CITY OF OXFORD
STAFF SUMMARY REPORT

Report to the City Manager

City Manager
Originating Department

Council Meeting Of: October 15, 2019

Mary Ann Eaton
Prepared By

Account Code No. #: N/A

Budgeted Amount: N/A

October 7, 2019
Date Prepared

Agenda Title: A Resolution authorizing the City Manager to enter into an amended lease agreement a copy of which is attached hereto as Exhibit "A" with the Talawanda Oxford Pantry and Social Services (TOPSS) Board of Directors to lease a portion of the City owned premises known as Merry Day Park for an initial term of twenty five (25) years.

Recommendation: Adopt the Resolution

Discussion:

The proposed lease would permit the construction and ownership of a structure not to exceed 6,000 square feet on a portion of the City owned Merry Day Park land. The building will be utilized for the collection, storage and distribution of food items by the Talawanda Oxford Pantry and Social Services (TOPSS) and it will be utilized for the operation of other non-profit entities as approved by the lessor (City of Oxford). The proposed lease is for 25 years with 10 year renewable options. If the structure is no longer utilized by TOPSS, ownership would revert to the City of Oxford or TOPPS would be required to restore the site to its original condition.

The Lease agreement specifies that construction begin by January 31, 2020. Due to funding shortfalls the TOPSS Board Chair has requested that the construction date be extended to January 31, 2023.

Approved By:

	Initial	Date
Department Head:		\
City Manager:	DRF	10/11/19

September 26, 2019

Mr. Douglas R. Elliott, Jr.
City Manager
City of Oxford, OH
15 S. College Ave.
Oxford Ohio

RE: Lease Agreement for Merry Day Park

Dear Mr. Elliott,

Due to funding shortfalls, we are unable to begin construction of a building at Merry Day Park in the timeframe indicated in the referenced lease (by January 31, 2020). We still intend to construct a facility at a later date pending raising the necessary funds.

Per our discussion on September 24, 2019, we request your support and assistance to extend the construction start time to January 31, 2023.

We appreciate your help in this matter.

Sincerely,

Diana Byrd

Diana Byrd
TOPSS Board Chair

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AMENDED LEASE AGREEMENT A COPY OF WHICH IS ATTACHED HERETO AS EXHIBIT "A" WITH THE TALAWANDA OXFORD PANTRY AND SOCIAL SERVICES (TOPSS) BOARD OF DIRECTORS TO LEASE A PORTION OF THE CITY OWNED PREMISES KNOWN AS MERRY DAY PARK FOR AN INITIAL TERM OF TWENTY FIVE (25) YEARS.

WHEREAS, on May 2, 2017, Oxford City Council adopted Resolution No. 5062 authorizing the City Manager to develop an agreement for City Council approval between the City of Oxford and the Oxford Community Choice Pantry Board of Directors for the lease of land at the City owned Merry Day Park; and

WHEREAS, the proposed lease would permit the construction and ownership of up to a a 3,500 square foot structure to be utilized for the collection, storage and distribution of food items by the Oxford Community Choice Pantry; and

WHEREAS, the proposed lease was not executed; and

WHEREAS, the Oxford Community Choice Pantry has been renamed the Talawanda Oxford Pantry and Social Services (TOPSS); and

WHEREAS, the Talawanda Oxford Pantry and Social Services (TOPSS) has proposed to construct a 5,600 square foot pre-engineered building with construction to begin by January 31, 2020.

WHEREAS, due to funding shortfalls the Talawanda Oxford Pantry & Social Services Board Chair has requested the construction to begin date be amended from January 31, 2020 to January 31, 2023; and

WHEREAS, the City Manager recommends that City Council authorize the City Manager to enter into an amended lease agreement a copy of which is attached hereto as Exhibit "A" with the Talawanda Oxford Pantry and Social Services (TOPSS) Board of Directors to lease a portion of the City owned premises known as Merry Day Park for an initial term of twenty five (25) years.

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

SECTION 1: Council accepts the recommendation of the City Manager and hereby authorizes the City Manager to enter into an amended lease agreement in a form as approved by the Law Director and substantially similar to Exhibit "A" attached hereto with the Talawanda Oxford Pantry and Social Services (TOPSS) Board of Directors to lease a portion of the City owned premises known as Merry Day Park for an initial term of twenty five (25) years.

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)

EXHIBIT "A"

LEASE AGREEMENT

THIS LEASE AGREEMENT (hereinafter the "Lease") made this ____ day of ______, 2019, by and between the **City of Oxford** (hereinafter "Lessor"), an Ohio municipal corporation, having an address of 15 South College Avenue, Oxford, OH 45056 and the **Talawanda Oxford Pantry and Social Services Board of Directors** (hereinafter "Lessee), an Ohio nonprofit corporation, having an address of 400 West Withrow Street, Oxford, OH 45056.

LEASEHOLD

Subject to the terms and conditions set forth herein, Lessor leases to Lessee, and Lessee leases from Lessor, a portion of the premises known as Merry Day Park, located off U.S. Route 27 on Reagh Way (hereinafter the "Premises"). The Premises covered by this Lease includes an area within the Merry Day Park described as follows and any structure constructed by Lessee thereon.

TERM

Initial Term. The Initial Term of this Lease is for a period of 25 years commencing on February 6, 2019 ("Commencement Date") and ending on February 6, 2044 unless terminated sooner as provided in this Lease.

Option to Renew. The Lessor hereby grants the Lessee the right and option to renew this Lease for an additional term of 25 years from and after the expiration of the Initial Term hereof upon the same terms and conditions, provided written notice of the exercise of the option is given by the Lessee to the Lessor, at least 90 days prior to the expiration of the Initial Term; and provided further that Lessee has not committed an Event of Default. The period including the Initial Term and any renewal term shall be referred to herein as the "Term".

RENT AND SECURITY DEPOSIT

Rent. Lessee shall pay Lessor as rent, for the possession and use of the Premises, the sum of $1.00 per year. Rent is payable at the address of Lessor at 15 South College Avenue, Oxford, OH 45056.

TAXES

Lessee shall pay any and all taxes, real property and otherwise, to which the Premises is subject.

USE OF PREMISES

Lessor shall allow Lessee to build a building structure up to 6,000 square feet in size. Lessee shall use the structure primarily for the collection, storage, and distribution of food items by Lessee to low and moderate income persons and those in immediate crises who reside in the City of Oxford or the surrounding area. Lessee may also use the Premises for other charitable and nonprofit work with the prior approval of the Lessor.

Lessee shall not create or allow any nuisance to exist on or about the Premises and shall conduct its use of the Premises in accordance with all applicable laws and regulations. All uses of the Premises shall take place within the building.

Lessee shall construct adequate parking and facility access for the structure pursuant to the Chapter 1149 of the Codified Ordinances of the City of Oxford Ohio.

Lessee shall comply with all applicable zoning and building regulations of the City of Oxford pursuant to the Ohio Building Code (published in the Ohio Administrative Code 4101:1-1-01 *et seq.*) as adopted by the section 1301 of the Codified Ordinances of the City of Oxford Ohio and pursuant to Part 11 of the Codified Ordinances of the City of Oxford Ohio.

UTILITY CHARGES

Lessor is providing no utilities whatsoever at its own expense. Lessee shall be responsible for and pay all utilities, trash removal, and similar expense. All utilities should be in Lessee's name as soon as the utilities are installed at the Premises and remain in the Lessee's name during the Term of this Lease. Lessee shall also be responsible for the cost of utilities installation and all connection charges.

LESSEE IMPROVEMENTS

Lessee accepts the Premises "as is," and Lessor is not required to undertake, maintain, or construct any Lessee improvements to the Premises prior to the Commencement Date or at anytime thereafter.

MAINTENANCE BY LESSEE

The Lessee shall, during the Term of this Lease and any renewal thereof, at its sole expense keep the Premises in good order and repair, including, but not limited to any repairs to the structure built by Lessee thereon excepting such repairs and replacements as are occasioned by any act, neglect or failure of the Lessor to perform its covenants under this Lease. Lessee agrees to have any heating and/or air conditioning equipment inspected and serviced prior to the heating and cooling seasons each year.

Lessor shall not be liable for any damage occasioned by reason of the construction of any structure on the premises. Lessor shall not be liable for any damage done or occasioned by or from any electrical system, heating and/or air conditioning system, the plumbing and sewer system, or failure of any security system in, above, upon, or about the premises, nor for damage occasioned by water, snow, or ice being upon or coming through the roof, trapdoor, walls, windows, doors, or otherwise.

INSURANCE

Lessee shall save Lessor harmless against all claims for property damage, loss or bodily injury or death, of all persons coming upon said premises and Lessee shall, during the entire Term hereof and any renewal Term, keep in full force and effect a policy of liability insurance with respect to the leased Premises and the operations of Lessee, in which both Lessor and Lessee shall be named as parties covered thereby, or which provided equivalent protection to and is approved by Lessor, with a combined single limit of $1,000,000 for bodily and/or property damage liability. Prior to the Commencement Date, Lessee shall furnish Lessor with a Certificate or Certificates of Insurance, or other acceptable evidence that such insurance is in full force and effect at all times during the term hereof.

If Lessee installs any electrical equipment that overloads the power lines to any structure built upon the Premises, Lessee shall, at its own expense, make whatever changes are necessary to comply with the requirements of insurance underwriters and insurance rating bureaus and governmental authorities having jurisdiction.

All property which may be upon said premises during the term hereof or any renewal thereof shall be at and upon the sole risk and responsibility of Lessee.

TOTAL OR PARTIAL DESTRUCTION

In the event the leased premises and/or any structures or buildings thereon shall be damaged by fire or other casualty, the premises and/or buildings shall be repaired within One Hundred Twenty (120) days from the date of such damage. If such repair shall not have been completed within One Hundred Twenty (120) days from the date of such damage, this lease may, at the option of the Lessor, be terminated. If Lessee determines that repairing or rebuilding will take more than One Hundred Twenty (120) days, Lessee shall notify Lessor of this issue, and of Lessee's intention to repair, within sixty (60) days of the date of the damage. Lessor may, at Lessor's sole discretion, extend the time period allow for repairing or rebuilding.

If Lessee fails to repair the property, Lessor is entitled to all insurance proceeds paid as a result of the fire or other casualty.

Lessor shall have no responsibility to restore the premises and/or any structures or buildings thereon, whatsoever.

INDEMNIFICATION

Lessor shall not be liable for any loss or damage to person or property for any reason including, but not limited to, theft, fire, acts of God, acts of a public enemy, riot, strike, insurrection, war, court order, requisition, or order of government body or authority, unless caused by the acts of Lessor. Lessee will indemnify and defend Lessor, by counsel acceptable to Lessor, against any and all claims or liabilities, including reasonable attorney fees and court costs, arising out of or relating to the Premises whether inside or outside a structure or building.

ABANDONMENT OF PREMISES

If Lessee for any reason abandons the Premises or any structure it has built thereon, Lessor shall have the option to take possession of the Premises and any such structure. If Lessor does not exercise the option, either through express decision or through non-action within 30 days from the date of abandonment, Lessee shall take all actions necessary to restore the Premises and pay any costs arising out of such restoration.

Under no circumstances shall Lessor be required to take possession of the Premises upon Lessee's abandonment of it.

ASSIGNMENT AND SUBLETTING

Lessee may not assign or sublet, whether voluntarily or involuntarily or by operation of law, the Premises or any part of the Premises, or any structure or buildings thereon, without Lessor's written consent, which consent may be withheld at Lessor's sole discretion.

DEFAULT BY LESSEE

Events of Default. The occurrence of any of the following events will, at Lessor's option, constitute an event of default ("Event of Default"):

(a) In the event Rent is late as defined hereunder, failure to pay Rent within 15 days following written demand to pay Rent by Lessor;

(b) Abandonment of the Premises for a period of 30 consecutive days;

(c) Failure to perform Lessee's covenants under this Lease (except default in the payment of Rent); provided that if this default is susceptible of cure and Lessee has promptly commenced the cure of this default and is diligently prosecuting the cure to completion, then the default must remain uncured for thirty (30) days after written notice from Lessor.

Remedies. In the event of any default by Lessee under this Lease, Lessor shall have the following remedies:

(a) **Termination.** In the event of the occurrence of any Event of Default, Lessor will have the right to give a written termination notice to Lessee and, on the date specified in that notice, this Lease will terminate unless on or before that date all arrears of Rent and all other sums payable by Lessee under this Lease and all costs and expenses incurred by or on behalf of Lessor have been paid by Lessee and all other Events of Default at the time existing have been fully cured to the satisfaction of Lessor.

(b) **Repossession.** Repossession following termination, without prejudice to other remedies Lessor may have, Lessor may (i) peaceably re-enter the Premises on voluntary surrender by Lessee; (ii) remove Lessee and any other persons occupying the Premises, using any legal proceedings that may be available; (iii) repossess the Premises or re-let the Premises, any structure built thereon during the Term of this Lease, or any part of the Premises for any term (which may be for a term extending beyond the Term), at any rental and on any other terms and conditions that Lessor in Lessor's sole discretion may determine, with the right to make reasonable alterations and repairs to the Premises; and (iv) remove all personal property.

(c) **Unpaid Rent.** Lessor will have all the rights and remedies of a Lessor provided by applicable law, including the right to recover from Lessee (i) the worth, at the time of award of the unpaid Rent that had been earned at the time of termination; (ii) the worth, at the time of award, of the amount by which the unpaid Rent that would have been earned after the date of termination until the time of award exceeds the amount of loss of rent that Lessee proves could have been reasonably avoided; (iii) the worth, at the time of award, of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the loss of rent that Lessee proves could have been reasonably avoided; and (iv) any other amount, and court costs, necessary to compensate Lessor for all detriment proximately caused by Lessee's default.

(d) **Cumulative.** Each right and remedy of Lessor provided for in this Lease or now or later existing at law, in equity, by statute, or otherwise, will be cumulative and will not preclude Lessor from exercising any other rights or remedies provided for in this Lease or now or later existing at law or in equity, by statute, or otherwise. No payment by Lessee of a lesser amount than the Rent, or any endorsement on any check or letter accompanying any check or payment as Rent, will be deemed an accord and satisfaction of full payment of Rent. However, Lessor may accept this payment without prejudice to Lessor's right to recover the balance of Rent or to pursue other remedies.

NOTICES

Any notice under this Lease shall be in writing and shall be deemed to be duly given only if delivered personally or mailed by first class U.S. Mail, addressed to the Lessor and Lessee at the addresses noted on this Lease, to an address as either party may hereafter designate to the other in writing.

MISCELLANEOUS

Entire Agreement. This Lease sets forth all the agreements between Lessor and Lessee concerning the Premises, and there are no other agreements, either oral or written, other than as set forth in this Lease.

Validity of Lease. This Lease shall be valid only if both parties have executed this Lease by January 31, 2020 and construction on the Premises has commenced by ~~January 31, 2020~~ **January 31, 2023**. The acquiring of building permits shall be considered the commencement of construction.

Attorney's Fees. In any action that either party brings to enforce its rights under this Lease, the prevailing party shall be entitled to all of its costs plus reasonable attorney fees to be fixed by the court. Those costs and attorney fees will be considered a part of the judgment in that action.

Severable. If any provision of this Lease or the application of any provision is held by a court of competent jurisdiction to be invalid, void, or unenforceable to any extent, the remaining provisions of this Lease and the application of it will remain in full force and will not be affected, impaired, or invalidated.

Governing Law. This Lease will be construed and enforced in accordance with the laws of the state of Ohio.

Successors. This Lease will be binding on and inure to the benefit of the successors and assigns of Lessor and Lessee, their heirs and court appointed representative.

No Waiver. No waiver of any default or breach under this Lease will be implied from any omission to take action on account of this Lease, regardless of any custom and practice or course of dealing. No waiver will affect any default other than the default specified in the waiver, and then the waiver will be operative only for the time and to the extent stated in the Lease. Waivers of any covenant will not be construed as a waiver of any subsequent breach of the same covenant. No waiver by either party of any provision under this Lease will be effective unless in writing and signed by that party.

Surrender. Upon the termination of this Lease or Lessee's right to possession of the Premises, Lessee will surrender the Premises to Lessor.

Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Lease is executed on this ____ day of __________, 2019, in the City of Oxford, Ohio.

