



AGENDA
ATHENS CITY COUNCIL
MONDAY, SEPTEMBER 16, 2024 AT 7:00 PM

e-mail: dwalker@ci.athens.oh.us

Streaming is available at www.ci.athens.oh.us/video

1. Public Hearing:

- Community Development Block Grant: Critical Infrastructure Program (Theatre Lane and Columbus Road Lift Stations)

2. Establish Quorum

3. Appoint Acting Clerk

4. Disposition of Minutes:

- Regular Session of City Council held August 19, 2024
- Regular Session of City Council held September 3, 2024

5. Communications

6. Reports and Communications from Other Elected Officials

7. Ordinances for Third Reading:

0-48-24

AN ORDINANCE AMENDING ATHENS CITY CODE TITLE 25, FLOOD DAMAGE PREVENTION, CHAPTERS 25.01, GENERAL PROVISIONS; 25.02, DEFINITIONS; 25.03, ADMINISTRATION; 25.04, USE AND DEVELOPMENT STANDARDS FOR FLOOD HAZARD REDUCTION; 25.05, APPEALS AND VARIANCES; AND 25.06, ENFORCEMENT; AND DECLARING AN EMERGENCY.

Introduced by Council Member McCarey

0-77-24

AN ORDINANCE APPROVING THE PETITION, PLAN, AND ARTICLES OF INCORPORATION OF THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC. AND DECLARING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS, OHIO

IN COOPERATION WITH THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

Introduced by Council Member Swank

0-78-24

AN ORDINANCE DETERMINING TO PROCEED WITH THE ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS, OHIO IN COOPERATION WITH THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT.

Introduced by Council Member Swank

0-79-24

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS, OHIO IN COOPERATION WITH THE ATHENS ENERGY SPECIAL IMPROVEMENT DISTRICT, APPROVING AN ENERGY PROJECT COOPERATIVE AGREEMENT AND A SPECIAL ASSESSMENT AGREEMENT.

Introduced by Council Member Swank

0-80-24

AN ORDINANCE GRANTING A SPECIAL RIGHT-OF-WAY USE PERMIT AT 49 CENTRAL AVENUE FOR PRE-EXISTING PATIO, STAIRS AND PARKING IN THE CITY RIGHT-OF-WAY.

Introduced by Council Member Swank

0-81-24

AN ORDINANCE AFFIRMING THE SERVICE-SAFETY DIRECTOR'S EXECUTION OF EASEMENTS WITH THE STATE OF OHIO NECESSARY FOR THE CONSTRUCTION OF CITY SEWER SYSTEM IMPROVEMENTS, PROJECT #330.

Introduced by Council Member McCarey

8. Ordinances for Second Reading:

0-84-24

AN ORDINANCE AMENDING THE 2024 APPROPRIATION ORDINANCE 130-23; AND AUTHORIZING AN INTERFUND TRANSFER.

Introduced by Council Member Risner

0-86-24

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 2403(1) CONCERNING WAGES AND WORKING CONDITIONS.

Introduced by the Finance & Personnel Committee

0-87-24

AN ORDINANCE AMENDING ATHENS CITY CODE TITLE 21, SUBDIVISION

REGULATIONS, CHAPTERS 21.03, APPLICATION, PROCEDURE FOR SUBDIVISION APPROVAL, 21.04, DESIGN AND CONSTRUCTION STANDARDS, AND 21.10, HILLSIDE REGULATIONS.

Introduced by Council Member Swank

0-88-24

AN ORDINANCE AMENDING ATHENS CITY CODE TITLE 23, ZONING, CHAPTER 23.03, GENERAL REGULATIONS AND PERMITTED MODIFICATIONS, SECTIONS 23.03.08(C), YARD REGULATIONS, AND 23.03.14, FENCES, WALLS, TERRACES, AND STOOPS; AND TABLE A, SCHEDULE OF BULK CONTROLS.

Introduced by Council Member Swank

0-89-24

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN ANNEXATION AGREEMENT WITH THE ATHENS TOWNSHIP TRUSTEES FOR PROPERTY LOCATED EAST OF CABLE LANE.

Introduced by Council Member Swank

0-90-24

AN ORDINANCE AMENDING TITLE 7, TRAFFIC CODE, SECTIONS 7.02.11, 7.02.17, 7.02.23, 7.03.07, 7.03.07.1, 7.03.25, 7.04.58, AND 7.05.31; AND REPEALING ALL ORDINANCES INCONSISTENT THEREWITH.

Introduced by All Members of Council

0-91-24

AN ORDINANCE AMENDING TITLE 13, GENERAL OFFENSES, SECTIONS 13.02.04, 13.03.01, 13.05.01, 13.05.08, AND 13.05.13; AND REPEALING ALL ORDINANCES INCONSISTENT THEREWITH.

Introduced by All Members of Council

0-92-24

AN ORDINANCE AMENDING THE 2024 APPROPRIATION ORDINANCE 130-23.

Introduced by Council Member Risner

0-93-24

AN ORDINANCE AMENDING ORDINANCES 74-21, 116-22, and 36-24; AUTHORIZING ATHENS UPTOWN DESIGNATED OUTDOOR REFRESHMENT AREA (DORA) HOURS OF OPERATION.

Introduced by Council Member Thomas

9. Ordinance for First Reading:

0-94-24

AN ORDINANCE AMENDING THE 2024 APPROPRIATION ORDINANCE 130-23.

Introduced by Council Member Risner

10. Resolution for Second Reading:

- **R-06-24**
A RESOLUTION ACCEPTING THE AMOUNTS AND RATES AS DETERMINED BY THE BUDGET COMMISSION AND AUTHORIZING THE NECESSARY TAX LEVIES AND CERTIFYING THEM TO THE COUNTY AUDITOR.
Introduced by Council Member Risner

11. Announcements & Other Business:

- Confirm the Mayor's appointment and reappointments to the Board of Zoning Appeals
- Motion to Accept the August 2024 Financial Reports
- Motion to Accept the July 2024 Credit Card Transactions

12. Opportunity for Citizens to Speak on Legislative Items and City Services Not Covered on the Agenda

13. Adjournment

Sam Crowl
President of Council

The City of Athens supports the Americans with Disabilities Act. Requests for reasonable accommodation may be made with the ADA Coordinator in the City Building or by calling 592-3367.

0-48-24

Introduced by Micah McCarey, Chair
City & Safety Services Committee

AN ORDINANCE AMENDING ATHENS CITY CODE TITLE 25, FLOOD DAMAGE PREVENTION, CHAPTERS 25.01, GENERAL PROVISIONS; 25.02, DEFINITIONS; 25.03, ADMINISTRATION; 25.04, USE AND DEVELOPMENT STANDARDS FOR FLOOD HAZARD REDUCTION; 25.05, APPEALS AND VARIANCES; AND 25.06, ENFORCEMENT; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Code Title 25, Flood Damage Prevention, Chapters 25.01, General Provisions; 25.02, Definitions; 25.03, Administration; 25.04, Use and Development Standards for Flood Hazard Reduction; 25.05, Appeals and Variances; and 25.06, Enforcement, are hereby amended to read as attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be an emergency measure necessary for the preservation of the health, welfare and safety of the residents of the City of Athens, Ohio, in order to meet the FEMA effective date of September 26, 2024, and it shall be in full force and effect upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

Title 25

Flood Damage Prevention

Chapter 25.01. General Provisions

25.01.01. Title.

This title shall be known as the "Flood Damage Prevention Title of the City of Athens, Ohio," hereinafter referred to as "this title," or "these regulations."

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.02. Statutory authorization.

Article XVIII, Section 3, of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. Therefore, the City Council of Athens, State of Ohio, does ordain as follows:

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.03. Findings of fact.

The City of Athens, Ohio, has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.04. Statement of purpose.

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (F) Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;
- (G) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- (H) Minimize the impact of development on adjacent properties within and near floodprone areas;

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- (I) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
 - (J) Minimize the impact of development on the natural, beneficial values of the floodplain;
 - (K) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
 - (L) Meet community participation requirements of the National Flood Insurance Program.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.05. Methods of reducing flood loss.

In order to accomplish its purposes, these regulations include methods and provisions for:

- (A) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- (B) Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;
- (C) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- (D) Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and
- (E) Preventing or regulating the construction of flood barriers, which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.06. Lands to which these regulations apply.

These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Athens, Ohio, as identified in Section 25.01.07, including any additional areas of special flood hazard annexed by the City of Athens, Ohio.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.07. Basis for establishing the areas of special flood hazard.

For the purposes of these regulations, the following studies and/or maps are adopted:

- (A) ~~Flood Insurance Rate Map for Athens County, Ohio and Incorporated Areas, effective December 18, 2009.~~
~~Flood Insurance Study for Athens County, Ohio and Incorporated Areas, effective December 18, 2009.~~
FLOOD INSURANCE RATE MAP (FIRM) AND FLOOD INSURANCE STUDY (FIS) FOR ATHENS COUNTY, OHIO AND INCORPORATED AREAS, BOTH EFFECTIVE SEPTEMBER 26, 2024.
- (B) Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard include:

Appalachian Flood Risk Reduction Initiative (AFRRI) Flood Risk Study for the City of Athens, Ohio, effective February 2004 and revised March 2007, issued by the Ohio Department of Natural Resources, Division of Water, Floodplain Management Program.

"City of Athens Higher Risk Floodplain Boundaries" Map, adopted on Sept. 21, 2009.

- (C) Any hydrologic and hydraulic engineering analysis authored by a registered professional engineer in the State of Ohio which has been approved by the City of Athens, Ohio, as required by Chapter [Section] 25.04.03 Subdivisions and large scale developments.

Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the city building, 8 East Washington Street, Athens, Ohio, 45701.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.08. Abrogation and greater restrictions.

These regulations are not intended to repeal any existing ordinances including subdivision regulations, zoning or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. ~~These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by the regulations.~~ **THESE REGULATIONS ARE NOT INTENDED TO REPEAL, ABROGATE OR IMPAIR ANY EXISTING EASEMENTS, COVENANTS OR DEED RESTRICTIONS. HOWEVER, WHERE THIS ORDINANCE AND ANOTHER ORDINANCE, EASEMENT, COVENANT OR DEED RESTRICTION CONFLICT OR OVERLAP, WHICHEVER IMPOSES THE MORE STRINGENT RESTRICTIONS SHALL PREVAIL.**

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.09. Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body; and
- (C) Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence over these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.10. Warning and disclaimer of liability.

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Athens, Ohio, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.01.11. Severability.

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

(Ord. No. 0-100-09, § I, 9-12-2009)

Chapter 25.02. Definitions

25.02.01. [Definitions.]

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application.

"Accessory structure." A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

"Appeal." A request for review of the floodplain administrator's interpretation of any provision of these regulations or a request for a variance.

"Base flood." The flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the one percent chance annual flood or 100-year flood.

"Base (100-year) flood elevation (BFE)." The water surface elevation of the base flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in feet mean sea level (MSL). In Zone AO areas, the base flood elevation is the **LOWEST ADJACENT** natural grade elevation plus the depth number (from one to three feet).

"Basement." Any area of the building having its floor subgrade (below ground level) on all sides.

"Development." Any manmade change to improved or unimproved real estate including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Enclosure below the lowest floor." See "Lowest floor."

"Executive order 11988 (floodplain management)." Issued by President Carter in 1977, this order requires that no federally-assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.

"Federal Emergency Management Agency (FEMA)." The agency with the overall responsibility for administering the National Flood Insurance Program.

"Fill." A deposit of earth material placed by artificial means.

"Flood" or "Flooding." A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood hazard boundary map (FHBM)." Usually the initial map, produced by the Federal Emergency Management Agency, or U.S. Department of Housing and Urban Development, for a community depicting approximate special flood hazard areas.

"Flood insurance rate map (FIRM)." An official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of special flood hazard.

"Flood insurance risk zones." Zone designations on FHBMS and FIRMS that indicate the magnitude of the flood hazard in specific areas of a community. Following are the zone definitions:

"Zone A:" Special flood hazard areas inundated by the 100-year flood **IN ANY GIVEN YEAR**; base flood elevations are not determined.

"Zones A1—30 and Zone AE:" Special flood hazard areas inundated by the 100-year flood **IN ANY GIVEN YEAR**; base flood elevations are determined.

"Zone AO:" Special flood hazard areas inundated by the 100-year flood **IN ANY GIVEN YEAR**; with flood depths of one to three feet (usually sheet flow on sloping terrain); average depths are determined.

"Zone AH:" Special flood hazard areas inundated by the 100-year flood **IN ANY GIVEN YEAR**; flood depths of one to three feet (usually areas of ponding); base flood elevations are determined.

"Zone A99:" Special flood hazard areas inundated by the 100-year flood to be protected from the 100-year flood by a federal flood protection system under construction; no base flood elevations are determined.

"Zone B" and "Zone X (shaded):" Areas of 500-year flood; areas subject to the 100-year flood with average depths of less than one foot or with contributing drainage area less than one square mile; and areas protected by levees from the base flood.

"Zone C" and "Zone X (unshaded):" Areas determined to be outside the 500-year floodplain.

"Flood insurance study (FIS)." The official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided flood profiles, floodway boundaries (sometimes shown on flood boundary and floodway maps), and the water surface elevations of the base flood.

"FLOODPROOFING" ANY COMBINATION OF STRUCTURAL AND NON-STRUCTURAL ADDITIONS, CHANGES, OR ADJUSTMENTS TO STRUCTURES WHICH REDUCE OR ELIMINATE FLOOD DAMAGE TO REAL ESTATE OR IMPROVED REAL PROPERTY, WATER AND SANITARY FACILITIES, STRUCTURES AND THEIR CONTENTS.

"Flood protection elevation." The flood protection elevation, or FPE, is the base flood elevation plus one foot of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations, or base flood elevations determined and/or approved by the floodplain administrator.

"Floodway." A floodway is the channel of a river or other watercourse and the adjacent land areas that have been reserved in order to pass the base flood discharge. A floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community.

The floodway is an extremely hazardous area, and is usually characterized by any of the following: Moderate to high velocity floodwaters, high potential for debris and projectile impacts, and moderate to high erosion forces.

"Freeboard." A factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

"Historic structure." Any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;

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- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;
 - (3) Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office; or
 - (4) Individually listed on the inventory of historic places maintained by the City of Athens, Ohio's historic preservation program, which program is certified by the Ohio Historic Preservation Office.

"Hydraulic connection." Hydraulic connection is generally defined as a condition where water from one location can reach another location through pervious subsurface geologies in a relatively rapid manner. Two sites with a hydraulic connection between them are considered to be hydraulically connected.

"Hydrologic" and "hydraulic engineering analysis." An analysis performed by a professional engineer, registered in the State of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and/or floodway boundaries.

"Letter of map change (LOMC)." A letter of map change is an official FEMA determination, by letter, to amend or revise effective flood insurance rate maps, flood boundary and floodway maps, and flood insurance studies. LOMCS are broken down into the following categories:

"Letter of map amendment (LOMA)." A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.

"Letter of map revision (LOMR)." A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the base flood elevation and is, therefore, excluded from the special flood hazard area.

"Conditional letter of map revision (CLOMR)." **A COMMENT BY FEMA REGARDING A PROPOSED PROJECT THAT WOULD, UPON CONSTRUCTION, AFFECT THE HYDROLOGIC OR HYDRAULIC CHARACTERISTICS OF A FLOODING SOURCE AND THUS RESULT IN THE MODIFICATION OF THE EXISTING REGULATORY FLOODWAY, THE EFFECTIVE BASE FLOOD ELEVATIONS, OR THE SPECIAL FLOOD HAZARD AREA. A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria.** A CLOMR does not amend or revise effective flood insurance rate maps, flood boundary and floodway maps, or flood insurance studies.

"Lowest floor." The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood-resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the lowest floor.

"Manufactured home." A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle." For the purposes of these regulations, a manufactured home includes manufactured homes and mobile homes as defined in Chapter 3733 of the ORC.

"Manufactured home park." As specified in the **OAC 3701-27-01 OHIO ADM. CODE 4781-12-01(K)**, a manufactured home park means any tract of land upon which three or more manufactured homes, used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured

homes on the lots, is not a manufactured home park, even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority. **MANUFACTURED HOME PARK DOES NOT INCLUDE ANY TRACT OF LAND USED SOLELY FOR THE STORAGE OR DISPLAY FOR SALE OF MANUFACTURED HOMES.**

"Market value." Any of the following:

- (1) Sale price of the property within last five years;
- (2) Professional appraisal;
- (3) Auditor's appraised (true) value.

"MEAN SEA LEVEL." FOR PURPOSES OF THE NATIONAL FLOOD INSURANCE PROGRAM, THE NATIONAL GEODETIC VERTICAL DATUM (NGVD) OF 1929 OR OTHER DATUM, TO WHICH BASE FLOOD ELEVATIONS SHOWN ON A COMMUNITY'S FLOOD INSURANCE RATE MAP ARE REFERENCED.

"National Flood Insurance Program (NFIP)." The NFIP is a federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the federal government that states if a community will adopt and enforce floodplain management regulations to reduce future flood risks to all development in special flood hazard areas, the federal government will make flood insurance available within the community as a financial protection against flood loss.

"New construction." ~~Structures for which the "start of construction" commenced on or after the initial effective date of the City of Athens, Ohio, Flood Insurance Rate Map, March 28, 1980, and includes any subsequent improvements to such structures.~~ **STRUCTURES FOR WHICH THE "START OF CONSTRUCTION" COMMENCED ON OR AFTER THE EFFECTIVE DATE OF A FLOODPLAIN REGULATION ADOPTED BY THE CITY OF ATHENS AND INCLUDES ANY SUBSEQUENT IMPROVEMENTS TO SUCH STRUCTURES.**

FOR THE PURPOSES OF DETERMINING INSURANCE RATES, STRUCTURES FOR WHICH THE "START OF CONSTRUCTION" COMMENCED ON OR AFTER THE EFFECTIVE DATE OF AN INITIAL FIRM [MARCH 28, 1980] AND INCLUDES ANY SUBSEQUENT IMPROVEMENTS TO SUCH STRUCTURES.

"Ordinary high water mark." The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a district marked by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic. the ordinary high water mark defines the bed of a watercourse.

"Person." Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies. An agency is further defined in the the ~~ORC Section 111.15~~ **OHIO REV. CODE SECTION 111.15(A)(2)** as any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.

"Recreational vehicle." A vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Registered professional architect." A person registered to engage in the practice of architecture ~~under the provisions of~~ **PURSUANT TO OHIO REV. CODE** sections 4703.01 to 4703.19 ~~of the O.R.C.~~

"Registered professional engineer." A person registered as a professional engineer ~~under the provisions of~~ **PURSUANT TO OHIO REV. CODE** sections 4733 ~~of the O.R.C.~~

"Registered professional surveyor." A person registered as a professional surveyor ~~under the provisions of~~ **PURSUANT TO OHIO REV. CODE** sections 4733 ~~of the O.R.C.~~

"Riparian area." Naturally vegetated land adjacent to streams that, if appropriately sized, helps to stabilize stream banks, limit erosion, reduce flood size flows, and/or filter and settle out runoff pollutants, or performs other functions consistent with the purposes of this regulation.

"Riparian setback." The real property adjacent to a designated stream located in the area defined by the criteria set forth in this regulation.

"Routine maintenance" includes, but is not limited to, replacing roofing, windows or appliances, painting and basement sealing, or for small development activities (except for filling and grading) valued at less than \$5,000.00.

"Special flood hazard area." Also known as "areas of special flood hazard," it is the land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on flood insurance rate maps, flood insurance studies, flood boundary and floodway maps and flood hazard boundary maps as Zones A, AE, AH, AO, A1—30, and A99. Special flood hazard areas may also refer to areas that are floodprone and designated from other federal state or local sources of data including but not limited to historical flood information reflecting high water marks, previous flood inundation areas, and floodprone soils associated with a watercourse.

"Start of construction." The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of a building.

"Stream." A surface watercourse with a well-defined bed and bank, either natural or artificial, which confines and conducts continuous or periodical flowing water (O.R.C. 6105.01) in such a way that terrestrial vegetation cannot establish roots within the channel.

"Structure." A walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.

"Substantial damage." Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement." Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. Substantial improvement also includes improvements to a structure on one or more occasions during a five-year period for which the cumulative cost of the improvements equals or exceeds 50 percent of the market value of the structure, before the improvement was performed. This term includes

structures, which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include:

~~(1) Any improvement to a structure that is considered "new construction;"~~

(21) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified prior to the application for a development permit by the local code enforcement official and which are the minimum necessary to assure safe living conditions;

(32) Any alteration of a "historic structure," provided that the alteration would not preclude the structure's continued designation as a "historic structure;"

(43) Routine maintenance.

"Variance." A grant of relief from the standards of these regulations ~~consistent with the variance conditions herein.~~

"Violation." The failure of a structure or other development to be fully compliant with these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009; Ord. No. 0-77-11, § I, 7-18-2011)

Chapter 25.03. Administration

25.03.01. Designation of the floodplain administrator.

The service-safety director of the city or their designee is hereby appointed to administer and implement these regulations and is referred to herein as the "floodplain administrator."

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.03.02. Duties and responsibilities of the floodplain administrator.

The duties and responsibilities of the floodplain administrator shall include but are not limited to:

- (A) Evaluate applications for permits to develop in special flood hazard areas.
- (B) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- (C) Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.
- (D) Inspect buildings and lands to determine whether any violations of these regulations have been committed.
- (E) Make and permanently keep all records for public inspection necessary for the administration of these regulations including flood insurance rate maps, letters of map amendment and revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, **FLOODPROOFING CERTIFICATES**, variances, and records of enforcement actions taken for violations of these regulations.
- (F) Enforce the provisions of these regulations.
- (G) Provide information, testimony, or other evidence as needed during variance hearings.
- (H) Coordinate map maintenance activities and FEMA follow-up.

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- (I) Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.03. Floodplain development permits.

It shall be unlawful for any person to begin construction or other development activity including, but not limited to, filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in Section 25.01.07, until a floodplain development permit is obtained from the floodplain administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the floodplain administrator until the requirements of these regulations have been met. All departments, officials, and public employees of the city who are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this chapter and shall issue no permit or license for any use, development, or purpose in conflict with the provisions of this chapter. Any permit or license that is issued in conflict with the provisions of this chapter shall be null and void.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.04. Application required.

An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or their authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished by the code enforcement office and on the city website for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the floodplain administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:

- (A) Duplicate site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing in relation to the channel, the floodway, and the flood protection elevation.
- (B) Elevation of the existing, natural ground where structures are proposed.
- (C) Elevation of the lowest floor, including basement, of all proposed structures.
- (D) Such other material and information as may be requested by the floodplain administrator to determine conformance with, and provide enforcement of these regulations.
- (E) Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a floodplain development permit when applicable:
 - (1) Floodproofing certification for nonresidential floodproofed structure as required in Section 25.04.05.
 - (2) Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of subsection 25.04.04(E) are designed to automatically equalize hydrostatic flood forces.

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- (3) Description of any watercourse alteration or relocation that the flood-carrying capacity of the watercourse will not be diminished, and maintenance assurances as required in subsection 25.04.09(C).
 - (4) A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but no floodway as required by subsection 25.04.09(B).
 - (5) A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by subsection 25.04.09(A).
 - (6) Generation of base flood elevation(s) for subdivision and ~~large-scale~~OTHER NEW developments as required by Section 25.04.03.
- (F) A floodplain development permit application fee is due upon application. The fee is established by separate ordinance [0-55-08].

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.03.05. Review and approval of a floodplain development permit application.

(A) Review.

- (1) After receipt of a complete application, the floodplain administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all information required in Section 25.03.04 has been received by the floodplain administrator.
- (2) The floodplain administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.

- (B) Approval. Within 30 days after the receipt of a complete application, the floodplain administrator shall either approve or disapprove the application. **IF THE FLOODPLAIN ADMINISTRATOR IS SATISFIED THAT THE DEVELOPMENT PROPOSED IN THE FLOODPLAIN DEVELOPMENT APPLICATION CONFORMS TO THE REQUIREMENTS OF THIS ORDINANCE, THE FLOODPLAIN ADMINISTRATOR SHALL ISSUE THE PERMIT. ALL FLOODPLAIN DEVELOPMENT PERMITS SHALL BE CONDITIONAL UPON THE COMMENCEMENT OF WORK WITHIN 180 DAYS. A FLOODPLAIN DEVELOPMENT PERMIT SHALL EXPIRE 180 DAYS AFTER ISSUANCE UNLESS THE PERMITTED ACTIVITY HAS BEEN SUBSTANTIALLY BEGUN AND IS THEREAFTER PURSUED TO COMPLETION.** If an application is approved, a floodplain development permit shall be issued. All floodplain development permits shall be conditional upon the commencement of work within one year. A floodplain development permit shall expire one year after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.06. Inspections.

The floodplain administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.07. Post-construction certifications required.

The following as-built certifications are required after a floodplain development permit has been issued:

- (A) For new or substantially-improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a Federal Emergency Management Agency Elevation Certificate completed by a registered **PROFESSIONAL** surveyor to record as-built elevation data. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's representative.
- (B) For all development activities subject to the standards of subsection 25.03.10(A), a letter of map revision.
- (C) **FOR NEW OR SUBSTANTIALLY IMPROVED NONRESIDENTIAL STRUCTURES THAT HAVE BEEN FLOODPROOFED IN LIEU OF ELEVATION, WHERE ALLOWED, THE APPLICANT SHALL SUPPLY A COMPLETED FLOODPROOFING CERTIFICATE FOR NON-RESIDENTIAL STRUCTURES COMPLETED BY A REGISTERED PROFESSIONAL ENGINEER OR ARCHITECT TOGETHER WITH ASSOCIATED DOCUMENTATION.**

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.08. Revoking a floodplain development permit.

A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the board of zoning appeals in accordance with Chapter 25.05 of these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.09. Exemption from filing a development permit.

An application for a floodplain development permit shall not be required for **MAINTENANCE WORK SUCH AS ROOFING, PAINTING, AND BASEMENT SEALING, OR FOR SMALL NONSTRUCTURAL DEVELOPMENT ACTIVITIES (EXCEPT FOR FILLING AND GRADING) VALUED AT LESS THAN \$2500.**

~~(A) Maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than \$5,000.00.~~

~~(B) Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Health and subject to the flood damage reduction provisions of the OAC Section 3701.~~

~~(C) Major utility facilities permitted by the Ohio Power Siting Board under Section 4906 of the ORC.~~

~~(D) Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under Section 3734 of the ORC.~~

~~(E) Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988—Floodplain Management.~~

~~Any proposed action exempt from filing for a floodplain development permit is also exempt from the standards of these regulations.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.10. STATE AND FEDERAL DEVELOPMENT.

A. DEVELOPMENT THAT IS FUNDED, FINANCED, UNDERTAKEN, OR PREEMPTED BY STATE AGENCIES SHALL COMPLY WITH MINIMUM NFIP CRITERIA.

