,530 upon Effective Date for BSA's Project Management/Implementation Planning Fees and Data Conversion fees as set forth in Schedule 2.
4. BSA shall invoice Customer \$27,215 at start of On-Site Implementation and Training. Such amount equals BSA's software license fees as set forth in Schedule 1.
5. BSA shall invoice Customer \$47,690 at completion of On-Site Implementation and Training. Such amount equals On-Site Implementation and Training costs, Customization and Interface costs, and travel expenses, as set forth in Schedule 2.
6. Customer shall be responsible for all taxes (including sales taxes) imposed as a result of any transaction associated with this Agreement, exclusive of taxes on BSA's net income.

Schedule 1 to Exhibit A

License Fees

Applications

Community Development

Building Department .NET	\$13,275
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Field Inspection .NET	\$5,575
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BS&A Online

Community Development	\$8,365
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Subtotal	\$27,215
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Schedule 2 to Exhibit A

Professional Services Fees

Data Conversions

Convert existing Access data to BS&A format:

Building Department (per database)	\$13,280
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No conversion or database setup to be performed for:

Field Inspection

Customizations

Custom import from third-party software to populate Building Department database with parcels, properties, and current owners.	\$1,500
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Project Management and Implementation Planning

Services include:

- Analyzing customer processes to ensure all critical components are addressed.
- Creating and managing the project schedule in accordance with the customer's existing processes and needs.
- Planning and scheduling training around any planned process changes included in the project plan.
- Modifying the project schedule as needed to accommodate any changes to the scope and requirements of the project that are discovered.
- Providing a central contact between the customer's project leaders, developers, trainers, IT staff, conversion staff, and other resources required throughout the transition period.
- Installing the software and providing IT consultation for network, server, and workstation configuration and requirements.
- Reviewing and addressing the specifications for needed customizations to meet customer needs (when applicable).

\$14,250

Implementation and Training

- \$1,000/day
- Days quoted are estimates; you are billed for actual days used

Services include:

- Setting up users and user security rights for each application
- Performing final process and procedure review
- Configuring custom settings in each application to fit the needs of the customer
- Setting up application integration and workflow methods
- Onsite verification of converted data for balancing and auditing purposes
- Training and Go-Live

Software Setup	Days:	1	\$1,000
Community Development Applications	Days:	32	\$32,000
	Total:	33	Subtotal \$33,000

Post-Go Live Assistance

- Review and consult on streamlining day-to-day activities as they relate to the processes within the BS&A applications
- Assist customers with more detailed and advanced report options available within the BS&A applications
- Revisit commonly-used procedures discussed during training
- As needs arise, provide assistance with bank reconciliations
- \$1,000/day
- Days quoted are estimates; you are billed for actual days used

Post-Go Live for all applications for which training was performed	Days: 2	\$2,000
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Travel Expenses	\$11,190
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EXHIBIT B

Maintenance and Support Fees

Annual Service Fees

Unlimited service and support during your first year with the program are included in your purchase price. Thereafter, Service Fees are billed annually. After two (2) years, BS&A Software reserves the right to increase the Annual Service Fee by no more than the yearly Consumers Price Index (CPI).

Community Development	
Building Department .NET	\$3,125
Field Inspection .NET	\$1,310
BS&A Online	
Community Development	\$1,970
Total Annual Service Fees	\$6,405

EXHIBIT C

Support Call Process

BSA's standard hours for telephone support are from 8:30 a.m. to 5:00 p.m. (EST), Monday through Friday, excluding holidays.

You can lodge a support request in three ways: (i) **Contact Customer Support** option located within the Help menu of all of our applications (ii) our toll-free support line (1-855-BSA-SOFT) or via email.

BSA targets less than thirty (30) minutes for initial response ("Initial Response Target").

Customer service requests fall into four main categories:

- A. Technical.** Questions or usage issues relating to I.T. functionality, future hardware purchases, and configuration. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- B. Questions/Support.** General questions regarding functionality, use, and set-up of the applications. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- C. Requests.** Customer requests for future enhancements to the applications. Key product management personnel meet with development staff on a regular basis to discuss the desirability and priority of such requests. BSA tries to resolve these issues within BSA's Initial Response Target or as soon thereafter as reasonably possible.
- D. Issues/Bugs.** Errors fall into three (3) subcategories:
 - i. Critical.** Cases where an Error has rendered the application or a material component unusable or not usable without substantial inconvenience causing material and detrimental consequences to business -- with no viable Customer workaround or alternative. The targeted resolution time for critical issues is less than one (1) day.
 - ii. Moderate.** Cases where an Error causes inconvenience and added burden, but the application is still usable by Customer. The targeted resolution time for all moderate issues is within two (2) weeks, which is within our standard update cycle.
 - iii. Minimal.** Cases that are mostly cosmetic in nature, and do not impede functionality in any significant way. These issues are assigned a priority level at our regular meetings, and resolution times are based on the specified priority.

Remote Support Process

Some support calls may require further analysis of Customer's database or set-up to diagnose a problem or to assist Customer with a question. BSA's remote support tools share Customer's desktop *via* the Internet to provide Customer with virtual on-site support. BSA's support team is able to quickly connect remotely to Customer's desktop and view its setup, diagnose problems, or assist Customer with screen navigation.