LESSOR:

CITY OF OXFORD, OHIO

BY:______________________________
Douglas R. Elliott, Jr., City Manager

LESSEE:

TALAWANDA OXFORD PANTRY AND SOCIAL SERVICES

BY:______________________________

CITY OF OXFORD
STAFF SUMMARY REPORT

Report to the City Manager

Council Meeting of: October 15, 2019 — Service Department, **Originating Department**

Account Code #: N/A — David Treleaven, **Prepared By**

Budgeted Amount: N/A — October 4, 2019, **Date Prepared**

Agenda Title:	Environmental Commission Meeting of October 2, 2019

Recommendation:	For Review and Consideration

Discussion:

Environmental Commission members present at the Wednesday, October 2, 2019 meeting were: Chair, Mr. Wright Gwyn; Vice-Chair, Ms. Madeline Maurer; Planning Commission Representative, Ms. Carla Blackmar, Mr. Andor Kiss, and Mr. Jon Ralinovsky. A quorum was present. City Council Representative, Ms. Chantel Raghu, and Mr. Steven Elliott had previously informed the Commission that they would be unable to attend the October meeting. Also in attendance were Ms. Suzanne Zazycki, Assistant Director of the Miami University Institute for the Environment and Sustainability Department (IES), and IES Graduate Student team members Mr. Emmanuel Aina, Mr. Feras Althuniyan, Ms. Olivia Herron, Ms. Maggie Kinney, Mr. Noah Miller, and Mr. Cecil Okotah. Mr. Sam Squillante, also a graduate student in IES, was also in attendance.

The minutes from the September 4, 2019 Environmental Commission meeting was unanimously approved as presented.

Ms. Zazycki introduced the IES Graduate Student team members to the Commissioners. The team members will be undertaking the continuation of the local government operations' greenhouse gas (GHG) inventory Professional Service Project (PSP) that was started during the last academic year. Mr. Squillante is performing an IES independent studies program, and during this fall, he will be assembling the data the PSP student team will need to conduct the GHG inventory (to be formally undertaken in the upcoming second semester, starting in January 2020). Mr. Squillante is also working in conjunction with Ms. Jessica Greene, Oxford's Assistant City Manager, in her efforts to address the requirements of the Global Covenant of Mayors for Climate and Energy on behalf of Oxford. The PSP team indicated they would like to meet with Commissioners in the future to discuss and define the project, as well as the Commissioners' expectations. It is envisioned the discussion would be approximately an hour in length, so conducting it during the November Commission meeting would not be practical. The student team is to provide several meeting day/time options to the Commissioners, and the available Commissioners will attend to meeting. Representatives of the PSP student team are to update the Commission on the progress and developments associated with the GHG inventory at the Commission's regularly scheduled monthly meetings.

City Councilor Mr. David Prytherch had requested that the Environmental Commission select a representative to the recently re-established Oxford Parking and Transportation Board. Mr. Ralinovsky volunteered and was unanimously approved.

(Continued)

Approved By:

	Initial	Date
Department Head:	MED	10/7/19
City Manager:	DRE	10/11/19

Ms. Blackmar informed the Commission that the Planning Commission had approved development plans for the South Farm property along Kehr Road. Ms. Blackmar was of the opinion that the developers' decision to leave existing woody vegetation around the margins of the property reduced the potential objections to the development by the existing neighbors.

Mr. Gwyn went over the history and evolution of the Commission's work in developing the draft Tree Preservation and Protection Ordinance. Over the summer, Community Development Director, Mr. Sam Perry, had incorporated several primary components (the tree survey and the tree protection plan) of the draft Tree Preservation and Protection Ordinance into existing Oxford Planning and Zoning Code's text. Mr. Perry had indicated his intention was to mesh tree preservation and protection concepts into the existing regulatory framework, emphasizing a gradual, incremental approach rather than the more rigid approach of the draft Tree Preservation and Protection Ordinance. Commissioners discussed whether to utilize Mr. Perry's format or to continue with the Commission's "stand-alone" ordinance as its own chapter. Ms. Blackmar explained to the Commission that the incorporation of tree preservation and protection concepts into existing Code was probably the better approach in getting the developer's attention since the requirements would be with the other regulations affecting their project(s). The Commission agreed with her assessment. Subsequent discussion of the preservation and protection text incorporated into the Planning and Zoning Codes concluded that the existing language was vague in places and/or on several protection and preservation aspects. The Commissioners included some additional requirements that they felt had been omitted in the Planning and Zoning Code (tree replacement plan and time frame included in the Landscape Plan requirement, maintenance/care requirements for newly planted trees, etc.). Mr. Gwyn indicated he would make these agreed upon additions to the text, and prepare a cover letter to accompany the revised Code's submittal to the Planning Commission for their review. Mr. Gwyn is to provide drafts of the revisions and cover letter to the Environmental Commissioners for approval prior to their submittal to the Planning Commission.

Staff informed the Commission that only one contractor (Rumpke) had submitted prices for the refuse and recycling contract. Several of the Environmental Commission's recommendations were including in the bid specifications, including an option for a lower volume of residential services ("Discounted Service"), and having the 65-gallon lidded, waste wheeler cart be the default of residential recycling service (with the existing default 23-gallon red bins available upon request) with no monthly rental fee. No pricing was submitted for the residential curbside food scraps collections request; Rumpke indicated that they did not have the State licensing to performing composting operations. It is anticipated that the recycling and refuse contract will be included in the October 15th City Council meeting agenda

A summary of the residential food scraps drop-off pilot program was provided. Through the end of September (25 weeks of collections), approximately 13,000 pounds of food scraps have been collected by the residential drop-off program, averaging approximately 520 pounds per week.

Commissioners concluded discussions at 8:55 p.m. The next Environmental Commission meeting is tentatively scheduled for 7:00 p.m. on November 6, 2019, in the Municipal Building's First Floor Conference Room.

CITY OF OXFORD
STAFF SUMMARY REPORT

Report to the City Manager

City Council Meeting of: October 15, 2019

Account Code #: Not Applicable

Budgeted Amount: Not Applicable

Service Department
Originating Department

Michael B. Dreisbach, Service Director
Prepared By

October 7, 2019
Date Prepared

Agenda Title: Local Public Agency (LPA) Agreement with the Ohio Department of Transportation to Local Let OATS Phase IV Construction ODOT PID #109427

Recommendation: Approve

Discussion: The City of Oxford (City) is currently planning the construction of Phase IV of the Oxford Area Trails (OATS) system. This project will install a 10' shared use path from the Talawanda Middle School on Oxford Reily Rd. making a connection to the trail system of the Oxford Community Park and Aquatic Center.

While the project has not been formally designed, the City estimates of cost of the project at approximately $2,500,000. ODOT shall provide to the City 30% of eligible costs, up to a maximum of $750,000 (from an OKI TA grant). The City shall be responsible for any cost overruns, all locally funded items, and any contractor claims.

By local-letting this project, the City will save 10% in construction engineering costs – in this case, approximately $250,000. The responsibility of project management will fall on the City's LPA, City Engineer Scott Otto. We will be responsible for advertising, sale, and award of the contract, all aspects of contract administration, as well as project inspection and reporting.

The current schedule for this project includes hiring a design consultant in 2020, producing drawings and specifications through mid-2021, and bidding the project in late 2021 for construction beginning in 2022 with completion in 2023.

Staff recommends City Council approve this Resolution authorizing the City Manager to sign the attached "LPA Federal Local-Let Project Agreement" with the Ohio Dept. of Transportation.

Approved By:

	Initial	Date
Department Head:	MBD	10/7/19
City Manager:	DRE	10/11/19

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENT NO. 109427 WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) AUTHORIZING A LOCAL-LET PROJECT FOR THE CONSTRUCTION OF PHASE IV OF THE OXFORD AREA TRAILS SYSTEM (OATS).

WHEREAS, the City has secured federal funding, administered by the Ohio Department of Transportation (ODOT) for the construction of Phase IV of the Oxford Area Trails System (OATS) with construction beginning in 2022 and completing in 2023. ODOT has designated this project as PID No. 109427 with Local-Let Agreement No. 33726; and

WHEREAS, the ODOT Local-Let Project Agreement stipulates the conditions required to receive the funds for the project as well as the obligations and responsibilities of all parties for the project. ODOT will provide 30% of eligible project costs up to a maximum of $750,000.00 from an OKI TA grant. The City of Oxford as the Local Public Agency (LPA) shall be responsible for any cost overruns, all locally funded items and any contractor claims; and

WHEREAS, the City shall also follow all ODOT contracting guidelines; provide all construction management for the project and follow nondiscrimination practices as defined by the State of Ohio including Disadvantaged Business Enterprise requirements; and

WHEREAS, the City Manager and the Service Director recommend Council authorize the City Manager to enter into Agreement No. 109427 with ODOT authorizing a Local-Let project for the construction of Phase IV of the Oxford Area Trails System (OATS).

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

SECTION 1: The City has secured federal funding administered by ODOT for the construction of Phase IV of the Oxford Area Trails System (OATS). The ODOT Local-Let Project Agreement stipulates the conditions required to receive the funds for the project as well as the obligations and responsibilities of all parties for the project. ODOT will provide 30% of eligible project costs up to a maximum of $750,000.00. The City of Oxford as the Local Public Agency (LPA) shall be responsible for any cost overruns, all locally funded items and any contractor claims.

SECTION 2: Council accepts the recommendation of the City Manager and the Service Director and approves the attached LPA Federal Local-Let Project Agreement.

SECTION 3: Council further authorizes the City Manager to enter into Agreement No. 109427 attached hereto as Exhibit "A" with the Ohio Department of Transportation (ODOT) authorizing a Local-Let project for the construction of Phase IV of the Oxford Area Trails System (OATS).

SECTION 4: 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)

FUTURE OXFORD AREA TRAILS SYSTEM

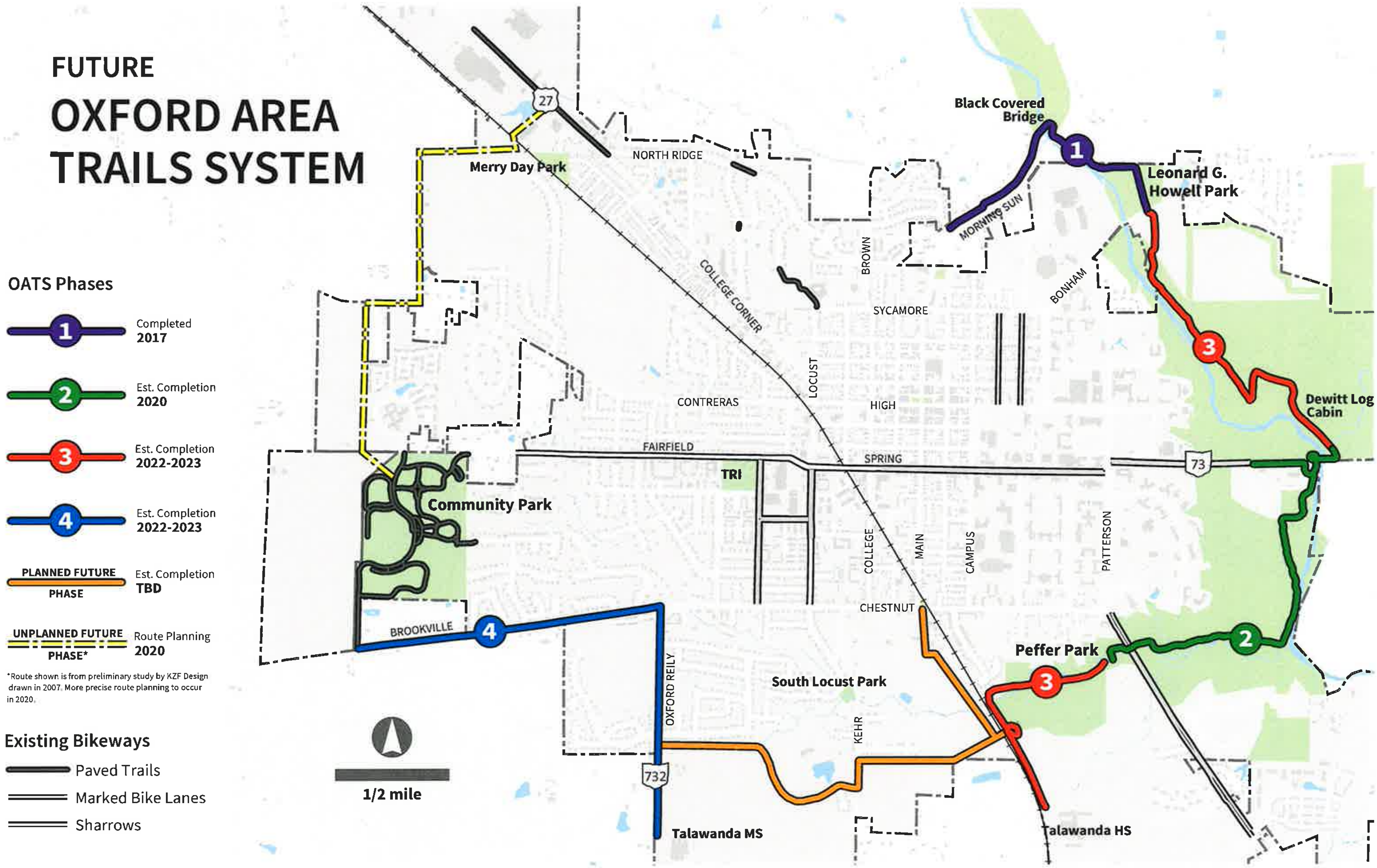


EXHIBIT "A"

BUT OXFORD AREA TRAIL WESTSIDE
COUNTY-ROUTE-SECTION

109427
PID NUMBER

33726
AGREEMENT NUMBER

CFDA 20.205

DUNS NUMBER

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **City of Oxford** hereinafter referred to as the LPA, **15 S. College Avenue, Oxford, OH 45056.**

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D) of the **Ohio Revised Code** (hereinafter referred to as ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 The **construction of an asphalt shared use path from Talawanda Middle School to Oxford Community Park, with connections to neighborhoods along the route** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.

1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:

a. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
b. Federal Funding Accountability and Transparency Act of 2006 (FFATA);
c. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
d. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
e. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT).

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be **$2,500,000** as set forth in Attachment 1. ODOT shall provide to the LPA **30 percent** of the eligible costs, up to a maximum of **$750,000** in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally-funded work, cost overruns and contractor claims.

4. PROJECT DEVELOPMENT AND DESIGN

4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: www.dot.state.oh.us/drrc/Pages/default.aspx

4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the Project Design Engineer and serve as the LPA's principal representative for attending to project responsibilities or engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC sections 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT

4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.

4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at www.dot.state.oh.us/CONTRACT. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.

5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.

5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.

5.6 The LPA shall submit a NOI to Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-Let LPA projects, they may use an alternative post-construction BMP criteria with Ohio EPA approval.

6. <u>RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION</u>

6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.

6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.

6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.

6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.

6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.

6.8 The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.

6.9 Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.

7. <u>ADVERTISING, SALE AND AWARD</u>

7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.

7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.

7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

7.4 The LPA must incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.

7.5 The LPA shall require the contractor to be enrolled in, and maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.

7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award.** For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30-percent prime requirement does not apply to design-build contracts.

7.7 In accordance with ORC Section 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an oblige on any bond. If the LPA has 100 percent locally-funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100 percent locally-funded work product.

7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC Section 9.24, that the contractor has taken the appropriate remedial steps required under ORC Section 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at https://ohioauditor.gov/findings.html . If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.

7.10 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.

7.11 After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this Agreement, if applicable.

8. <u>CONSTRUCTION CONTRACT ADMINISTRATION</u>

8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the

LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this Agreement.

8.2 The LPA must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.

8.3 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.

8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA is requests reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the ORC may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.

8.7 Payment or reimbursement to the LPA shall be submitted to:

Douglas R. Elliott, Jr.
City Manager
15 S College Avenue
Oxford, OH 45056

8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.

8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its Federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with Title 23 United States Code 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within 6 months of the physical completion date of the PROJECT. All costs must be submitted within 6 months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the 6-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.

9. <u>CERTIFICATION AND RECAPTURE OF FUNDS</u>

9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the

PROJECT, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.

10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

> Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.
>
> ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. Prior to executing the contract with the contractor, and in order for ODOT to encumber the Federal/State funds, the contractor must demonstrate compliance with the DBE Utilization Plan and Good Faith Efforts requirements.
>
> **GOOD FAITH EFFORTS (GFEs)**
>
> In the event that the DBE contract goal established by ODOT is not met on a project, the Contractor shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.
>
> The Contractor shall demonstrate its GFEs by submitting information including but not limited to the following to the LPA:
>
> (1) All written quotes received from certified DBE firms;

(2) All written (including email) communications between the Contractor and DBE firms;
(3) All written solicitations to DBE firms, even if unsuccessful;
(4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
(5) Phone logs of communications with DBE firms.