B. BEFORE AWARDING FUNDING OR FINANCING OR GRANTING A LICENSE, PERMIT, OR OTHER AUTHORIZATION FOR A DEVELOPMENT THAT IS OR IS TO BE LOCATED WITHIN A 100-YEAR FLOODPLAIN, A STATE AGENCY SHALL REQUIRE THE APPLICANT TO DEMONSTRATE TO THE SATISFACTION OF THE AGENCY THAT THE DEVELOPMENT WILL COMPLY WITH MINIMUM NFIP CRITERIA AND ANY APPLICABLE LOCAL FLOODPLAIN MANAGEMENT RESOLUTION OR ORDINANCE AS REQUIRED BY OHIO REVISED CODE SECTION 1521.13. THIS INCLUDES, BUT IS NOT LIMITED TO:

- 1. DEVELOPMENT ACTIVITIES IN AN EXISTING OR PROPOSED MANUFACTURED HOME PARK THAT ARE UNDER THE AUTHORITY OF THE OHIO DEPARTMENT OF COMMERCE AND SUBJECT TO THE FLOOD DAMAGE REDUCTION PROVISIONS OF THE OHIO ADMINISTRATIVE CODE SECTION 4781-12.**
- 2. MAJOR UTILITY FACILITIES PERMITTED BY THE OHIO POWER SITING BOARD UNDER SECTION 4906 OF THE OHIO REVISED CODE.**
- 3. HAZARDOUS WASTE DISPOSAL FACILITIES PERMITTED BY THE HAZARDOUS WASTE SITING BOARD UNDER SECTION 3734 OF THE OHIO REVISED CODE.**

C. DEVELOPMENT ACTIVITIES UNDERTAKEN BY A FEDERAL AGENCY AND WHICH ARE SUBJECT TO FEDERAL EXECUTIVE ORDER 11988 – FLOODPLAIN MANAGEMENT.

- 1. EACH FEDERAL AGENCY HAS A RESPONSIBILITY TO EVALUATE THE POTENTIAL EFFECTS OF ANY ACTIONS IT MAY TAKE IN A FLOODPLAIN; TO ENSURE THAT ITS PLANNING PROGRAMS AND BUDGET REQUEST REFLECT CONSIDERATION OF FLOOD HAZARDS AND FLOODPLAIN MANAGEMENT; AND TO PRESCRIBE PROCEDURES TO IMPLEMENT THE POLICIES AND REQUIREMENTS OF EO 11988.**

25.03.101. Map maintenance activities.

To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Athens, Ohio's flood maps, studies and other data identified in Section 25.01.07 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

- (A) Requirement to submit new technical data.

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- (1) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
 - a. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
 - b. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
 - c. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
 - d. Subdivision or **OTHER NEW**large-scale development proposals requiring the establishment of base flood elevations in accordance with Section 25.04.03.
 - (2) It is the responsibility of the applicant to have technical data, required in accordance with subsection 25.03.10(A), prepared in a format required for a conditional letter of map revision or letter of map revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
 - (3) The floodplain administrator shall require a conditional letter of map Revision prior to the issuance of a floodplain development permit for:
 - a. Proposed floodway encroachments that increase the base flood elevation; and
 - b. Proposed development which increases the base flood elevation by more than one foot in **RIVERINE** areas where FEMA has provided base flood elevations but no floodway.
 - (4) Floodplain development permits issued by the floodplain administrator shall be conditioned upon the applicant obtaining a letter of map revision from FEMA for any development proposal subject to subsection 25.03.10(A)(1).
- (B) Right to submit new technical data. The floodplain administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Mayor of the City of Athens, Ohio, and may be submitted at any time.
- (C) Annexation/detachment. Upon occurrence, the floodplain administrator shall notify FEMA in writing whenever the boundaries of the City of Athens, Ohio, have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the city's flood insurance rate map accurately represent the city boundaries, include within such notification a copy of a map of the city suitable for reproduction, clearly showing the new corporate limits or the new area for which the city has assumed or relinquished floodplain management regulatory authority.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.112. Data use and flood map interpretation.

The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

- (A) In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain

Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.

- (B) Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the floodplain administrator.
- ~~(C) When preliminary flood insurance rate maps and/or flood insurance study have been provided by FEMA:~~
- ~~(1) Upon the issuance of a letter of final determination by the FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.~~
- ~~(2) Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and/or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.~~
- (DC) The floodplain administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Chapter 25.05, "Appeals and variances."
- (ED) **WHERE AN EXISTING OR PROPOSED STRUCTURE OR OTHER DEVELOPMENT IS AFFECTED BY MULTIPLE FLOOD ZONES, BY MULTIPLE BASE FLOOD ELEVATIONS, OR BOTH, THE DEVELOPMENT ACTIVITY MUST COMPLY WITH THE PROVISIONS OF THIS ORDINANCE APPLICABLE TO THE MOST RESTRICTIVE FLOOD ZONE AND THE HIGHEST BASE FLOOD ELEVATION AFFECTING ANY PART OF THE EXISTING OR PROPOSED STRUCTURE; OR FOR OTHER DEVELOPMENTS, AFFECTING ANY PART OF THE AREA OF THE DEVELOPMENT.**~~Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, etc.) shall prevail.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.03.13. USE OF PRELIMINARY FLOOD INSURANCE RATE MAP AND/OR FLOOD INSURANCE STUDY DATA.

A. ZONE A:

1. WITHIN ZONE A AREAS DESIGNATED ON AN EFFECTIVE FIRM, DATA FROM THE PRELIMINARY FIRM AND/OR FIS SHALL REASONABLY UTILIZED AS BEST AVAILABLE DATA.

2. WHEN ALL APPEALS HAVE BEEN RESOLVED AND A NOTICE OF FINAL FOOD ELEVATION DETERMINATION HAS BEEN PROVIDED IN A LETTER OF FINAL DETERMINATION (LFD), BFE AND FLOODWAY DATA FROM THE PRELIMINARY FIRM AND/OR FIS SHALL BE USED FOR REGULATING DEVELOPMENT.

B. ZONES AE, A1-30, AH, AND AO:

1. BFE AND FLOODWAY DATA FROM A PRELIMINARY FIS OR FIRM RESTUDY ARE NOT REQUIRED TO BE USED IN LIEU OF BFE AND FLOODWAY DATA CONTAINED IN AN EXISTING EFFECTIVE FIS AND FIRM. HOWEVER,

A. WHERE BFES INCREASE IN A RESTUDIED AREA, COMMUNITIES HAVE THE RESPONSIBILITY TO ENSURE THAT NEW OR SUBSTANTIALLY IMPROVED STRUCTURES ARE PROTECTED. COMMUNITIES ARE ENCOURAGED TO REASONABLY UTILIZE PRELIMINARY FIS OR FIRM DATA IN INSTANCES WHERE BFES INCREASE AND FLOODWAYS ARE REVISED TO ENSURE THAT THE HEALTH, SAFETY, AND PROPERTY OF THEIR CITIZENS ARE PROTECTED.

B. WHERE BFES DECREASE, PRELIMINARY FIS OR FIRM DATA SHOULD NOT BE USED TO REGULATE FLOODPLAIN DEVELOPMENT UNTIL THE LFD HAS BEEN ISSUED OR UNTIL ALL APPEALS HAVE BEEN RESOLVED.

2. IF A PRELIMINARY FIRM OR FIS HAS DESIGNATED FLOODWAYS WHERE NONE HAD PREVIOUSLY EXISTED, COMMUNITIES SHOULD REASONABLY UTILIZE THIS DATA IN LIEU OF APPLYING THE ENCROACHMENT PERFORMANCE STANDARD OF SECTION 4.9(B) SINCE THE DATA IN THE DRAFT OR PRELIMINARY FIS REPRESENTS THE BEST DATA AVAILABLE.

C. ZONES B, C, AND X:

1. USE OF BFE AND FLOODWAY DATA FROM A PRELIMINARY FIRM OR FIS ARE NOT REQUIRED FOR AREAS DESIGNATED AS ZONE B, C, OR X ON THE EFFECTIVE FIRM WHICH ARE BEING REVISED TO ZONE AE, A1-30, AH, AO, VE, OR V1-30. COMMUNITIES ARE ENCOURAGED TO REASONABLY UTILIZE PRELIMINARY FIS OR FIRM DATA TO ENSURE THAT THE HEALTH, SAFETY, AND PROPERTY OF THEIR CITIZENS ARE PROTECTED.

25.03.124. Substantial damage determinations.

Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, etc. After such a damage event, the floodplain administrator shall:

- (A) Determine whether damaged structures are located in special flood hazard areas;
- (B) Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and
- (C) **REQUIRE OWNERS OF SUBSTANTIALLY DAMAGED STRUCTURES TO OBTAIN A FLOODPLAIN DEVELOPMENT PERMIT PRIOR TO REPAIR, REHABILITATION, OR RECONSTRUCTION.**~~Make reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.~~

Additionally, the floodplain administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with increased cost of compliance insurance claims.

(Ord. No. 0-100-09, § I, 9-12-2009)

Chapter 25.04. Use and Development Standards for Flood Hazard Reduction

Note(s)—The following use and development standards apply to development wholly within, partially within, or in contact with any special flood hazard area as established in Section 25.01.07 or 25.03.12(A), **25.03.13.**

25.04.01. Use regulations.

(A) Permitted uses. All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by the City of Athens, Ohio, are allowed provided they meet the provisions of these regulations.

~~(B) Prohibited uses.~~

~~(1) Private water supply systems in all special flood hazard areas identified by FEMA, permitted under Section 3701 of the ORC.~~

~~(2) Infectious waste treatment facilities in all special flood hazard areas, permitted under Section 3734 of the ORC.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.02. Water and wastewater systems.

The following standards apply to all water supply, sanitary sewerage and waste disposal systems ~~not otherwise regulated by the ORC~~ **IN THE ABSENCE OF ANY MORE RESTRICTIVE STANDARD PROVIDE UNDER THE OHIO REVISED CODE OR APPLICABLE STATE RULES:**

- (A) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
- (B) New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and
- (C) Onsite waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.03. Subdivisions and ~~large~~**OTHER NEW** developments.

(A) All subdivision proposals **AND ALL OTHER PROPOSED NEW DEVELOPMENT** shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations as well as the standards in Athens City Subdivision Regulations, Sections 21.04.03 "Suitability of land" and 21.04.17, "Drainage."

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- (B) All subdivision proposals **AND ALL OTHER PROPOSED NEW DEVELOPMENT** shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize **OR ELIMINATE** flood damage.
- (C) All subdivision proposals **AND ALL OTHER PROPOSED NEW DEVELOPMENT** shall have adequate drainage provided to reduce exposure to flood damage.
- (D) In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or five acres, whichever is less.
- (E) The applicant shall meet the requirement to submit technical data to FEMA in subsection 25.03.10(A)(1)d. when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by subsection 25.04.03(D).
- ~~(F) All proposals for residential subdivisions, including those for manufactured home subdivisions, shall include provisions for a buildable area on each lot to be elevated (naturally or by means of fill) to the base flood level prior to sale of the lot. All lots must meet the compensatory storage requirements in Section 25.04.11 when elevating with fill.~~
- ~~(G) For subdivisions or portions of subdivisions within the 20-year floodplain, each lot must have a naturally elevated (to the base flood level) buildable area in order for a structure to be erected on it.~~
- ~~(H) For subdivisions or portions of subdivisions within the 20-year floodplain, residential structures are not permitted unless there is access to the structure in the event of a base flood.~~
- ~~(I) Each new nonresidential subdivision with adjacent access above the flood protection level shall have direct access to a driveway or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the floodplain area.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.04. Residential structures.

THE REQUIREMENTS OF SECTION 4.4 APPLY TO NEW CONSTRUCTION OF RESIDENTIAL STRUCTURES AND TO SUBSTANTIAL IMPROVEMENTS OF RESIDENTIAL STRUCTURES IN ZONES A, A1-30, AE, AO, AND AH, WHEN DESIGNATED ON THE COMMUNITY'S EFFECTIVE FIRM, AND WHEN DESIGNATED ON A PRELIMINARY OR FINAL FIRM ISSUED BY FEMA UNDER THE CIRCUMSTANCES PROVIDED IN SECTION 3.13.

- (A) New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring (subsection 25.04.04(A)) and construction materials resistant to flood damage (subsection 25.04.04(B)) are satisfied.
- (B) New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.
- (C) New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (D) New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. Support

structures and other foundation members shall be certified by a registered professional engineer or architect as designed in accordance with ASCE 24, Flood-Resistant Design and Construction.

- (E) New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings ~~sufficient to allow unimpeded movement of floodwaters~~ **TO ALLOW THE AUTOMATIC EQUALIZATION OF HYDROSTATIC PRESSURE** may have an enclosure below the lowest floor provided the enclosure meets the following standards:
- (1) Be used only for the parking of vehicles, building access, or storage;
 - (2) Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters;
 - (3) Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters;
 - (4) Upon initial construction or transfer of property, owners are required to sign a nonconversion agreement. The existence of a nonconversion agreement will be filed as a marginal notation on the deed, and would be a covenant running with the land. The nonconversion agreement can be found at the code enforcement office and on the City of Athens website.
- (F) Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- (G) Repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of Section 25.04.04.
- ~~(H) Each new residential site with adjacent access above the flood protection level shall have direct access to a driveway or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the floodplain area.~~
- (Ord. No. 0-100-09, § I, 9-12-2009)

25.04.05. Nonresidential structures.

THE REQUIREMENTS OF SECTION 4.5 APPLY TO NEW CONSTRUCTION AND TO SUBSTANTIAL IMPROVEMENTS OF NONRESIDENTIAL STRUCTURES IN ZONES A, A1-30, AE, AO, AND AH, WHEN DESIGNATED ON THE COMMUNITY'S EFFECTIVE FIRM, AND WHEN DESIGNATED ON A PRELIMINARY OR FINAL FIRM ISSUED BY FEMA UNDER THE CIRCUMSTANCES PROVIDED IN SECTION 3.13.

- (A) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of subsections 25.04.04(A)—(C) and 25.04.04(E)—(G).
- (B) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or together with attendant utility and sanitary facilities, shall meet all of the following standards:

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- (1) Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;
 - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
 - (3) Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with subsections (B)(1) and (2).

~~(C) — Each new nonresidential site with adjacent access above the flood protection level shall have direct access to a driveway or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the floodplain area.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.06. Accessory structures.

STRUCTURES THAT ARE 600 SQUARE FEET OR LESS WHICH ARE USED FOR PARKING AND STORAGE ONLY ARE EXEMPT FROM ELEVATION OR DRY FLOODPROOFING STANDARDS WITHIN ZONES A, A1-30, AE, AO, AND AH DESIGNATED ON THE COMMUNITY'S FIRM. SUCH STRUCTURES MUST MEET THE FOLLOWING STANDARDS: ~~Relief to the elevation or dry floodproofing standards may be granted for accessory structures containing no more than 600 square feet. The floodplain administrator shall inform the applicant for such exemption that construction of such accessory structure without elevating or dry floodproofing to the flood protection elevation level may result in increased insurance premiums. Such structures must meet the following standards:~~

- (A) They shall not be used for human habitation;
- (B) They shall be constructed of flood-resistant materials;
- (C) They shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
- (D) They shall be firmly anchored to prevent flotation;
- (E) Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the level of the flood protection elevation; and
- (F) They shall meet the opening requirements of subsection 25.04.04(E)(3).

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.07. Recreational vehicles.

Recreational vehicles **ON SITES WITHIN ZONES A, A1-A30, AE, AO, OR AH** must meet at least one of the following standards:

- (A) They shall not be located on sites in special flood hazard areas for more than 180 days;
- (B) They must be fully licensed and ready for highway use; or
- (C) They must **BE PLACED ON THE SITE PURSUANT TO A FLOODPLAIN DEVELOPMENT PERMIT ISSUED UNDER SECTIONS 3.3 AND 3.4, AND** meet all standards of Section 25.04.04.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.08. Above-ground gas or liquid storage tanks.

WITHIN ZONE A, A1-A30, AE, AO, OR AH, NEW OR SUBSTANTIALLY IMPROVED-All aboveground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.09. Assurance of flood-carrying capacity.

Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood-carrying capacity of watercourses is minimized:

(A) Development in floodways.

- (1) Prohibited uses. The following uses are prohibited from the floodway district, regardless of their effect on flood levels:
 - a. No structure shall be designed, constructed, altered, enlarged, or used for human habitation.
 - b. There shall be no manufacture or storage of materials that are buoyant, flammable, toxic, or explosive.
 - c. Fill is prohibited in the floodway.

Exception: If an existing legal nonconforming structure is substantially damaged, fill may be used to bring an existing basement to original grade as part of bringing the structure into compliance.
- (2) In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or
- (3) Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:
 - a. Meet the requirements to submit technical data in subsection 25.03.10(A);
 - b. An evaluation of alternatives, which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
 - c. Certification that no structures are located in areas that would be impacted by the increased base flood elevation;
 - d. Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
 - e. Concurrence of the Mayor of the City of Athens, Ohio, and the chief executive officer of any other communities impacted by the proposed actions.
- (4) Floodway nonconforming uses. Any lawful use of land or buildings existing on the effective date of this chapter, and located in a floodway district in which such would not be permitted as a new

use under the provisions of this chapter, is hereby declared to be a nonconforming use. Nonconforming uses may be continued, subject to the following conditions:

- a. No such use, nor any structure or premises put to such use, may be expanded or enlarged; nor may such use, structure, or premises be changed or altered in a way which increases the nonconformity.
- b. If such use is discontinued for 12 or more consecutive months, any future use of the building premises shall conform to this chapter.
- c. Uses or adjuncts thereof that are declared nuisances shall not be entitled to continue as nonconforming uses.
- d. Over the lifetime of a nonconforming use, no structural alterations or repairs to any structure that houses such use shall exceed 50 percent of the structure's assessed value at the time of its use becoming a nonconforming use, unless the structure is permanently changed to a conforming use, or unless the degree of nonconformity is significantly reduced as a result of the changes.
- e. If any nonconforming use or structure is destroyed by any means, including floods, to an extent of 50 percent or more of its assessed value, it shall not be reconstructed except in conformity with the provisions of this chapter.

(B) Development in riverine areas with base flood elevations but no floodways.

- (1) In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than one foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or
- (2) Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:
 - a. An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;
 - b. Subsections (A)(3)a. and c.—e.

(C) Alterations of a watercourse. For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the "bankfull stage." The field determination of "bankfull stage" shall be based on methods presented in Chapter 7 of the USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique or other applicable publication available from a federal, state, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:

- (1) The bankfull flood-carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.

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- (2) Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.
 - (3) The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood-carrying capacity will not be diminished. The floodplain administrator may require the permit holder to enter into an agreement with the City of Athens, Ohio, specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.
 - (4) The applicant shall meet the requirements to submit technical data in subsection 25.03.10(A)(1)c. when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.10. Fill.

The following standards apply to all fill activities in special flood hazard areas:

- (A) Fill sites, upon which structures will be constructed or placed, must be compacted to 95 percent of the maximum density obtainable with the standard proctor test method or an acceptable equivalent method;
- (B) Fill slopes shall not be steeper than one foot vertical to two feet horizontal;
- (C) Fill shall be composed of clean granular or earthen material;
- (D) Fill shall extend a minimum of 30 feet from the base of the structure to provide access by fire equipment, with a grade not more than two percent for new construction or substantial damage or improvement, on any lots greater than 200 feet wide.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.11. Compensatory storage.

Compensatory storage required for fill:

- (A) When fill is used during development on the 20- or 50-year floodplain, prior to issuance of a floodplain development permit, a plan and calculations prepared by a professional engineer shall be submitted for approval. This plan shall be based on a field survey, shall show the existing and proposed grades of the development and compensatory storage areas, and shall be accompanied by calculations which demonstrate that the proposed stage vs. storage volume relationship of the compensatory storage area would meet the storage volume requirements outlined in subsection 25.04.11 (D)–(F) at each stage of the proposed development.
- (B) Where the applicant proposes compensatory storage on property owned by others, the applicant shall submit a written agreement between such landowner and the applicant wherein the landowner agrees to convey an easement or other property interest or right to the applicant allowing compensatory storage, and to permanently maintain such area for flood storage purposes.
- (C) After the development and compensatory storage areas are complete, an as-built topographic survey of the development area and the compensatory storage area shall be prepared and stamped by a professional surveyor and submitted to the Floodplain Administrator. This survey shall be accompanied

by as-built stage vs. storage volume calculations prepared by a professional engineer as described in subsection (A) above.

~~(D) Twenty-year floodplain.~~

~~Lots one acre or larger: development within the special flood hazard area shall result in no net loss of natural floodplain storage. The volume of the loss of floodwater storage due to filling in the special flood hazard area shall be offset by providing an equal or greater volume of permanent flood storage by excavation or other compensatory measures at a hydraulically connected site which is preferably at, adjacent to, or on the opposite side of the stream across from the development area.~~

~~Lots smaller than one acre: less than one cubic foot of fill per square foot of property may be imported without compensation.~~

~~(E) Fifty-year floodplain.~~

~~Lots one acre or larger: less than one-half cubic feet of fill per square foot of property may be imported without compensation.~~

~~Lots less than one acre: less than two cubic feet per square foot of property may be imported without compensation.~~

~~(F) Parking lots. Parking lots within the special flood hazard area (20-, 50-, and 100-year floodplains) may not be elevated with fill, with the exception of a minimal amount of material, such as gravel and asphalt, needed for the construction of the parking surface. All material brought on site shall be compensated by material removed from site. Up to one inch of asphalt for parking lot maintenance may be allowed without compensation. Parking lots also may be filled to meet Americans with Disabilities Act (ADA) requirements for pedestrian access, using on-site material.~~

~~(G) Within the 100-year floodplain area, a minimal amount of fill should be used to elevate any structures.~~

~~(H) Exception: If an existing legal non-conforming structure is substantially damaged, fill may be used to bring an existing basement to original grade as part of bringing the structure into compliance.~~

~~(Ord. No. 0-100-09, § I, 9-12-2009)~~

25.04.12. Establishment of a riparian setback.

~~(A) Riparian setbacks are established as provided in this section.~~

~~(B) Streams addressed by this title are those which meet the definition of "stream" in Chapter 25.02 of these regulations and are indicated on at least one of the following maps:~~

~~(1) USGS topographical map;~~

~~(2) Currently adopted City of Athens Flood Insurance Study and Flood Insurance Rate Map.~~

~~(C) Widths of setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of a stream, and are established as follows:~~

~~(1) A minimum of 75 feet on each side of all streams draining an area 100 square miles or greater.~~

~~(2) A minimum of 30 feet on each side of all streams draining an area between 15 and 100 square miles.~~

~~(3) A minimum of 15 feet on each side of all streams draining an area of 15 or less square miles.~~

~~(Ord. No. 0-100-09, § I, 9-12-2009)~~

25.04.13. Critical facilities.

~~New critical facilities are prohibited on the five-percent annual chance (20-year) floodplain. Existing facilities are allowed to perform any maintenance necessary to continue operation, but are prohibited from expanding unless the facility has direct access to a driveway or roadway whose surface elevation is not less than the flood protection elevation and such escape route leads directly out of the floodplain area.~~

(Ord. No. 0-100-09, § I, 9-12-2009)

25.04.14. Hazardous materials.

~~(A) There shall be no manufacture or storage of hazardous materials above a baseline quantity threshold (BQT) within the 20-year floodplain. Both the BQT and hazardous materials are defined in Section 39.01.05.~~

~~(B) The city shall maintain public information in the office of code enforcement providing residents and businesses within the 100-year floodplain instructions on the proper storage of hazardous materials above the base flood elevation (BFE).~~

(Ord. No. 0-100-09, § I, 9-12-2009)

Chapter 25.05. Appeals and Variances

25.05.01. Appeals board established.

(A) The Athens City Council shall appoint a board of zoning appeals as described in Section 23.07.01.

(B) The organization of the board of zoning appeals is described in Section 23.07.05.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.05.02. Powers and duties.

(A) The board of zoning appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the floodplain administrator in the administration or enforcement of these regulations.

(B) Authorize variances in accordance with Section 25.05.04 of these regulations.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.05.03. Appeals.

(A) Appeals from decisions of the floodplain administrator. Any person affected by any notice and order, or other official action of the floodplain administrator may request and shall be granted a hearing on the matter before the board of zoning appeals provided that such person shall file, within 20 days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the floodplain administrator's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the floodplain administrator.

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- (B) Information required in appeals. The following information, submitted in writing, shall accompany any appeal, and no appeal shall be complete, nor shall it be scheduled for hearing, until all such required information shall have been submitted:
- (1) All of the material required in Section 25.03.04, "Application required," of this chapter;
 - (2) A copy of the floodplain administrator's refusal, order, determination, or decision from which the appeal is taken; and
 - (3) Where an appellant alleges error in an order, requirement, decision, determination, or refusal made by the floodplain administrator, a written statement of the section of this title for which the alleged erroneous ruling is being appealed, and of the reasons why the appellant believes the ruling to be erroneous. Upon receipt of the appeal, the floodplain administrator shall transmit said notice and all pertinent information on which the floodplain administrator's decision was made to the board of zoning appeals.
- (C) Filing fee. Each appeal shall be accompanied by a check, payable to the Treasurer of the City of Athens, or cash payment that is sufficient in amount to cover the cost of publishing and mailing the notices of the hearing, but in no event shall it be less than \$15.00. Where an appeal under these regulations is submitted together with an application or appeal pertaining to the same property under the zoning ordinance, and both are to be considered at the same hearing, only one filing fee need be paid.

Upon receipt of the notice of appeal, the board of zoning appeals shall fix a reasonable time for the appeal, give ten days' public notice thereof, as well as notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted. At the hearing, any party may appear in person or be represented by an authorized agent or attorney. Testimony shall be conducted under oath.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.05.04. Variances.

Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The board of zoning appeals shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

- (A) Application for a variance.
- (1) Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the floodplain administrator, who upon receipt of the variance shall transmit it to the board of zoning appeals.
 - (2) Such application at a minimum shall contain the following information:
 - a. All of the material required in Section 25.03.04, "Application required," of this chapter;
 - b. A copy of the floodplain administrator's refusal, order, determination, or decision from which the appeal is taken; and
 - c. A written statement in the terms of subsection 25.05.04(C) of the reasons why a variance should be granted.
 - (3) Each variance appeal shall be accompanied by a check, payable to the Treasurer of the City of Athens, or cash payment, that is sufficient in amount to cover the cost of publishing and mailing the notices of the hearing, but in no event shall it be less than \$15.00. Where an appeal under these regulations is submitted together with an application or appeal pertaining to the same

property under the zoning ordinance, and both are to be considered at the same hearing, only one filing fee need be paid.