The LPA will send the GFE documentation including their recommendation to ODOT at the following address:

Office of Small & Disadvantaged Business Enterprise
The Ohio Department of Transportation
1980 West Broad Street, Mail Stop 3270
Columbus, Ohio 43223

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Contactor has made adequate good faith efforts to meet the goal. ODOT will review the GFE documentation and the LPA's recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the Contractor.

The Contractor may request administrative reconsideration within two (2) days of being informed that it did not perform a GFE. The Contractor must make this request in writing to the following official:

Ohio Department of Transportation
Division of Chief Legal Counsel
1980 West Broad Street, Mail Stop 1500
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient good faith effort.

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

ODOT may issue sanctions if the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort. ODOT may impose any of the following sanctions:

(a) letter of reprimand;
(b) contract termination; and/or
(c) other remedies available by law including administrative suspension.

Factors to be considered in issuing sanctions include, but are not limited to:

(a) the magnitude and the type of offense;
(b) the degree of the Consultant's culpability;
(c) any steps taken to rectify the situation;
(d) the Contractor's record of performance on other projects including, but not limited to:
    (1) annual DBE participation over DBE goals;
    (2) annual DBE participation on projects without goals;

(3) number of complaints ODOT has received from DBEs regarding the Contractor; and,

(4) the number of times the Contractor has been previously sanctioned by ODOT; and,

(e) Whether the Contractor falsified, misrepresented, or withheld information.

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:

(a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

(b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(c) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.

(d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the LPA under the contract until the LPA complies, and/or

(2) cancellation, termination or suspension of the contract, in whole or in part.

(f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.

12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

12.5 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.3. In the event of termination for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. <u>THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS</u>

13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the ORC.

13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA: If to ODOT:

If to the LPA	If to ODOT
Douglas R. Elliott, Jr.	Tammy K. Campbell, P.E.
City Manager	District 8 Deputy Director
15 S College Avenue	505 South S.R. 741
Oxford, OH 45056	Lebanon, OH 45036

15. GENERAL PROVISIONS

15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs*:

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below:

☐ **1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**

(A) The LPA ***does not*** currently maintain an ODOT approved federally compliant time-tracking system[1], ***and***

(B) The LPA ***does not*** intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, ***and/or***

(C) The LPA ***does not*** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

☐ **2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [2]

(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, ***and***

(B) The LPA ***does not*** currently have, and ***does not*** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

1 A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. The definition of MTDC is provided in the regulation at 2 CFR §200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

☐ 3. **Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [3]

(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, ***and***

(B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐ 4. **Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.** [4]

(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, ***and***

(B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, ***and***

(C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.

15.3 *Financial Reporting and Audit Requirements*: One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-federal entities, including ODOT's LPA sub recipients, that have aggregate federal awards expenditures from all sources of $750,000 or more in the non-federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

Federal and State funds expended to or on behalf of a sub recipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project

3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with section 2 CFR §200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

15.4 *Record Retention*: The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

> As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

15.5 *Ohio Ethics Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.

15.6 *State Property Drug-Free Workplace Compliance*: In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.7 *Trade:* Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at https://www.treasury.gov/resource- center/sanctions/Programs/Pages/Programs.aspx. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

15.8 *Lobbying*: Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

15.9 *Debarment*. LPA 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. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.

15.10 *Governing Law*: This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

15.11 *Assignment*: Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

15.12 *Merger and Modification*: This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

15.13 *Severability*: If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

15.14 *Signatures*: Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

15.15 *Facsimile Signatures*: Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: CITY OF OXFORD	STATE OF OHIO DEPARTMENT OF TRANSPORTATION
By: ______________________________ Douglas R. Elliott, Jr.	By: ______________________________ Jack Marchbanks, Ph.D.
Title: City Manager	Director
Date: ______________________________	Date: ______________________________

Attachment 1

PROJECT BUDGET - SOURCES AND USES OF FUNDS

SOURCES / USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT		100			0					
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS		100			0					
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION		100			0					
PROJECT CONSTRUCTION COSTS	$1,750,000	70	LNTP	$750,000	30	4TC7/ KI08				$2,500,000
INSPECTION		100			0					
TOTALS	$1,750,000			$750,000						$2,500,000

Attachment 2

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the contractor in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this Agreement, and shall indicate that the payment is to be made to the contractor. In addition, the invoice must state the contractor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (sub recipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We________________________________request that all payments for the Federal/State share of the construction costs of this Agreement performed by ______________________________ be paid directly to ________________________________.

VENDOR Name:	
Oaks Vendor ID:	
Mailing Address:	
LPA signature:	________________________________

LPA Name:	
Oaks Vendor ID:	
Mailing Address:	
ODOT Approval signature:	________________________________

CITY OF OXFORD
STAFF SUMMARY REPORT

Report to the City Manager

Council Meeting of: October 15, 2019

Service Dept.
Originating Department

Account Code #: N/A

David Treleaven
Prepared By

Budgeted Amount: N/A

October 3, 2019
Date Prepared

Agenda Title: Solid Waste & Recycling Contract

Recommendation: Approve

Discussion:

The City of Oxford (City) advertised for proposals for the collection of solid waste and recyclable materials in the Hamilton *Journal-News* newspaper on September 13 and 20, 2019. City Staff directly contacted local solid waste haulers (Bavarian Trucking, Best Way Disposal, Republic Services/CSI, Rumpke, and Waste Management) to alert them of the bidding opportunity. Bavarian Trucking and Best Way Disposal stated they did not perform residential solid waste and/or recycling services, Best Way Disposal indicated Oxford was too far away from their base of operations to provide residential solid waste and/or recycling services, and no responses were received from Republic Services/CSI or Waste Management. Rumpke currently has the City's refuse and recycling contract (that will expire December 31, 2019).

The City requested bids for two contract time periods. The first was for solid waste and recycling services for the 2020 and 2021 time period, with the possibility of three additional one-year extensions (2022, 2023 and 2024), with not-to-exceed annual percentage increases allowed. This duplicates the existing contract we have with Rumpke Waste. The second was for the entire five year time period of 2020-2024. Additionally, the City requested bids for various levels of residential refuse service: up to ten items and/or containers of refuse weekly (the existing level of service), and a "Discounted Service" residential option with the weekly trash volume limited to fitting in a single 65-gallon lidded, wheeled waste cart, one trash item outside of the cart, and recycling.

Both contract periods require the contractor to provide residential 65-gallon recycling lidded, wheeled carts with **no monthly rental fee** (currently $1.00 per month). The elimination of the monthly rental fee is intended to encourage an increase in residential recycling volume, while reducing the potential for wind-blown litter from the open-topped recycling bins currently provided to residential accounts at no additional expense.

Pricing requests for curbside food scraps collections for composting were included for each contract period.

(Continued)

Approved By:

	Initial	Date
Department Head:		
City Manager:	DRF	10/11/19

A sealed proposal from Rumpke was publicly opened and read aloud on September 29, 2019. Rumpke submitted bids for the requested services described above. However, no pricing was provided for the residential food scrap collections as Rumpke does not have the facilities with the necessary State license to provide for food scraps composting. The proposed costs of the "Discounted Service" were $1 per month less than the 10-Item trash collection for both the two-year contract with annual extensions and the five-year contract periods. It was deemed that the $1 reduction in monthly fees, for an approximate 80% decrease in service, was not cost efficient. By having larger recycling carts (on wheels and with lids), the City can encourage more recycling, have less blowing litter compared to bins, and still having adequate facilities for solid waste collection.

The total cost differences between Rumpke's two-year contract with annual extension options versus the five year contract had the five year contract prices costing the City more in the long run, for both residential and commercial services. For residential service, the five year total was $51,968 more expensive to the City. Summaries of the existing and proposed Rumpke fees are attached. Discussion below will focus on the two-year contract, with the three annual extensions.

The monthly residential service charges to the City with the two-year contract and possible three annual extensions are $12.95 ($8.95 for solid waste and $4.00 for recycling) during the 2020-2021 time period. The current monthly residential service charges for 2019 to the City are either $12.21 or $13.21 ($8.53 for solid waste and $3.68 for recycling, with an additional $1 rental fee for the 65-gallon recycling cart, if utilized). The 2020-2021 residential account's expense to the City has increased by $0.74 per month for recycling and trash collections when compared to the current charges. However, if the residential account is already utilizing the 65-gallon recycling cart (1,024 out of 3,410 residential accounts are), these accounts will see a $0.26 decrease in the monthly recycling and trash charges compared to current charges, as the $1 rental fee for the recycling cart has been eliminated.

During the 2020-2021 contract period, the monthly commercial refuse collection prices for once weekly collection increased between $0.30 (1.98% for a 96-gallon lidded, wheeled tote) and $2.91 (2.44% for an 8-cubic yard dumpster). Monthly commercial recycling collection prices for once weekly collection increased between $0.45 (11.84% for a 96-gallon lidded, wheeled tote) and $3.17 (3.98% for an 8-cubic yard dumpster).

It is the recommendation of Staff that City Council authorize the City Manager to enter into an agreement with Rumpke of Ohio, Inc. for the collection and disposal of solid waste and for the collection and processing of recyclable materials. This agreement would be for a two-year period commencing on January 1, 2020 and could be extended by annual options through December 31, 2024.

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH RUMPKE OF OHIO, INC. FOR THE COLLECTION AND DISPOSAL OF SOLID WASTE AND FOR THE COLLECTION AND PROCESSING OF RECYCLABLE MATERIALS FOR THE CITY OF OXFORD AND ITS RESIDENTS FOR A TWO (2) YEAR PERIOD COMMENCING JANUARY 1, 2020 WITH THREE (3) ONE (1) YEAR OPTIONS THROUGH DECEMBER 31, 2024.

WHEREAS, the City advertised for proposals in the Hamilton *Journal-News* on September 13, 2019 and on September 20, 2019. City staff also directly contacted local waste haulers to alert them of the bidding opportunity. One (1) sealed proposal was opened and publicly read aloud on September 29, 2019. The lowest, best and only proposal was provided by Rumpke of Ohio, Inc.

WHEREAS, the City Manager and the Service Director recommend City Council accept the proposal of Rumpke of Ohio, Inc. as the lowest, best and only proposal for the collection and disposal of solid waste and for the collection and processing of recyclable materials for the City of Oxford and its residents for a two year period commencing on January 1, 2020. The agreement could be extended by annual options through December 31, 2024.

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

SECTION 1: Council hereby accepts the recommendation of the City Manager and the Service Director and finds Rumpke of Ohio, Inc. to be the lowest, best and only bidder for the collection and disposal of solid waste and for the collection and processing of recyclable materials for the City of Oxford and its residents.

SECTION 2: The City Manager is hereby authorized to enter into a two (2) year agreement with three (3) one (1) year options in a form acceptable to the Law Director with Rumpke of Ohio, Inc. for the collection and disposal of solid waste and for the collection and processing of recyclable materials for the City of Oxford and its residents effective January 1, 2020 pursuant to the terms of the proposal submitted by Rumpke of Ohio, Inc. by reference herein.

SECTION 3: 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)

COPY

BIDDER PROPOSAL SHEET

RECEIVED SEP 2 6 2019 BY:

OPTION A

A two year contract (2020-2021), with up to three (3) one-year extensions (2022, 2023, and 2024)

ITEM I **Collection/disposal of refuse and recyclable materials for up to 10 (ten) containers (with up to 40/45 gallon capacity, or three 90-gallon waste wheeler totes (or equivalent volume), recycling 18- to 23-gallon bins, 35-gallon, or 65-gallon recycling totes (or equivalent).**

Assume: **3,410 single-family, multi-family, duplex, and other residential, non-dumpster customers. Of these, 1,974 residential accounts utilize 90-gallon waste wheeler totes for solid waste.**

I.A For the figures and sum shown at the right, the contractor agrees to provide once-a-week **RESIDENTIAL "CURB-SIDE"** collection for refuse and/or recycling service per calendar month for a period of at least 2 (two) years, per specifications.

Collection/Disposal*	$ 8.95
Recycling (bins or totes)*	$ 4.00
Total	**I.A $** 12.95

I.B For the figures and sum shown at the right, the contractor agrees to provide once-a-week **SPECIAL, REAR and/or SIDE-OF-PROPERTY** collection for refuse and/or recycling service per calendar month for a period of 2 (two) years, per specifications.

Collection/Disposal*	$ 32.95
Recycling (bins or totes)*	$ 15.00
Total	**I.B $** 47.95

ITEM II **"Discounted Service" residential refuse and recycling services for the following volume (or near equivalent) containers**

For the figures and sum shown at the right, the contractor agrees to provide once-a-week **RESIDENTIAL "CURB-SIDE"** collection for refuse and/or recycling service per calendar month for a period of at least 2 (two) years, per specifications of the following number and volumes (or equivalent volume) of containers:

II.A "Discounted Service" Refuse Service

Single 65-Gallon Waste Wheeler Tote*	$ 7.95

**Residential unit prices for refuse collection do not include state, district, or local surcharge fees. These will be invoiced separately on a monthly basis.

II.B. "Discounted Service" Recycling

18 or 23-Gallon Recycling Bin* $ 4.00

65-Gallon Recycling Tote* $ 4.00

II.C For the figures and sum shown at the right, the contractor agrees to provide once-a-week **SPECIAL, REAR and/or SIDE-OF-PROPERTY** collection for refuse and/or recycling service per calendar month for a period of 2 (two) years, per specifications.

"Discounted Service" Refuse Service:

Single 65-Gallon Waste Wheeler Tote* $ 31.95

"Discounted Service" Recycling

18 or 23-Gallon Recycling Bin* $ 15.00

65-Gallon Recycling Tote* $ 15.00

* The City of Oxford reserves the right to reject, at its discretion, the recycling portion of any selected bid option and simultaneously accept the refuse collection/disposal portion of said option.

ITEM III **<u>Collection/disposal of solid waste and recyclables for commercial customers</u>**

III.A For the figures shown below, the contractor agrees to provide regularly, weekly scheduled refuse collection and disposal per dumpster size per calendar month for a period of 2 (two) years. **For commercial refuse waste customers, assume:**

110 two-cubic yard dumpster customers with 184 total collections weekly;
71 three-cubic yard dumpster customers with 150 total collections weekly;
46 four-cubic yard dumpster customers with 78 total collections weekly;
44 six-cubic yard dumpster customers with 94 total collections per week;
44 eight-cubic yard dumpster customers with 78 total collections per week; and
445 ninety-gallon (or equivalent) wheeled tote customers, with 749 total collections per week.

BIDDER PROPOSAL SHEET
(Continued, 3 of 26 pages)

Commercial Refuse:

Number of Times per Week of Regularly Scheduled Collection/Disposal

Volume	1X	2X	3X	4X	5X	6X	~~Additional~~ Extra Serv
2 Cu YD	37.27	59.02	88.39	114.50	142.78	171.06	27.19
3 Cu YD	48.20	85.18	123.26	161.32	198.31	236.39	28.25
4 Cu YD	62.41	110.26	158.12	207.07	254.93	301.71	32.64
6 Cu YD	92.92	160.36	227.80	282.19	367.04	436.65	35.64
8 Cu YD	122.35	211.55	299.66	388.85	476.95	566.14	38.08
90-gal. tote	15.25	26.10	36.99	47.86	58.74	69.62	10.88

Rates above do not include container rental charges.

III.B For the figures shown below, the contractor agrees to provide weekly recycling collection and disposal per dumpster size per calendar month for a period of 2 (two) years.
For commercial recycling customers, assume:
21 two-cubic yard dumpster customers with 33 total collections weekly;
2 three cubic yard dumpster customers with 5 total collections per week;
20 four cubic yard dumpster customers with 21 total collections per week;
4 six cubic yard dumpster customers with 10 total collections per week;
Presently, no eight cubic yard dumpster customers; and
263 ninety-gallon wheeled toter customers, with 247 total collections per week.

Commercial Recycling:

Number of Times per Week of Regularly Scheduled Collection/Disposal

Volume	1X	2X	3X	4X	5X	6X	~~Additional~~ Extra Serv
2 Cu YD	39.54	57.12	72.49	90.06	105.45	123.02	27.46
3 Cu YD	52.72	76.89	101.05	127.42	151.59	175.75	28.53
4 Cu YD	65.90	98.86	131.81	164.77	197.71	230.67	32.96
6 Cu YD	90.06	137.30	185.63	235.06	285.59	333.92	35.96
8 Cu YD	108.75	174.65	240.56	306.46	372.37	437.16	38.45
90-gal. tote	13.25	19.87	26.49	33.12	39.73	46.36	11.05

Recycling rates include container rental charges.