- (B) Notice for public hearing. Upon receipt of the notice of appeal, the board of zoning appeals shall fix a reasonable time for the appeal, give ten days' public notice thereof, as well as notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.
- (C) Public hearing. At such hearing the applicant shall present such statements and evidence as the board of zoning appeals requires. In considering such variance applications, the board of zoning appeals shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:
 - (1) The danger that materials may be swept onto other lands to the injury of others.
 - (2) The danger to life and property due to flooding or erosion damage.
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
 - (4) The importance of the services provided by the proposed facility to the community.
 - (5) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.
 - (6) The necessity to the facility of a waterfront location, where applicable.
 - (7) The compatibility of the proposed use with existing and anticipated development.
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
 - (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Variances shall only be issued upon:

- (1) A showing of good and sufficient cause.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.
- (3) A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
- (4) A determination that the structure or other development is protected by methods to minimize flood damages.
- (5) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Upon consideration of the above factors and the purposes of these regulations, the board of zoning appeals may attach such conditions to the granting of variances, as it deems necessary to further the purposes of these regulations.

(D) Other conditions for variances.

- (1) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (2) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in subsection (C)(1) to (11) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
- (3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (4) Any variance to permit encroachment within a designated floodway shall be conditioned upon approval by FEMA.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.05.05. Procedure at hearings.

- (A) All testimony shall be given under oath.
- (B) A complete record of the proceedings shall be kept, except confidential deliberations of the board, but including all documents presented and a verbatim record of the testimony of all witnesses.
- (C) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.
- (D) The administrator may present evidence or testimony in opposition to the appeal or variance.
- (E) All witnesses shall be subject to cross-examination by the adverse party or their counsel.
- (F) Evidence that is not admitted may be proffered and shall become part of the record for appeal.
- (G) The board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.
- (H) The board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.05.06. Stay of proceedings.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the floodplain administrator certifies to the board after notice of appeal shall have been filed with them, that, by reason of acts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board or by

the court of common pleas on application, on notice of the floodplain administrator, or by judicial proceedings, and on due cause shown.

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.05.07. Decisions of the appeals board.

The board shall decide all appeals within 30 days after the final hearing thereon. A certified copy of the board's decision shall be transmitted to the appellant, and to the floodplain administrator. Such decision shall be binding upon the floodplain administrator and shall be observed by them, and they shall incorporate the terms and conditions of the same in the permit to the appellant, whenever a permit is authorized by the board.

A decision of the board shall not become final until the expiration of five days from the date such decision is made, unless the board shall find the immediate taking effect of such decision to be necessary for the preservation of property or personal rights and shall so certify on the record.

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.05.08. Appeal to the court.

Those aggrieved by the decision of the board of zoning appeals may appeal such decision to the Athens County Court of Common Pleas, as provided in Chapter 2506 of the ORC. Such appeal petition shall be presented to the court within 30 days after the day upon which written notification of the appeals board's decision is mailed to the applicant or appellant.

(Ord. No. 0-100-09, § I, 9-12-2009)

Chapter 25.06. Enforcement

25.06.01. Compliance required.

- (A) No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a development permit as stated in Section 25.03.09.
- (B) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with Section 25.06.03.
- (C) Floodplain development permits issued on the basis of plans and applications approved by the floodplain administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with Section 25.06.03.

(Ord. No. 0-100-09, § I, 9-12-2009)

25.06.02. Notice of violation.

Whenever the floodplain administrator determines that there has been a violation of any provision of these regulations, they shall give notice of such violation to the person responsible therefore and order compliance with these regulations as hereinafter provided. Such notice and order shall:

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- (A) Be put in writing on an appropriate form;
 - (B) Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action, which, if taken, will effect compliance with the provisions of these regulations;
 - (C) Specify a reasonable time for performance;
 - (D) Advise the owner, operator, or occupant of the right to appeal;
 - (E) Be served on the owner, occupant, or agent in person. However, this notice and order shall be deemed to be properly served upon the owner, occupant, or agent if a copy thereof is sent by registered or certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the dwelling affected.

(Ord. No. 0-100-09, § I, 9-12-2009; Res. No. R-05-2022, 8-1-2022)

25.06.03. Violations and penalties.

Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a first degree misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined or imprisoned as provided by the laws of the City of Athens, Ohio. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Athens, Ohio, from taking such other lawful action as is necessary to prevent or remedy any violation. The City of Athens, Ohio, shall prosecute any violation of these regulations in accordance with the penalties stated herein.

(Ord. No. 0-100-09, § I, 9-12-2009)

0-77-24

Introduced by Council Member Swank
Planning & Development Committee

AN ORDINANCE APPROVING THE PETITION, PLAN, AND ARTICLES OF INCORPORATION OF THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC. AND DECLARING THE NECESSITY OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS, OHIO IN COOPERATION WITH THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.

WHEREAS, as set forth in Ohio Revised Code Chapter 1710, the Ohio General Assembly has authorized property owners to include their properties within Energy Special Improvement Districts ("ESIDs") upon a petition to a municipal corporation or township, which ESIDs are voluntary organizations of property owners who undertake special energy improvement projects for their properties and finance such special energy improvement projects by way of voluntary special assessments;

WHEREAS, pursuant to the Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects (the "Petition"), including an initial plan entitled Athens Regional Energy Special Improvement District Program Plan (the "Program Plan") and Articles of Incorporation, as validly amended from time to time (the "Articles"), Lostro Ventures, LLC (the "Owner"), as the owner of 100% of the real property subject to the Petition, has requested the formation of the Athens Regional Energy Special Improvement District, Inc., an energy special improvement district and nonprofit corporation organized under the laws of the State of Ohio, (the "District"), and its Board of Directors (the "Board") in accordance with Ohio Revised Code Chapters 1702 and 1710;

WHEREAS, the Owner, has identified certain real property located at the commonly used mailing address 63 S. Court Street, Athens, Ohio, and having Athens County Auditor Permanent Parcel Identification Number A027050001400 (the "Property"), as an appropriate property for a Special Energy Improvement Project pursuant to Ohio Revised Code Chapter 1710;

WHEREAS, on or before August 14, 2024 pursuant to Ohio Revised Code Chapter 1710, the Owner submitted the Petition to this City Council (the "Council"), and the Petition is on file with the Council and the City Auditor;

WHEREAS, the Petition is for the purpose of developing and implementing special energy improvement projects in furtherance of the purposes set forth in Section 2o of Article VIII of the Ohio Constitution, including, without limitation, a special energy improvement project to be provided on the Property, as described more particularly in the Petition (the "Project");

WHEREAS, following the approval of the Petition by this Council, the Owner intends to submit to the District, and the Board, as the governing body of the District in accordance with Ohio Revised Code Chapter 1710, intends to approve the Petition, which Petition requests the formation of the District, that the Property be added to the District, and that the City levy special assessments on the Property (the "Special Assessments") in an amount and for a length sufficient to pay the costs of the Project, which is estimated to be \$2,351,485.92, including other related costs of financing the Project, which may include, without limitation, the payment of principal of and interest on obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and District administrative fees and expenses, and requests that the Project be undertaken cooperatively by the City, the District, and such other parties as the City may deem necessary or appropriate to pay the costs of the Project; and

WHEREAS, this Council, as mandated by Ohio Revised Code Section 1710.06, must approve or disapprove the Petition within sixty (60) days of the submission of the Petition;

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Athens, Ohio, as follows:

SECTION I: This Council hereby approves the Petition, the Program Plan, and the Articles, in substantially the form now on file with the Council and the City Auditor. Pursuant to the Petition, the Program Plan, and the Articles, the District is hereby created.

SECTION II: This Council hereby approves and consents to (i) any addition of real property to the territory of the District within the boundaries of any municipal corporation or any township which is contiguous to the municipal corporations or townships in which a portion of the territory of the District is located; (ii) the addition of the municipal corporation or township in which such real property is located as a "participating political subdivision," as defined in Ohio Revised Code Section 1710.01(E), of the District; and (iii) any amendment to the Articles of Incorporation necessary to recognize or effect such addition.

SECTION III: Pursuant to Ohio Revised Code Section 1710.02(G)(4), this Council determines that the Project is not required to be owned exclusively by the City for its purposes, for uses determined by this Council, as the legislative authority of the City, as those that will promote the welfare of the people of such participating political subdivision; to improve the quality of life and the general and economic well-being of the people of the City; to better ensure the public health, safety, and welfare; to protect water and other natural resources; to provide for the conservation and preservation of natural and open areas and farmlands, including by making urban areas more desirable or suitable for development and revitalization; to control, prevent, minimize, clean up, or

mediate certain contamination of or pollution from lands in the state and water contamination or pollution; or to provide for safe and natural areas and resources. This Council accordingly authorizes the Board to act as its agent to sell, transfer, lease, or convey the Project. The consideration the Board must obtain from any sale, transfer, lease, or conveyance of the special energy improvement project on the Property is any consideration greater than or equal to One Dollar and Zero Cents (\$1.00).

SECTION IV: This Council determines and declares that the Project is an essential and vital public, governmental purpose of the City as a Special Energy Improvement Project, as defined in Ohio Revised Code Section 1710.01(I); and that in order to fulfill that essential and vital public purpose of the City, it is necessary and proper to provide, in cooperation with the District, for (i) the acquisition, construction, and improvement of the Project by Lostro Ventures, LLC, as set forth in the Petition and the Plan, and (ii) the payment of the costs of the Project, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing, and inspection costs; the amount of any damages resulting from the Project and the interest on such damages; the reasonable costs incurred in connection with the preparation, levy and collection of the special assessments; the cost of purchasing and otherwise acquiring any real estate or interests in real estate; reasonable expenses of legal services; costs of labor and material; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to Lostro Ventures, LLC or otherwise to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other reasonable obligations so issued or incurred, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and reasonable District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the Project for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the Project; together with all other necessary expenditures, all as more fully described in the Petition, the Plan, and profiles, specifications, and estimates of cost of the Project, all of which are on file with the Clerk of Council and open to the inspection of all persons interested. This Council further determines and declares that the Project is conducive to the public peace, health, safety and welfare of the City and the inhabitants of the City.

SECTION V: This Council determines that the Project's elements are so situated in relation to each other that in order to complete the acquisition, construction, and improvement of the Project's elements in the most practical and economical manner, they should be acquired and improved at the same time, with the same kind of

materials, and in the same manner; and that the Project's elements shall be treated as a single improvement, pursuant to Ohio Revised Code Section 727.09, and the Project's elements shall be treated as a joint improvement to be undertaken cooperatively by the City and the District pursuant to Ohio Revised Code Section 9.482 and Ohio Revised Code Chapter 1710.

SECTION VI: Pursuant to and subject to the provisions of a valid Petition signed by the Owner, which is the owner of one hundred percent (100%) of the Property, the entire cost of the Project shall be paid by the Special Assessments levied against the Property, which is the benefited property. The City does not intend to issue securities in anticipation of either the levy of the Special Assessments or the collection of the Special Assessments.

SECTION VII: The method of levying the Special Assessments shall be in proportion to the benefits received from the financing of the Project, allocated among the parcels constituting the Property as set forth in the Petition.

SECTION VIII: The lots or parcels of land to be assessed for the Project shall be the Property, described in Exhibit A to the Petition, all of which lots and lands are determined to be specially benefited by the Project.

SECTION IX: The Special Assessments shall be levied and paid in [fifty-eight] ([58]) semi-annual installments pursuant to the list of estimated Special Assessments set forth in the Petition, and the Owner has waived its option to pay the Special Assessment in cash within thirty (30) days after the first publication of the notice of the assessing Ordinance. The aggregate maximum amount of Special Assessments estimated to be necessary to pay the costs of the Project is \$2,351,485.92. Each semi-annual Special Assessment payment represents payment of a portion of any principal repayment, interest, and administrative fees payable with respect to the Project. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the City. In addition to the Special Assessments, the County Auditor of Athens County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount will be added to the Special Assessments by the County Auditor of Athens County, Ohio.

SECTION X: The Council and the City Auditor, or their designee, are authorized and directed to prepare and file in the office of the Council and the City Auditor the estimated Special Assessments for the costs of the Project in accordance with the method of assessment set forth in the Petition and this Ordinance, showing the amount of the assessment against each lot or parcel of land to be assessed.

SECTION XI: Upon the filing of the estimated Special Assessments with the Council and the City Auditor, notice of the adoption of this Ordinance and the filing of the estimated Special Assessments shall be served upon the Owner of the Property, as provided in Ohio Revised Code Section 727.13. The appropriate officials of the City shall also comply with the applicable procedural requirements of Ohio Revised Code Chapter 727.

SECTION XII: The Council and the City Auditor, or their designee, is authorized, pursuant to Ohio Revised Code Section 727.12, to cause the Special Assessments to be levied and collected at the earliest possible time including, if applicable, prior to the completion of the acquisition and construction of the Project.

SECTION XIII: The Special Assessments will be used by the City to provide the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION XIV: This Council accepts and approves the waiver of all further notices, hearings, claims for damages, rights to appeal and other rights of property owners under the law, including but not limited to those specified in the Ohio Constitution, Ohio Revised Code Chapter 727, Ohio Revised Code Chapter 1710, and consents to the immediate imposition of the Special Assessments upon the Property. This waiver encompasses, but is not limited to, waivers by the Owner of the following rights:

- (i) The right to notice of the adoption of the Ordinance of Necessity under Ohio Revised Code Sections 727.13 and 727.14;
- (ii) The right to limit the amount of the Special Assessments under Ohio Revised Code Sections 727.03 and 727.06, including the right to consider the Special Assessments authorized by the Petition within the limitations contained in Ohio Revised Code Section;
- (iii) The right to file an objection to the Special Assessments under Ohio Revised Code Section 727.15;
- (iv) The right to the establishment of, and any proceedings by and any notice from an Assessment Equalization Board under Ohio Revised Code Sections 727.16 and 727.17;
- (v) The right to file any claim for damages under Ohio Revised Code Sections 727.18 through 727.22 and Ohio Revised Code Section 727.43;
- (vi) The right to notice that bids or quotations for the Project may exceed estimates by 15%;
- (vii) The right to seek a deferral of payments of Special Assessments under Ohio Revised Code Section 727.251;
- (viii) The right to notice of the passage of the assessing Ordinance under Ohio Revised Code Section 727.26; and

(ix) Any and all procedural defects, errors, or omissions in the Special Assessment process.

SECTION XV: The Council is authorized to enter into agreements by and among the City, the District, and such other parties as the City may deem necessary or appropriate in order to provide the Project, and that the Mayor and the Council, the President of the Council, or any of them, is authorized to execute, on the City's behalf, such agreements.

SECTION XVI: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this legislative Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Ohio Revised Code Section 121.22.

SECTION XVII: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Resolution No. [] duly adopted by the City Council of the City of Athens, Ohio on [], 2024.

Clerk of Council
City of Athens, Ohio

**PETITION FOR CREATION OF ENERGY SPECIAL IMPROVEMENT DISTRICT
AND FOR SPECIAL ASSESSMENTS FOR
SPECIAL ENERGY IMPROVEMENT PROJECTS AND AFFIDAVIT**

A PETITION TO THE CITY OF ATHENS, OHIO REQUESTING THE CREATION OF THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT AND SEEKING THE IMPOSITION OF SPECIAL ASSESSMENTS AGAINST REAL PROPERTY OWNED BY THE PETITIONER TO PAY CERTAIN COSTS OF VARIOUS SPECIAL ENERGY IMPROVEMENT PROJECTS, THE FINANCING OF WHICH WILL SPECIALLY BENEFIT SUCH REAL PROPERTY, INCLUDING A WAIVER OF ALL RIGHTS TO NOTICES, HEARINGS, AND APPEALS RESPECTING THE REQUESTED SPECIAL ASSESSMENTS

To: The Mayor and the Council (the “**Council**”) of the City of Athens, Ohio (the “**City**”)

Lostro Ventures, LLC, an Ohio limited liability company (the “**Petitioner**”), is the owner of 100% of the property described on **Exhibit A** attached hereto (the “**Property**”) and has identified the Property as appropriate property for special energy improvement projects pursuant to Ohio Revised Code Chapter 1710.

The Petitioner respectfully petitions the Council of the City for the creation of an energy special improvement district initially to be named the Athens Regional Energy Special Improvement District, Inc. (the “**Corporation**”), an Ohio nonprofit corporation formed to govern the Athens Regional Energy Special Improvement District (the “**District**”), initially created within the boundaries of the City of Athens, Ohio. The Corporation will approve (i) a plan (the “**Program Plan**”) for the purpose of developing and implementing special energy improvement projects as defined in Ohio Revised Code Section 1710.01(I) (“**Special Energy Improvement Projects**”) and (ii) the articles of incorporation (the “**Articles of Incorporation**”) in accordance with Ohio Revised Code Sections 1710.01(D) and (E). The Program Plan is attached to this Petition as **Exhibit C**. The Corporation’s Articles of Incorporation are attached to this Petition as **Exhibit D**. The District is hereby authorized to use the registered trade name the Athens Regional Energy Special Improvement District, Inc., or any other such similar trade name as the Board of Directors of the Corporation (the “**Board**”) may duly determine from time to time.

Pursuant to the Program Plan, the Corporation will cause Special Energy Improvement Projects to be provided from time to time. In accordance with Ohio Revised Code Chapter 1710 and the Program Plan, the Program Plan may be amended from time to time by supplemental plans (each a “**Supplemental Plan**” and collectively, the “**Supplemental Plans**”) (the Program Plan and every Supplemental Plan together constituting the “**Plan**”) to provide for additional Special Energy Improvement Projects, and the District may be enlarged from time to time to include additional property so long as at least one special energy improvement project is designated for each parcel of real property within the additional territory added to the District.

The Board has received or will receive the Program Plan attached to this Petition as **Exhibit C**, including the description of the Special Energy Improvement Projects proposed to be

In consideration of the City's acceptance of this Petition and the imposition of the requested Special Assessments, the Petitioner consents and agrees that the Property as identified in Exhibit A shall be assessed for all of the costs of the Authorized Improvements, including any and all architectural, engineering, legal, insurance, consulting, energy auditing, planning, acquisition, installation, construction, surveying, testing and inspection costs; costs of labor and material; the amount of any damages resulting from the Authorized Improvements and the interest on such damages; the cost of purchasing and otherwise acquiring any real estate or interests in real estate necessary for the construction and installation of the Authorized Improvements; the costs incurred in connection with the preparation, levy, and collection of the Special Assessments; expenses of legal services; trustee fees and other financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued or incurred to provide a loan or to secure an advance of funds to the Petitioner or otherwise to pay costs of the Authorized Improvements in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, program administration fees, financing servicing fees, and District administrative fees and expenses; an amount to reflect interest on unpaid Special Assessments which shall be treated as part of the cost of the Authorized Improvements for which the Special Assessments are made at an interest rate which shall be determined by the District to be substantially equivalent to the fair market rate that would have been borne by notes or bonds if notes or bonds had been issued by the District or another issuer of notes or bonds to pay the costs of the Authorized Improvements; together with all other necessary expenditures.

In consideration of the Authorized Improvements, the Petitioner, for itself and its grantees and other successors with respect to the Property, agrees to pay promptly all Special Assessments as they become due, and agrees that the determination by the Council of the Special Assessments in accordance with the terms hereof will be final, conclusive, and binding upon the Petitioner and the Property. In further consideration of the Authorized Improvements, the Petitioner covenants and agrees to disclose, upon the transfer of the Property or any portion of the Property to be special assessed for the actual costs of the Authorized Improvements set forth in Exhibit B, in the deed to the transferee or in a separate instrument recorded with respect to the Property the existence of any outstanding Special Assessments for the Authorized Improvements and to require that transferee covenant to disclose that information in any subsequent deed or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer so long as the Special Assessments remain unpaid. As a condition to each subsequent transfer while the Special Assessments remain unpaid, the Petitioner further covenants and agrees to provide expressly in the deed to any transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer (a) for the acquisition by the transferee of the Property subject to any outstanding Special Assessments and the transferee's assumption of responsibility for payment thereof and for the waiver by the transferee of any rights that the Petitioner has waived pursuant to this Petition, and (b) the requirement that each transferee from time to time of the Property covenant to include in the deed to any subsequent transferee or in a separate instrument recorded with respect to the Property at the time of the subsequent transfer the conditions described in clause (a) so long as the Special Assessments remain unpaid.

The Petitioner further agrees and consents to the Council promptly proceeding with all actions necessary to facilitate the acquisition, installation, equipment, and improvement of the Authorized Improvements and to impose the Special Assessments.

The Petitioner acknowledges that the Special Assessments set forth in this Petition and in the Exhibits to this Petition are based upon an estimate of costs, and that the final Special Assessments shall be calculated in the same manner, which, regardless of any statutory limitation on the Special Assessments, may be more or less than the respective estimated assessments for the Authorized Improvements. In the event the final assessments exceed the estimated assessments, the Petitioner, without limitation of the other waivers contained in this Petition, also waives any rights it may now or in the future have to object to those assessments, any notice provided for in Ohio Revised Code Chapters 727 and 1710, and any rights of appeal provided for in such Chapters or otherwise. The Petitioner further acknowledges and represents that the respective final assessments may be levied at such time as determined by the City and regardless of whether or not any of the parts or portions of the Authorized Improvements have been completed.

The Petitioner further acknowledges that the final Special Assessments for the Authorized Improvements, when levied against the Property, will be payable in cash within thirty (30) days from the date of passage of the ordinance or resolution confirming and levying the final assessments and that if any of such assessments are not paid in cash they will be certified to the County Auditor of Athens County, Ohio, as provided by law, to be placed on the tax list and duplicate and collected as other taxes are collected. Notwithstanding the foregoing, however, the Petitioner hereby waives the right to pay the final assessments for the Authorized Improvements in cash within thirty (30) days from the passage of the ordinance or resolution confirming and levying the final assessments and requests that the unpaid final assessments for the Authorized Improvements shall be payable in 42 semi-annual installments, together with interest at the maximum rate of 9.45%. The Petitioner hereby consents and agrees that the maximum schedule of Special Assessments represents the final hard costs of the Authorized Improvements, together with an assumed rate of interest on those costs in excess of the rate of interest expected to be available for financing the costs of the Authorized Improvements. The Petitioner hereby consents and agrees that the final rate of interest will be determined after the City approves the levy of the maximum Special Assessments. The Petitioner hereby authorizes and requests the City to certify the Special Assessments to the County Auditor of Athens County, Ohio for collection, as provided in this Petition, in amounts which, in aggregate, are less than or equal to the aggregate amount of the maximum Special Assessments shown on Exhibit C and are in the amounts necessary to pay the costs of financing the Authorized Improvements, as certified to the City by the Petitioner and the provider of financing for the Authorized Improvements.

Pursuant to Ohio Revised Code Section 1710.03(C), the Petitioner hereby appoints as its designee to carry out the rights and responsibilities of District members under Ohio Revised Code Chapter 1710 such representative as may be duly appointed by the Petitioner from time to time, which designation shall not expire unless and until the Petitioner shall notify the Secretary of the District that said designation is no longer in effect or that Petitioner has made a new designation to replace said designation.

IN WITNESS WHEREOF, the Petitioner has caused this Petition to be executed by its undersigned duly authorized signatory.

PETITIONER:

LOSTRO VENTURES, LLC

By: [Signature]

Name: David Kozar

Title: authorized rep.

Address for notices to Property Owner: Lostro Ventures, LLC

STATE OF Ohio)
COUNTY OF Franklin)

SS:

Sworn to or affirmed and subscribed before me by David Kozar this date of August 13th, 2024.

[SEAL]

[Signature]
Notary Public



CRAIG DOLAN
Notary Public
State of Ohio
My Comm. Expires
June 26, 2027

EXHIBIT B

SPECIAL ENERGY IMPROVEMENT PROJECT DESCRIPTION

The real property owned by Lostro Ventures, LLC at 63 S. Court Street, Athens, Ohio (the "Property") is the location at which the special energy improvements described below shall be constructed and installed, and shall exist (the "Project"). The Property is further described on Exhibit A of this Petition. The Property will be subject to special assessments for energy improvements in accordance with Ohio Revised Code Chapter 1710.

The Project is expected to consist of the following energy efficiency elements:

Table 1. Efficiency Improvements Summary

EEI-#	EEI Description	Energy Savings	Improvement Costs (\$)	Allowable Financing Factor	Allowable CPACE EEI Cost (\$)	Est Useful Life (yrs)
EEI-1	HVAC + Water Heater	Yes	\$796,085.00	100%	\$796,085.00	20
EEI-2	Lighting	Yes	\$473,138.00	100%	\$473,138.00	20
EEI-3	Elevator	Yes	\$163,491.00	100%	\$163,491.00	25
	Qualifying Soft Costs		\$1,280,622.50	11%	\$140,473.54	
	Total		\$2,713,336.50		\$1,573,187.54	20.6

The Program is intended to assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects, as that term is defined in the Act (the “**Authorized Improvements**”). Obligations, including but not limited to special assessment reimbursement agreements, special assessment revenue bonds and revenue notes, loan obligations or other evidences of indebtedness, and nonprofit corporation securities (collectively, the “**Program Obligations**”) may be issued by the District or on behalf of the District by a third party. Program Obligations or the proceeds from the sale of the Program Obligations may be used to finance Authorized Improvements that benefit properties within the District and any costs incurred by the District in connection with the issuance of Program Obligations. Participating political subdivisions shall levy special assessments on real property included in the District, the payment of which may pay the Program Obligations and the costs of administering the Program. Special assessment payments levied to finance Authorized Improvements will be due and payable by property owners at the same time real property taxes are due; provided, however, that certain Program Obligations may require special assessments to be due and payable by property owners only to the extent that such property owners fail to pay an obligation of the property owner secured by special assessments, such as a loan, in which case special assessments will only be due and payable by property owners if actually levied.

Nothing in this Program Plan shall be construed as a representation on the part of any participating political subdivision, the District, the board of directors of the District, or any of the directors, officers, agents, members, independent contractors, or employees of the District or board of directors that the Program is the best financing option available. Property owners are advised to conduct independent research to determine the best course of action.

II. The District’s Governance and Program Administrator

The District shall be governed, pursuant to the District Documents and the Act, by the Board of Directors (“**Board**”) of the Athens Regional Energy Special Improvement District, Inc., a nonprofit corporation organized under the laws of the State of Ohio (the “**Corporation**”) to govern the District.

Pursuant to the Act, other Ohio law, and any Code of Regulations adopted for the governance of the Corporation, the Board may from time to time, and under such conditions as the Board determines, delegate any or all of the authority contained in this Program Plan to its sub-committee or to an agent, independent contractor, or employee of the District or the Board.

This Program Plan specifically contemplates that, as authorized in the Act, the District may contract for the services of a “**Program Administrator**.”

The Program Administrator may provide, without limitation, the following services: (i) pursuant to Part III of this Program Plan, developing and administering eligibility guidelines, creating and administering an application, setting criteria and developing a list of pre-approved contractors, procuring resources or cooperating with property owners to procure resources, and administering referrals; (ii) pursuant to Part IV of this Program Plan, marketing, program design, cooperating

Code Chapter 1710 and any requirements of the Board. No special assessments authorized, levied, assessed, or collected with respect to the Authorized Improvements described in this Program Plan or in any Supplemental Plan shall ever be used to pay the costs of any Authorized Improvements described in any other Program Plan or Supplemental Plan.