BIDDER PROPOSAL SHEET
(Continued, 4 of 26 pages)

ITEM IV **Dumpster and waste wheeler tote rental and purchase charge**

IV.A For the figures shown below, the contractor agrees to **rent** dumpsters and waste wheeler totes by size per calendar month for a period of at least 2 (two) years, per specification.

IV.A.1	One cubic yard dumpster	**IV.A.1** $ N/A
IV.A.2	Two cubic yard dumpster	**IV.A.2** $ 14.00
IV.A.3	Three cubic yard dumpster	**IV.A.3** $ 17.00
IV.A.4	Four cubic yard dumpster	**IV.A.4** $ 20.00
IV.A.5	Six cubic yard dumpster	**IV.A.5** $ 23.00
IV.A.6	Eight cubic yard dumpster	**IV.A.6** $ 26.00
IV.A.7	Waste Wheeler: Residential refuse 65 to 90-gal (or equivalent)	**IV.A.7** $ 3.00
IV.A.8	Waste Wheeler: Commercial refuse &/or recycling Specify size: 95 gallon	**IV.A.8** $ 9.00

IV.B For the figures shown below, the contractor agrees to sell dumpsters and waste wheeler totes for a period of 2 (two) years, per specification.

IV.B.1	One cubic yard dumpster	**IV.B.1** $ N/A
IV.B.2	Two cubic yard dumpster	**IV.B.2** $ 594.00
IV.B.3	Three cubic yard dumpster	**IV.B.3** $ 720.00
IV.B.4	Four cubic yard dumpster	**IV.B.4** $ 794.00
IV.B.5	Six cubic yard dumpster	**IV.B.5** $1,050.00
IV.B.6	Eight cubic yard dumpster	**IV.B.6** $1,350.00
IV.B.7	Waste Wheeler: 65-gal (or equivalent)	**IV.B.7** $ 85.00
IV.B.8	Waste Wheeler: Commercial Specify size: 95 gallon	**IV.B.8** $ 95.00

* Plus Tax on all purchases

ITEM V **Refuse collection and disposal for compactor/dumpster customers**

Contractor shall provide a rate schedule of charges to apply for the collection and disposal of solid waste and recyclable dumpsters in addition to the customer's regularly scheduled weekly event(s). The Contractor shall provide a schedule of monthly charges for compactor equipment rental and collection. After the award of this contract, the Contractor shall provide a listing of all customers receiving compactor services to the City and be responsible for keeping the City informed of changes associated with compactor services and/or compactor customers.

ITEM VI **Collection and disposal service for "Move-In/Move-Out week" and other special events**

VI.A Rate for vehicle(s) and crew(s) to provide additional collection and disposal services for these events or at other times at the discretion of the City for at least 2 (two) years.

VI.A. $ 175.00

VI.B Per ton disposal rate for materials collected for at least 2 (two) years:

VI.B. $ included

ITEM VII **Yard waste collection and disposal**

VII.A For the unit cost figures shown below, the Contractor agrees to sell a weekly tag for up to 40/45 gallon paper bag or rigid container for the collection and disposal service per specifications for at least 2 (two) years.

VII.A. $ No Bid

VII.B For the lump sum figures shown below, the Contractor agrees to provide once-a-week SPECIAL, REAR and/or SIDE-OF-PROPERTY collection of yard waste once per calendar month for a period of 2 (two) years, per specifications.

VII.B. $ No Bid

ITEM VIII **Residential food scraps curbside collection for composting**

VIII For the figure shown below, the Contractor agrees to weekly collect up to 15-gallons in volume of residentially-generated food scraps, and transport the collected food scraps to an appropriate Ohio Environmental Protection Agency-licensed composting facility for at least 2 (two) years.

VIII $ No Bid

* Rumpke acknowledges City Staff will collect yardwaste trimmings from residents. Rumpke accepts "grass clippings" with the solid waste refuse collection.

BIDDER PROPOSAL SHEET
(Continued, 6 of 26 pages)

ITEM IX **Compactor/"Transfer Station" service for the City of Oxford**

IX For the unit rate per recovery/removal below, the Contractor agrees to transport and dispose of the waste collected at the transfer station per specification for a period of at least 2 (two) years.

IX $ 525.00 **/ 42 cu. yd.** * **Container**

* Compactor rental charge at $495.00 per month

ITEM X **"One-time" collection tags**

X.A For the figure shown below, the Contractor agrees to collect, transport and dispose items from residential accounts (in excess of the customer's selected and/or allotted volume of service) that have the "one-time" collection tag affixed and not exceeding 75 pounds in weight, for a period of at least 2 (two) years:

X.A $ 15.00 **/ tag**

X.B For the figure shown below, the Contractor agrees to collect, transport and dispose items from commercial accounts (due to volume in excess of capacity or over-sized items that will not fit into refuse container) that have the "one-time" collection tag affixed, and are manageable for collection by a two (2) person crew, for a period of at least 2 (two) years:

X.B $ 15.00 **/ tag**

ITEM XI **Other waste disposal services**

XI.A Roll-Off container rental

For the rates shown below, the Contractor agrees to rent a roll-off container on a per day basis and to collect and dispose of solid waste in it on a per load basis.

	Per Load * **	Per Day Rental	Per Month Rental
XI.A.1 15 cubic yard	$ 450.00	$ 3.50	$ 105.00
XI.A.2 30 cubic yard	$ 480.00	$ 3.50	$ 105.00
XI.A.3 40 cubic yard	$ 510.00	$ 3.50	$ 105.00

* Includes delivery, disposal and current surcharges
** All 15, 30 and 40 yard loads include up to 8 tons of material. All loads that exceed 8 tons, will be charged $33.00 per ton over 8 tons.

BIDDER PROPOSAL SHEET

(Continued, 7 of 26 pages)

Optional yearly extension(s) of the initial two-year contract

Solid waste collection and disposal services may be extended beyond the two-year (2020-2021) contract provided that the increases for services do not exceed the following annual percentages as specified by the contractor:

Residential:	**2022:** 2.5 **%**	**2023:** 2.5 **%**	**2024:** 2.5 **%**
Commercial:	**2022:** 2 **%**	**2023:** 2 **%**	**2024:** 2 **%**

BIDDER PROPOSAL SHEET
(Continued, 8 of 26 pages)

OPTION B

Five year contract ~~(2015-2020)~~ (2020–2024)

ITEM I **Collection/disposal of refuse and recyclable materials for up to 10 (ten) containers (with up to 40/45 gallon capacity, or three 90-gallon waste wheeler totes (or equivalent volume), recycling 18- to 23-gallon bins, 35-gallon, or 65-gallon recycling totes (or equivalent).**

Assume: **3,410 single-family, multi-family, duplex, and other residential, non-dumpster customers. Of these, 1,974 residential accounts utilize 90-gallon waste wheeler totes for solid waste.**

I.A For the figures and sum shown at the right, the contractor agrees to provide once-a-week **RESIDENTIAL "CURB-SIDE"** collection for refuse and/or recycling service per calendar month for a period of 5 (five) years, per specifications.

Collection/Disposal*	$ 9.40
Recycling (bins or totes)*	$ 4.20
Total	**I.A $** 13.60

I.B For the figures and sum shown at the right, the contractor agrees to provide once-a-week **SPECIAL, REAR and/or SIDE-OF-PROPERTY** collection for refuse and/or recycling service per calendar month for a period of 5 (five) years, per specifications.

Collection/Disposal*	$ 34.60
Recycling (bins or totes)*	$ 15.75
Total	**I.B $** 50.35

ITEM II **"Discounted Service" residential refuse and recycling services for the following volume (or near equivalent) containers**

For the figures and sum shown at the right, the contractor agrees to provide once-a-week **RESIDENTIAL "CURB-SIDE"** collection for refuse and/or recycling service per calendar month for a period of 5 (five) years, per specifications of the following number and volumes (or equivalent volume) of containers:

II.A "Discounted Service" Refuse Service

Single 65-Gallon Waste Wheeler Tote*	$ 8.40

** Residential unit prices for refuse collection do not include state, district, or local fees. These will be invoiced separately on a monthly basis.

BIDDER PROPOSAL SHEET
(Continued, 9 of 26 pages)

II.B. "Discounted Service" Recycling

18 or 23-Gallon Recycling Bin* $ 4.20

65-Gallon Recycling Tote* $ 4.20

II.C For the figures and sum shown at the right, the contractor agrees to provide once-a-week **SPECIAL, REAR and/or SIDE-OF-PROPERTY** collection for refuse and/or recycling service per calendar month for a period of 5 (five) years, per specifications.

"Discounted Service" Refuse Service:

Single 65-Gallon Waste Wheeler Tote* $ 33.60

"Discounted Service" Recycling

18 or 23-Gallon Recycling Bin* $ 15.75

65-Gallon Recycling Tote* $ 15.75

* The City of Oxford reserves the right to reject, at its discretion, the recycling portion of any selected bid option and simultaneously accept the refuse collection/disposal portion of said option.

ITEM III **Collection/disposal of solid waste and recyclables for commercial customers**

III.A For the figures shown below, the contractor agrees to provide regularly, weekly scheduled refuse collection and disposal per dumpster size per calendar month for a period of 5 (five) years. **For commercial refuse waste customers, assume:**

110 two-cubic yard dumpster customers with 184 total collections weekly;
71 three-cubic yard dumpster customers with 150 total collections weekly;
46 four-cubic yard dumpster customers with 78 total collections weekly;
44 six-cubic yard dumpster customers with 94 total collections per week;
44 eight-cubic yard dumpster customers with 78 total collections per week; and
445 ninety-gallon (or equivalent) wheeled tote customers, with 749 total collections per week.

BIDDER PROPOSAL SHEET
(Continued, 10 of 26 pages)

Commercial Refuse:

Number of Times per Week of Regularly Scheduled Collection/Disposal

Volume	1X	2X	3X	4X	5X	6X	~~Additional~~ Extra Serv
2 Cu YD	38.77	61.41	91.96	119.13	148.55	177.97	29.38
3 Cu YD	50.15	88.63	128.24	167.83	206.32	245.94	30.98
4 Cu YD	64.93	114.72	164.51	215.44	265.23	313.90	33.95
6 Cu YD	96.68	166.83	237.00	293.59	381.87	454.29	35.95
8 Cu YD	127.29	220.09	311.76	404.56	496.22	589.01	39.60
90-gal. tote	15.86	27.14	38.46	49.77	61.09	72.40	11.32

Rates above do not include container rental charges.

III.B For the figures shown below, the contractor agrees to provide weekly recycling collection and disposal per dumpster size per calendar month for a period of 5 (five) years. **For commercial recycling customers, assume:**
21 two-cubic yard dumpster customers with 33 total collections weekly;
2 three cubic yard dumpster customers with 5 total collections per week;
20 four cubic yard dumpster customers with 21 total collections per week;
4 six cubic yard dumpster customers with 10 total collections per week;
Presently, no eight cubic yard dumpster customers; and
263 ninety-gallon wheeled toter customers, with 247 total collections per week.

Commercial Recycling:

Number of Times per Week of Regularly Scheduled Collection/Disposal

Volume	1X	2X	3X	4X	5X	6X	~~Additional~~ EXTRA SERV
2 Cu YD	41.14	59.43	75.42	93.70	109.71	127.99	20.67
3 Cu YD	54.85	80.00	105.14	132.57	157.71	182.85	30.67
4 Cu YD	68.56	102.85	137.13	171.43	205.70	239.99	34.28
6 Cu YD	93.70	142.85	193.13	244.55	297.13	374.41	36.98
8 Cu YD	113.14	181.70	250.27	318.84	387.41	454.82	39.98
90-gal. tote	13.78	20.65	27.55	34.45	41.32	48.21	11.50

Recycling rates include container rental charges.

BIDDER PROPOSAL SHEET

ITEM IV **Dumpster and waste wheeler tote rental and purchase charge**

IV.A For the figures shown below, the contractor agrees to **rent** dumpsters and waste wheeler totes by size per calendar month for a period of5 (five) years, per specification.

IV.A.1	One cubic yard dumpster	**IV.A.1** $ N/A
IV.A.2	Two cubic yard dumpster	**IV.A.2** $ 14.00
IV.A.3	Three cubic yard dumpster	**IV.A.3** $ 17.00
IV.A.4	Four cubic yard dumpster	**IV.A.4** $ 20.00
IV.A.5	Six cubic yard dumpster	**IV.A.5** $ 23.00
IV.A.6	Eight cubic yard dumpster	**IV.A.6** $ 26.00
IV.A.7	Waste Wheeler: Residential refuse 65 to 90-gal (or equivalent)	**IV.A.7** $ 3.00
IV.A.8	Waste Wheeler: Commercial refuse &/or recycling Specify size: 95 gallon	**IV.A.8** $ 9.00

IV.B For the figures shown below, the contractor agrees to sell dumpsters and waste wheeler totes for a period of 5 (five) years, per specification.

IV.B.1	One cubic yard dumpster	**IV.B.1** $ N/A
IV.B.2	Two cubic yard dumpster	**IV.B.2** $ 594.00
IV.B.3	Three cubic yard dumpster	**IV.B.3** $ 720.00
IV.B.4	Four cubic yard dumpster	**IV.B.4** $ 794.00
IV.B.5	Six cubic yard dumpster	**IV.B.5** $1,050.00
IV.B.6	Eight cubic yard dumpster	**IV.B.6** $1,350.00
IV.B.7	Waste Wheeler: 65-gal (or equivalent)	**IV.B.7** $ 85.00
IV.B.8	Waste Wheeler: Commercial Specify size: 95 gallon	**IV.B.8** $ 95.00

Plus tax on all purchases

BIDDER PROPOSAL SHEET

ITEM V **Refuse collection and disposal for compactor/dumpster customers**

Contractor shall provide a rate schedule of charges to apply for the collection and disposal of solid waste and recyclable dumpsters in addition to the customer's regularly scheduled weekly event(s). The Contractor shall provide a schedule of monthly charges for compactor equipment rental and collection. After the award of this contract, the Contractor shall provide a listing of all customers receiving compactor services to the City and be responsible for keeping the City informed of changes associated with compactor services and/or compactor customers.

ITEM VI **Collection and disposal service for "Move-In/Move-Out week" and other special events**

VI.A Rate for vehicle(s) and crew(s) to provide additional collection and disposal services for these events or at other times at the discretion of the City for 5 (five) years.

VI.A. $ 183.75

VI.B Per ton disposal rate for materials collected for 5 (five) years:

VI.B. $ included

ITEM VII **Yard waste collection and disposal**

VII.A For the unit cost figures shown below, the Contractor agrees to sell a weekly tag for up to 40/45 gallon paper bag or rigid container for the collection and disposal service per specifications for 5 (five) years.

VII.A. $ No Bid

VII.B For the lump sum figures shown below, the Contractor agrees to provide once-a-week SPECIAL, REAR and/or SIDE-OF-PROPERTY collection of yard waste once per calendar month for a period of 5 (five) years, per specifications.

VII.B. $ No Bid

ITEM VIII **Residential food scraps curbside collection for composting**

VIII For the figure shown below, the Contractor agrees to weekly collect up to 15-gallons in volume of residentially-generated food scraps, and transport the collected food scraps to an appropriate Ohio Environmental Protection Agency-licensed composting facility for 5 (five) years.

VIII $ No Bid

*Rumpke acknowledges City Staff collects yardwaste trimmings from residents.
Rumpke will collect "grass clippings" with the solid waste refuse collection.

BIDDER PROPOSAL SHEET
(Continued, 13 of 26 pages)

ITEM IX **Compactor/"Transfer Station" service for the City of Oxford**

IX For the unit rate per recovery/removal below, the Contractor agrees to transport and dispose of the waste collected at the transfer station per specification for a period of 5 (five) years.

IX $ 546.00 / 42 cu. yd. Container

*Compactor rental charge $515.00 per month.