- (B) Application. The Board is hereby authorized to create, administer, amend, and abolish an application, including a pre-application, for participation in the Program. The Board further may set the terms and conditions for the application's use and evaluation.
- (C) Contractors. The Board is hereby authorized to require property owners to utilize pre-approved contractors to complete the Authorized Improvements. The Board is further authorized to create criteria for the approval of contractors and to determine which contractors meet the criteria and are approved. The Board may communicate which contractors have been pre-approved to property owners by any means the Board deems appropriate, and the Board shall determine whether property owners comply with its pre-approved contractor's requirements.

Nothing in this Program Plan or the District Documents shall be construed to be a recommendation or guarantee of reliability of pre-approved contractors by any participating political subdivision, the District, the Board, or any of the directors, officers, agents, members, independent contractors, or employees of the District or Board.

- (D) Procurement and Referrals. The Board is hereby authorized to procure supplies, services, contracts, financing, and other resources related to the completion of Authorized Improvements. The Board is further authorized to refer property owners to suppliers, service providers, contractors, lenders, and the providers of other resources related to the completion of Authorized Improvements and the administration of District activities.

Pursuant to ORC Section 1710.11, the Board shall adopt written rules prescribing competitive bidding procedures for the District and for Authorized Improvements undertaken by the District on behalf of property owners, which competitive bidding procedures may differ from competitive bidding procedures applicable to the participating political subdivision and may specify conditions under which competitive bidding is not required. Except as specified in the Act and in this Program Plan, the District Documents shall not be construed to eliminate or alter the competitive bidding procedures applicable to a participating political subdivision due to its status as a participating political subdivision.

- (E) Financing. The Board is hereby authorized to finance Authorized Improvements through the use or issuance of Program Obligations. The Board may hire such legal and financial professionals as may be required to successfully finance Authorized Improvements through the use or issuance of Program Obligations.

the calculation or billing of special assessments. The Board may hire such professionals as may be required to successfully administer special assessments.

- (G) Budgeting. The Board shall provide for the production of an annual report describing the District's budget, services delivered, revenues received, expenditures made, and other information about the District's activities. The annual report shall be made available to the Board and to the District's members. The Board may hire such professionals as may be required to successfully account for all District finances.
- (H) Auditing. The Board is hereby authorized to provide for an audit of the District in such manner as the Board deems appropriate. The Board may hire such professionals as may be required to successfully audit the District.
- (I) Annual Report. In accordance with Section 1710.04(D), the Board is hereby authorized, by the first day of March of each year, to submit to each member of the District and to the municipal executive, chief fiscal officer, and legislative authority of each municipal corporation with territory within the boundaries of the District and to the board of township trustees of each township with territory within the boundaries of the District a report of the District's activities and financial condition for the previous year.
- (J) Other Services. The Board is hereby authorized to provide any other services authorized by the Act.

V. Fees

Program Costs. The Board is hereby authorized to charge to property owners, as costs of administering the Program, any costs permitted by the Act. Such costs may include, without limitation, the following:

- (A) The cost of creating and operating the District, including creating and operating the Corporation, hiring employees and professional services, contracting for insurance, and purchasing or leasing office space or office equipment;
- (B) The cost of planning, designing, reviewing, facilitating the implementation of, and implementing Authorized Improvements or services under this Program Plan or any Supplemental Plan, including payment of architectural, engineering, legal, appraisal, insurance, consulting, energy auditing, and planning fees and expenses, and, for services under this Program Plan or any Supplemental Plan, the management, protection, and maintenance costs of public or private facilities;
- (C) Any costs of litigation, including but not limited to court costs, attorneys' fees, and expert witness fees, incurred by the District in implementing this Program Plan or any Supplemental Plans;

or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of energy efficiency credit programs.

Renewable Energy Credits. The Board is hereby authorized to adopt rules governing renewable energy credits associated with Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of renewable energy credit programs.

Monetizing Other Energy Efficiency or Renewable Energy Attributes. The Board is hereby authorized to adopt rules governing the monetization of any energy efficiency or renewable energy attributes of any Authorized Improvements financed with Program Obligations or the proceeds of Program Obligations. Property owners shall comply with Board requirements in furtherance of the monetization of such attributes.

VII. Statutory Requirements

As provided in the District Documents:

- (A) Additional territory may be added to the District in accordance with the Act and the rules established by the Board pursuant to Part III of this Program Plan.
- (B) The District Documents may be amended or supplemented in accordance with their terms.
- (C) As described in this Program Plan, the Board is authorized to implement and amend this Program Plan, any Supplemental Plan, and any other plans for Authorized Improvements, public improvements, and public services, all in accordance with the Act.
- (D) The public improvements to be provided by the District are the Authorized Improvements identified in the petition and Supplemental Plan. The area where the Authorized Improvements will be undertaken will be the area identified in each petition requesting formation of the District or in any petition requesting addition of real property to the District. The method of assessment shall be in proportion to the special benefits received by each property owner within the District as a result of Authorized Improvements.
- (E) For the purpose of levying an assessment, the Board may combine levies for Authorized Improvements and public services into one special assessment to be levied against each specially benefited property in the District.

VIII. Changes in State and Federal Law

Participation in the Program is subject to the District Documents' terms and conditions in effect from time to time during participation. The District reserves the right to change this New Program Plan and the terms and conditions of the District Documents at any time upon not less than five (5) days' prior written notice. No such change will affect a property owner's rights or obligations under this Program Plan, including, without limitation, the payment of special assessments as set forth in the District Documents.

If any provision of the District Documents is determined to be unlawful, void, or for any reason unenforceable, that provision shall be severed from these District Documents and shall not affect the validity and enforceability of any remaining provisions.

XI. Disclosure of Property Owner Information

The District and any participating political subdivision may disclose information of the District to any agent of the District or to third parties when such disclosure is essential either to the conduct of the District's business or to provide services to property owners, including but not limited to where such disclosure is necessary to (i) comply with any applicable law, (ii) enable the District and participating political subdivisions and their agents to provide services or otherwise perform their duties, and (iii) obtain and provide credit reporting information. In order to receive funding for the Program and to enable communication regarding the State of Ohio's energy programs, property owner's names and contact information may be disclosed to their current electric utilities. Property owner's name, contact information, and utility usage data further may be disclosed to the District and its agents for the purpose of conducting surveys and evaluating the Program. The District shall not disclose personal information to third parties for telemarketing, e-mail, or direct mail solicitation unless required to by law or court order.

Each owner of real property located within the District acknowledges that the District and any participating political subdivision is subject to Ohio public records laws, including Ohio Revised Code Section 149.43 *et seq.* Each property owner that executes this Program Plan agrees, on behalf of itself as an owner, and any and all agents, employees, contractors, or other parties who submit plans, proposals, drawings, trade secrets, copyrighted material, or other work products related to proposed or authorized improvements, to the disclosure of certain information as stated in this Part, and will indemnify and hold harmless the District and any participating political subdivision from liability for compliance with said laws.

XII. Initial Authorized Improvements

The Owner has requested and consented to certain special assessments to be levied by the City with respect to certain real property owned by the Owner (the "**Property**") and located on Athens County Auditor Parcel ID Number 3400700036406028 which Property is described more specifically in **Exhibit 1** attached to this Program Plan.

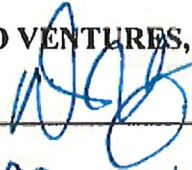
A proposed maximum schedule of special assessments to be assessed against the Property to pay the costs of the Authorized Improvements is attached hereto as **Exhibit 2**. The Owner hereby consents and agrees that the maximum schedule of special assessments represents the final hard

BY EXECUTING THIS PROGRAM PLAN, THE PROPERTY OWNER IDENTIFIED BELOW HEREBY AUTHORIZES AND CONSENTS TO THIS PROGRAM PLAN, AND ALL DISTRICT DOCUMENTS (AS DEFINED IN THE PROGRAM PLAN) AND AGREES TO PERFORM THE OBLIGATIONS OF THE PROPERTY OWNER CONTAINED IN THIS PROGRAM PLAN.

Date: Aug 15th, 2024.

Property Owner:

LOSTRO VENTURES, LLC

By: 

Name: David Kozm

Title: Authorized Rep.

Address for notices to Property Owner:

Lostro Ventures, LLC

[Property Owner Consent to Program Plan]

EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

The Property will be subject to special assessments for the Authorized Improvements in accordance with Ohio Revised Code Chapter 1710.

Total assessment costs:	\$2,351,485.92
Estimated semi-annual special assessments for 21 years:	\$55,987.76
Number of semi-annual assessments:	42
First semiannual installment due (approximately):	January 31, 2026

The schedule of Special Assessments for the Authorized Improvements is as follows:

Special Assessment Date*	Semi-Annual Special Assessment Installment Amount**
1/31/2026	\$55,987.76
7/31/2026	55,987.76
1/31/2027	55,987.76
7/31/2027	55,987.76
1/31/2028	55,987.76
7/31/2028	55,987.76
1/31/2029	55,987.76
7/31/2029	55,987.76
1/31/2030	55,987.76
7/31/2030	55,987.76
1/31/2031	55,987.76
7/31/2031	55,987.76
1/31/2032	55,987.76
7/31/2032	55,987.76
1/31/2033	55,987.76
7/31/2033	55,987.76
1/31/2034	55,987.76
7/31/2034	55,987.76
1/31/2035	55,987.76
7/31/2035	55,987.76
1/31/2036	55,987.76
7/31/2036	55,987.76
1/31/2037	55,987.76
7/31/2037	55,987.76
1/31/2038	55,987.76
7/31/2038	55,987.76
1/31/2039	55,987.76
7/31/2039	55,987.76
1/31/2040	55,987.76

EXHIBIT 3

Description of Authorized Improvements

The Authorized Improvements are expected to consist of the following energy efficiency elements:

Table 1. Efficiency Improvements Summary

EEI-#	EEI Description	Energy Savings	Improvement Costs (\$)	Allowable Financing Factor	Allowable CPACE-EEI Cost (\$)	Est Useful Life (yrs)
EEI-1	HVAC + Water Heater	Yes	\$796,085.00	100%	\$796,085.00	20
EEI-2	Lighting	Yes	\$473,138.00	100%	\$473,138.00	20
EEI-3	Elevator	Yes	\$163,491.00	100%	\$163,491.00	25
	Qualifying Soft Costs		\$1,280,622.50	11%	\$140,473.54	
	Total		\$2,713,336.50		\$1,573,187.54	20.6

- (B) To engage in any lawful act, activity or business not contrary to and for which a nonprofit corporation may be formed under the laws of the State of Ohio.
- (C) To have and exercise all powers, rights and privileges conferred by the laws of the State of Ohio on nonprofit corporations or on special improvement districts, including, but not limited to, buying, leasing or otherwise acquiring and holding, using or otherwise enjoying and selling, leasing or otherwise disposing of any interest in any property, real or personal, of whatever nature and wherever situated, and buying and selling renewable energy credits, stocks, bonds, or any other security of any issuer as the Corporation by action of its Board may, at any time and from time to time, deem advisable.
- (D) The reasons for establishing the District include the public health, safety, peace, convenience, and welfare by developing and assisting in developing special energy improvement projects that reduce the territory's carbon footprint, promote the District as a location for green technology job creation, benefit property within the District, and improve the environment.

THIRD:
RESTRICTIONS

In accordance with ORC Chapter 1702, no part of the net earnings of the Corporation shall inure to the benefit of any private person, including any of the Corporation's members, directors, trustees, or officers, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to the Corporation or allowed by the Corporation as reasonable allowance for authorized expenditures incurred on behalf of the Corporation.

FOURTH:
MEMBERS

The members of the Corporation ("Members") shall be those persons or organizations described in the Code of Regulations. The annual meeting of Members shall be determined by the Board of Directors ("Board") as described in the Code of Regulations.

FIFTH:
BOARD OF
DIRECTORS

The Corporation shall be controlled and managed under the direction of the Board. The Board shall at all times consist of at least five (5) individuals (individually a "Director").

- (A) The municipal executive, as defined in ORC Section 1710.01(D), provided that for each participating political subdivision that is a township, municipal executive shall refer to the chief administrative officer of the township, if any, or if no chief administrative officer exists, the board of township trustees, of each participating political subdivision of the District, or an employee of each participating political subdivision who is involved with its planning or economic development functions and who shall be appointed by and serve at the pleasure of such

Under ORC Chapter 1710, certain Directors of the Corporation are elected by the Members of the Corporation, are appointed by participating political subdivisions, or are identified by operation of ORC Chapter 1710 and, further, one of the District's purposes is to approve special energy improvement projects that benefit the property located within the District that, by operation of ORC Section 1710.03, is owned by a Member of the Corporation or governed by the participating political subdivision. As a direct result of such statutory requirements, a Director of the Corporation shall not be prohibited from participating in or voting upon actions relating to special energy improvement projects for which a Director has an interest either in its capacity as a Member of the Corporation or as a Director that was elected by such Member, appointed by a participating political subdivision, or identified by operation of ORC Chapter 1710.

No contract, action or other transaction shall be void or voidable because any Director or officer or other agent of the Corporation is a party thereto, or otherwise has any direct or indirect interest in such contract, action or transaction or in any other party thereto, or for reason that any interested director or officer or other agent of the Corporation authorizes or participates in authorization of such contract, action or transaction, provided that:

The material facts as to such interest and as to the contract, action or transaction are disclosed or are otherwise known to the Board or applicable committee of Directors at the time the contract, action or transaction is authorized and the Directors or the Members of the committee, in good faith reasonably justified by the facts, authorize the contract, action or transaction by at least a majority vote of the disinterested Directors or disinterested Members of the committee, even though such disinterested Directors or Members are less than a quorum; or

The material facts as to such interest and as to the contract, action or transaction are disclosed or are otherwise known to the member at the time the contract, action or transaction is authorized and the member authorizes the contract, action or transaction; or the contract, action or transaction (i) is not less favorable to the Corporation than an arm's length contract, action or transaction in which no director or officer or other agent of the Corporation has any interest or (ii) is otherwise fair to the Corporation as of the time it is authorized.

Any interested director may be counted in determining the presence of a quorum at any meeting of the Board or any committee thereof which authorizes the contract, action or transaction.

**EIGHTH:
DISSOLUTION**

The existence of the Corporation shall be perpetual, provided however, that the Corporation may be dissolved in accordance with the procedure proscribed under ORC Chapter 1710.13. No rights or obligations of any person under any contract, or in relation to any bonds, notes, or assessments made under this

0-78-24

Introduced by Council Member Swank, Chair
Planning & Development Committee

AN ORDINANCE DETERMINING TO PROCEED WITH THE
ACQUISITION, CONSTRUCTION, AND IMPROVEMENT OF CERTAIN
PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS, OHIO IN
COOPERATION WITH THE ATHENS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT.

WHEREAS, the City Council ("Council") of the City of Athens, Ohio ("City") duly adopted Ordinance No. 0-77-24 on [____], 2024 (the "Ordinance Approving Petition and Declaring Necessity"), (i) declaring the necessity of acquiring, constructing, and improving energy efficiency improvements, including, without limitation, HVAC (heating and cooling systems), domestic hot water systems, retrofitting of interior and exterior lighting, an elevator retrofit, and related improvements associated with the adaptive reuse of a 20-suite extended stay hotel and retail building (the "Project", as more fully described in the Petition referenced in this Ordinance) located on real property owned by Lostro Ventures, LLC (the "Owner") located at the commonly used mailing address 63 S. Court Street, Athens, Ohio, with Athens County Auditor Permanent Parcel Identification Number A027050001400 (the "Property", as more fully described in Exhibit A to the Petition); (ii) providing for the acquisition, construction, and improvement of the Project by the Owner, as set forth in the Owner's *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects* (the "Petition"), including by levying and collecting special assessments to be assessed upon the Property (the "Special Assessments") in an amount sufficient to pay the costs of the Project, which is estimated to be \$2,351,485.92 including other related costs of financing the Project, which may include, without limitation, the payment of principal of and interest on nonprofit corporate obligations issued to pay the costs of the Project and other interest, financing, credit enhancement, and issuance expenses and ongoing trustee fees and administrative fees and expenses of the Athens Regional Energy Special Improvement District, Inc., an energy special improvement district and nonprofit corporation under the laws of the State of Ohio, (the "District"); and (iii) determining that the Project will be treated as a special energy improvement project to be undertaken cooperatively by the City and the District; and,

WHEREAS, the claims for damages alleged to result from and objections to the Project have been waived by one hundred percent (100%) of the affected property owners; and,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Athens, Ohio, as follows:

SECTION I: Each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Petition.

SECTION II: This Council declares that its intention is to proceed with the acquisition, construction, and improvement of the Project described in the Petition and the Ordinance Approving Petition and Declaring Necessity. The Project shall be made in accordance with the provisions of the Ordinance Approving Petition and Declaring Necessity and with the plans, specifications, profiles, and estimates of cost previously approved and now on file with the Council and the Clerk of Council.

SECTION III: The aggregate maximum amount of Special Assessments to pay costs of the Project, which are estimated to be \$2,351,485.92, including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses, shall be assessed against the Property in the manner and in the number of semi-annual installments provided in the Petition and the Ordinance Approving Petition and Declaring Necessity. Each semi-annual Special Assessment payment represents the payment of a portion of any principal repayment and interest and administrative fees payable with respect to the Project. The Special Assessments shall be assessed against the Property commencing in tax year 2025 for collection in 2026 and shall continue through tax year 2045 for collection in 2046. In addition to the Special Assessments, the County Auditor of Athens County, Ohio may impose a special assessment collection fee with respect to each semi-annual payment, which amount, if imposed, will be added to the Special Assessments by the County Auditor of Athens County, Ohio.

SECTION IV: The estimated Special Assessments for costs of the Project prepared and filed in the offices of the Council and the Clerk of Council, in accordance with the Ordinance Approving Petition and Declaring Necessity, are adopted.

SECTION V: In compliance with Ohio Revised Code Section 319.61, the Council and the Clerk of Council are directed to deliver a certified copy of this Ordinance to the County Auditor of Athens County, Ohio within fifteen (15) days after the date of its passage.

SECTION VI: All contracts for the construction of the Project will be let in the manner provided by law, subject to the provisions of the Ohio Revised Code and the Petition, and the costs of the Project shall be financed as provided in the Ordinance Approving Petition and Declaring Necessity.

SECTION VII: This Council finds and determines that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

SECTION VIII: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. [_____] duly adopted by the City Council of the City of Athens, Ohio on [_____] , 2024 and that a true copy thereof was certified to the County Auditor of Athens County, Ohio within fifteen (15) days of its passage.

Clerk of Council
City of Athens, Ohio

RECEIPT OF ATHENS COUNTY AUDITOR FOR
LEGISLATION DETERMINING TO
PROCEED WITH ACQUISITION, CONSTRUCTION,
AND IMPROVEMENT OF CERTAIN PUBLIC
IMPROVEMENTS IN THE CITY OF ATHENS, OHIO
IN COOPERATION WITH THE ATHENS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT

I, Jill A. Davidson, the duly elected, qualified, and acting County Auditor in and for Athens County, Ohio hereby certify that a certified copy of Ordinance No. [] duly adopted by the City Council of the City of Athens, Ohio on [], 2024 and made effective on [], determining to proceed with the acquisition, construction, and improvement of certain public improvements in the City of Athens, Ohio in cooperation with the Athens Regional Energy Special Improvement District, was filed in this office on [], 2024.

WITNESS my hand and official seal at Athens, Ohio on [], 2024.

—
[SEAL]

County Auditor
Athens County, Ohio

0-79-24

Introduced by Council Member Swank, Chair
Planning & Development Committee

AN ORDINANCE LEVYING SPECIAL ASSESSMENTS FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS IN THE CITY OF ATHENS, OHIO IN COOPERATION WITH THE ATHENS ENERGY SPECIAL IMPROVEMENT DISTRICT, APPROVING AN ENERGY PROJECT COOPERATIVE AGREEMENT AND A SPECIAL ASSESSMENT AGREEMENT.

WHEREAS, Lostro Ventures, LLC (the "Owner") has submitted its *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects* (the "Petition") in order to provide for the completion of a special energy improvement project on real property owned by the Owner in the City of Athens, Ohio (the "City"); and

WHEREAS, this Council ("Council") of the City duly adopted Ordinance No. 0-77-24 on [____], 2024 (the "Resolution Approving Petition and Declaring Necessity") and declared the necessity of acquiring, constructing, improving and installing energy efficiency improvements on its real property, including, without limitation, HVAC improvements, water heater improvements designed to reduce heating and cooling, interior and exterior lighting improvements, an elevator retrofit, and related improvements associated with the adaptive reuse of a 20-suite extended stay hotel and retail building (the "Project"), as described in the Resolution Approving Petition and Declaring Necessity and as set forth in the Petition requesting those improvements; and,

WHEREAS, this Council duly passed Ordinance No. 0-78-24 on [____], 2024 and determined to proceed with the Project and adopted the maximum estimated Special Assessments (as defined in the Resolution Approving Petition and Declaring Necessity) filed with the Council and the Clerk of Council pursuant to the Resolution Approving Petition and Declaring Necessity; and,

WHEREAS, the City intends to enter into an Energy Project Cooperative Agreement (the "Energy Project Cooperative Agreement") with the District, the Owner, and the Peachtree Group (together with its successors and assigns, the "Investor") to provide for, among other things, (i) the making of the Project Advance (as defined in the Energy Project Cooperative Agreement and referred to herein as the "Project Advance") to pay costs of the Project, (ii) the disbursement of the Project Advance for the acquisition, installation, equipment, and improvement of the Project, and (iii) the delivery of the Special Assessments to the Investor by the City or by the County Auditor of Athens County, Ohio (the "County Auditor") on behalf of the City to pay principal and interest and other costs relating to the Project Advance; and,

WHEREAS, to provide for the security for the Project Advance and for the administration of payments on the Project Advance and related matters, the City intends to enter into the Special Assessment Agreement with the County Treasurer of Athens County, Ohio (the "County Treasurer"), the District, the Owner, and the Investor (the "Special Assessment Agreement"); and,

WHEREAS, the actual costs of the Project have been ascertained and have been certified to the City in the Petition and the Plan for the Project; and,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Athens, Ohio, as follows:

SECTION I: That each capitalized term not otherwise defined in this Ordinance or by reference to another document shall have the meaning assigned to it in the Ordinance Approving Petition and Declaring Necessity.

SECTION II: That the list of maximum Special Assessments to be levied and assessed on the Property in an amount sufficient to pay the costs of the Project, which is \$2,351,485.92, including other related financing costs incurred in connection with the issuance, sale, and servicing of securities, nonprofit corporate obligations, or other obligations issued to pay costs of the Project in anticipation of the receipt of the Special Assessments, capitalized interest on, and financing reserve funds for, such securities, nonprofit corporate obligations, or other obligations so issued, including any credit enhancement fees, trustee fees, and District administrative fees and expenses, which costs were set forth in the Petition and previously reported to this Council and are now on file with the Council and the Clerk of Council, is adopted and confirmed, and that the Special Assessments are levied and assessed on the Property. The interest portion of the Special Assessments, together with amounts used to pay administrative expenses, are determined to be substantially equivalent to the fair market rate or rates of interest that would have been borne by securities issued in anticipation of the collection of the Special Assessments if such securities had been issued by the Council.

As requested in the Petition, the final aggregate amount of the Special Assessments may be in an amount less than the aggregate maximum amount of \$2,351,485.92 if the final rate of interest for the financing for the Project is less than the assumed maximum rate of interest such that the aggregate amount of Special Assessments necessary to repay the financing for the Project is less than the aggregate amount of \$2,351,485.92, the Owner and the provider of the financing shall certify a final schedule of Special Assessments to the City, which final schedule shall be certified to the County Auditor for collection.

The Special Assessments are assessed against the Property commencing in tax year 2025 for collection in 2026 and shall continue through tax year 2045 for collection in 2046. The semi-annual installments of the Special Assessments shall be collected in each calendar year equal to a total maximum annual amount of Special Assessments as shown in Exhibit A, attached to and incorporated into this Ordinance.

All Special Assessments shall be certified by the Council or the Clerk of Council to the County Auditor of Athens County, Ohio pursuant to the Petition and Ohio Revised Code Chapter 727.33 to be placed on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

The Special Assessments shall be allocated among the parcels constituting the Property as set forth in the Petition and the List of Special Assessments attached to and incorporated into this Ordinance as Exhibit A.

SECTION III: That this Council finds and determines that the Special Assessments are in proportion to the special benefits received by the Property through the financing of the Project, as set forth in the Petition, and are not in excess of any applicable statutory limitation.

SECTION IV: That Owner has waived its right to pay the Special Assessments in cash, and all Special Assessments and installments of the Special Assessments shall be certified by the Council or the Clerk of Council to the County Auditor of Athens County, Ohio as provided by the Petition and Ohio Revised Code Section 727.33 to be placed by him or her on the tax list and duplicate and collected with and in the same manner as real property taxes are collected and as set forth in the Petition.

SECTION V: That the Special Assessments will be used by the City to provide for the Project in cooperation with the District in any manner, including assigning the Special Assessments actually received by the City to the District or to another party the City deems appropriate, and the Special Assessments are appropriated for such purposes.

SECTION VI: That the Council and the Clerk of Council shall keep the Special Assessments on file in their respective offices.

SECTION VII: That this Council hereby approves the Energy Project Cooperative Agreement, a copy of which is on file with the Clerk of Council. The Mayor and the Law Director, or their designee, shall sign and deliver, in the name and on behalf of the City, the Energy Project Cooperative Agreement, in substantially the form as is now on file with the Clerk of Council. The Energy Project Cooperative Agreement is approved, together with any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Mayor and the Law Director, or their designee, in the name and on behalf of the City, all of which shall be conclusively evidenced by the signing of the Energy Project Cooperative Agreement or amendments to the Energy Project Cooperative Agreement.

SECTION VIII: That this Council hereby approves the Special Assessment Agreement, a copy of which is on file in the office of the Clerk of Council. The Mayor and the Law Director, or their designee, shall sign and deliver, in the name and on behalf of the City, the Special Assessment Agreement, in substantially the form as are now on file with the Clerk of Council. The Special Assessment Agreement is approved, together with

any changes or amendments that are not inconsistent with this Ordinance and not substantially adverse to the City and that are approved by the Mayor and the Law Director, or their designee, on behalf of the City, all of which shall be conclusively evidenced by the signing of the Special Assessment Agreement or amendments to the Special Assessment Agreement.

SECTION IX: That the Safety Service Director is hereby authorized to enter into such other agreements that are not inconsistent with the Ordinance Approving Petition and Declaring Necessity and this Ordinance and that are approved by the Mayor and the Law Director, or their designee, on behalf of the City, all of which shall be conclusively evidenced by the signing of such agreements or any amendments to such agreements.

SECTION X: That in compliance with Ohio Revised Code Section 319.61, the Council and the Clerk of Council are directed to deliver a certified copy of this Ordinance to the County Auditor of Athens County, Ohio within twenty (20) days after its passage.

SECTION XI: That this Council finds and determines that all formal actions of Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements including Ohio Revised Code Section 121.22.

SECTION XII: That this Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

CERTIFICATE

The undersigned Clerk of Council hereby certifies that the foregoing is a true copy of Ordinance No. [] duly adopted by the City Council of the City of Athens, Ohio on [], 2024 and that a true copy thereof was certified to the County Auditor of Athens County, Ohio within fifteen (15) days of its passage.

Clerk of Council
City of Athens, Ohio

EXHIBIT A

**LIST OF SPECIAL ASSESSMENTS AND
SCHEDULE OF SPECIAL ASSESSMENTS**

LIST OF SPECIAL ASSESSMENTS

Name	Assessed Properties Description	Portion of Benefit and Special Assessment	Maximum Amount of Special Assessments
Lostro Ventures, LLC	A027050001400	100%	\$2,351,485.92

*As identified in the records of the Auditor of Athens County, Ohio as of June 24, 2024.

SCHEDULE OF SPECIAL ASSESSMENTS

The following schedule of Special Assessment charges shall be levied in forty-two (42) semi-annual installments with respect to first-half and second-half real property taxes in calendar years 2026 through 2046:

Special Assessment Payment Date*	Total Special Assessment Payment Amount**
1/31/2026	\$55,987.76
7/31/2026	55,987.76
1/31/2027	55,987.76
7/31/2027	55,987.76
1/31/2028	55,987.76
7/31/2028	55,987.76
1/31/2029	55,987.76
7/31/2029	55,987.76
1/31/2030	55,987.76
7/31/2030	55,987.76
1/31/2031	55,987.76
7/31/2031	55,987.76
1/31/2032	55,987.76
7/31/2032	55,987.76
1/31/2033	55,987.76
7/31/2033	55,987.76
1/31/2034	55,987.76
7/31/2034	55,987.76
1/31/2035	55,987.76
7/31/2035	55,987.76
1/31/2036	55,987.76
7/31/2036	55,987.76
1/31/2037	55,987.76
7/31/2037	55,987.76
1/31/2038	55,987.76
7/31/2038	55,987.76
1/31/2039	55,987.76
7/31/2039	55,987.76
1/31/2040	55,987.76
7/31/2040	55,987.76
1/31/2041	55,987.76
7/31/2041	55,987.76
1/31/2042	55,987.76
7/31/2042	55,987.76
1/31/2043	55,987.76
7/31/2043	55,987.76
1/31/2044	55,987.76
7/31/2044	55,987.76
1/31/2045	55,987.76
7/31/2045	55,987.76
1/31/2046	55,987.76
7/31/2046	55,987.76

** Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Schedule of Special Assessments are subject to adjustment by the Athens County Auditor under certain conditions.

*** The Auditor of Athens County, Ohio may impose a special assessment collection fee with respect to each semi-annual Special Assessment payment. If imposed, this special assessment collection fee will be added by the Auditor of Athens County, Ohio to each semi-annual Special Assessment payment.

RECEIPT OF ATHENS COUNTY AUDITOR FOR
LEGISLATION LEVYING SPECIAL ASSESSMENTS
FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING,
AND IMPROVING CERTAIN PUBLIC IMPROVEMENTS
IN THE CITY OF ATHENS IN COOPERATION WITH
THE ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT

I, Jill A. Davidson, the duly elected, qualified, and acting Auditor in and for Athens County, Ohio hereby certify that a certified copy of Ordinance No. [____], duly adopted by the Council of the City of Athens, Ohio on [____], 2024 and made effective on [____], levying special assessments for the purpose of acquiring, constructing, and improving certain public improvements in the City of Athens, Ohio in cooperation with the Athens Regional Energy Special Improvement District, including the List of Special Assessments and Schedule of Special Assessments, which Special Assessment charges are levied in forty-two (42) semi-annual installments with respect to real property taxes due in calendar years 2026 through 2046, was filed in this office on [____], 2024.

WITNESS my hand and official seal at Athens, Ohio on [____], 2024.

[SEAL]

Auditor
Athens County, Ohio

ENERGY PROJECT COOPERATIVE AGREEMENT

By and among

ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT;

LOSTRO VENTURES, LLC

[_____] ; and

CITY OF ATHENS, OHIO

Dated as of [_____] , 2024

BRICKER GRAYDON LLP

ENERGY PROJECT COOPERATIVE AGREEMENT

THIS ENERGY PROJECT COOPERATIVE AGREEMENT (the “Agreement”) is made and entered into as of [____], 2024 (the “Closing Date”), between the ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC., a nonprofit corporation and special improvement district duly organized and validly existing under the laws of the State of Ohio (the “State”) (the “ESID”), LOSTRO VENTURES, LLC, a limited liability company duly organized and validly existing under the laws of the State of Ohio (the “Owner”), [____], a limited liability company duly organized and validly existing under the laws of the State of [____] (together with its successors and assigns, the “Investor”), and the CITY OF ATHENS, OHIO, a municipal corporation and political subdivision duly organized and validly existing under the constitution and laws of the State (the “City”) (the capitalized terms used in this Agreement and not defined in the preamble and recitals have the meanings stated in **Exhibit A** to this Agreement):

A. The ESID was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to a Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects (the “Petition”) approved by Resolution No. [____] of the City Council of the City (the “City Council”). Pursuant to the same action, the Athens Regional Energy Special Improvement District Program Plan (as amended and supplemented from time to time, the “Plan”) was adopted as a plan for public improvements and public services under Ohio Revised Code Section 1710.02(F).

B. The ESID is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State to further the public purpose of implementing special energy improvement projects pursuant to the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 20 of the Ohio Constitution.

C. Pursuant to the Plan, the ESID, among other services, shall assist property owners, whether private or public, who own real property within participating political subdivisions to obtain financing for special energy improvement projects.

E. In order to obtain financing for special energy improvement projects and to create special assessment revenues available to pay and repay the costs of special energy improvement projects, the Petition requested that the City Council levy Special Assessments against the Owner’s property as more fully described in the Petition.

F. The ESID, the Owner, the Investor, and the City (collectively the “Parties,” and each, a “Party”) each have determined that the most efficient and effective way to implement the financing, acquisition, installation, equipping, and improvement of energy special improvement projects and to further the public purposes set forth above is through this Agreement, pursuant to the Special Assessment Act and on the terms set forth in this Agreement, with (i) the Investor providing the Project Advance to finance the costs of the special energy improvement projects described in the Petition, (ii) the ESID and the Owner cooperating to acquire, install, equip and improve special energy improvement projects, (iii) the Owner agreeing to make Special Assessment payments in an aggregate amount that will provide revenues sufficient to pay or repay the permitted costs of the special energy improvement projects, (iv) the City agreeing to assign and transfer all Special Assessment payments and Delinquency Amounts actually received by the

City to the Investor to repay the Project Advance and certain fees identified herein; and (v) the ESID agreeing to assign, transfer, and set over to the Investor any of its right, title, or interest in and to the Special Assessments which it may have by operation of law, this Agreement, or otherwise; provided that a portion of the Special Assessments may be retained by, or be payable to, the City, the County Auditor, or the ESID, all pursuant to and in accordance with this Agreement.

G. The Parties each have full right and lawful authority to enter into this Agreement and to perform and observe its provisions on their respective parts to be performed and observed, and have determined to enter into this Agreement to set forth their respective rights, duties, responsibilities, obligations, and contributions with respect to the implementation of special energy improvement projects within the ESID.

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, covenants, and agreements contained in this Agreement, the Parties agree as follows; provided, that any obligation of the ESID created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the ESID, or give rise to any pecuniary liability of the ESID, but any such obligation shall be payable solely from the Special Assessments and Delinquency Amounts actually received by the ESID, if any; and provided, further, that any obligation of the City created by or arising out of this Agreement never shall constitute a general obligation, bonded indebtedness, or a pledge of the general credit of the City, or give rise to any pecuniary liability of the City, but any such obligation shall be payable solely from the Special Assessments actually received by the City, if any:

ARTICLE I: DEFINITIONS

Section 1.1. Use of Defined Terms. In addition to the words and terms defined elsewhere in this Agreement or by reference to another document, words and terms used in this Agreement shall have the meanings set forth in **Exhibit A** to this Agreement unless the context or use clearly indicates another meaning or intent. Definitions shall apply equally to both the singular and plural forms of any of the words and terms. Words of any gender include the correlative words of the other gender, unless the sense indicates otherwise.

Section 1.2. Interpretation. Any reference in this Agreement to the ESID, the ESID Board, the Owner, the City, the City Council, the Investor, or to any member or officer of any of the foregoing, includes entities or officials succeeding to their respective functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions.

Any reference to a section or provision of the Constitution of the State or the Special Assessment Act, or to a section, provision or chapter of the Ohio Revised Code or any other legislation or to any statute of the United States of America, includes that section, provision, or chapter as amended, modified, revised, supplemented, or superseded from time to time; provided, however, that no amendment, modification, revision, supplement, or superseding section, provision, or chapter shall be applicable solely by reason of this provision if it constitutes in any way an impairment of the rights or obligations of the Parties under this Agreement.

Section 1.3. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and in no way define, limit, or describe the scope or intent of any of this Agreement's Articles, Sections, subsections, paragraphs, subparagraphs or clauses.

ARTICLE II: COOPERATIVE ARRANGEMENTS; ASSIGNMENT OF SPECIAL ASSESSMENTS

Section 2.1. Agreement Among the City, the ESID, and the Investor. The Owner and the ESID have requested the assistance of the Investor and the City in the financing of special energy improvement projects within the ESID. For the reasons set forth in this Agreement's Recitals—which Recitals are incorporated into this Agreement by this reference as a statement of the public purposes of this Agreement and the intended arrangements among the Parties—the City and the ESID have requested the assistance and cooperation of the Investor in the collection and payment of Special Assessments in accordance with this Agreement. The Parties intend this Agreement to be, and it shall be, an agreement among the Parties to cooperate in the financing, acquisition, installation, equipping, and improvement of “special energy improvement projects,” pursuant to Ohio Revised Code Chapter 1710, and as that term is defined in Ohio Revised Code Section 1710.01(I). The Parties intend this Agreement's provisions to be, and they shall be construed as, agreements to take effective cooperative action and to safeguard the Parties' interests.

Upon the considerations stated above and upon and subject to the terms and conditions of this Agreement, the Investor, on behalf of the Parties, shall make the Project Advance available to the Owner to pay the costs of the Project. The City and the ESID shall assign, transfer, set over, and pay the Special Assessments actually received by the City or the ESID, respectively, to the Investor, to pay the costs of the Project at the times and in the manner provided in this Agreement, including, without limitation, by repaying the principal of and paying any interest on the Project Advance to the Investor; provided, however, that the City, the ESID, and the Investor intend that the City shall receive all Special Assessments and Delinquency Amounts from the County Treasurer and shall transfer, set over, and pay all Special Assessments and Delinquency Amounts received from the County Treasurer directly to the Investor. The City, the ESID, and the Investor further intend and agree that the Investor shall pay to the ESID, out of the Special Assessments received by the Investor, a semi-annual ESID fee for the ESID's administrative expenses; provided, however, that if the amount of Special Assessments received by the Investor in any year are insufficient to pay the principal of, and interest on the Project Advance due in that year, and the semi-annual ESID Fee, the Special Assessments received shall first be applied to the payment of interest on the Project Advance, then to the repayment of the principal of the Project Advance, and then to the payment of the semi-annual ESID Fee.

Notwithstanding anything in this Agreement to the contrary, any obligations of the City under this Agreement, including the obligation to transfer the Special Assessments and Delinquency Amounts received by the City to the Investor, shall be a special obligation of the City and shall be required to be made only from Special Assessments actually received by or on behalf of the City, if any. The City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the City's faith and credit or taxing power, and the ESID, the Owner, and the Investor do not have and shall not have any right to have taxes levied by the City for the transfer of the Special Assessments.

Section 2.2. Special Assessments; City Transfer of Special Assessments.

- (a) The Special Assessment Proceedings. The City has taken all necessary actions required by the Special Assessment Act to levy and collect the Special Assessments on the Property.

Pursuant to Ohio Revised Code Section 727.33, the City has certified the Special Assessments to the County Auditor for collection, and the County Auditor shall collect the unpaid Special Assessments with and in the same manner as other real property taxes and pay the amount collected to the City. The Parties intend that the County Auditor and the County Treasurer shall have the duty to collect the Special Assessments through enforcement proceedings in accordance with applicable law.

- (b) Collection of Delinquent Special Assessments. The ESID and the Investor are hereby authorized to take any and all actions as assignees of and, to the extent required by law, in the name of, for, and on behalf of, the City to collect delinquent Special Assessments levied by the City pursuant to the Special Assessment Act and to cause the lien securing the delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings. The proceeds of the enforcement of any such lien shall be deposited and used in accordance with this Agreement.

- (c) Prepayment of Special Assessments. The Parties agree that the Special Assessments assessed against the Property and payable to the City pursuant to the Special Assessment Act may be prepaid to the Investor by the Owner in accordance with Section 4.7 of this Agreement. Except as set forth in this Section 2.2(c) and Section 4.7 of this Agreement, the Owner shall not prepay any Special Assessments. Notwithstanding the foregoing, if the Owner attempts to cause a prepayment of the Special Assessments by paying to the County Treasurer any amount as a full or partial prepayment of Special Assessments, and the Owner shall provide written notice to the Investor of such prepayment, and if the City shall have knowledge of the same, the City shall promptly notify the Investor, and, unless provided the express written consent of the Investor, the City shall not cause any reduction in the amount of the Special Assessments. Except as specifically provided in this Agreement to the contrary, no other action pursuant to any provision of this Agreement shall abate in any way the payment of the Special Assessments by the Owners of the Property or the transfer of the Special Assessments by the City to the Investor.

- (d) Reduction of Special Assessments. The Parties agree that the Special Assessments may be subject to reduction, but only upon the express written consent or instruction of the Investor, such written consent or instruction to be provided by Investor to the City within twenty (20) days of the receipt of any prepayment by

Owner as set forth in this Agreement. If the Owner causes the Special Assessments to be prepaid in accordance with Sections 2.2(c) and 4.7 of this Agreement, upon the City's receipt of the Investor's express written consent or instruction, including the Investor's calculation of the amount of Special Assessments remaining, the City shall certify to the County Auditor, prior to the last date in the then-current tax year on which political subdivisions may certify special assessments to the County Auditor, a reduction in the amount of Special Assessments collected such that, following such reduction, the amount of Special Assessments remaining to be paid shall be equal to the amounts necessary to pay, as and when due, the remaining outstanding principal of the Project Advance, together with interest at the annual rate of []%, and a semi-annual ESID Fee. The parties acknowledge and agree that County Auditor may calculate, charge, and collect a collection fee on each installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Notwithstanding anything in this Agreement to the contrary, the City shall not cause any reduction in the amount of the Special Assessments without the prior written consent or instruction of the Investor.

- (e) Assignment of Special Assessments. The City agrees that it shall establish its funds for the collection of the Special Assessments as separate funds maintained on the City's books and records and to be held in the custody of a bank with which the City maintains a depository relationship. The City hereby assigns to the Investor all of its right, title and interest in and to: (i) the Special Assessments received by the City under this Agreement, (ii) the City's special assessment funds established for the Project, and (iii) any other property received or to be received from the City under this Agreement. The City further shall transfer, set over, and pay the Special Assessments and Delinquency Amounts to the Investor in accordance with this Agreement. The ESID acknowledges and consents to the City's assignment of the Special Assessments to the Investor. The Parties agree that each of the City, the ESID, and the Investor, as assignee of the Special Assessments, is authorized, together or individually, to take any and all actions, whether at law, or in equity, to collect delinquent Special Assessments levied by the City pursuant to law and to cause the lien securing any delinquent Special Assessments to be enforced through prompt and timely foreclosure proceedings, including, but not necessarily limited to, filing and prosecution of mandamus or other appropriate proceedings to induce the County Prosecutor, the County Auditor, and the County Treasurer, as necessary, to institute such prompt and timely foreclosure proceedings.
- (f) Transfer of Special Assessments. The parties anticipate that semi-annual installments of the Special Assessments and Delinquency Amounts will be paid to the City by the County Auditor and the County Treasurer in accordance with Ohio Revised Code Chapters 319, 321, 323, and 727, which, without limiting the generality of the foregoing, contemplates that the County Auditor and County Treasurer will pay the Special Assessments and Delinquency Amounts to the City on or before June 1 and December 1 of each year. Immediately upon receipt of any moneys received by the City as Special Assessments and Delinquency Amounts,

but in any event not later than 21 calendar days after the receipt of such moneys and the corresponding final settlement from the County Auditor, the City shall deliver to the Investor all such moneys received by the City as Special Assessments and Delinquency Amounts by ACH or check as determined in the sole discretion of the City. The Investor shall provide the City with account and payment information in the form of **Exhibit F** on the Closing Date. The Investor may from time to time provide updated written account and payment information in the form of **Exhibit F** to the City for the payment of Special Assessments and Delinquency Amounts, but the City shall maintain its right to send the special assessments by ACH or check in its sole discretion. If at any time during the term of this Agreement the County Auditor agrees, on behalf of the City, to disburse the Special Assessments and Delinquency Amounts to the Investor pursuant to instructions or procedures agreed upon by the County Auditor and the City, then, upon each transfer of an installment of the Special Assessments and Delinquency Amounts from the County Auditor to the Investor, the City shall be deemed to have satisfied all of its obligations under this Agreement to transfer that installment of the Special Assessments and Delinquency Amounts to the Investor.

- (g) **Repayment of Project Advance.** The Investor shall credit, on the dates shown on the Repayment Schedule (which is attached to, and incorporated into, this Agreement as **Exhibit B**), Special Assessments in the amounts shown on the Repayment Schedule to the payment of accrued interest on the Project Advance and to the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Investor, on the dates shown on the Repayment Schedule, further shall pay to the ESID, after the payment of accrued interest on the Project Advance, the repayment of the portion of principal of the Project Advance scheduled to be repaid on such date, the payment of a semi-annual ESID Fee of [____] or such lesser amount as may be available from the Special Assessments on the applicable date after the payment of accrued interest on the Project Advance and the repayment of the portion of the principal of the Project Advance scheduled to be repaid on such date. The Parties acknowledge and agree that the County Auditor may calculate, charge, and collect a fee on each installment of the Special Assessments in an amount that the County Auditor deems necessary to defray the expense of collecting the Special Assessments pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties, and that such fee shall be paid to the County Auditor with the Special Assessments, and that the County Auditor will retain such fee.

Section 2.3. **Obligations Unconditional; Place of Payments.** The City's obligation to transfer the Special Assessments and any Delinquency Amounts to the Investor under Section 2.2 of this Agreement shall be absolute and unconditional, and the City shall make such transfers without abatement, diminution, or deduction regardless of any cause or circumstance whatsoever, including, without limitation, any defense, set-off, recoupment, or counterclaim which the City may have or assert against the Investor, the ESID, or the Owner; provided, however, that the City's obligation to transfer the Special Assessments and any Delinquency Amounts is limited to the Special Assessments and any Delinquency Amounts actually received by or on behalf of the City,

and nothing in this Agreement shall be construed to obligate the City to transfer or pledge, and the City shall not transfer or pledge any special assessments not related to the ESID.

Section 2.4. Appropriation by the City; No Further Obligations. Upon the Parties' execution of this Agreement, all of the Special Assessments and any Delinquency Amounts received or to be received by the City shall be deemed to have been appropriated to pay the City's obligation under this Agreement to pay to the Investor all Special Assessments and any Delinquency Amounts received by the City. During the years during which this Agreement is in effect, the City shall take such further actions as may be necessary or desirable in order to appropriate the transfer of the Special Assessments and any Delinquency Amounts actually received by the City in such amounts and at such times as will be sufficient to enable the City to satisfy its obligation under this Agreement to pay to the Investor all Special Assessments and any Delinquency Amounts received by the City; provided that the City shall not be responsible for the costs and expenses of any collection or enforcement actions, except to the extent of any Special Assessments and Delinquency Amounts actually received by the City; and provided further that nothing in this paragraph shall be construed as a waiver of the City's right to be indemnified pursuant to Section 6.4 of this Agreement or pursuant to the Special Assessment Agreement. The City has no obligation to use or apply to the payment of the Special Assessments and any Delinquency Amounts any funds or revenues from any source other than the moneys received by the City as Special Assessments and any Delinquency Amounts; provided, however, that nothing in this Agreement shall be deemed to prohibit the City from using, to the extent that it is authorized to do so, any other resources for the fulfillment of any of this Agreement's terms, conditions, or obligations.

Section 2.5. Security for Advanced Funds. To secure the transfer of the Special Assessments and any Delinquency Amounts by the City to the Investor, and in accordance with the Special Assessment Act, the ESID hereby assigns, transfers, sets over, and shall pay all of its right, title, and interest in and to the Special Assessments and any Delinquency Amounts related to the ESID actually received by or on behalf of the City to the Investor. The Owner and the City agree and consent to that assignment.

ARTICLE III: REPRESENTATIONS, WARRANTIES, AND AGREEMENTS

Section 3.1. The City's Representations and Warranties. The City represents and warrants that:

- (a) It is a municipal corporation and political subdivision duly organized, and validly existing under the Constitution and applicable laws of the State.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the City that would impair its ability to carry out its obligations contained in this Agreement.
- (c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the City's knowledge, that execution, delivery and performance does not and will not violate

or conflict with any provision of law applicable to the City and does not and will not conflict with or result in a default under any agreement or instrument to which the City is a party or by which it is bound.

- (d) It, by proper action, duly has authorized, executed, and delivered this Agreement, and the City has taken all steps necessary to establish this Agreement and the City's covenants and agreements within this Agreement, as valid and binding obligations of the City, enforceable in accordance with their terms.
- (e) There is no litigation pending, or to its knowledge threatened, against or by the City in which an unfavorable ruling or decision would materially adversely affect the City's ability to carry out its obligations under this Agreement.
- (f) The assignment contained in Section 2.2(e) is a valid and binding obligation of the City with respect to the Special Assessments received by the City under this Agreement.

Section 3.2. The ESID's Representations and Warranties. The ESID represents and warrants that:

- (a) It is a nonprofit corporation and special improvement district, duly organized, and validly existing under the Constitution and applicable laws of the State.
- (b) It is not in violation of or in conflict with any provisions of the laws of the State or of the United States of America applicable to the ESID that would impair its ability to carry out its obligations contained in this Agreement.
- (c) It is legally empowered to execute, deliver and perform this Agreement and to enter into and carry out the transactions contemplated by this Agreement. To the ESID's knowledge, that execution, delivery and performance does not and will not violate or conflict with any provision of law applicable to the ESID and does not and will not conflict with or result in a default under any agreement or instrument to which the ESID is a party or by which it is bound.
- (d) It, by proper action, duly has authorized, executed, and delivered this Agreement, and the ESID has taken all steps necessary to establish this Agreement and the ESID's covenants and agreements within this Agreement as valid and binding obligations of the ESID, enforceable in accordance with their terms.
- (e) There is no litigation pending, or to its knowledge threatened, against or by the ESID in which an unfavorable ruling or decision would materially adversely affect the ESID's ability to carry out its obligations under this Agreement.
- (f) The ESID shall provide an opinion of PACE Counsel dated as of the Closing Date to the addressees included in such opinion regarding the enforceability and compliance with applicable law of the Agreement, the Special Assessment Agreement, and the Petition.

- (g) The assignment contained in Section 2.5 is a valid and binding obligation of the ESID with respect to the ESID's right, title and interest in the Special Assessments under this Agreement.

Section 3.3. The Owner's Representations and Warranties. The Owner represents and warrants that:

- (a) It is a limited liability company duly organized, validly existing and in full force and effect under the laws of the State of Ohio. It has all requisite power to conduct its business as presently conducted and to own, or hold under lease, its assets and properties, and, is duly qualified to do business in all other jurisdictions in which it is required to be qualified, except where failure to be so qualified does not have a material adverse effect on it, and will remain so qualified and in full force and effect during the period during which Special Assessments shall be assessed, due, and payable.
- (b) It, by proper action, duly has authorized, executed, and delivered the Transaction Documents, and it has taken all steps necessary to establish this Agreement and its covenants and agreements within this Agreement as valid and binding obligations, enforceable in accordance with their terms
- (c) There are no actions, suits or proceedings pending or, to its knowledge, threatened against or affecting it, the Property, or the Project that, if adversely determined, would individually or in the aggregate materially impair its ability to perform any of its obligations under this Agreement, or materially adversely affect its financial condition (an "Action"), and during the term of this Agreement, the Owner shall promptly notify the Investor of any Action commenced or to its knowledge threatened against it.
- (d) It is not in default under this Agreement, and no condition, the continuance in existence of which would constitute a default under this Agreement exists. It is not in default in the payment of any Special Assessments or under any agreement or instrument related to the Special Assessments which has not been waived or allowed.
- (e) Except for any financing of the Property and the lien related thereto that Owner has previously disclosed in writing (including, without limitation, the Senior Loan from the Senior Lender), it has as of the date of this Agreement made no contract or arrangement of any kind, other than this Agreement, which has given rise to, or the performance of which by the other party thereto would give rise to, a lien or claim of lien on its Project, except inchoate statutory liens in favor of suppliers, contractors, architects, subcontractors, laborers or materialmen performing work or services or supplying materials in connection with the acquiring, installing, equipping and improving of its Project.
- (f) No representation or warranty made by it contained in this Agreement, and no statement contained in any certificate, schedule, list, financial statement or other

instrument furnished to the Investor or the ESID by it or on its behalf contained, as of the date thereof, any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

- (g) Since the date of the most recent financial statements of the Owner provided to the Investor, there has been no material adverse change in the financial condition of the Owner, nor has the Owner mortgaged, pledged or granted a security interest in or encumbered the Property since such date, except as otherwise disclosed to the Investor in writing, and the financial statements which have been delivered to the Investor prior to the Closing Date are true, correct, and current in all material respects and fairly represent the respective financial conditions of the subjects of the financial statements as of the respective dates of the financial statements.
- (h) The Owner has good and marketable title to its Property, subject only to existing liens, pledges, encumbrances, charges or other restrictions of record previously disclosed by the Owner to the Investor in writing, liens for taxes not yet due and payable, and minor liens of an immaterial nature.
- (i) The Project complies in all material respects with all applicable zoning, planning, building, environmental and other regulations of each Governmental Authority having jurisdiction of the Project, and all necessary permits, licenses, consents and permissions necessary for the Project have been or will be obtained.
- (j) The plans and specifications for the Project are satisfactory to the Owner, have been reviewed and approved by the general contractor for the Project, the tenants under any leases which require approval of the plans and specifications, the purchasers under any sales contracts which require approval of the plans and specifications, any architects for the Project, and, to the extent required by applicable law or any effective restrictive covenant, by all Governmental Authorities and the beneficiaries of any such covenants; all construction of the Project, if any, already performed on the Property has been performed on the Property in accordance with such approved plans and specifications and the restrictive covenants applicable to the plans and specifications; there are no structural defects in the Project or violations of any requirement of any Governmental Authorities with respect to the Project; the planned use of the Project complies with applicable zoning ordinances, regulations, and restrictive covenants affecting the Property as well as all environmental, ecological, landmark and other applicable laws and regulations; and all requirements for such use have been satisfied.
- (k) The Owner has the Required Insurance Coverage and will maintain the Required Insurance Coverage at all times during the term of this Agreement, while any principal of or interest on the Project Advance remains outstanding, and while any Special Assessments remain to be paid. Any return of insurance premium or dividends based upon the Required Insurance Coverage shall be due and payable solely to the Owner or its Lender pursuant to any agreements between the Owner

and its Lender, unless such premium shall have been paid by the Investor, in accordance with the distribution priority specified in Section 4.3.