ITEM X **"One-time" collection tags**

X.A For the figure shown below, the Contractor agrees to collect, transport and dispose items from residential accounts (in excess of the customer's selected and/or allotted volume of service) that have the "one-time" collection tag affixed and not exceeding 75 pounds in weight, for a period of 5 (five) years:

X.A $ 15.00 / tag

X.B For the figure shown below, the Contractor agrees to collect, transport and dispose items from commercial accounts (due to volume in excess of capacity or over-sized items that will not fit into refuse container) that have the "one-time" collection tag affixed, and are manageable for collection by a two (2) person crew, for a period of 5 (five) years:

X.B $ 15.00 / tag

ITEM XI **Other waste disposal services**

XI.A Roll-Off container rental

For the rates shown below, the Contractor agrees to rent a roll-off container on a per day basis and to collect and dispose of solid waste in it on a per load basis.

	Per Load * **	Per Day Rental	Per Month Rental
XI.A.1 15 cubic yard	$ 468.00	$ 3.50	$ 105.00
XI.A.2 30 cubic yard	$ 499.00	$ 3.50	$ 105.00
XI.A.3 40 cubic yard	$ 530.00	$ 3.50	$ 105.00

* Include delivery, disposal and current surcharges.
** All 15, 30 and 40 yard loads include up to 8 tons of material. All loads that exceed 8 tons, will be charged $33.00 per ton over 8 tons.

CITY OF OXFORD
STAFF SUMMARY REPORT

Report to the City Manager

City Council Meeting of: October 15, 2019

Account Code #: Not Applicable

Budgeted Amount: Not Applicable

Service Department
Originating Department

Michael B. Dreisbach, Service Director
Prepared By

October 7, 2019
Date Prepared

Agenda Title: Local Public Agency (LPA) Agreement with the Ohio Department of Transportation to Local Let OATS Phase III Construction ODOT PID #108112

Recommendation: Approve

Discussion: The City of Oxford (City) is currently planning the construction of Phase III of the Oxford Area Trails (OATS) system. This project will install a 10' shared use path from Peffer Park to Talawanda High School as well as from SR 73 to Bonham Rd. making a connection to Phase I of the OATS trail.

While the project has not been formally designed, the City estimates of cost of the project at approximately $2,000,000. ODOT shall provide to the City 75% of eligible costs, up to a maximum of $1,500,000 (from an OKI CMAQ grant). The City shall be responsible for any cost overruns, all locally funded items, and any contractor claims.

By local-letting this project, the City will save 10% in construction engineering costs – in this case, approximately $200,000. The responsibility of project management will fall on the City's LPA, City Engineer Scott Otto. We will be responsible for advertising, sale, and award of the contract, all aspects of contract administration, as well as project inspection and reporting.

The current schedule for this project includes hiring a design consultant in 2020, producing drawings and specifications through mid-2021, and bidding the project in late 2021 for construction beginning in 2022 with completion in 2023.

Staff recommends City Council approve this Resolution authorizing the City Manager to sign the attached "LPA Federal Local-Let Project Agreement" with the Ohio Dept. of Transportation.

Approved By:

	Initial	Date
Department Head:	MBD	10/7/19
City Manager:	DRE	10/11/19

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AGREEMENT NO. 108112 WITH THE OHIO DEPARTMENT OF TRANSPORTATION (ODOT) AUTHORIZING A LOCAL-LET PROJECT FOR THE CONSTRUCTION OF PHASE III OF THE OXFORD AREA TRAILS SYSTEM (OATS).

WHEREAS, the City has secured federal funding, administered by the Ohio Department of Transportation (ODOT) for the construction of Phase III of the Oxford Area Trails System (OATS) with construction beginning in 2022 and completing in 2023. ODOT has designated this project as PID No. 108112 with Local-Let Agreement No. 33727; and

WHEREAS, the ODOT Local-Let Project Agreement stipulates the conditions required to receive the funds for the project as well as the obligations and responsibilities of all parties for the project. ODOT will provide 75% of eligible project costs up to a maximum of $1,500,000.00 from an OKI CMAQ grant. The City of Oxford as the Local Public Agency (LPA) shall be responsible for any cost overruns, all locally funded items and any contractor claims; and

WHEREAS, the City shall also follow all ODOT contracting guidelines; provide all construction management for the project and follow nondiscrimination practices as defined by the State of Ohio including Disadvantaged Business Enterprise requirements; and

WHEREAS, the City Manager and the Service Director recommend Council authorize the City Manager to enter into Agreement No. 108112 with ODOT authorizing a Local-Let project for the construction of Phase III of the Oxford Area Trails System (OATS).

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

SECTION 1: The City has secured federal funding administered by ODOT for the construction of Phase III of the Oxford Area Trails System (OATS). The ODOT Local-Let Project Agreement stipulates the conditions required to receive the funds for the project as well as the obligations and responsibilities of all parties for the project. ODOT will provide 75% of eligible project costs up to a maximum of $1,500,000.00. The City of Oxford as the Local Public Agency (LPA) shall be responsible for any cost overruns, all locally funded items and any contractor claims.

SECTION 2: Council accepts the recommendation of the City Manager and the Service Director and approves the attached LPA Federal Local-Let Project Agreement.

SECTION 3: Council further authorizes the City Manager to enter into Agreement No. 108112 attached hereto as Exhibit "A" with the Ohio Department of Transportation (ODOT) authorizing a Local-Let project for the construction of Phase III of the Oxford Area Trails System (OATS).

SECTION 4: This resolution shall take effect at the earliest date allowed by law.

MAYOR

ADOPTED:

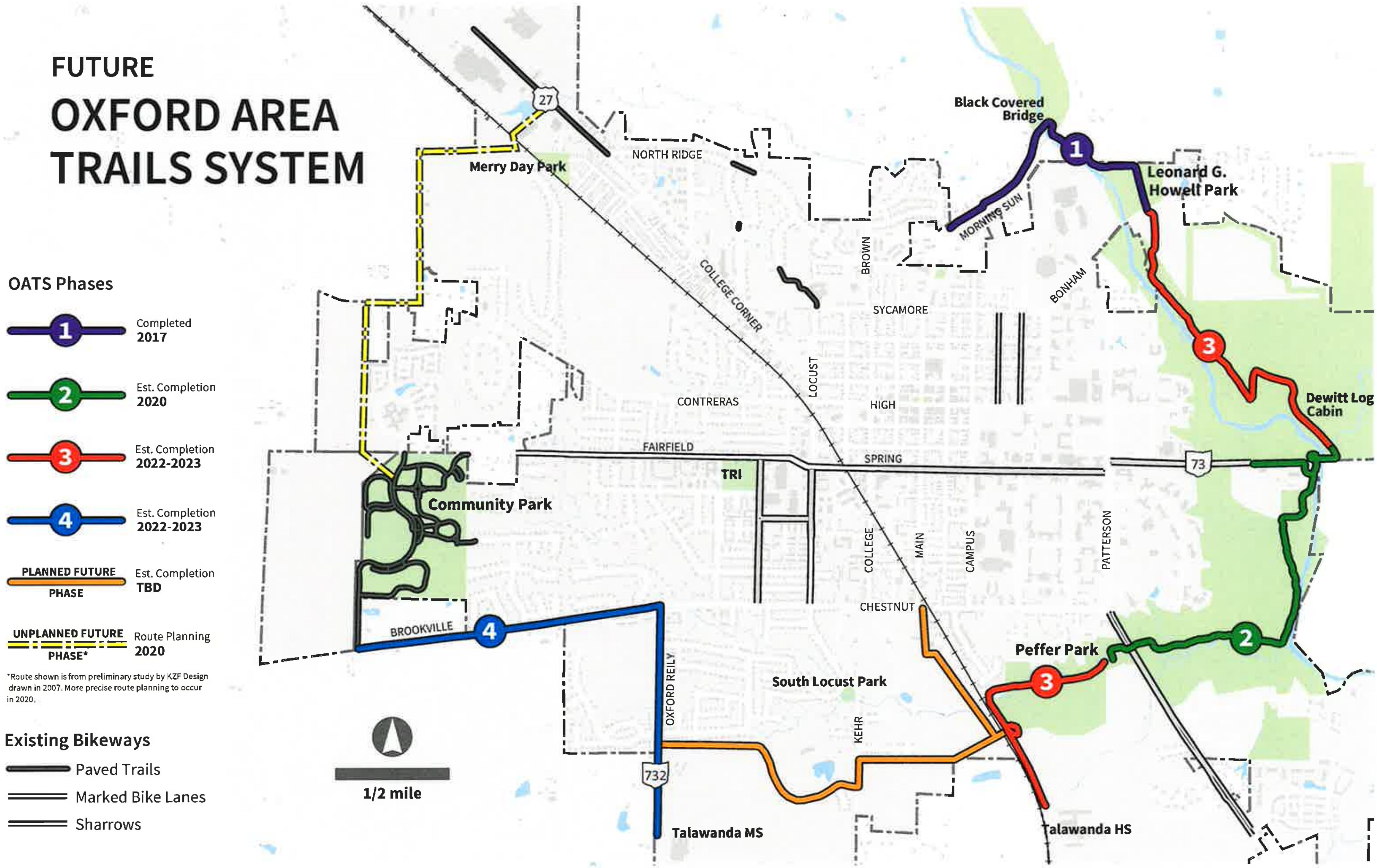
ATTEST:

CLERK OF OXFORD CITY COUNCIL

INTRODUCED BY: KATE ROUSMANIERE

PREPARED BY: LAW (STAFF)

FUTURE OXFORD AREA TRAILS SYSTEM



BUT OXFORD AREA TRAIL PHASE 3
COUNTY-ROUTE-SECTION

108112
PID NUMBER

33727
AGREEMENT NUMBER

CFDA 20.205

DUNS NUMBER

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **City of Oxford** hereinafter referred to as the LPA, **15 S. College Avenue, Oxford, OH 45056.**

1. PURPOSE

1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (hereinafter referred to as FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.

1.2 Section 5501.03 (D) of the **Ohio Revised Code** (hereinafter referred to as ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.

1.3 The **construction of a shared use path connecting Peffer Park to Talawanda High School on the south side of Oxford. Also paving the existing crushed aggregate path that connects Bonham Road and SR-73 on the east side of Oxford** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.

1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:

a. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
b. Federal Funding Accountability and Transparency Act of 2006 (FFATA);
c. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
d. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
e. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT).

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be **$2,000,000** as set forth in Attachment 1. ODOT shall provide to the LPA **75 percent** of the eligible costs, up to a maximum of **$1,500,000** in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100 percent Locally-funded work, cost overruns and contractor claims.

4. PROJECT DEVELOPMENT AND DESIGN

4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication. Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: www.dot.state.oh.us/drrc/Pages/default.aspx

4.4 The LPA shall either designate an LPA employee, who is a registered professional engineer, to act as the Project Design Engineer and serve as the LPA's principal representative for attending to project responsibilities or engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC sections 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT

4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.

4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at www.dot.state.oh.us/CONTRACT. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.

5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.

5.5 The LPA shall require its consultant, selected to prepare a final environmental document pursuant to the requirements of the National Environmental Policy Act, to execute a copy of a disclosure statement specifying that the consultant has no financial or other interest in the outcome of the PROJECT.

5.6 The LPA shall submit a NOI to Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-Let LPA projects, they may use an alternative post-construction BMP criteria with Ohio EPA approval.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

6.1 All right-of-way acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended by 49 CFR Part 24 (hereinafter referred to as Uniform Act), any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT.

6.2 If existing and newly-acquired right of way is required for this PROJECT, the LPA shall certify that the all right of way has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective right of way functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA. Likewise, a consultant hired to perform right of way acquisition work is not permitted to perform both the relocation and relocation review functions. Relocation review shall be performed by an independent staff or fee reviewer.

6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA's control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Right of Way Certification, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.

6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a utility relocation agreement with each utility prior to the letting of construction. No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.

6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval.

6.8 The LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.

6.9 Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 10.1 and 10.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.

7. ADVERTISING, SALE AND AWARD

7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.

7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Coordinator as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.

7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

7.4 The LPA must incorporate ODOT's LPA Bid Template in its bid documents. The template includes Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.

7.5 The LPA shall require the contractor to be enrolled in, and maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.

7.6 Only pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award.** For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement. In accordance with FHWA Form 1273 Section VII and 23 CFR 635.116, the "prime" contractor must perform no less than 30 percent of the total original contract price. The 30-percent prime requirement does not apply to design-build contracts.

7.7 In accordance with ORC Section 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an oblige on any bond. If the LPA has 100 percent locally-funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100 percent locally-funded work product.

7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC Section 9.24, that the contractor has taken the appropriate remedial steps required under ORC Section 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at https://ohioauditor.gov/findings.html . If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all federal funding commitments.

7.10 The LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.

7.11 After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this Agreement, if applicable.

8. <u>CONSTRUCTION CONTRACT ADMINISTRATION</u>

8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the

LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this Agreement.

8.2 The LPA must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.

8.3 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.

8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA is requests reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.

8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the ORC may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.

8.7 Payment or reimbursement to the LPA shall be submitted to:

Douglas R. Elliott, Jr.
City Manager
15 S College Avenue
Oxford, OH 45056

8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.

8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its Federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim. The LPA further authorizes ODOT to sue, compromise, or settle any such Claim. It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all of the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with Title 23 United States Code 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any Federally-funded programs.

8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within 6 months of the physical completion date of the PROJECT. All costs must be submitted within 6 months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the 6-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.

9. <u>CERTIFICATION AND RECAPTURE OF FUNDS</u>

9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the State for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC section 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.

9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the

PROJECT, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.

10.3 The LPA shall ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, will have an equal opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. To meet this requirement, subcontractors who claim to be DBEs must be certified by ODOT. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

Disadvantaged Business Enterprise (DBE) Requirement. DBE participation goals (subcontracts, materials, supplies) have been set on this PROJECT for those certified as DBEs pursuant to Title 23, U.S.C. section 140(c) and 49 CFR, Part 26, and where applicable qualified to bid with ODOT under Chapter 5525 of the ORC.

ODOT shall supply the percentage goal to the LPA upon review of the Engineer's Estimate. Prior to executing the contract with the contractor, and in order for ODOT to encumber the Federal/State funds, the contractor must demonstrate compliance with the DBE Utilization Plan and Good Faith Efforts requirements.

GOOD FAITH EFFORTS (GFEs)

In the event that the DBE contract goal established by ODOT is not met on a project, the Contractor shall demonstrate that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

The Contractor shall demonstrate its GFEs by submitting information including but not limited to the following to the LPA:

(1) All written quotes received from certified DBE firms;

(2) All written (including email) communications between the Contractor and DBE firms;
(3) All written solicitations to DBE firms, even if unsuccessful;
(4) Copies of each non-DBE quote when a non-DBE was selected over a DBE for work on the contract;
(5) Phone logs of communications with DBE firms.

The LPA will send the GFE documentation including their recommendation to ODOT at the following address:

Office of Small & Disadvantaged Business Enterprise
The Ohio Department of Transportation
1980 West Broad Street, Mail Stop 3270
Columbus, Ohio 43223

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the Contactor has made adequate good faith efforts to meet the goal. ODOT will review the GFE documentation and the LPA's recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the Contractor.

The Contractor may request administrative reconsideration within two (2) days of being informed that it did not perform a GFE. The Contractor must make this request in writing to the following official:

Ohio Department of Transportation
Division of Chief Legal Counsel
1980 West Broad Street, Mail Stop 1500
Columbus, Ohio 43223

The reconsideration official will not have played any role in the original determination that the Contractor did not document sufficient good faith effort.

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

ODOT may issue sanctions if the Contractor fails to comply with the contract requirements and/or fails to demonstrate the necessary good faith effort. ODOT may impose any of the following sanctions:

(a) letter of reprimand;
(b) contract termination; and/or
(c) other remedies available by law including administrative suspension.

Factors to be considered in issuing sanctions include, but are not limited to:

(a) the magnitude and the type of offense;
(b) the degree of the Consultant's culpability;
(c) any steps taken to rectify the situation;
(d) the Contractor's record of performance on other projects including, but not limited to:
    (1) annual DBE participation over DBE goals;
    (2) annual DBE participation on projects without goals;

(3) number of complaints ODOT has received from DBEs regarding the Contractor; and,

(4) the number of times the Contractor has been previously sanctioned by ODOT; and,

(e) Whether the Contractor falsified, misrepresented, or withheld information.

10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:

(a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally-assisted programs of the United States Department of Transportation (hereinafter "U.S. DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").

(b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

(c) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.

(d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

(e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:

(1) withholding of payments to the LPA under the contract until the LPA complies, and/or

(2) cancellation, termination or suspension of the contract, in whole or in part.

(f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. <u>DATA, PATENTS AND COPYRIGHTS - PUBLIC USE</u>

11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.

11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. <u>TERMINATION; DEFAULT AND BREACH OF CONTRACT</u>

12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.

12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.

12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.

12.5 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.

12.3. In the event of termination for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. <u>THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS</u>

13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the ORC.

13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA: If to ODOT:

If to the LPA	If to ODOT
Douglas R. Elliott, Jr.	Tammy K. Campbell, P.E.
City Manager	District 8 Deputy Director
15 S College Avenue	505 South S.R. 741
Oxford, OH 45056	Lebanon, OH 45036

15. GENERAL PROVISIONS

15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs*:

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below:

☐ **1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.**
(A) The LPA ***does not*** currently maintain an ODOT approved federally compliant time-tracking system[1], ***and***
(B) The LPA ***does not*** intend to have a federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, ***and/or***
(C) The LPA ***does not*** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.

☐ **2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [2]
(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, ***and***
(B) The LPA ***does not*** currently have, and ***does not*** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

1 A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

2 [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. The definition of MTDC is provided in the regulation at 2 CFR §200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

☐ 3. **Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** [3]

(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, ***and***

(B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐ 4. **Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.** [4]

(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, ***and***

(B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, ***and***

(C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.

15.3 *Financial Reporting and Audit Requirements*: One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-federal entities, including ODOT's LPA sub recipients, that have aggregate federal awards expenditures from all sources of $750,000 or more in the non-federal entity's fiscal year must have a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

Federal and State funds expended to or on behalf of a sub recipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project

3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.

4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds. Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with section 2 CFR §200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

15.4 *Record Retention*: The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

> As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this contract.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

15.5 *Ohio Ethics Laws*: LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.

15.6 *State Property Drug-Free Workplace Compliance*: In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.

15.7 *Trade:* Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its Contractors, subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at https://www.treasury.gov/resource- center/sanctions/Programs/Pages/Programs.aspx. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

15.8 *Lobbying*: Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

15.9 *Debarment*. LPA 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. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.

15.10 *Governing Law*: This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

15.11 *Assignment*: Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

15.12 *Merger and Modification*: This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.

15.13 *Severability*: If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.

15.14 *Signatures*: Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

15.15 *Facsimile Signatures*: Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA: CITY OF OXFORD	STATE OF OHIO DEPARTMENT OF TRANSPORTATION
By: ______________________________ Douglas R. Elliott, Jr.	By: ______________________________ Jack Marchbanks, Ph.D.
Title: City Manager	Director
Date: ______________________________	Date: ______________________________

Attachment 1

PROJECT BUDGET - SOURCES AND USES OF FUNDS

SOURCES / USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT		100			0					
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS		100			0					
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION		100			0					
PROJECT CONSTRUCTION COSTS	$500,000	25	LNTP	$1,500,000	75	4TB7/ KI08				$2,000,000
INSPECTION		100			0					
TOTALS	$500,000			$1,500,000						$2,000,000

Attachment 2

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the contractor in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this Agreement, and shall indicate that the payment is to be made to the contractor. In addition, the invoice must state the contractor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (sub recipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We______________________________request that all payments for the Federal/State share of the construction costs of this Agreement performed by ____________________________ be paid directly to ______________________________.

VENDOR Name:	
Oaks Vendor ID:	
Mailing Address:	
LPA signature:	______________________________

LPA Name:	
Oaks Vendor ID:	
Mailing Address:	
ODOT Approval signature:	______________________________

CITY OF OXFORD
STAFF SUMMARY REPORT

Report to the City Manager

Council Meeting Of: October 15, 2019

Account Code No. #: N/A

Budgeted Amount: N/A

City Manager
Originating Department

Doug Elliott
Prepared By

October 7, 2019
Date Prepared

Agenda Title: A Resolution authorizing the City Manager to enter into the Southpointe Road Construction agreement with 4-Leaf Development, LLC.

Recommendation: Adopt the Resolution.

Discussion:
The City signed a Development Agreement with 4-Leaf Development, LLC on May 23, 2006. One of the provisions of the agreement was entitled Failure of Connector Conditions. This provision provided that if the Connector was not constructed, 4-Leaf may elect to construct and dedicate a road in the area generally shown for the Connector. Also, the City agreed to create one or more Tax Increment Financing Districts to provide financing for the construction of the road. In 2017, the City created one commercial and four residential Tax Increment Financing Districts covering the housing development of OH-MU Holdings, LLC which development is known as the "Annex". Each of the TIF districts created is a 10 year and 75% TIF Program. The City of Oxford issued General Obligation Bonds in 2019 to provide funding for this road which included construction, engineering, tree clearing, and principal/interest on the bonds. The payments in Lieu of Taxes (PILOT's) received from the Tax Increment Financing Districts will be utilized to pay the debt service on the bonds. The amount of funding available for construction is $2,407,416 as of October 4, 2019. Upon completion of the road 4-Leaf will dedicate the road as a public street. Since the funding available from the 2017 Tax Increment Financing Districts will not be sufficient to construct the road as indicated on Exhibit "B", additional Tax Increment Financing Districts will need to be established as outlined in the 2006 Development Agreement. This will be dependent upon whether or not future development occurs on the remaining land and if it qualifies under the Ohio Tax Increment Financing Program.

Approved By:

	Initial	Date
Department Head:		
City Manager:	DRE	10/11/19

RESOLUTION NO.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE SOUTHPOINTE ROAD CONSTRUCTION AGREEMENT WITH 4-LEAF DEVELOPMENT, LLC.

WHEREAS, 4-Leaf Development, LLC previously owned Property which it sold to OH-MU Holdings, LLC in 2016 with the understanding that the Property would be developed for housing; and

WHEREAS, 4-Leaf Development, LLC still owns land abutting and located next to the Property sold to OH-MU Holdings, LLC and seeks to construct a road to access the land it still owns; and

WHEREAS, the Parties entered into a Development Agreement on May 23. 2006, a copy of which is attached hereto as Exhibit "A" which specified that an access road would be constructed; and

WHEREAS, the Parties all acknowledge that Southpointe Road will be constructed with Tax Increment Financing; and

WHEREAS, the City Manager recommends Council authorize him to enter into the Southpointe Road Construction Agreement per the 2006 Development Agreement between the City of Oxford and 4-Leaf Development, LLC.

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

SECTION 1: Council accepts the recommendation of the City Manager and hereby authorizes him to enter into the Southpointe Road Construction Agreement with 4-Leaf Development, LLC a copy of which is attached hereto and incorporated herein.

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)

SOUTHPOINTE ROAD CONSTRUCTION AGREEMENT

The Southpointe Road Construction Agreement (the "Agreement") is hereby made and entered into this _______ day of October, 2019 (the "effective date") by and between 4-Leaf Development, LLC, an Ohio limited liability company, its successors and assigns (collectively, hereinafter referred to as "4-Leaf") located at 125 West Spring Street, Oxford, Ohio 45056 and the City of Oxford, Ohio, an Ohio municipal corporation ("the City") located at 15 S. College Avenue, Oxford, Ohio 45056. 4-Leaf and the City at times may be collectively referred to herein as the "Parties" or individually as a "Party" under the terms of this Agreement.

WHEREAS, 4-Leaf previously owned Property (hereinafter defined) which it sold to OH-MU Holdings LLC in 2016 with the understanding that the Property would be developed for housing; and

WHEREAS, 4-Leaf still owns land abutting and located next to the Property sold to OH-MU Holdings LLC; and

WHEREAS, 4-Leaf seeks to construct a road to access the land it still owns; and

WHEREAS, the Parties entered into a Development Agreement on May 23, 2006, a copy of which is attached hereto as Exhibit "A" and hereinafter referred to as the "2006 Agreement"; and

WHEREAS, the 2006 Agreement provided that an access road would be built.

NOW, THEREFORE, in consideration of the foregoing, the Parties agree as follows:

ARTICLE I- ROAD CONSTRUCTION

A. The City and 4-Leaf agree to the construction of Southpointe Road under the terms of this Agreement.

B. 4-Leaf represents that the business known as 0X01, Ltd. no longer has any interest in the 2006 Agreement or the subject matter thereof. 4-Leaf, on behalf of itself; its predecessors and successors; its past, present and future officers, directors, shareholders, interest shareholders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest; its trustees and any and all other persons acting by, through, under or in concert with them, and each of them individually, shall defend, indemnify and hold harmless the City of Oxford and/or its employees, officials, agents or other representatives as a result of any claims of any nature, whatsoever, known or unknown, which are asserted or brought by 0X01, Ltd., or its predecessors and successors; its past, present and future officers, directors, shareholders, interest shareholders, members, partners, attorneys, agents, employees, managers, representatives, assigns and successors in interest; its trustees and any and all persons acting by, through, under or in concert with them, against the City of Oxford and/or its employees, officials, agents or other representatives which are related to any claims concerning the 2006 Agreement or the Southpointe Road project.

C. The Parties all acknowledge that Southpointe Road is being constructed with Tax Increment Financing ("TIF").

D. The Parties acknowledge and agree that the road construction is the last requirement of the 2006 Agreement as no other requirements remain unresolved between the Parties, and that on completion of the road construction contemplated by this Agreement, all terms have been met by the Parties. The Parties further acknowledge and agree that in order to construct the entire length of road as indicated on Exhibit B, which is attached hereto and incorporated herein by reference, additional TIF Districts will need to be created as outlined in the 2006 Agreement.

E. The City passed legislation and took other action in 2017 to create one (1) commercial and four (4) residential Tax Increment Financing Districts, covering the housing development of OH-MU Holdings LLC, which development is known as "the Annex".

ARTICLE II- COST OF CONSTRUCTING SOUTHPOINTE ROAD

A. The Parties acknowledge and agree that the sole source of public funds to pay for the construction of Southpointe Road (the "Southpointe Road Project") are the TIF Programs created by the City.

B. The current TIF Program is a ten (10) year and seventy-five percent (75%) TIF Program.

C. The Parties agree that the total amount of public funds currently available for construction of the Southpointe Road Project from Payments in Lieu of Taxes (PILOTs) generated by the TIF Program is $2.4 million dollars and that any additional expenses incurred by 4-Leaf for the Southpointe Road Project that are in excess of the $2.4 million dollar allotment shall be paid by 4-Leaf in their entirety, subject to reimbursement as described below. The City will disburse the $2.4 million dollar allotment during construction based on monthly draws submitted by 4-Leaf within 15 days of the submission of such draw. If the City objects to any expense within a draw request, it will pay the remaining portion of the draw request and promptly meet with 4-Leaf to resolve the objection.

D. The Parties agree that all roadway construction components of the Southpointe Road Project, which includes but not limited to the construction of the roadway, utilities, sidewalks, curbs and gutters, will be constructed per plans and specifications approved by the City. 4-Leaf is solely responsible for and has control over construction means, methods, techniques, sequences and procedures for coordinating all portions of the work. The City will cooperate with 4-Leaf to coordinate construction inspections so that construction can remain on schedule.

E. 4-Leaf agrees that it will establish a bidding process for the roadway construction which shall be subject to the City's reasonable approval (with the goal of awarding bids that are deemed the "best" with reference not only to price but also other contractor qualifications, and not being restricted to the lowest bid) and shall award bids through this competitive process in accordance with all applicable legal requirements. The City will cooperate with 4-Leaf in establishing a list of approved contractors to participate in the competitive bidding process. 4-Leaf shall obtain and maintain all necessary City and other governmental permits, licenses, and other governmental approvals and shall comply with all applicable federal, state, and local laws, codes, ordinances and other governmental requirements applicable to the construction of the roadway. 4-Leaf shall comply and shall cause all contractors working on the roadway to comply with all applicable prevailing wage requirements.

F. 4-Leaf agrees that it will not proceed or undertake any construction activity on a portion of the Southpointe Road Project until it receives a notice to proceed from the City. The City will issue the notice to proceed at the request of 4-Leaf after approval of the applicable plans and specifications by the City, which approval shall not be unreasonably withheld.

G. The Parties acknowledge and agree that the length of roadway constructed will be dependent on the amount of the annual PILOT payments generated by the TIF Programs.

H. On completion of all of the Southpointe Road Project that is to be constructed using the available PILOT payments, 4-Leaf shall dedicate the newly constructed portion of Southpointe Road to the City and will also provide the City with a one (1) year maintenance bond.

This Agreement is hereby entered into on the date first noted above, by and between the Parties.

CITY OF OXFORD, OHIO

____
Douglas R. Elliott, Jr., City Manager

4-LEAF DEVELOPMENT, LLC

____
Name and Title:

CERTIFICATE

The undersigned, fiscal officer of the City of Oxford, certifies that the money required to meet the obligations of the City in the year 2019 under the foregoing contract has been lawfully appropriated by City Council for such purposes 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 Section 5705.41, Ohio Revised Code.

Dated: ___________, 2019

____

Fiscal Officer
City of Oxford, Ohio

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is made and entered into as of this 23 day of May, 2006 ("Effective Date") by and between **4-Leaf Development, LLC**, an Ohio limited liability company, its successors and assigns (collectively, hereinafter referred to as "4-Leaf") located at 22 East High Street, Oxford, Ohio, 45056, and **OXO1, Ltd.**, an Ohio limited partnership, its successors and assigns (collectively, hereinafter referred to as "OXO1) located at 319 N. Magnolia Avenue, Orlando, Florida and **The City of Oxford, Ohio**, an Ohio municipal corporation (the "City") located at 101 East High Street, Oxford, Ohio, 45056. 4-Leaf, OXO1 and the City, at times hereafter, may be collectively referred to as the "Parties" or individually as a "Party" under the following circumstances.

RECITALS

A. 4-Leaf and OXO1 own the Property (hereinafter defined) upon which they plan to develop a planned commercial, business and single and multi-family residential project (collectively the "Project"); and

B. The City has agreed to make City sanitary sewer and water service available to the Project; and

C. The Parties desire to annex real property owned by 4-Leaf and OXO1 as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property") into the City in order to facilitate the development of the Project; and

D. The Parties desire to provide for various other covenants and agreements with respect to the development of the Property and the Project; and

E. The Parties desire to formalize the understandings between them with respect to the Project and the Property.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

ARTICLE I - WATER

A. Upgrade of Existing Line. 4-Leaf agrees to upgrade the existing water main and related improvements located on US 27 South adjacent to the Property (the "Water Line Work") and to extend water service into the Property by way of Southpointe Parkway ("Parkway Water Line Work") substantially in accordance with the plans and specifications set forth on Exhibit "B" attached hereto, at 4-Leaf's initial cost and expense. When the Water Line Work and the Parkway Water Line Work are completed and accepted by the City (pursuant to Chapter 921 of the Codified Ordinances of the City), the water main and related improvements, as upgraded (collectively, hereinafter referred to as the "Water Line"), shall be owned and maintained by the

City, subject to the obligation of 4-Leaf to provide a one-year maintenance bond ("Waterline Maintenance Bond") for the Water Line Work and the Parkway Water Line Work (pursuant to Chapter 921 of the Codified Ordinances of the City). The Parties acknowledge and agree that the Waterline Maintenance Bond shall be in the amount of Sixty Nine Thousand One Hundred Fifty Four and 60/100 ($69,154.60) Dollars.

B. Water Services. The Parties agree that 4-Leaf and OXO1 shall have the right at all times to tap into the Water Line (without the obligation to pay a tap or connection fee subject to the exhaustion of the Waiver as provided in Article V A.) with lines of the size shown on attached Exhibit "B" and at the places shown on attached Exhibit "B" and 4-Leaf and OXO1 shall have the right to use the City water service for the benefit of the Property and the Project. .

C. Rates. Until such time as the Property is annexed into the City, water service will be provided to the Property and/or the Project at the rates paid by users of water service which are not located in the City. At such time as the Property is annexed into the City, water service will be provided to the Property and/or the Project at the rates paid by City users of water service.

ARTICLE II - SANITARY SEWER

A. Sanitary Sewer Line Extension. 4-Leaf agrees to install a sanitary sewer line and related improvements to the Property substantially in accordance with the plans and specifications set forth as Exhibit "C" attached hereto (the "Sewer Line Work"), at 4-Leaf's cost and expense. When the Sewer Line Work is completed and accepted by the City (pursuant to Chapter 923 of the Codified Ordinances of the City), the new sanitary sewer line and related improvements, excluding service laterals, (collectively, hereinafter referred to as the "Sewer Line") shall be owned and maintained by the City, subject to the obligation of 4-Leaf to provide a one-year maintenance bond (the "Sewer Line Maintenance Bond") for the Sewer Line Work pursuant to Chapter 923 of the Codified Ordinances of the City. The Parties acknowledge and agree that 4-Leaf's Sewer Line Maintenance Bond shall be in the amount of Twenty Five Thousand, Eight Hundred Sixty Two and 67/100 ($25,862.67) Dollars. The City and OXO1 will sign a mutually agreeable Easement Agreement for that part of the public Sewer Line located on the Property owned by OXO1 allowing for inspection, maintenance and repair of the sewer line.