- (l) Each Disbursement Request Form presented to the Investor, and the receipt of the funds requested by the Disbursement Request Form, shall constitute an affirmation that the representations and warranties contained in this Agreement remain true and correct as of the date of the Disbursement Request Form and the receipt of the funds requested by the Disbursement Request Form.
- (m) Each of the Property and the Project are, and at all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, used solely for the commercial purposes disclosed by the Owner to the Investor in writing.
- (n) The Project and the plans and specifications for the Project have been developed pursuant to an energy analysis prepared by the Investor, which energy analysis demonstrates that the Project is expected to generate \$[] in annual energy savings.
- (o) Each of the components of the Project is a qualified “special energy improvement project” pursuant to the definition of that term in Ohio Revised Code Section 1710.01(I).
- (p) The Owner is not insolvent, and the consummation of the financing described in this Agreement will not render Owner insolvent.
- (q) At all times during the term of this Agreement, while any principal of or interest on the Project Advance remain outstanding, and while any Special Assessments remain to be paid, the Owner shall comply in all respects with the Special Assessment Act, and shall take any and all action necessary to remain in compliance with the Special Assessment Act.
- (r) All statements set forth in this Section 3.3 are true and correct in all material respects.

Section 3.4. The Owner’s Additional Agreements. The Owner agrees that:

- (a) It shall not transfer or convey any right, title, or interest, in or to the Property and the Project, except after giving prompt notice of any such transfer or conveyance to the Investor; provided, however, that the foregoing restrictions shall not apply to the grant or conveyance of any leasehold interests, mortgage interest, or lien interest, except as may be otherwise provided in this Agreement. Before or simultaneous with any such transfer or conveyance, the Owner shall (i) execute, cause the transferee or purchaser to execute, and deliver to the Investor, the City, and the ESID a fully executed “Assignment and Assumption of Energy Project Cooperative Agreement” in the form attached to, and incorporated into, this Agreement as **Exhibit E**; (ii) execute, cause the transferee or purchaser to execute, and deliver to the Investor, an assignment of all construction contracts related to

the Project, and (iii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement and the Owner Consent.

- (b) It shall pay when due all taxes, assessments, service payments in lieu of taxes, levies, claims and charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Property, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Property and all assessments and charges lawfully made by any governmental body for public improvements that may be secured by a lien on any portion of the Property. The Owner shall furnish the Investor, upon reasonable request, with proof of payment of any taxes, governmental charges, utility charges, insurance premiums or other charges required to be paid by the Owner under this Agreement. The Parties acknowledge and agree that the foregoing obligation is in addition to the Owner's obligation to pay the Special Assessments.
- (c) It shall not, without the prior written consent of the Investor, cause or agree to the imposition of any special assessments, other than the Special Assessments, on the Property for the purpose of paying the costs of "special energy improvement projects," as that term is defined in Ohio Revised Code Section 1710.01(I), as amended and in effect at the time.
- (d) It shall promptly pay and discharge all undisputed claims for labor performed and material and services furnished in connection with the acquisition, installation, equipping, and improvement of the Project.
- (e) Once annually until the Completion Date, the chief financial officer of the Owner shall provide the Investor with a certificate setting forth all sources and uses of funds with respect to the Project.
- (f) It promptly shall notify the Investor of any material damage or destruction to the Project or the Property.
- (g) Upon the reasonable request of the Investor, it shall take any actions and execute any further certificates, instruments, agreements, or documents as shall be reasonably necessary in connection with the performance of this Agreement and with the transactions, obligations, and undertakings contained in this Agreement.
- (h) It shall not cause the Property to be subdivided, platted, or otherwise separated into any additional parcels in the records of the County Auditor.
- (i) It does not and will not engage in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of hazardous materials or hazardous wastes, as defined in applicable state law, or any other federal, state or local environmental laws or regulations, and neither the Property

nor any other of its premises has been so used previously, in each case, except as previously disclosed in writing to the Investor. Notwithstanding the foregoing, Owner may use commercially acceptable and lawful hazardous materials and substances used in connection with the ownership and operation of seniors and residential housing and care communities. There are no underground storage tanks located on the Property. There is no past or present non-compliance with environmental laws, or with permits issued pursuant thereto, in connection with the Property, which has not been fully remediated in accordance with environmental laws. There is no environmental remediation required (or anticipated to be required) with respect to the Property. The Owner does not know of, and has not received, any written or oral notice or other communication from any person (including but not limited to a governmental entity) relating to hazardous substances or remediation of hazardous substances, of possible liability of any person pursuant to any environmental law, other environmental conditions in connection with the Property, or any actual or potential administrative or judicial proceedings in connection with the foregoing.

- (j) It shall, until such times as the Project Advance is paid in full, provide to the Investor within 30 days of written request therefor, copies of all utility bills for the Property for the period of time so requested, including, but not limited to water, gas, and electricity bills. Further, Owner will, within 30 days of request therefor, execute a consent to electronic data interface or similar document supplied by Investor allowing Investor to receive utility bills for the Property directly from the Property's utility providers. Investor shall use the information obtained in such utility reporting only for the purpose of tracking energy savings and energy use intensity provided by the installation and operation of the Project on the Property. Data shall be protected by Investor and will not be sold or reused for other purposes.

ARTICLE IV: PROJECT ADVANCE; CONSTRUCTION OF PROJECT; REPAYMENT

Section 4.1. Project Advance. The Investor has made available to the Owner the Project Advance in the amount of \$[] of which \$[] will be net funded into the Project Account (as defined below) for disbursement pursuant to Section 4.2, closing costs in the amount of \$[] will be disbursed by the Investor in accordance with Section 4.2 and **Exhibit C**, and capitalized interest in the amount of \$[] will be retained for the account of the Investor for further payment to itself and the EISD in accordance with this Agreement. As further provided in, and subject to, the Disbursing Agreement, the Investor shall hold the Project Advance in a segregated account established in the custody of the Investor, which account shall be referred to as the "Project Account." Subject to the terms and conditions of this Agreement and the Disbursing Agreement, the Investor, upon the direction of the Owner, shall disburse amounts on deposit in the Project Account to the Owner or to such parties as may be named by the Owner in order to pay the costs of the Project.

If the Project Advance net funded to the Owner is insufficient to pay the costs of the Project pursuant to this Agreement, the Owner, nevertheless, shall complete the acquisition, installation, equipping, and improvement of its Project, and the Owner shall pay all such additional costs of its

Project from its own funds. The Owner shall not be entitled to reimbursement for any such additional costs of its Project, nor shall it be entitled to any abatement, diminution, or postponement of the Special Assessments.

Section 4.2. Disbursements. In order to cause disbursement of amounts on deposit in the Project Account to pay or reimburse the costs of the Project, the Owner shall submit Disbursement Request Forms (a form of which is attached to the Disbursing Agreement as Exhibit B) to the Investor. Each Disbursement Request Form shall, in part, set forth the payments or reimbursements requested, and shall be accompanied by invoices or other appropriate documentation supporting the payments or reimbursements requested. In addition, the following shall occur:

- (a) With each Disbursement Request Form:
 - (i) The Owner shall deliver to the Investor proof that each project milestone has occurred;
 - (ii) The Owner shall deliver to the Investor copies of all related receipts and invoices;
 - (iii) The Owner shall deliver to the Investor signed lien waivers in the form attached to the Disbursement Request Form as Schedule 2;
 - (iv) The Owner shall deliver to the Investor, as necessary, bank information for wiring the amounts requested for disbursement;
 - (v) The Investor shall have received copies of all other disbursement requests for disbursements of other sources of funds, including from the loan from the Owner's Lender, that have been submitted on or prior to the date on which the related Disbursement Request is submitted, and all such disbursement requests shall have been validly approved in accordance with the Lender Loan Documents; and
 - (vi) All of the conditions to disbursement under the Disbursing Agreement shall have been satisfied.
- (b) With the first Disbursement Request Form submitted, in addition to the documents required under Section 4.2(a):
 - (i) The Owner shall deliver to the Investor copies of all construction permits required for the construction of the Project;
 - (ii) The Owner shall deliver to the Investor copies of all agreements with the general contractor performing work or furnishing materials for the Project;
 - (iii) The Owner shall deliver to the Investor a construction schedule completed by the general contractor for the Project, which includes an anticipated date of completion of the Project; and
 - (iv) The Owner shall deliver to the Investor copies of all current policies of the Required Insurance Coverage;
 - (v) The construction plans and specifications shall have been approved in all respects by the Investor in its reasonable discretion;
 - (vi) The budget shall have been approved by the Investor in its reasonable discretion;

- (vii) The Owner shall deliver to the Investor the written consent of its existing mortgage lender to the levying, assessment, and collection of the Special Assessments, in the form attached to this Agreement as **Exhibit D**;
 - (viii) The Owner shall provide to the Investor evidence acceptable to the Investor, in its reasonable discretion, that the City Council and the ESID have approved the Project;
 - (ix) The Investor shall receive the executed Special Assessment Agreement and Owner Consent and evidence that the Owner Consent has been recorded in the records of the Recorder of Athens County, Ohio with respect to the Property;
 - (x) The Owner and the ESID shall provide to the Investor original executed copies of this Agreement and any related certificates;
 - (xi) The Owner shall provide to the Investor a list of authorized representatives on whose instructions and directions the Investor may rely until such time as an updated list has been provided.
- (c) With the final Disbursement Request Form, in addition to the documents required under Section 4.2(a):
- (i) The Owner shall deliver to the Investor the final lien waiver and release;
 - (ii) The Owner shall deliver to the Investor the executed Completion Certificate; and
 - (iii) The Owner shall deliver to the Investor copies of all completion inspections and closed permits with respect to the Project.

Upon its receipt of each completed Disbursement Request Form, the Investor shall approve all or a portion of the payment or reimbursements requested to be disbursed from the Project Account. To the extent the Investor approves the payment or reimbursements requested to be disbursed from the Project Account, the Investor shall pay the Owner or such other parties as are indicated on the Disbursement Request Form the amounts described on such Disbursement Request Form which have been approved by the Investor.

Additionally, on the Closing Date, the Investor shall disburse closing costs related to the financing described in this Agreement in an amount not to exceed \$[____], as detailed in **Exhibit C** to this Agreement. Without limiting the generality of the foregoing, disbursements made pursuant to this paragraph may be for fees to the Investor, fees to the ESID, legal fees, fees to the City, and other closing costs or contingencies.

If at any time an Event of Default has occurred and is continuing under this Agreement, the Investor may withhold approval of any requests for disbursement until the Event of Default is cured and its effects are removed.

Section 4.3. **Casualties and Takings**. The Owner shall promptly notify the Investor if the Project is damaged or destroyed by fire, casualty, injury or any other cause (each such occurrence, a "Casualty"). Upon the occurrence of such Casualty, the Owner's Lender, if any, may elect, in accordance with the provisions of the applicable loan documents between the Owner and Owner's Lender, to restore the Property and the Project or to terminate the construction of the

Project, and in either case, to direct the application of the insurance proceeds pursuant to the terms of Owner's Lender's agreement with the Owner, provided that if the insurance proceeds are not used to restore the Property and the Project, insurance proceeds will be distributed to the Owner's Lender and to the Investor in accordance with their insured interests, and any excess proceeds will be paid to the Owner.

Upon the occurrence of a Casualty, if no Person is a Lender at the time of such Casualty, the insurance proceeds shall be applied to pay the costs of the restoration of the Project or to the repayment of the outstanding balance of the Special Assessments, and in which case the Investor shall remain obligated to make disbursements of up to the total amount of the Project Advance in accordance with this Agreement.

In the event restoration of the Project or the Property is pursued, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Investor's reasonable judgment, said insurance proceeds are insufficient to complete the restoration, the Owner shall deposit with the Investor such amounts as are necessary, in the Investor's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event any part of the Property or the Project shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (a "Taking"), the Owner's Lender, if any, may elect, in accordance with the provisions of the applicable loan documents between Owner and Owner's Lender, not to restore the Property or the Project or to restore the Property or the Project, and in either case, to direct the application of the proceeds of the Taking pursuant to the terms of its agreements with the Owner, provided that if the Takings proceeds are not used to restore the Property and the Project, Takings proceeds will be distributed to Owner's and to the Investor in accordance with their insured interests, and any excess Takings proceeds will be paid to the Owner. If the Lender determines not to restore the Property or the Project and release funds related thereto to the Owner, the Investor's obligation to make disbursements under this Agreement shall be terminated. If the Lender determines to restore the Property and the Project, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the Investor such amounts as are necessary, in the Investor's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

In the event that no Person is a Lender at the time of such Taking, the Investor's obligation to make disbursements under this Agreement shall be terminated unless the Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the Property and the Project can be so restored, the Owner shall immediately proceed with the restoration of the Project in accordance with the plans and specifications, and the Investor shall release the funds for such purpose. If, in the Investor's reasonable judgment, the Taking proceeds available to the Owner and the Investor are insufficient to complete the restoration, the Owner shall deposit with the

Investor such amounts as are necessary, in the Investor's reasonable judgment, to complete the restoration in accordance with the plans and specifications.

Section 4.4. Eligible Costs. The costs of the Project which are eligible for payment or reimbursement pursuant to this Agreement include the following:

- (a) costs incurred directly or indirectly for or in connection with the acquisition, installation, equipping, and improvement of the Project, including without limitation, costs incurred in respect of the Project for preliminary planning and studies; architectural, legal, engineering, surveying, accounting, consulting, supervisory and other services; labor, services and materials; and recording of documents and title work;
- (b) financial, legal, recording, title, accounting, and printing and engraving fees, charges and expenses, and all other fees, charges and expenses incurred in connection with the financing described in this Agreement;
- (c) premiums attributable to any surety and payment and performance bonds and insurance required to be taken out and maintained until the date on which each Project is final and complete;
- (d) taxes, assessments and other governmental charges in respect of the Project that may become due and payable until the date on which each Project is final and complete;
- (e) costs, including, without limitation, attorney's fees, incurred directly or indirectly in seeking to enforce any remedy against any contractor or subcontractor in respect of any actual or claimed default under any contract relating to the Project; and
- (f) any other incidental or necessary costs, expenses, fees and charges properly chargeable to the cost of the acquisition, installation, equipping, and improvement of the Project.

Section 4.5. Completion of Project; Inspection. The Owner (a) in accordance with the approved plans and specifications for the Project, which plans and specifications shall not be materially revised without the prior written approval of the Investor, which approval shall not be unreasonably withheld, shall acquire, install, equip, and improve its Project with Project Advance with all commercially reasonable dispatch, (b) subject to its right to contest any disputed work, shall pay when due all fees, costs and expenses incurred or payable by the Owner in connection with that acquisition, installation, equipping, and improvement from funds made available therefor in accordance with this Agreement or otherwise, and (c) shall ask, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable to the Owner under the terms of any contract, order, receipt, writing or instruction in connection with the acquisition, installation, equipping, and improvement of the Project, and shall utilize commercially reasonable efforts to enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is to be owned by the Owner and any contracts made by the Owner with respect to

the Project or any work to be done by the Owner on or with respect to the Project are made or done by the Owner on its own behalf and not as agent or contractor for the ESID.

During the period of acquisition, installation, equipping, and improvement of the Project, the ESID and the Investor, and their respective agents, subject to reasonable security and safety regulations, and upon reasonable prior notice, shall have the right, during normal business hours, to inspect the Project. The ESID and the Investor and their respective agents shall utilize commercially reasonable efforts to minimize interference with the tenants of the Property during any such inspection.

The Investor reserves the right to deny the request for a Project Advance pursuant to Article IV of this Agreement if such inspection reveals that construction is not proceeding with Reasonable Dispatch. If, in the Investor's opinion, after 30 days' written notice to the Owner, the construction is not proceeding with Reasonable Dispatch, the Investor may (i) request that the Owner remove and replace the general contractor with a general contractor acceptable to the Investor, the failure of which by the Owner shall be a default under this Agreement, (ii) utilize funds to continue construction of the Project and such funds shall be considered Project Advances, or (iii) deny any Project Advance until such time as the construction resumes proceeding with Reasonable Dispatch.

The Owner shall notify the ESID, the City, and the Investor of the Completion Date by certificates in the forms attached as Exhibit D to the Disbursing Agreement, signed by the Owner stating: (a) the date on which the acquisition, installation, equipping, and improvement of the Project was substantially completed by the general contractor for the Project in accordance with the construction contract, and the Owner has no unresolved complaints regarding the work; (b) that the Project has been completed in all material respects in accordance with the plans and specifications, permits, and budget for the Project approved by the Investor; (c) that the Owner has complied, and will continue to comply with all applicable statutes, regulations, and resolutions or ordinances in connection with the Property and the construction of the Project; (d) that the Owner holds fee ownership of the Property; (e) that the general contractor for the project has not offered the Owner any payment, refund, or any commission in return for completing Project; and (f) that all funds provided to the Owner by the Investor for the Project have been used in accordance with this Agreement. The certificate shall be delivered as promptly as practicable after the Completion Date.

Section 4.6. Repayment. The Parties acknowledge that pursuant to this Agreement, the Project Advance is expected to be repaid by the Special Assessments. The Parties agree that the Special Assessments have been levied and certified to the County Auditor in the amounts necessary to amortize the Project Advance, together with interest at the annual rate of []%, and a semi-annual ESID Fee, over [] semi-annual payments to be collected beginning approximately on [] and continuing through approximately []. The Parties further acknowledge that in addition to the amount of the Special Assessments and other related interest, fees, and penalties, the County Auditor may charge and collect a County Auditor collection fee on each installment of the Special Assessments in an amount to be calculated, charged, and collected by the County Auditor pursuant to Ohio Revised Code Section 727.36, which fee is in addition to the amount of the Special Assessments and other related interest, fees, and penalties. Interest shall

accrue on the entire amount of the Project Advance from the Closing Date; provided, however, that a portion of the Project Advance may be used to pay interest accruing and due and payable on the Project Advance prior to the date on which the first installment of the Special Assessments is paid to the Investor by the City. The Owner agrees to pay, as and when due, all Special Assessments with respect to its Property. The Parties acknowledge and agree that, pursuant to the laws of the State, the Special Assessments to be collected by the County Treasurer which as of the relevant date are not yet due and payable never shall be accelerated, and the lien of the Special Assessments never shall exceed the amount of Special Assessments which, as of the relevant date, are due and payable but remain unpaid.

Section 4.7. Prepayment. At any time prior to the second anniversary of the Closing Date, the Owner may prepay all or a portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, [105%] of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment. At any time after the second anniversary of the Closing Date and prior to the fifth anniversary of the Closing Date, the Owner may prepay all or a portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, [102%] of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment. At any time after the fifth anniversary of the Closing Date, the Owner may prepay all or a portion of the principal of the Project Advance to the Investor by paying, in immediately available funds, [101%] of the principal amount of the Project Advance to be prepaid, together with all accrued and unpaid interest on the Project Advance to the date of prepayment.

Immediately upon any prepayment pursuant to this Section 4.7, the Investor shall notify the City of the prepayment, and the Owner, the Investor, and the City shall cooperate to reduce the amount of Special Assessments to be collected by the County Auditor pursuant to Section 2.2(d) of this Agreement.

Section 4.8. Payment of Fees and Expenses. If an Event of Default on the part of the Owner should occur under this Agreement such that the ESID, the Investor, or the City should incur expenses, including attorneys' fees, in connection with the enforcement of this Agreement or the collection of sums due under this Agreement, the Owner shall reimburse the ESID, the Investor, and the City, as applicable, for any reasonable out-of-pocket expenses so incurred upon demand. If any such expenses are not so reimbursed, the amount of such expenses, together with interest on such amount from the date of demand for payment at an annual rate equal to the maximum rate allowable by law, shall constitute indebtedness under this Agreement, and the ESID, the Investor, and the City, as applicable, shall be entitled to seek the recovery of those expenses in such action except as limited by law or by judicial order or decision entered in such proceedings.

Section 4.9. Further Assurances. Upon the request of the Investor, the Owner shall take any actions and execute any further documents as the Investor deems necessary or appropriate to carry out the purposes of this Agreement.

ARTICLE V: EVENTS OF DEFAULT AND REMEDIES

Section 5.1. Events of Default. If any of the following shall occur, such occurrence shall be an “Event of Default” under this Agreement:

- (a) The Owner shall fail to pay an installment of the Special Assessments when due, after taking into account all applicable extensions;
- (b) The City shall fail to transfer, or cause the transfer of, any of the Special Assessments to the Investor within the time specified in this Agreement;
- (c) Any Party is in material breach of its representations or warranties under this Agreement; provided, however, that upon the material breach of a Party’s representations or warranties under this Agreement, such Party shall have the right to cure such breach within five days of the receipt of notice, and, if so cured, such breach shall not constitute an Event of Default;
- (d) The ESID, the Owner, or the City, shall fail to observe and perform any other agreement, term, or condition contained in this Agreement or the Special Assessment Agreement and the continuation of such failure for a period of 30 days after written notice of such failure shall have been given to the ESID, the Owner, or the City, as applicable, by any other Party to this Agreement, or for such longer period to which the notifying Party may agree in writing; provided, however, that if the failure is other than the payment of money, and is of such nature that it can be corrected but not within the applicable period, that failure shall not constitute an Event of Default so long as the ESID, an Owner, or the City, as applicable, institutes curative action within the applicable period and diligently pursues that action to completion;
- (e) The Owner abandons its Property or its Project;
- (f) The Owner commits waste upon its Property or its Project;
- (g) The Owner becomes bankrupt or insolvent or files or has filed against it (and such action is not stayed or dismissed within 90 days) a petition in bankruptcy or for reorganization or arrangement or other relief under the bankruptcy laws or any similar state law or makes a general assignment for the benefit of creditors; or

The declaration of an Event of Default above, and the exercise of remedies upon any such declaration, shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding that declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings.

Promptly upon any non-defaulting Party becoming aware that an Event of Default has occurred, such Party shall deliver notice of such Event of Default to each other Party under this Agreement in accordance with the notice procedures described in Section 6.5 of this Agreement.

Section 5.2. Remedies on Default. Whenever an Event of Default shall have happened and be subsisting, any one or more of the following remedial steps may be taken:

- (a) Upon an Event of Default described in Section 5.1(a) only, the Investor shall become entitled to receive any Delinquency Amounts actually received by the City.
- (b) The ESID, the Investor, and the City, together or separately, may pursue all remedies now or later existing at law or in equity to collect all amounts due and to become due under this Agreement or to enforce the performance and observance of any other obligation or agreement of any of the Parties, as applicable, under this Agreement, including enforcement under Ohio Revised Code Chapter 2731 of duties resulting from an office, trust, or station upon the ESID or the City, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Investor, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.
- (c) Any Party may pursue any other remedy which it may have, whether at law, in equity, or otherwise, provided that, Parties may only pursue such remedies against the Party responsible for the particular Event of Default in question; provided, however, that the ESID, the Investor, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default.

Notwithstanding the foregoing, each of the ESID and the City shall not be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it at no cost or expense.

Section 5.3. Foreclosure. Pursuant to Section 2.1 of the Special Assessment Agreement by and among the County Treasurer, the City, the ESID, and the Owner and dated as of the date of this Agreement (the "Special Assessment Agreement"), the County Treasurer has agreed not to confirm the sale of the Property for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Property, as shall be certified by the ESID to the County Treasurer pursuant to the records of the County Treasurer without the consent of the ESID and the Investor. The ESID hereby agrees that in the event it is asked to provide its consent in accordance with Section 2.1 of the Special Assessment Agreement, it will notify the Investor of such request, and it will not provide its consent pursuant to Section 2.1 of the Special Assessment Agreement without the Investor's prior written direction.

Section 5.4. No Remedy Exclusive. No remedy conferred upon or reserved to the Parties by this Agreement is intended to be exclusive of any other available remedy or remedies, 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 later existing at law, in equity or by statute; provided, however,

that the ESID, the Investor, and the City may not take any other action or exercise any remedy against the Property, the Project, or the Owner except to collect or remedy any outstanding damages or liability which shall have arisen due to the occurrence of an Event of Default. No delay or omission to exercise any right or power accruing upon any default shall impair that right or power nor shall be construed to be a waiver, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Parties to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than any notice required by law or for which express provision is made in this Agreement.

Section 5.5. No Waiver. No failure by a Party to insist upon the strict performance by the other Parties of any provision of this Agreement shall constitute a waiver of such Party's right to strict performance; and no express waiver shall be deemed to apply to any other existing or subsequent right to remedy the failure by the Parties to observe or comply with any provision of this Agreement.

Section 5.6. Notice of Default. Any Party to this Agreement shall notify every other Party to this Agreement immediately if it becomes aware of the occurrence of any Event of Default or of any fact, condition or event which, with the giving of notice or passage of time or both, would become an Event of Default.

ARTICLE VI: MISCELLANEOUS

Section 6.1. Owner Waivers. The Owner acknowledges that the process for the imposition of special assessments provides the owner of property subject to such special assessments with certain rights, including rights to: receive notices of proceedings; object to the imposition of the special assessments; claim damages; participate in hearings; take appeals from proceedings imposing special assessments; participate in and prosecute court proceedings, as well as other rights under law, including but not limited to those provided for or specified in the United States Constitution, the Ohio Constitution, Ohio Revised Code Chapter 727 and the resolutions or ordinances in effect in the City (collectively, "Assessment Rights"). The Owner irrevocably waives all Assessment Rights as to its Project and consents to the imposition of the Special Assessments as to its Project immediately or at such time as the ESID determines to be appropriate, and the Owner expressly requests the entities involved with the special assessment process to promptly proceed with the imposition of the Special Assessments upon its Property as to its Project. The Owner further waives in connection with the Project: any and all questions as to the constitutionality of the laws under which the Project will be constructed and the Special Assessments imposed upon the Property; the jurisdiction of the Council of the City acting thereunder; and the right to file a claim for damages as provided in Ohio Revised Code Section 727.18 and any similar provision of the resolutions or ordinances in effect within the City.

Section 6.2. Term of Agreement. This Agreement shall be and remain in full force and effect from the Closing Date until the payment in full of the entire aggregate amount of the Special Assessments and any other amounts due hereunder shall have been made to the Investor, or such time as the Parties shall agree in writing to terminate this Agreement. Any attempted termination of this Agreement prior to the payment in full of the entire aggregate amount of the Special

Assessments and any other amounts due hereunder which is not in writing and signed by each of the Parties to this Agreement shall be null and void.