B. Sanitary Sewer Services. The Parties agree that 4-Leaf and OXO1 shall at all times have the right to tap into the Sewer Line (without the obligation to pay a tap or connection fee subject to the exhaustion of the Waiver as provided in Article V A.) with lines of the size shown on attached Exhibit "C" and at the places shown on attached Exhibit "C" and 4-Leaf and OXO1 shall have the right to use City sewer sanitary service for the benefit of the Property and the Project.

C. Rates. Until such time the Property is annexed into the City, sanitary sewer service will be provided to the Property and/or the Project at the rates paid by users of sanitary sewer service which are not located in the City. At such time as the Property is annexed into the City, sanitary sewer service will be provided to the Property and/or the Project at the rates paid by City users of sanitary sewer service.

ARTICLE III - ANNEXATION

A. Annexation. The Parties acknowledge and agree that the Property is currently located in Oxford Township, Butler County, Ohio (the "Township"), and the Parties desire the Property to be annexed into the City. The Parties acknowledge that 4-Leaf and OXO1 will file the annexation petition (the "Petition") necessary to commence the process of annexation under Section 709.022 of the Ohio Revised Code ("Code") or Section 709.023, as provided below, and further that each of the Parties will take such other actions reasonably required to further the process of annexation under Section 709.022 or Section 709.023, as provided below, of the Code.

B. Procedure. The City shall immediately commence good faith negotiations with the Township and proceed diligently to enter into an Annexation Agreement ("Annexation Agreement") with the Township as provided for in Section 709.192 of the Code. The Annexation Agreement shall be satisfactory to 4-Leaf and OXO1 as it relates to the zoning of the Property and/or liens or assessments to be placed on the Property, in 4-Leaf's and OXO1's sole discretion, and shall provide, among other things, that at the time that the Property is annexed into the City the Property shall be zoned in accordance with Exhibit "D" attached hereto ("Zoning Designations"). 4-Leaf and OXO1 shall have no right to reject the Annexation Agreement except with respect to whether the Property shall be zoned in accordance with the Zoning Designations or if the Annexation Agreement requires that any lien or assessment be placed on the Property. Immediately upon execution, the City shall provide 4-Leaf and OXO1 with a certified copy of the Annexation Agreement together with a resolution of services and intent (the "Annexation Resolution") passed by the City which Annexation Resolution shall, among other things: (a) authorize the City Manager to execute and deliver the Annexation Agreement on behalf of the City; (b) provide that the Property shall be annexed into the City pursuant to and consistent with the terms of the Annexation Agreement; and (c) contain such other provisions and/or assurances as 4-Leaf or OXO1 may request with respect to the zoning of the Property and/or liens or assessments affecting the Property, including, but not limited to, provisions that the Property will be accepted as zoned by the City consistent with the Zoning Designations. At such time, the Petition shall be filed pursuant to Section 709.022 of the Code.

If, after negotiating with the Township in good faith, the City reasonably determines, that the City and the Township are unable to come to an agreement with respect to the Annexation Agreement, the City shall give 4-Leaf and OXO1 written notice ("Annexation Notice") of such fact. The Annexation Notice may only be given by the City to 4-Leaf and OXO1 after June 1, 2006 but on or before September 1, 2006 (the "Outside Date"). In such case, 4-Leaf and OXO1 will, within fifteen calendar days of the Annexation Notice, file a Petition pursuant to Section 709.023 of the Code. Contemporaneously, the City agrees to accept from 4-Leaf and OXO1, an application to zone the Property and to have the application heard by the Planning Commission at the first available date. The application will call for the Property to be zoned consistent with the Zoning Designations, subject to the City of Oxford conditions for development of a Planned Unit Development relating solely to Dimensional Requirements (defined below) and signage as set forth in Chapter 1151 of the Ordinance. The rezoning will then be heard by City Council. If, simultaneously with the annexation of the Property becoming final, the City:

fails to rezone the Property consistent with the Zoning Designations or otherwise agreed by 4-Leaf and OXO1,

denies the replat of the Property consistent with the Zoning Designations,

refuses to issue a zoning permit for the Property consistent with the Zoning Designations, or

makes such zoning upon conditions unacceptable to 4-Leaf and/or OXO1, in their sole and absolute discretion,

then 4-Leaf and/or OXO1, in their sole and absolute discretion, may withdraw the Petition or institute a detachment proceeding, which the City expressly agrees not to oppose.

C. Failure of Petition. If the Petition is not filed pursuant to Article III B above on or before the Outside Date, the obligation of 4-Leaf and OXO1 to file the Petition shall terminate as of the Outside Date and thereafter none of the Parties shall have any further rights or obligations to the other pursuant to this Article III. All other rights and obligations of the Parties set forth in this Agreement, except as otherwise provided in this Agreement, shall be unaffected and shall continue in full force and effect.

ARTICLE IV - CONNECTOR

A. Connector. The City has received approval for federal funding ("Federal Funding") for the preliminary engineering and environmental work (the "Studies") for the construction of a roadway connector (the "Connector") between US 27 and State Route 73 which shall cross the Property in the area generally shown on Exhibit "E". The City is required, as a condition to the receipt of the Federal Funding, to generate matching funds ("Matching Funds") of up to twenty (20%) percent of the total cost of the construction of the Connector. The Federal Funding and Matching Funds may be collectively referred to hereafter as the "Connector Financing". Upon completion of the Studies to the reasonable satisfaction of the City, the City shall diligently proceed to finalize the Connector Financing to enable the construction of the Connector to commence at the earliest possible time.

B. Right of Way. Subject to the conditions set forth in Section C hereof, upon the written request of the City, 4-Leaf agrees to transfer to the City or its designee fee simple title to that part of the Property (the "Right of Way") upon which the Connector will be constructed. The Right of Way will be conveyed to the City or its designee by means of a Quit Claim Deed ("Deed") duly executed by an authorized representative of 4-Leaf. The Right of Way will be conveyed to the City free and clear of all mortgage liens but subject to easements, conditions and restrictions of record. The acreage of the Right of Way shall not exceed ten (10) acres (unless otherwise agreed to by the Parties) and shall be located in an area mutually agreed upon by 4-Leaf and the City.

C. Conditions. 4-Leaf's obligation to deliver the Deed to the City or its designee shall be subject to the following conditions ("Connector Conditions"):

1. Annexation. The Property shall have been annexed into the City pursuant to Article III and all Ordinances with respect thereto shall be final.

2. Right of Way. 4-Leaf and the City shall have agreed upon the location of the Right of Way.

3. Financing. The City shall certify in writing to 4-Leaf that the Connector Financing is available for use in connection with the construction of the Connector.

4. Conditions to Financing. The Connector Financing shall not adversely affect the development of the Property (as determined by 4-Leaf in its sole discretion) or result in the imposition of any lien, charge, assessment, encumbrance or the like on the Property or any part of it due to the Connector Financing which would obligate any owner of the Property or any part of the Property to pay an amount greater than the amount of real estate taxes that would normally be imposed on the Property (or the relevant part of it).

D. Failure of Connector Conditions. If any of the Connector Conditions are not met to the satisfaction of 4-Leaf, in its sole discretion, or waived by 4-Leaf, in its sole discretion, before December 31, 2008 (the "Outside Date for the Connector"), 4-Leaf's obligations under Article IV(B) shall terminate as of the Outside Date for the Connector and thereafter 4-Leaf may elect to construct (in such a way as to comply with all applicable laws pertaining to competitive bidding and prevailing wages for public projects) and dedicate a road ("Road") in the area generally shown for the Connector on Exhibit "E" in accordance with the Butler County, Ohio, engineering specifications (the "Engineering Specifications"). If 4-Leaf elects to construct the Road, 4-Leaf and the City agree as follows:

1. Public Dedication. If the Property has been annexed into the City, upon completion of the construction of the Road, 4-Leaf will dedicate the Road as a public street. Provided that the Road has been constructed to the Engineering Specifications, the City will sign the dedication plat accepting the Road as a public street to be maintained (subject to 4-Leaf's maintenance obligations under its one year maintenance bond pursuant to Section 1101.06 of the Codified Ordinances of the City) by the City, at the City's sole cost and expense.

2. TIF District. If the Property has been annexed into the City, the City will, at 4-Leaf's request: (i) cause appropriate legislation to create one or more tax increment financing districts ("TIF Districts") under Chapter 5709 of the Code to be passed; and (ii) enter into a Service Payment Agreement ("Service Agreement") with respect thereto, all for the purpose of providing for the financing of the construction of the Road through the issuance of bonds and/or notes (the "TIF Obligations") of the City. Neither 4-Leaf nor any of its members shall be obligated to guarantee any

service payments ("Service Payments") made in lieu of taxes or any shortfall thereof under the Service Agreement nor shall the Service Agreement be recorded as an encumbrance against the Property nor shall 4-Leaf or any of its members be required to reimburse the Talawanda School District for its lost revenue.

3. Other Rights And Obligations. All other rights and obligations of the Parties set forth in this Agreement, except as otherwise provided in this Agreement, shall be unaffected by the failure of the Connector Conditions.

E. Other Roads. 4-Leaf shall have the right to develop that part of the Property (the "Undeveloped Property") to the east of the area in which the Connector or the Road is proposed as shown on Exhibit "E" attached hereto. The City agrees not to unreasonably withhold or delay its approval of the development of the Undeveloped Property, so long as adequate access to the Property for public safety purposes is provided for. The City agrees to recommend that the existing lane adjacent to the Undeveloped Property is sufficient to adequately serve public safety purposes with respect to the development of the Undeveloped Property.

ARTICLE V - ADDITIONAL CITY COVENANTS

The City covenants and agrees to do the following:

A. Water and Sewer Taps. The City hereby waives (the "Waiver") all tap and/or connection fees or permit charges (collectively, hereinafter the "Tap Fees") for taps into the Water Line and/or the Sewer Line for the benefit of all or any part of the Property or the Project. The City hereby agrees that 4-Leaf and OXO1 shall have the right to assign all or any of its rights under the Waiver without the City's prior consent so long as the assignment is only for the benefit of the Property or any part of it.

The Waiver will terminate at the earlier of the following dates: (i) on the date that the total dollar amount of the Tap Fees that would have been paid to the City for taps benefiting all or any part of the Property by 4-Leaf, OXO1, or their successors and assigns, but for the Waiver, is equal to Six Hundred Thousand and 00/100 ($600,000.00) Dollars (which sum is the agreed upon cost for 4-Leaf to complete the Water Line Work); or (ii) January 1, 2036. The parties acknowledge that as of March 30, 2006, the City has waived Three Hundred Fifty Six Thousand Eighty ($356,080.00) Dollars in Tap Fees and that that amount is to be deducted from Six Hundred Thousand and 00/100 ($600,000.00) Dollars leaving the balance of Tap Fee waiver yet available to 4-Leaf and OX01 to be Two Hundred Forty Three Thousand Nine Hundred Twenty and 00/100 ($243,920.00) Dollars. The City shall certify in writing ("Tap Certification") to 4-Leaf on or before January 30th of each calendar year the total Tap Fees waived in the immediately preceding calendar year and the aggregate amount of Tap Fees waived. 4-Leaf shall also have the right to request a Tap Certification from the City from time to time.

B. Final PUD Approvals. The Annexation Agreement and the Annexation Resolution will provide, among other things, that the Property, if annexed into the City, will be zoned consistent with the approved preliminary Planned Unit Development plans and related density provisions (collectively, hereinafter the "Final Plans") attached hereto as Exhibit "F", subject only to the requirements for set-backs (front, rear and side-yard) and building height provided for in Chapter 1143 of the Codified Ordinances of the City (collectively, the "Dimensional Requirements") and signage as set forth in Chapter 1151 of the Codified Ordinances of the City. The term "Dimensional Requirements" shall not be interpreted to include any other requirements not specified in Chapter 1143 of the Codified Ordinances of the City.

C. Point of Presence. Prior to December 31, 2008, and on annexation of the Property, the City may, at the City's option, cause a fiber optic point of presence ("POP") to be installed at no cost or expense to 4-Leaf or OXO1 in the right of way area for US 27 adjacent to the Property which shall, in part, serve the Property and the Project. Once installed, 4-Leaf and OXO1 shall have the right to tap into the POP and extend and use POP service for the benefit of the Property and the Project, subject to the payment of applicable service and connection rates established by the City or authorized third party provider for City users from time to time.

D. Easements. The City will grant to 4-Leaf and OXO1 such easements as are reasonably requested by 4-Leaf or OXO1 for constructing and tapping into, accessing or using the Water Line, the Sewer Line and the POP.

E. Right of Way. At the time 4-Leaf conveys title to the Right of Way as provided for in Article IV of this Agreement, the City will execute and deliver to 4-Leaf such documentation as 4-Leaf may require, including but not limited to IRS Form 8283, so that 4-Leaf can substantiate its non-cash charitable contribution to the City in the amount of the agreed-upon fair market value of the Right of Way. The fair market value of the Right of Way shall be the value determined by a qualified real estate appraiser from Butler County, Ohio, hired by 4-Leaf and approved by the City (which approval shall not be unreasonably withheld or delayed).

F. Ordinances. The final ordinances which the City agrees to pass pursuant to this Agreement or in connection with the performance of any of its obligations under this Agreement, including, but not limited to Annexation Resolution, and the ordinance authorizing the execution and delivery of this Agreement shall be deemed "final" for purposes of this Agreement at the later of: (i) thirty (30) days after such ordinance is passed by City Council; or (ii) the date the referendum period with respect to such ordinance has expired.

G. ODOT. The City covenants and agrees to cooperate with and assist 4-Leaf with respect to any Ohio Department of Transportation requirements, including permitting, applications and approvals. The City covenants and agrees to support 4-Leaf's effort with respect to such matters in any reasonable respect.

H. Sidewalk. The City covenants and agrees, at its sole cost and expense, to construct a sidewalk (the "Sidewalk") along US 27 South in the area set forth on Exhibit "H"; provided, however, that the City shall have no obligation to construct the Sidewalk on property owned by The Board of Trustees of Miami University ("Miami") nor shall the City have an obligation to construct the bridge shown thereon. That part of the Sidewalk to be constructed by the City shall be complete on or before July 1, 2007. The City further covenants and agrees to use best efforts to negotiate with Miami to provide for the construction of the Sidewalk on property owned by Miami on or before July 1, 2007 and to use best efforts to negotiate with 4-Leaf with respect to the construction of the bridge.

ARTICLE VI - ADDITIONAL 4-LEAF COVENANTS

4-Leaf covenants and agrees to do the following:

A. Turn Lanes; Traffic Light. If the Property is annexed into the City, 4-Leaf will construct, at its sole cost and expense, the turning and deceleration lanes ("Roadway Improvements") and install a traffic signal ("Signal") according to the plans and specifications set forth on Exhibit "G" (collectively, the "Roadway Work"). Upon completion of the Roadway Work, 4-Leaf shall dedicate the Roadway Improvements as publicly dedicated improvements. Thereafter, the Roadway Improvements shall be maintained by the City, at its sole cost and expense, subject to the obligation of 4-Leaf to provide a one-year maintenance bond for the Roadway Improvements pursuant to Section 1101.06 of the Codified Ordinance of the City. After 4-Leaf installs the Signal, it shall be maintained by the City, at its sole cost and expense, subject to the obligation of 4-Leaf to provide a one-year maintenance bond for the Signal pursuant to Section 1101.06 of the Codified Ordinances of the City.

B. Conservation Easements. If the Property is annexed into the City, at the request of the City, 4-Leaf shall grant to Three Valley Conservation Trust, or another eligible entity agreed upon by the City and 4-Leaf, a conservation easement over that part of the Property denoted as "green space" on Exhibit "F" hereto, subject to such terms and conditions (including, but not limited to the documentation of the value of the charitable gift for IRS purposes) as are acceptable to 4-Leaf, in its sole discretion.

C. Easements. 4-Leaf will grant to the City such easements over the Property in areas acceptable to 4-Leaf as may be reasonably requested by the City for the Water Line and the POP.