Section 6.3. Litigation Notice. Each Party shall give all other Parties prompt notice of any action, suit, or proceeding by or against the notifying Party, at law or in equity, or before any governmental instrumentality or agency, of which the notifying Party has notice and which, if adversely determined would impair materially the right or ability of the Parties to perform their obligations under this Agreement. The notifying Party's prompt notice shall be accompanied by its written statement setting forth the details of the action, suit, or proceeding and any responsive actions with respect to the action, suit, or proceeding taken or proposed to be taken by the Party.

Section 6.4. Indemnification. The Owner shall indemnify and hold harmless the ESID, the Investor, and the City (including any member, officer, director, or employee thereof) (collectively, the "Indemnified Parties") against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) imposed upon, incurred by or asserted against an Indemnified Party arising or resulting from (i) the levy and collection of the Special Assessments, (ii) Owner's financing, acquisition, construction, installation, operation, use or maintenance of the Project, (iii) any act, failure to act or misrepresentation solely by the Owner in connection with, or in the performance of any obligation on the Owner's part to be performed under this Agreement or related to the Special Assessments resulting in material actual damages, or (iv) (a) a past, present or future violation or alleged violation of any environmental laws in connection with the Property by any person or other source, whether related or unrelated to the Owner, (b) any presence of any hazardous, toxic or harmful substances, materials, wastes, pollutants or contaminants defined as such in or regulated under any environmental law ("Materials of Environmental Concern") in, on, within, above, under, near, affecting or emanating from the Property, (c) the failure to timely perform any investigation, inspection, site monitoring, containment, clean-up, removal, response, corrective action, mitigation, restoration or other remedial work of any kind or nature because of, or in connection with, the current or future presence, suspected presence, Release (as defined below) or threatened Release in or about the air, soil, ground water, surface water or soil vapor at, on, about, under or within all or any portion of the Property of any Materials of Environmental Concern, including any action to comply with any applicable environmental laws or directives of any governmental authority with regard to any environmental laws, (d) any past, present or future activity by any person or other source, whether related or unrelated to the Owner in connection with any actual, proposed or threatened use, treatment, storage, holding, existence, disposition or other release, generation, production, manufacturing, processing, refining, control, management, abatement, removal, handling, transfer or transportation to or from the Property of any Materials of Environmental Concern at any time located in, under, on, above or affecting the Property, (e) any past, present or future actual generation, treatment, use, storage, transportation, manufacture, refinement, handling, production, removal, remediation, disposal, presence or migration of Materials of Environmental Concern on, about, under or within all or any portion of the Property (a "Release") (whether intentional or unintentional, direct or indirect, foreseeable or unforeseeable) to, from, on, within, in, under, near or affecting the Property by any person or other source, whether related or unrelated to the Owner, (f) the imposition, recording or filing or the threatened imposition, recording or filing of any lien on the Property with regard to, or as a result of, any Materials of Environmental Concern or pursuant to any environmental law, or (g) any

misrepresentation or failure to perform any obligations related to environmental matters in any way pursuant to any documents related to the Special Assessments.

In the event any action or proceeding is brought against any Indemnified Party by reason of any such claim, such Indemnified Party will promptly give written notice thereof to the Owner. The Owner shall be entitled to participate at its own expense in the defense or, if it so elects, to assume at its own expense the defense of such claim, suit, action or proceeding, in which event such defense shall be conducted by counsel chosen by the Owner; but if the Owner shall elect not to assume such defense, it shall reimburse such Indemnified Party for the reasonable fees and expenses of any counsel retained by such Indemnified Party. If at any time the Indemnified Party becomes dissatisfied, in its reasonable discretion, with the selection of counsel by the Owner, a new mutually agreeable counsel shall be retained at the expense of the Owner. Each Indemnified Party agrees that the Owner shall have the sole right to compromise, settle or conclude any claim, suit, action or proceeding against any of the Indemnified Parties. Notwithstanding the foregoing, each Indemnified Party shall have the right to employ counsel in any such action at their own expense; and provided further that such Indemnified Party shall have the right to employ counsel in any such action and the fees and expenses of such counsel shall be at the expense of the Owner, if: (i) the employment of counsel by such Indemnified Party has been authorized by the Owner, (ii) there reasonably appears that there is a conflict of interest between the Owner and the Indemnified Party in the conduct of the defense of such action (in which case the Owner shall not have the right to direct the defense of such action on behalf of the Indemnified Party) or (iii) the Owner shall not in fact have employed counsel to assume the defense of such action. The Owner shall also indemnify the Indemnified Parties from and against all costs and expenses, including reasonable attorneys' fees, lawfully incurred in enforcing any obligations of the Owner under this Agreement. The obligations of the Owner under this Section shall survive the termination of this Agreement and shall be in addition to any other rights, including without limitation, rights to indemnity which any Indemnified Party may have at law, in equity, by contract or otherwise.

None of the Investor, the City, or the ESID shall have any liability to the Owner or any other Person on account of (i) the Owner engaging a contractor from the list of contractors submitted by the ESID or the Investor to the Owner, (ii) the services performed by the contractor, or (iii) any neglect or failure on the part of the contractor to perform or properly perform its services. None of the Investor, the City, or the ESID assumes any obligation to the Owner or any other Person concerning contractors, the quality of construction of the Project or the absence of defects from the construction of the Project. The making of a Project Advance by the Investor shall not constitute the Investor's approval or acceptance of the construction theretofore completed. The Investor's inspection and approval of the budget, the construction work, the improvements, or the workmanship and materials used in the improvements, shall impose no liability of any kind on the Investor, the sole obligation of the Investor as the result of such inspection and approval being to make the Project Advances if, and to the extent, required by this Agreement. Any disbursement made by the Investor without the Investor having received each of the items to which it is entitled under this Agreement shall not constitute breach or modification of this Agreement, nor shall any written amendment to this Agreement be required as a result.

Section 6.5. Notices. All notices, certificates, requests or other communications under this Agreement shall be in writing and shall be deemed to be sufficiently given when mailed by

registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Parties, by notice given under this Agreement to the others, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

Section 6.6. Extent of Covenants; No Personal Liability. All covenants, obligations, and agreements of the ESID and the City contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of the ESID, the Board, the Owner, the City, the City Council, or the Investor in other than his or her official capacity; and none of the members of the Board or the City Council, nor any official of the ESID, the Owner, the City, or the Investor executing this Agreement shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the covenants, obligations, or agreements of the ESID, the Owner, the City, or the Investor contained in this Agreement.

Section 6.7. Binding Effect; Assignment; Estoppel Certificates. This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Parties. Except as specifically provided below, this Agreement shall not be assigned by the any of the Parties except as may be necessary to enforce or secure payment of the Special Assessments.

Notwithstanding anything in this Agreement to the contrary, the Owner freely may sell the Property and the Project or any portion of the Property and the Project from time to time and may assign this Agreement to an arms-length, good faith purchaser of the Property but only after notice of such assignment is given to the Investor, and only upon (i) the execution and delivery to the City, the Investor, and the ESID of an "Assignment and Assumption of Energy Project Cooperative Agreement" in the form attached to, and incorporated into, this Agreement as **Exhibit E**; (ii) the execution and delivery to the Investor of an assignment of all construction contracts for the Project, and (iii) the payment by Owner of all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel. The Parties acknowledge and agree that the Assignment and Assumption of Energy Project Cooperative Agreement includes the assignment and assumption of the Special Assessment Agreement and the Owner Consent. Following any assignment by the Owner as described above, all obligations of the Owner contained in this Agreement, the Special Assessment Agreement, and the Owner Consent shall be obligations of the assignee, and the assigning Owner shall be released of its obligations to a corresponding extent.

Notwithstanding anything in this Agreement to the contrary, the Investor shall have the unrestricted right at any time or from time to time, and without the Owner's consent, to assign all or any portion of its rights and obligations under this Agreement, and may sell or assign any and all liens received directly or indirectly from the City to any Person (each, an "Investor Assignee"), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Investor shall deem necessary to effect the foregoing so long as such amendment does not materially adversely impact the Owner's rights and obligations under this Agreement. Any Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in

connection with this Agreement) to the extent that such rights and obligations have been assigned by the Investor pursuant to the assignment documentation between the Investor and such Investor Assignee, and the Investor shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent. If, at any time, the Investor assigns any of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to an Investor Assignee, the Investor shall (i) give prompt notice of such assignment to the other Parties and (ii) pay all legal fees and expenses of PACE Counsel associated with legal services performed to facilitate such assignment upon receipt of an invoice from PACE Counsel.

In addition, the Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Owner, to grant to one or more Persons (each, a "Participant") participating interests in Investor's obligation to make Project Advances under this Agreement or to any or all of the loans held by Investor under this Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Owner, the Investor shall remain responsible for the performance of its obligations under this Agreement, and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor's rights and obligations under this Agreement. The Owner agrees that the Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor Assignees and Participants.

This Agreement may be enforced only by the Parties, their permitted assignees, and others, who may, by law, stand in their respective places.

Any Party shall at any time and from time to time, upon not less than 30 days' prior written notice by the other party, execute, acknowledge and deliver to such party a statement in writing certifying that: (i) this Agreement is unmodified and in full force and effect (or, if there has been any modification of this Agreement, that the same is in full force and effect as modified and stating the modification or modifications); (ii) to the best of such Party's actual knowledge (without any duty of inquiry) there are no continuing Events of Default (or, if there is a continuing Event of Default, stating the nature and extent of such Event of Default); (iii) that, to the best of such Party's actual knowledge (without any duty of inquiry) there are no outstanding damages or liability arising from an Event of Default (or, if there is any outstanding damages or liability, stating the nature and extent of such damages or liability); (iv) if such certificate is being delivered by the Owner, the dates to which the Special Assessments have been paid; and (v) if such certificate is being delivered by the Investor, the dates to which the Special Assessments have been paid to the Investor. It is expressly understood and agreed that any such certificate delivered pursuant to this Section 6.7 may be relied upon by any prospective assignee of the Owner or any prospective Investor Assignee.

Section 6.8. Amendments and Supplements. Except as otherwise expressly provided in this Agreement, this Agreement may not be amended, changed, modified, altered or terminated except by unanimous written agreement signed by each of the Parties materially affected by such proposed amendment, change, modification, alteration, or termination. For purposes of this Section, a materially affected Party is a Party with respect to which a material right or obligation under this Agreement is proposed to be amended, changed, modified, altered, or terminated. Any

attempt to amend, change, modify, alter, or terminate this Agreement except by unanimous written agreement signed by all of the materially affected Parties or as otherwise provided in this Agreement shall be void.

Section 6.9. Execution Counterparts. This Agreement may be executed and delivered in original, via facsimile or email with PDF attachment, or other commercially acceptable electronic form, in any number of counterparts, each of which shall be deemed an original, and all of which shall together constitute but one and the same instrument, which instrument shall for all purposes be sufficiently evidenced by any such counterpart. Each Party agrees, and acknowledges that it is such Party's intent, that if such Party signs this agreement using an electronic signature, it is signing, adopting, and accepting this agreement and that signing this agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this agreement on paper.

Section 6.10. Severability. If any provision of this Agreement, or any covenant, obligation, or agreement contained in this Agreement is determined by a court to be invalid or unenforceable, that determination shall not affect any other provision, covenant, obligation, or agreement, each of which shall be construed and enforced as if the invalid or unenforceable portion were not contained in this Agreement. That invalidity or unenforceability shall not affect any valid and enforceable application of the provision, covenant, obligation, or agreement, and each such provision, covenant, obligation or agreement shall be deemed to be effective, operative, made, entered into, or taken in the manner and to the full extent permitted by law.

Section 6.11. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

[BALANCE OF PAGE INTENTIONALLY BLANK; SIGNATURES ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties have each caused this Agreement to be duly executed in their respective names, all as of the Closing Date.

ATHENS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT, as the ESID

By: _____

Name: _____

Title: _____

LOSTRO VENTURES, LLC,
an Ohio limited liability company, as the
Owner

By: _____

Name: _____

Title: _____

[____], as the Investor

By: _____

Name: _____

Title: _____

CITY OF ATHENS, OHIO, as the City

Approved as to form and correctness:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

CITY FISCAL OFFICER CERTIFICATE

The undersigned, fiscal officer of the City of Athens, Ohio, hereby certifies that the City has established or will establish a special assessment fund, into which the Special Assessments (as that term is defined in the foregoing Agreement) received by the City shall be deposited, free from any encumbrances. The Special Assessments represent other revenues in process of collection to the credit of the appropriate fund. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44.

Fiscal Officer
City of Athens, Ohio

Dated: _____, 2024

EXHIBIT A

DEFINITIONS

As used in this Agreement, the following words have the following meanings:

“*Agreement*” means this Energy Project Cooperative Agreement, dated as of [____], 2024, by and among the ESID, the Owner, the Investor, and the City, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

“*Board*” means the Board of Directors of the ESID.

“*City*” means the City of Athens, Ohio.

“*City Council*” means the Council of the City of Athens, Ohio.

“*Closing Date*” means the date set forth in the preamble of this Agreement.

“*Completion Date*” means the latest date on which substantial completion of the Project, in accordance with the Plans occurs, which date shall be established by the Completion Certificates attached to the Disbursing Agreement as Exhibit D.

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

“*County Auditor*” means the Auditor of the County.

“*County Prosecutor*” means the Prosecuting Attorney of the County.

“*County Treasurer*” means the Treasurer of the County.

“*Delinquency Amounts*” means any penalties or interest which may be due on or with respect to any installment of the Special Assessments and which are not paid or payable to any party (other than the Investor under this Agreement) under law.

“*Disbursement Request Form*” means the form attached to the Disbursing Agreement as Exhibit B, which form shall be submitted by the Owner in order to receive disbursements from the Project Account.

“*Disbursing Agreement*” means the Disbursing Agreement dated as of the Closing Date between the Owner and the Investor, as the same may be amended, modified, or supplemented from time to time in accordance with its terms.

“*ESID*” means the Athens Regional Energy Special Improvement District, Inc., a nonprofit corporation and energy special improvement district organized under the laws of the State.

“*ESID Fee*” means the semi-annual fee due to the ESID from the Investor upon receipt of each installment of the Special Assessments from the City in the amount provided as the “AED Administrator Fee” for each installment in **Exhibit B**.

“*Governmental Authority*” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“*Investor*” means [____], a limited liability company duly organized and validly existing under the laws of the State of [____], together with any Investor Assignee.

“*Lender*” means any Person which has loaned money to the Owner to pay or refinance the costs of acquiring, financing, refinancing, or improving the Property and which loan is secured by a mortgage interest in the Property, or any permitted successors or assigns of such Person, including, initially, and without limitation, the Senior Lender.

“*Lender Loan Documents*” means any loan agreement or loan agreements, mortgage or mortgages, and any other documents and instruments executed and delivered in connection with the a loan from a Lender, as they may be amended, modified, and supplemented from time to time under their terms.

“*Notice Address*” means:

- | | | |
|-----|---------------------|---|
| (a) | As to the City: | City of Athens, Ohio
[]
[]
Attention: [____] |
| (b) | As to the ESID: | Athens Regional Energy Special
Improvement District, Inc.
[]
[]
Attention: [____] |
| | With a Copy To: | [] |
| (c) | As to the Owner: | Lostro Ventures, LLC
[]
[]
Attention: [____]
Email: [] |
| | With a Copy To: | [] |
| (d) | As to the Investor: | [____] |

□
□
Attention: □

“*Owner*” means Lostro Ventures, LLC, a limited liability company duly organized and validly existing under the laws of the State of [____], and any permitted successors or assigns.

“*Owner Consent*” means the Owner Consent dated as of [____], 2024 by the Owner and recorded in the records of the Athens County Recorder with respect to the Property.

“*PACE Counsel*” means Bricker Graydon LLP, an Ohio limited liability partnership.

“*Parties*” means the ESID, the Owner, the Investor, and the City.

“*Person*” or words importing persons mean firms, associations, partnerships (including without limitation, general and limited partnerships), limited liability companies, joint ventures, societies, estates, trusts, corporations, public or governmental bodies, political subdivisions, other legal entities, and natural persons.

“*Plan*” means the Athens Regional Energy Special Improvement District Program Plan adopted by the City of Athens, and any and all future supplemental plans approved by the ESID and the City.

“*Project*” means the special energy improvement project described in the Petition with respect to the Property, for which Special Assessments are to be levied by the City, all in accordance with the Petition.

“*Project Account*” means the segregated account in the custody of the Investor for the benefit of the Owner which contains the Project Advance, and out of which disbursements may be made in accordance with Article IV of this Agreement.

“*Project Advance*” means the amount of immediately available funds to be transferred, set over, paid to, and held in the Project Account established pursuant to Section 4.1 of this Agreement for the benefit of the Owner.

“*Property*” means the fee simple and ground lessor interest in the real property subject to the Petition.

“*Reasonable Dispatch*” means on a schedule that is no more than four months behind the estimated completion date of the Project.

“*Repayment Schedule*” means the schedule attached to, and incorporated into, this Agreement as **Exhibit B**, which schedule establishes the dates and amounts for the repayment of the Project Advance by the Special Assessments paid by the Owner.

“Required Builder’s Risk Insurance Coverage” means at any time insurance coverage maintained with generally recognized, responsible insurance companies qualified to do business in the State in the minimum amount of the full replacement value of the Project and Project Site, insuring the Project against loss or damage during construction and containing loss deductible provisions not to exceed \$100,000, which insurance coverage shall name the Investor as lender loss payee.

“Required Business Interruption Insurance Coverage” means at all times after the Completion Date, business interruption and rent loss insurance maintained with generally recognized, responsible insurance companies qualified to do business in the State in a commercially reasonable minimum amount, which insurance coverage shall name the Investor as lender loss payee.

“Required Flood Insurance Coverage” means, as applicable, (i) if the Property or any part of the Property is identified by the United States Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (a) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the Project Advances if replacement cost coverage is not available for the type of building insured); or (b) such lesser amount as may be required by the Investor, and containing a loss deductible with respect not in excess of \$10,000 per occurrence; and (ii) earthquake insurance in amounts and in form and substance satisfactory to the Investor in the event the Property is located in an area with a high degree of seismic activity, provided that the insurance pursuant to this section shall be on terms consistent with the Required Public Liability Insurance Coverage.

“Required Insurance Coverage” means, collectively, the Required Builder’s Risk Insurance Coverage, the Required Business Interruption Insurance Coverage, the Required Flood Insurance Coverage (if any), the Required Property Insurance Coverage and the Required Public Liability Insurance Coverage, each of which, in addition to the requirements described in their respective definitions, (i) must provide for 10 days’ notice to the Investor in the event of cancellation or nonrenewal and (ii) must name as an additional insured (mortgagee/loss payee) the Investor.

“Required Property Insurance Coverage” means at any time insurance coverage evidenced on Acord 27 and maintained with generally recognized, responsible insurance companies qualified to do business in the State in the amount of (i) the then full replacement value of the Project and Property, insuring the Project against loss or damage by fire, windstorm, tornado and hail and extended coverage risks on a comprehensive all risk/special form insurance policy and containing loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Investor as loss payee/mortgagee.

“Required Public Liability Insurance Coverage” means at any time commercial general accident and public liability insurance coverage evidenced on Acord 25 and maintained with generally recognized, responsible insurance companies qualified to do business in the State with coverage limits in the maximum amount of \$2,000,000 per occurrence for death or bodily injury

and property damage liability combined, with loss deductible provisions of not to exceed \$10,000, which insurance coverage shall name the Investor as additional insureds.

“*Senior Lender*” means [____], a[n] [____].

“*Senior Loan*” means the loan from Senior Lender to the Owner in the maximum aggregate principal amount of \$[____].

“*Senior Loan Agreement*” means that certain Construction Loan Agreement between the Senior Lender, the Owner, [____], and [____] dated as of [____].

“*Senior Loan Documents*” means the Senior Loan Agreement, the Senior Mortgage, the Senior Note, and all other documents related to the Senior Loan.

“*Senior Mortgage*” means that certain [____] given by the Owner, dated as of [____] and filed in the Athens County Recorder’s office.

“*Senior Note*” means that certain [____] in the amount of the Senior Loan given pursuant to the Senior Mortgage by the Owner to the Senior Lender.

“*Special Assessment Act*” means, collectively, Ohio Revised Code Section 727.01 *et seq.*, Ohio Revised Code Section 1710.01 *et seq.*, Ohio Revised Code Section 323.01 *et seq.*, Ohio Revised Code Section 319.01 *et seq.*, Ohio Revised Code Section 5721.01 *et seq.*, and related laws, Resolution No. [____] approving the Petition and Plan and declaring the necessity of the Project, Ordinance No. [____], determining to proceed with the Project, and Ordinance No. [____] levying the Special Assessments, all adopted on [____], 2024 and all with respect to levying special assessments on real property within the ESID.

“*Special Assessments*” means the special assessments levied pursuant to the Special Assessment Act by the City with respect to the Project, a schedule of which is attached to, and incorporated into, the Petition.

“*State*” means the State of Ohio.

“*Transaction Documents*” means this Agreement, the Special Assessment Agreement, the Petition, the Owner Consent, or any other document executed in connection therewith or required thereby.

EXHIBIT B

REPAYMENT SCHEDULE

[To Be Added]

B-1

EXHIBIT C

CLOSING COSTS DETAIL

Pursuant to Section 4.2 of the foregoing Energy Project Cooperative Agreement, the Investor, on the Closing Date, shall disburse to the ESID or to the respective payee set forth below, the following closing costs:

Closing Cost	Amount

EXHIBIT D
CONSENT OF MORTGAGEE

[See Attached]

EXHIBIT E

**FORM OF ASSIGNMENT AND ASSUMPTION OF ENERGY PROJECT
COOPERATIVE AGREEMENT**

ASSIGNMENT AND ASSUMPTION
OF
ENERGY PROJECT COOPERATIVE AGREEMENT

_____ (“Assignor”), in consideration of the sum of \$ _____ in hand paid and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Assignor’s execution of this Assignment and Assumption of Energy Project Cooperative Agreement (“Assignment”), assigns, transfers, sets over, and conveys to _____ (“Assignee”) all of Assignor’s right, title, and interest in and to that certain Energy Project Cooperative Agreement dated as of [____], 2024 between Athens Regional Energy Special Improvement District, Inc. (the “ESID”), Assignor, [____], and the City of Athens, Ohio (the “Energy Project Cooperative Agreement”).

By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under, the Energy Project Cooperative Agreement. Assignee further represents and warrants that it has taken title to the “Property,” as that term is defined in the Energy Project Cooperative Agreement subject to the Special Assessment Agreement dated as of even date with the Energy Project Cooperative Agreement between the Athens County Treasurer, City of Athens, Ohio, the ESID, Lostro Ventures, LLC, and [____] (the “Special Assessment Agreement”) and to the “Owner Consent” dated as of [____], 2024 by Lostro Ventures, LLC and recorded in the records of the Athens County Auditor with respect to the Property. By executing this Assignment, Assignee accepts the assignment of, and assumes all of Assignor’s duties and obligations under the Special Assessment Agreement and the Owner Consent.

Assignor and Assignee acknowledge and agree that executed copies of this Assignment shall be delivered to the City, the Investor, and the ESID, as each of those terms are defined in the Energy Project Cooperative Agreement, all in accordance with Sections 3.4(a) and 6.7 of the Energy Project Cooperative Agreement

In witness of their intent to be bound by this Assignment, each of Assignor and Assignee have executed this Assignment this _____ day of _____, _____, which Assignment is effective this date. This Assignment may be executed in any number of counterparts, which when taken together shall be deemed one agreement.

[Signature Pages Follow]

ASSIGNOR:

[_____]

By: _____

Name: _____

Title: _____

ASSIGNEE:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT F

INVESTOR ACCOUNT AND PAYMENT INFORMATION

[To Be Provided Separately in the Following Format]

Bank Name: [BANK NAME]
[BANK ADDRESS]

ABA: [NUMBER]
Beneficiary Name
[Address]
[Address]
Beneficiary Account: [NUMBER]

Reference: [NUMBER]

Contact: [Information]

If sending by check, please make checks payable to: [NAME/REFERENCE] and mail to:

[BANK NAME]
[ADDRESS]
[ADDRESS]
Attention: [NAME]

SPECIAL ASSESSMENT AGREEMENT
(ORC Sections 5721.33 and 9.482)

by and among

COUNTY TREASURER OF ATHENS COUNTY, OHIO
("Treasurer"),

And

CITY OF ATHENS, OHIO
("City"),

And

ATHENS REGIONAL ENERGY SPECIAL IMPROVEMENT DISTRICT, INC.;
("District"),

And

LOSTRO VENTURES, LLC
("Owner"),

And

[____], LLC
("Investor")

Dated as of [____] [____], 2024

SPECIAL ASSESSMENT AGREEMENT

THIS SPECIAL ASSESSMENT AGREEMENT (this “Agreement”) is made effective as of [] [], 2024, by and among the County Treasurer of Athens County, Ohio (the “Treasurer”), the City of Athens, Ohio (the “City”), the Athens Regional Energy Special Improvement District, Inc. (“District”), Lostro Ventures, LLC (the “Owner”), and [] (together with its permitted successors and assigns, the “Investor”) (the Treasurer, the District, the City, the Owner, and the Investor are collectively referred to herein as the “Parties”).

BACKGROUND:

WHEREAS, the District was created under Ohio Revised Code Chapters 1702 and 1710 and established pursuant to Resolution [] of the City Council of the City of Athens, Ohio (the “City Council”) approved on [] [], 2024; and

WHEREAS, the District is an energy special improvement district and nonprofit corporation duly organized and validly existing under the laws of the State of Ohio to further the public purpose of implementing special energy improvement projects pursuant to the authority in Ohio Revised Code Chapter 1710 and Article VIII, Section 2o of the Ohio Constitution; and

WHEREAS, on [] [], 2024, by its Resolution No. [], the City Council of the City approved the Athens Regional Energy Special Improvement District Project Plan (the “Program Plan”), as a plan for public improvements or public services for the District under Ohio Revised Code Section 1710.02(F); and

WHEREAS, the Owner has determined that it is in its best interests to cause the acquisition, installation, equipping, and improvement of special energy efficiency improvements, including, without limitation, HVAC (heating and cooling systems), domestic hot water systems, retrofitting of interior and exterior lighting, replacement of roofing insulation, replacement of exterior windows, exterior door insulation, an elevator retrofit, and a generator replacement, and related improvements. (collectively, the “Project”) on certain real property located within Athens County, Ohio (the “County”) and the City, and as more fully described in **Exhibit A** to this Agreement (the “Assessed Lands”); and

WHEREAS, the costs of the Project are being funded in part through an advance in the amount of \$[] (the “Project Advance”) to the Owner pursuant to an Energy Project Cooperative Agreement dated as of [] [], 2024 (the “Energy Project Cooperative Agreement”) between the District, the Investor, the Owner, and the City; and

WHEREAS, to secure the repayment of the principal of, and the payment of any premium, fees, and unpaid interest on, the Project Advance used to finance the Project (the “Project Costs”), (i) the Owner signed and delivered to the Clerk of the City Council a *Petition for Creation of Energy Special Improvement District and for Special Assessments for Special Energy Improvement Projects and Affidavit* (the “Petition”) for the acquisition, installation, equipping, and improvement of the Project and evidencing Owner’s agreement to the levy and collection of

special assessments by the City (the “Special Assessments”) on the Assessed Lands, which are located within the District, in amounts sufficient to pay the Project Costs, and (ii) the City (a) has taken all the necessary actions required by Ohio Revised Code Chapter 727, including, without limitation, the passage of the assessing resolution or ordinance pursuant to the requirements of Ohio Revised Code Section 727.25, for the levying of the Special Assessments and has caused or will cause the Special Assessments to be certified to the County Auditor of Athens County, Ohio (the “County Auditor”) for collection by the Treasurer in semi-annual installments, and (b) hereby has agreed to transfer to the Investor the payments of Special Assessments received to pay the Project Costs.