D. Southpointe Parkway. The City acknowledges that 4-Leaf has commenced development of the Project prior to the annexation of the Property into the City. The Parties further acknowledge and agree that the construction of the public improvements for the Project, including but not limited to Southpointe Parkway, commenced prior to the finalization of the annexation of the Property into the City. All such public improvements shall be completed by 4-Leaf in accordance with the Engineering Specifications as defined in Article IV D. hereof. Further, if the Property has been annexed into the City, the Parties agree that upon completion of the construction of these public improvements in accordance with the Engineering Specifications, the City will accept them as public improvements which will be maintained by the City, subject to 4-Leaf's obligation to post a one-year maintenance bond in the amount as required.

ARTICLE VII - MANAGEMENT OF THE PROJECT

A. Control. Except with respect to that part of the Project owned by OXO1, 4-Leaf shall have sole control over the Project and is entitled to take such action as is commercially proper and necessary to perform its obligations hereunder, provided that such action of 4-Leaf shall not be inconsistent with the terms of this Agreement or contrary to law.

B. No Conflict. The City acknowledges that 4-Leaf, OXO1 and affiliates of each, have or will have a number of development projects in Butler County, Ohio and surrounding areas and that the activities of 4-Leaf, OXO1 or affiliates of each with respect to such other projects shall not constitute a conflict of interest or otherwise entitle the City to any claim against 4-Leaf, OXO1 or affiliates of each, or any such other project, under this Agreement or otherwise.

ARTICLE VIII - REPRESENTATIONS AND WARRANTIES

A. Representations and Warranties of 4-Leaf. 4-Leaf represents and warrants to the other Parties as follows:

1. 4-Leaf is an Ohio limited liability company duly formed and validly existing under the laws of the State of Ohio.

2. 4-Leaf has full power and authority to enter into and perform its obligations under this Agreement. The execution, delivery, and performance of this Agreement, and all transactions contemplated hereby, have been duly authorized and approved by all necessary actions of 4-Leaf and are the legal, valid and binding obligations of 4-Leaf.

B. Representations and Warranties of OXO1. OXO1 represents and warrants to the other Parties as follows:

1. OXO1 is a limited partnership duly formed and validly existing, in the State of Ohio.

2. OXO1 has full power and authority to enter into and perform its obligations under this Agreement. The execution, delivery, and performance of this Agreement, and all transactions contemplated hereby, have been duly authorized and approved by all necessary actions of OXO1 and are the legal, valid and binding obligations of OXO1.

C. Representations and Warranties of the City. The City represents and warrants to the other Parties as follows:

5. The City is a duly established and validly existing municipality and political subdivision in and of the State of Ohio.

6. The City has full power and authority to enter into and perform this Agreement. The execution, delivery, and performance of this Agreement and all transactions contemplated hereby have been duly authorized and approved by all necessary actions of the City, and are the legal, valid and binding obligations of the City.

7. The execution and delivery of this Agreement and the performance of the duties and obligations provided for in this Agreement by the City do not violate any provisions of the City's Charter or any law, ordinance or regulation or any agreement to which the City is a party or by which the City is bound.

8. The City has received no notice of any pending or threatened claim, litigation, or other administrative action or other legal proceeding involving or affecting the transactions contemplated by this Agreement.

9. The costs of any construction, work or maintenance performed by the City contemplated by this Agreement shall not be the subject matter of any special assessment, which will be levied against the Property.

10. By virtue of this Agreement and subject to its terms: (a) 4-Leaf, OXO1 and their successors and assigns, shall have a right of access to each of the Sewer Line, the Water Line, and the POP (if any); (b) 4-Leaf, OXO1 and their successors and assigns, shall have the right to use each of the Sewer Line, Water Line and the POP (if any) at the rates paid by users of water, sewer and POP services as provided for in this Agreement; and (c) 4-Leaf, OXO1 and their successors and assigns, shall have the right to tap into the Water Line and/or the Sewer Line servicing the Property as provided for in this Agreement.

ARTICLE IX - MISCELLANEOUS

A. Ordinance. The City hereby acknowledges and agrees that Ordinance 2845 (the "Utility Ordinance") is amended by this Agreement and that 4-Leaf's and OXO1's performance pursuant to this Agreement shall constitute the satisfaction of all of 4-Leaf's and OXO1's obligations under the Utility Ordinance.

B. Duration. The term of this Agreement shall commence on the date set forth above and shall remain in effect and as a continuing obligation of the Parties, subject only to such rights, or obligations that terminate pursuant to the terms hereof.

C. Wavier. The failure of any Party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of any right thereunder, nor shall it deprive that Party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be made in writing.

D. Notices. All notices, requests, consents, approvals, demands, and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been duly given when (i) delivered personally or (ii) three calendar days after deposit in the United States Mail, postage prepaid, by certified mail, return receipt requested, or (iii) upon delivery by nationally recognized overnight courier, addressed as follows or to such other person or address as either party shall designate by notice to the other party given in accordance herewith:

4-Leaf:	4-Leaf Development, LLC James M. Clawson 22 East High Street Oxford, Ohio 45056 Facsimile: (513) 523-9415
Copy to:	Catherine L. Evans, Esq. Millikin & Fitton Law Firm Six South Second Street P.O. Box 598 Hamilton, Ohio 45012 Facsimile: (513) 863-0031
OXO1:	College Suites 319 N. Magnolia Avenue Orlando, Florida 32801
City:	City of Oxford Jane Howington, City Manager 101 E. High Street Oxford, OH 45056-1887 Facsimile: (513) 523-7769
Copy to:	Stephen M. McHugh, Esq. Altick & Corwin Co., L.P.A. 1700 One Dayton Centre One South Main Street Dayton, OH 45402 Facsimile: (937) 223-5100

Failure of any Party to provide any notice to the other Party's legal counsel shall not be deemed a failure of the notice for purposes of this section.

E. Execution. Neither this Agreement nor any subsequent agreement amending or supplementing this Agreement shall be binding on the Parties unless and until it has been signed on their behalf by their respective duly authorized representatives. Commencement of performance hereunder or under any subsequent agreement shall not constitute a waiver of this requirement. As used herein, the term "Agreement" shall mean this Development Agreement and the Exhibits attached hereto. This Agreement may be executed in one or more counterparts by any Party hereto and by all Parties hereto in separate counterparts, each of which, when so executed and delivered to the other Parties, shall be deemed an original. All such counterparts together shall constitute one and the same instrument.

F. Severability. If any provision of this Agreement is or should become wholly or partially invalid or unenforceable for any reason whatsoever or violate any applicable law, this agreement is to be considered divisible as to such provision and such provision is to be deleted from this Agreement, and the remainder of this Agreement shall be deemed valid and binding as if such provision were not included herein. There shall be substituted for any such provision deemed to be deleted a suitable provision which, as far as is legally possible, comes nearest to what the parties desired or would have desired according to the sense and purpose of this Agreement had this point been considered when concluding this Agreement.

G. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to its rules as to conflicts of laws. The Parties hereto further agree that any action, suit, or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person by any court situated therein having jurisdiction over the subject matter.

H. Relationship of the Parties. Except as expressly stated and provided for herein, neither anything contained in this Agreement nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of association between any of the Parties to this Agreement.

I. No Third Party Beneficiary. Except as otherwise specified herein, the provisions of this Agreement are for the exclusive benefit of the City, 4-Leaf, OXO1, any lender providing financing to 4-Leaf or OXO1 and their successors and permitted assigns, and not for the benefit of any other person or entity, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any other person or entity.

J Dispute Resolution. The Parties agree that, in order to carry out the spirit and intent behind this Agreement, each shall cooperate fully with the others in furtherance of the objectives of this Agreement. If, however, a matter arises that is addressed in this Agreement or the interpretation of which cannot be mutually resolved and remains in dispute, the Parties agree that some method of alternative dispute resolution is appropriate to resolve the differences. To that end, the Parties agree to submit unresolved Agreement matters in dispute to either arbitration or mediation, as may be mutually agreed. In the event that any Party notifies the others in writing that such alternative dispute resolution is requested by such Party ("Notice"), the Party receiving the Notice shall have thirty (30) days in which to respond and agree to the method proposed. In the event no written agreement is reached, any Party may pursue any resolution of the dispute through any remedy available to such Party in law or in equity, including the filing of a lawsuit in a court of competent jurisdiction.

The arbitration proceedings will be conducted in Butler County, Ohio under the commercial Arbitration Rules of the American Arbitration Association ("AAA") in effect at the time the demand for arbitration is made, except that the decision of the arbitrator shall include written findings of fact and conclusions of law. The arbitrator shall be selected by agreement of the Parties, but if they do not so agree within twenty (20) days of the date of the initial request by the Party for arbitration, the selections shall be made pursuant to the designated rules of the AAA. The decision of the arbitrators shall be exclusive, final, and binding on all parties, their respective successors and assigns. To the extent permitted at law, each party to the arbitration proceeding will bear its own expenses in the arbitration for expenses of presenting that party's case. Other arbitration costs, including arbitrators' fees, administrative fees, and fees for jointly required or obtained records or transcripts, will be shared equally by the parties to the arbitration proceeding.

Mediation shall be determined by each Party selecting and mutually agreeing upon a mediator and shall take place in Butler County, Ohio. The costs of mediation shall be equally shared and paid.

K. Diligent Performance. With respect to any duty or obligation imposed on a party to this Agreement, unless a time limit is specified for the performance of such duty or obligation, it shall be the duty or obligation of such Party to commence and perform the same in a diligent and workmanlike manner and to complete the performance of such duty or obligation as soon as reasonably practicable after commencement of the performance thereof. Notwithstanding the above, time is of the essence in regard to payment obligations.

L. Time of the Essence. Time is of the essence for all matters in this Agreement herein and the Parties shall diligently pursue and complete their obligations hereunder.

M. Force Majeure. A Party shall not be in default in the performance of an obligation under this Agreement, other than an obligation requiring the payment of a sum of money, if and so long as the non-performance of such obligation shall be directly caused by labor disputes, lockouts, acts of God, enemy action, civil commotion, riot, governmental regulations not in effect at the date of execution of this Agreement, conditions that could not have been reasonably foreseen by the claiming party, inability to obtain construction materials or energy, fire or unavoidable casualty or other causes beyond the reasonable control of the Party.

N. Approvals. Except as required by statute, whenever a Party to this Agreement is required to consent to, or approve, an action by another Party or to approve any such action to be taken by another Party, unless the context clearly specifies a contrary intention or specific time limitation, such approval or consent shall be given within fifteen (15) business days (i.e., Saturdays, Sundays, and legal holidays excluded) and shall not be unreasonably withheld or delayed by the Party from whom such approval or consent is required. If a Party suffers damage due to another Party unreasonably withholding or delaying approval or consent, such other Party shall reimburse such Party for such damages.

O. Binding Effect. This Agreement and all of the provisions hereof shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

P. Successors and Assigns/Memorandum of Agreement. Subject to the limitations otherwise contained in this Agreement, the covenants, terms, and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the Parties hereto, including any person or entity to which 4-Leaf or OXO1 may sell or transfer a portion of the Project. This Agreement is a condition for the development of the Project and shall be a restriction that runs with the land. This Agreement or a memorandum thereof shall be recorded by the Parties hereto.

Q. Entire Agreement/Merger. This Agreement contains the entire agreement among the Parties hereto with respect to the subject matter set forth herein and supersedes any and all other agreements, oral or written, with respect to the subject matter of this Agreement.

R. Construction. No provision of this Agreement shall be construed by any court or other judicial authority against any Party hereto by reason of such Party's being deemed to have drafted or structured other provisions. The Parties have been represented by counsel with regard to this Agreement.

This Agreement embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter herein contained, and supersedes all prior agreements, correspondence, arrangements, and understandings relating to the subject matter hereof. No representations, promise, inducement, or statement of intention has been made by any Party which has not been embodied in this Agreement, and no Party shall be bound by or be liable for any alleged representation, promise, inducement, or statement of intention not so set forth. This Agreement may be amended, modified, superseded, or cancelled only by a written instrument signed by all of the Parties hereto, and any of the terms, provisions, and conditions hereof may be waived only by a written instrument signed by the waiving Party. Failure of any Party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of such provision by any Party.

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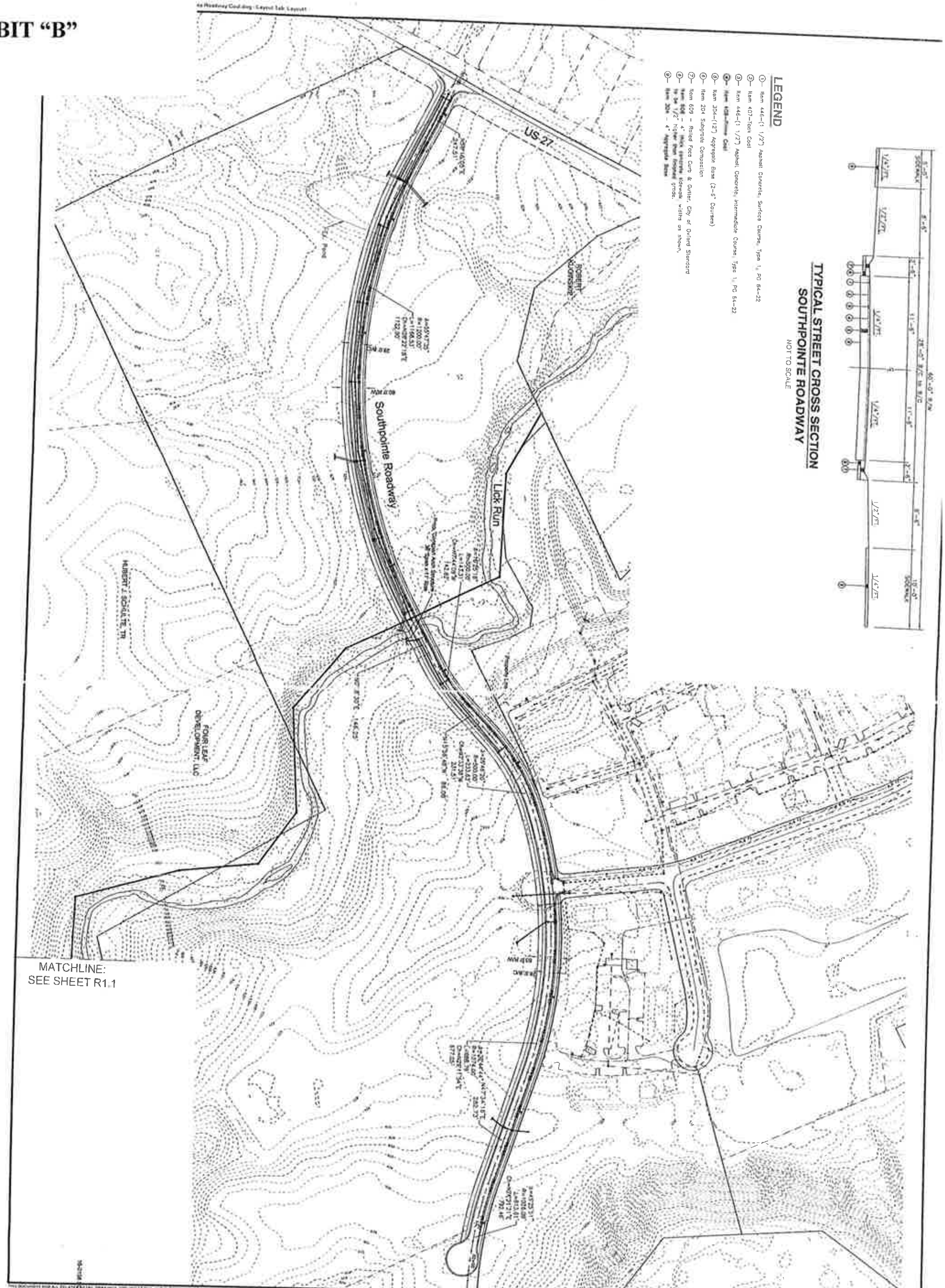
EXHIBIT "B"



LEGEND
TYPICAL STREET CROSS SECTION
SOUTHPOINTE ROADWAY
NOT TO SCALE
US-27
Southpointe Roadway
Lick Run
MATCHLINE:
SEE SHEET R1.1
SOUTHPOINTE ROADWAY
CONCEPT PLANS
CITY OF OXFORD
BUTLER COUNTY, OHIO
CONCEPT PLAN
PRELIMINARY
bayer
becker
R1.0