WHEREAS, the Owner agrees that its delivery of the Petition and the requests and agreements made in the Petition are irrevocable and that the Parties have acted and will act in reliance on the agreements contained in the Petition; and

WHEREAS, pursuant to the Petition, the Special Assessments have been levied against the Assessed Lands as described in the Petition and pursuant to this Agreement the Owner is willing to agree to make Special Assessment payments in accordance with the Petition; and

WHEREAS, Ohio Revised Code Chapters 323 and 5721 set forth certain parameters and timing requirements for the foreclosure of property on which taxes and assessments, including the Special Assessments, are due and owing and remain unpaid; and

WHEREAS, upon the occurrence of an Event of Default pursuant to the Energy Project Cooperative Agreement, it may be necessary for the District to foreclose on the lien of the Special Assessments with respect to the Assessed Lands as set forth in Section 2 of this Agreement; and

WHEREAS, in consideration of the Project Advance, the Owner is willing to consent to an expedited foreclosure process with respect to the lien of the Special Assessments, the form of the consent being attached hereto as Exhibit B (the “Owner Consent”) and the Owner Consent with respect to the foreclosure of the Special Assessments as soon as possible (as referenced in Section 2 hereof) shall be a covenant running with Assessed Lands and binding upon the Owner and upon future owners of the Assessed Lands until the Project Costs are paid in full; and

WHEREAS, based on the Owner Consent and other considerations, including, without limitation, the right to be indemnified pursuant to this Agreement, at the request of the District and, upon the occurrence of an Event of Default described under Section 7.1 of the Energy Project Cooperative Agreement, the Treasurer has agreed to foreclose the lien of the Special Assessments as soon as possible as described herein upon an occurrence of an Event of Default under the Energy Project Cooperative Agreement; and

WHEREAS, if any assessments, including, without limitation, the Special Assessments, payments in lieu of taxes, real property taxes, or other governmental charges levied on the Assessed Lands are not paid when due and thereafter remain delinquent, the Treasurer, pursuant to Ohio Revised Code Sections 5721.30 through 5721.41 (the “Delinquent Tax Lien Sale Act”), specifically Ohio Revised Code Section 5721.33, may, in their discretion, but is not required to,

negotiate with one or more persons the sale of any number of tax certificates (“Tax Certificates”) which evidence the liens (the “Tax Liens”) of the State of Ohio (the “State”) and its applicable taxing districts for such delinquent assessments, including Special Assessments, real property taxes, payments in lieu of taxes, governmental charges, or penalties and interest on such Assessed Lands; and

WHEREAS, pursuant to the Delinquent Tax Lien Sale Act, the Treasurer, in their discretion, may sell such Tax Certificates at a discount from the full amount of the general real estate taxes, assessments, including the Special Assessments, penalties, and interest that have become delinquent; and

WHEREAS, if the Treasurer were to sell such Tax Certificates at a discount (other than in accordance with the provisions of this Agreement), the proceeds of such sale representing the delinquent Special Assessments might be insufficient to pay the Project Costs; and

WHEREAS, the Treasurer does not desire to take any action with respect to the collection of the Special Assessments that might adversely affect the repayment of the Project Advance without the consent of the District or adversely affect the payment of the Project Costs without the consent of the District; and

WHEREAS, the Treasurer has agreed to remit to the District, in the event of a default under the Energy Project Cooperative Agreement, as set forth in this Agreement, amounts collected by the Treasurer and relating to the Special Assessments, including without limitation amounts collected by the Treasurer as a result of foreclosure of the lien of the Special Assessments on the Assessed Lands and including amounts received from a sale of Tax Certificates pursuant to the Delinquent Tax Lien Sale Act;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, and desiring to be legally bound hereunder, the Parties hereto covenant and agree as follows:

Section 1. Special Assessments.

1.1 The Owner, prior to the execution and delivery of this Agreement, signed and delivered to the Clerk of the City Council the Petition for the acquisition, installation, equipping, and improvement of the Project and evidencing the agreement of the Owner to the levy of the Special Assessments as security for the Project Advance. The Owner agrees that its delivery of the Petition and the requests and agreements made therein are irrevocable and that the Parties hereto have acted and will act in reliance on the agreements contained in that Petition. The City shall take all necessary actions required by Ohio Revised Code Chapter 727 to levy and collect the Special Assessments on the Assessed Lands. On [_____] [____], 2024 the City passed Ordinance No. [_____] pursuant to the requirements of Ohio Revised Code Section 727.25 for the levying of the Special Assessments (the “Assessing Ordinance”). The Clerk of the City Council

certified (or caused to be certified) the Assessing Ordinance to the County Auditor as set forth in the Petition.

1.2 The City shall cause the Special Assessments, as set forth in the Assessment Schedule attached to the Petition, to be certified to the County Auditor on or before the last date for the certification of special assessments to the County Auditor of each year during which the Special Assessments are to be levied pursuant to the Assessment Schedule. The Parties acknowledge that pursuant to such certification, the Special Assessments are expected to be collected and paid to the City pursuant to Ohio Revised Code Chapters 319, 321, 323, and 727.

1.3 In the event the Project Advance is prepaid or redeemed in accordance with the Energy Project Cooperative Agreement, in whole or in part, the Parties shall, in cooperation with the Owner, and to the extent permitted by law, cause the aggregate lien of the Special Assessments to be no greater than the remaining principal of and interest and premium, if any, on the Project Advance through maturity.

1.4 To the extent that the Owner prepays any of the required payments to the Investor pursuant to the Energy Project Cooperative Agreement, then the amounts of the Special Assessments shall be reduced in accordance with the appropriate Assessment Schedule attached to the Petition.

1.5 To facilitate the repayment of the Project Advance, the City, pursuant to Section 2.4 of the Energy Project Cooperative Agreement, assigned to the Investor all of its right, title, and interest in and to the Special Assessments, the funds of the City established to collect and hold the Special Assessments, and any other property received or to be received from the City under the Energy Project Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.6 Pursuant to Section 2.5 of the Energy Project Cooperative Agreement, the District assigned to the Investor any and all of its right, title, and interest it may have in and to the Special Assessments related to the District actually received by or on behalf of the City under the Energy Project Cooperative Agreement. The Treasurer, the City, the District, the Owner, and the Investor each hereby acknowledges, agrees with, and consents to those assignments.

1.7 Notwithstanding anything in this Agreement to the contrary, the Treasurer's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The Treasurer's obligations shall be limited to the moneys levied, collected, and received in respect of the Special Assessments and any County-imposed collection fees, charges, or penalties. The Treasurer's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the County.

1.8 Notwithstanding anything in this Agreement to the contrary, the City's obligations under this Agreement are not and shall not be secured by an obligation or pledge of any moneys raised by taxation. The City's obligation under this Agreement shall be limited to any moneys received from the County in respect of the Special Assessments and any County-imposed

collection fees, charges, or penalties. The City's obligations under this Agreement do not and shall not represent or constitute a debt or pledge of the faith and credit or taxing power of the City.

Section 2. Foreclosure Process.

2.1 The Treasurer, the City, the Investor, and the Owner each acknowledge that the Special Assessments are to secure payments relating to the Project Advance, including the Project Costs and other amounts as provided under the Energy Project Cooperative Agreement. The Treasurer agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Energy Project Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, the Treasurer will, upon receipt of written notice from the Investor or the District (with a copy to the other of the Investor or the District, and to the Owner and the City) that an Event of Default (solely as described under Section 7.1(b) of the Energy Project Cooperative Agreement) has occurred and is continuing and which notice requests the Treasurer to foreclose on the lien of the Special Assessments, file and diligently prosecute a foreclosure action against the Assessed Lands following the procedures for lien foreclosures established in Ohio Revised Code Section 323.25 and related sections, but not earlier than the sixtieth day following receipt by the Treasurer of the delinquent land list certifying that the Special Assessments are delinquent. The foreclosure action shall be to collect all Special Assessments then due and owing on the Assessed Lands in accordance with the Petition. Without the prior written consent of the District and the Investor, the Treasurer will not confirm the sale of the Assessed Lands for an amount less than 100% of the amount of the Special Assessments and other general real estate taxes, payments in lieu of taxes, and assessments then due and owing with respect to the Assessed Lands, as shall be certified by the District to the Treasurer pursuant to the records of the Treasurer, except and unless the Assessed Lands become forfeited land subject to Ohio Revised Code Chapter 5723. All fees and expenses of the Treasurer in collecting the Special Assessments are to be included and paid for by the Owner. All fees and expenses of the Treasurer in collecting the Special Assessments, including other general real estate taxes, payments in lieu of taxes, and assessments then due and owing are to be included and paid for by the Owner prior to any such amounts being paid to the City and to other affected taxing jurisdictions and special districts. The City, Investor, and Owner understand and agree that the failure of the Treasurer to obtain any consent under Section 2.1 shall not create a cause for action against the Treasurer, the Athens County Board of County Councilors, or Athens County, nor shall it subject the Treasurer, the Athens County Board of County Councilors, or Athens County to liability for any difference between the foreclosure price and the amount of the delinquent Special Assessments. Further, nothing in this Agreement shall be construed to limit any immunity to which the Treasurer may be entitled pursuant to Chapter 2744 of the Ohio Revised Code.

2.2 The Treasurer hereby acknowledges that the City has assigned all of its right, title, and interest in and to the Special Assessments to the Investor, and that the District has assigned all of its right, title, and interest it may have in and to the Special Assessments to the Investor, and the Treasurer hereby agrees that so long as the Project Advance is outstanding and the Project Costs and other amounts under the Energy Project Cooperative Agreement are secured, at least in part, by the revenues derived from the Special Assessments, the Treasurer will not sell

or negotiate the sale of one or more Tax Certificates related to the Assessed Lands for an amount less than 100% of the amount levied and certified for collection without the prior written consent of the District and the Investor.

2.3 The Treasurer hereby covenants and agrees that if any of the general real estate taxes, payments in lieu of taxes, assessments, including the Special Assessments, governmental charges, or penalties and interest on the Assessed Lands are delinquent and the Delinquent Tax Lien Sale Act would permit the Treasurer to negotiate the sale of Tax Certificates with respect thereto, the Treasurer will, prior to giving any notice under the Delinquent Tax Lien Sale Act of a sale of Tax Certificates with respect to the Assessed Lands, give written notice to the District and the Investor regarding the same and state therein whether the Treasurer reasonably anticipates receiving no less than 100% of the general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties and interest, originally levied and certified for collection plus other charges, including attorney's fees, or whether the Treasurer reasonably expects to receive less than 100% of the general real estate taxes, payments in lieu of taxes, and assessments, including the Special Assessments, penalties and interest, levied and certified for collection plus other charges, including attorney's fees, and in accordance with this Agreement is requesting the consent of the District and the Investor for such a sale.

2.4 The Treasurer agrees, on behalf of the County, not to utilize the authority contained in Ohio Revised Code Chapter 5722 to transfer any of the Assessed Lands to the county land reutilization corporation, to sell or convey any of the Assessed Lands to any political subdivision under the authority contained in Ohio Revised Code Chapter 5722, or to clear the liens and encumbrances applicable to the Assessed Lands under the authority contained in Ohio Revised Code Chapter 5722 without the express written consent of the District and the Investor.

2.5 Nothing in this Agreement shall, or shall be construed to, prevent the Treasurer from selling one or more Tax Certificates with respect to the Assessed Lands to a third party without the consent of the District if the price received for the Tax Certificate or Tax Certificates equals or exceeds 100% of the delinquent general real estate taxes, assessments, including the Special Assessments, penalties and interest on the Assessed Lands outstanding against the Assessed Lands at the time of such sale.

2.6 The District and the Investor each hereby agrees that upon written notice from the Treasurer pursuant to Section 2.1 of this Agreement, it, within thirty (30) days of receipt of the Treasurer's notice, shall give a written response to the Treasurer indicating therein whether it consents to the request for sale of a Tax Certificate or Tax Certificates.

2.7 Delay or failure of the District or the Investor to give a written response within thirty (30) days of receipt of such notice shall be construed to be a consent to such request or to be a waiver of the right to give such consent. No consent or refusal thereof by the District or the Investor in response to a request by the Treasurer shall extend to or affect any subsequent request of the Treasurer or shall impair the rights of the District or the Investor with respect to any such subsequent request.

2.8 So long as the Project Costs are outstanding, the Treasurer hereby covenants and agrees (a) to remit to the Investor, as appropriate and as provided for herein, not more than thirty (30) days from the date of collection by the Treasurer, any amounts collected with respect to the Assessed Lands as payment for delinquent Special Assessments, including any amounts collected from Tax Certificates; and (b) to the extent the Treasurer seeks and is appointed as receiver for the Assessed Lands, as provided for in Chapter 323 of the Revised Code, after payment of reasonable fees and expenses of the Treasurer, all amounts collected by the Treasurer, as receiver for the Assessed Lands and collected as a result of any delinquent Special Assessments, shall be remitted to the Investor.

Section 3. Indemnification by Owner

3.1 The Owner hereby releases the District, the City, the Treasurer, the Investor, and their respective officers, directors, and employees (the “Indemnified Parties”), from, agrees that the Indemnified Parties shall not be liable for, and indemnifies the Indemnified Parties against, all liabilities, claims, costs, and expenses, including out-of-pocket and incidental expenses and legal fees, imposed upon, incurred, or asserted against Indemnified Parties, on account of: (i) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the acquisition, installation, equipping, improvement, maintenance, operation, and use of the Owner’s Project; (ii) any breach or default on the part of the Owner in the performance of any covenant, obligation, or agreement of the Owner under the Energy Project Cooperative Agreement, or arising from any act or failure to act by the Owner, or any of the Owner’s agents, contractors, servants, employees, or licensees; (iii) the Owner’s failure to comply with any requirement of this Agreement; (iv) the efforts of the City and the Treasurer to collect Special Assessments; (v) any legal costs or out-of-pocket costs incurred by the District specifically related to additional approvals or actions that may be required by the District arising after the date of the Energy Project Cooperative Agreement (and in the case of such legal costs or out-of-pocket costs, agrees to pay such costs directly to the District); and (vi) any claim, action or proceeding brought with respect to any matter set forth in clause (i), (ii), (iii), (iv), or (v) above, provided, however that the Owner shall not indemnify the Indemnified Parties as provided above to the extent that any liability, claim, cost, or expenses arises out of or results from the gross negligence, willful misconduct, or breach of this Agreement or the Energy Project Cooperative Agreement of the Indemnified Parties.

3.2 The Owner agrees to indemnify, to pay, and to hold each of the Indemnified Parties harmless from and against all liabilities, and all reasonable costs and expenses, including out-of-pocket expenses and attorneys’ fees, arising out of any federal, state, or local environmental laws, regulations, resolutions or ordinances, incurred by any of the Indemnified Parties as a result of the existence on or release from the Owner’s Project Site of Hazardous Materials, which in any way result from any act of omission or Council of the Owner or any of its agents, employees, independent contractors, invitees, licensees, successors, assignees, or tenants.

Section 4. Additional Agreements and Covenants.

4.1 The agreements of the Parties hereafter with respect to the foreclosure process shall be a covenant running with the Assessed Lands and, so long as Project Costs are payable from or secured, at least in part, by the revenues derived from the Special Assessments, such covenant shall be binding upon the Assessed Lands (except as released as provided in the Owner Consent), the Owner and any future owner of all or any portion of the Assessed Lands. The Owner Consent, and all other required documents and agreements, shall be recorded with the Athens County, Ohio Recorder's Office, so that the agreements of the Parties hereafter with respect to the foreclosure process established pursuant to this Agreement is a covenant running with and is enforceable against the Assessed Lands.

4.2 The Investor and the District hereby agree that any future legal cause of action to enforce this Agreement against the Treasurer shall be solely limited to specific performance of this Agreement as the sole remedy, and the Investor and the District agree to provide the Treasurer with sixty (60) days advanced written notice delivered by certified mail prior to bringing an action for specific performance.

4.3 If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

4.4 This Agreement shall inure to the benefit of each of the Parties, and each of their successors and assigns, all subject to the provisions of this Agreement. This Agreement may be amended only by a written instrument of the Parties, and any attempt to amend or modify this Agreement without a written instrument signed by all of the Parties to this Agreement shall be null and void. Notices given hereunder shall be in writing and shall be effective when actually received if delivered by hand or overnight courier, or three days after being sent by registered or certified mail, postage prepaid, the certification receipt therefore being deemed the date of such notice, and addressed to the Parties as follows:

If to City: City of Athens, Ohio

Attention:

If to Treasurer: County Treasurer
Athens County, Ohio

If to the District: Athens Regional Energy Special Improvement District

If to the Owner: Lostro Ventures, LLC

If to the Investor: ☐

4.5 (a) The Investor shall have the unrestricted right at any time or from time to time, and without the Treasurer, the City, the District, or the Owner's consent, to assign all or any portion of its rights and obligations under this Agreement and may sell or assign any and all liens received directly or indirectly from the City to any person (each, an "Investor Assignee"), and the Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Agreement and to any other documents, instruments and agreements executed in connection with this Agreement as the Investor shall deem necessary to effect the foregoing. Any Investor Assignee shall be a party to this Agreement and shall have all of the rights and obligations of the Investor under this Agreement (and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement) to the extent that such rights and obligations have been assigned by the Investor pursuant to the assignment documentation between the Investor and such Assignee, and the Investor shall be released from its obligations under this Agreement and under any and all other guaranties, documents, instruments and agreements executed in connection with this Agreement to a corresponding extent.

(b) The Investor shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Treasurer, the City, the District, or the Owner, to grant to one or more persons (each, a "Participant") participating interests in the Investor's obligation to make Project Advances under the Energy Project Cooperative Agreement or any or all of the loans held by Investor under the Energy Project Cooperative Agreement. In the event of any such grant by the Investor of a participating interest to a Participant, whether or not upon notice to the Treasurer, the City, the District, and the Owner, the Investor shall remain responsible for the performance of its obligations under the Energy Project Cooperative Agreement and the Owner shall continue to deal solely and directly with the Investor in connection with the Investor's rights and obligations under the Energy Project Cooperative Agreement.

(c) The Investor may furnish any information concerning the Owner in its possession from time to time to prospective Investor Assignees and Participants.

4.6 This Agreement shall be construed in accordance with the laws of the State of Ohio.

4.7 This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[Signature Pages Immediately Follow]

IN WITNESS WHEREOF, each party to this Agreement has caused this Agreement to be executed in its respective name and capacity by its respective duly authorized officers, all as of the day and the year first written above.

“TREASURER”
COUNTY TREASURER OF ATHENS
COUNTY, OHIO

Treasurer
County of Athens, Ohio

Approved as to form and correctness:

“CITY”
CITY OF ATHENS, OHIO

City Attorney

By: _____

Name: _____

Title: _____

“DISTRICT”

ATHENS REGIONAL ENERGY SPECIAL
IMPROVEMENT DISTRICT, INC.

By: _____

Name: _____

Title: _____

“OWNER”
LOSTRO VENTURES, LLC

By: _____

Name: _____

Title: _____

“INVESTOR”

[]

By: _____

Name: _____

Title: _____

FISCAL OFFICER'S CERTIFICATE

The undersigned, Fiscal Officer of the City of Athens, Ohio, hereby certifies that the City will establish a special assessment fund, into which the Special Assessments (as that term is defined in the foregoing Agreement) received by the City shall be deposited, free from any previous encumbrances. The City shall use the moneys deposited in such special assessment fund to meet its obligations under the foregoing Agreement. This Certificate is given in compliance with Ohio Revised Code Sections 5705.41 and 5705.44

Dated: [_____] [____], 2024

Fiscal Officer
City of Athens, Ohio

EXHIBIT A

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Special Assessment Agreement and owned by Lostro Ventures, LLC is the portion of the real property described in the following legal description that, as of the date hereof, is assigned tax parcel identification number A027050001400 in the records of the Athens County, Ohio Auditor's Office, as such parcel may be further divided, combined, re-combined, re-numbered, or re-named from time to time, and is located at the commonly used mailing address 63 S. Court Street, Athens, Ohio.

For APN/Parcel ID(s): A027050001400

PARCEL 1:

Situated in the City of Athens, County of Athens, and State of Ohio, to-wit:

Beginning at the northeast corner of Inlot No. 59;

Thence west along the north line of said Inlot, 110 feet;

Thence South 66 feet and 7 inches to the north line of Susan Roach's premises;

Thence east along the north line of said Susan Roach's premises 110 feet to the east line of said Inlot No. 59;

Thence North 66 feet and 7 inches to the place of beginning.

PARCEL 2:

Situated in the City of Athens, County of Athens, State of Ohio, and more particularly described as follows:

Beginning on the North line of Inlot No. 59 in said City of Athens, at a point 110 feet West from the Northeast corner of the said Inlot No. 59;

Thence West 14 feet on the North line of said Inlot;

Thence, South 66 feet and seven inches, to the North line of that part of Inlot No. 59 owned by the heirs of Susan Roach;

Thence East 14 feet on the North line of the land owned by the heirs of Susan Roach;

Thence North 66 feet and 7 inches, to the place of beginning.

FOR INFORMATIONAL PURPOSES ONLY:

PPN: A027050001400

Also known as: 63 South Court Street, Athens, Ohio 45701

EXHIBIT B

OWNER CONSENT

(Affidavit of Facts Relating to Title Made Pursuant to O.R.C. §5301.252)

The undersigned, _____, having been duly cautioned and sworn, deposes and states as follows:

The undersigned is the _____ of Lostro Ventures, LLC, an Ohio limited liability company (the "Owner").

This Owner Consent, dated as of [_____] [____], 2024, is given by the Owner pursuant to the Special Assessment Agreement dated as of [_____] [____], 2024 (the "Agreement") by and among the County Treasurer of Athens County, Ohio (the "Treasurer"), the City of Athens, Ohio (the "City"), the Athens Regional Energy Special Improvement District (the "District"), Lostro Ventures, LLC (together with its permitted successors and assigns under the Agreement, the "Investor") and the Owner. Terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement.

The Agreement provides for an expedited foreclosure process with respect to certain Special Assessments which have been levied on the Assessed Lands by the City in order to pay the costs of special energy improvement projects under Ohio Revised Code Chapter 1710. The Assessed Lands are described in Exhibit 1 to this Owner Consent, and the Special Assessments are disclosed on Exhibit 2 to this consent.

The Agreement further provides that if an event of default occurs and is continuing with respect to a required semi-annual payment of Special Assessments or an "Event of Default" (as that term is defined in the Energy Project Cooperative Agreement, as appropriate) under the Energy Project Cooperative Agreement occurs and is continuing, the Treasurer will pursue an expedited foreclosure of the lien of the Special Assessments, all as provided in the Agreement. In consideration of the Project Advance to finance the Project, the Owner hereby consents to the expedited foreclosure process with respect to the lien of the Special Assessments then due and owing with respect to the Assessed Lands, as provided in the Agreement.

The Owner is the owner of the Assessed Lands. The Owner covenants and agrees that so long as the Project Advance remains outstanding, except as the covenant may be released by the District, the City, and the Investor, as applicable, in writing, the expedited foreclosure process established pursuant to the Agreement shall be a covenant on and running with, and shall be binding upon, the Assessed Lands, the Owner and all future owners of the Assessed Lands. Any release, modification or waiver of the covenant running with the land by the District, the City, or the Investor, as applicable, shall be filed of record with the Athens County, Ohio Recorder's Office. The Owner agrees that this Owner Consent shall be recorded with the Athens County, Ohio Recorder's Office and the Owner covenants and agrees to record such documents and to take such reasonable steps as are necessary, so that the expedited foreclosure process with respect to

the lien of the Special Assessments is a covenant on and running with the Assessed Lands and is binding on the Owner and any and all future owners of all or any portion of the Assessed Lands.

The Special Assessments have been levied by the City and certified to the County Auditor for placement on the tax list and duplicate and collection with and in the same manner as real property taxes as special assessments binding against the Assessed Lands in each of the years disclosed in the schedule of Special Assessments attached to this Owner Consent as Exhibit 2. Unless earlier paid by the Owner or any successor in interest of the Owner to the Assessed Lands, the Special Assessments shall be levied, billed, due and payable, and collected in each of the years in each of the amounts disclosed on Exhibit 2.

Anything in this Owner Consent to the contrary notwithstanding, this Owner Consent shall in no way be construed as a waiver by the Owner of its statutory right of redemption, including the full applicable redemption period.

[Signature Page Immediately Follows]

Further affiant sayeth naught.

“OWNER”

LOSTRO VENTURES, LLC

By: _____

Name: _____

Title: _____

STATE OF _____)

)

SS:

COUNTY OF _____)

Sworn to or affirmed and subscribed before me by _____ this date of _____, 2024.

[SEAL]

Notary Public

This instrument was prepared by:
Colin J. Kalvas, Esq.
Bricker Graydon LLP
100 South Third St.
Columbus, Ohio 43215

EXHIBIT 1

DESCRIPTION OF ASSESSED LANDS

The Assessed Lands subject to this Special Assessment Agreement and owned by Lostro Ventures, LLC is the portion of the real property described in the following legal description that, as of the date hereof, is assigned tax parcel identification number A027050001400 in the records of the Athens County, Ohio Auditor's Office, as such parcel may be further divided, combined, re-combined, re-numbered, or re-named from time to time, and is located at the commonly used mailing address 63 S. Court Street, Athens, Ohio.

For APN/Parcel ID(s): A027050001400

PARCEL 1:

Situated in the City of Athens, County of Athens, and State of Ohio, to-wit:

Beginning at the northeast corner of Inlot No. 59;

Thence west along the north line of said Inlot, 110 feet;

Thence South 66 feet and 7 inches to the north line of Susan Roach's premises;

Thence east along the north line of said Susan Roach's premises 110 feet to the east line of said Inlot No. 59;

Thence North 66 feet and 7 inches to the place of beginning.

PARCEL 2:

Situated in the City of Athens, County of Athens, State of Ohio, and more particularly described as follows:

Beginning on the North line of Inlot No. 59 in said City of Athens, at a point 110 feet West from the Northeast corner of the said Inlot No. 59;

Thence West 14 feet on the North line of said Inlot;

Thence, South 66 feet and seven inches, to the North line of that part of Inlot No. 59 owned by the heirs of Susan Roach;

Thence East 14 feet on the North line of the land owned by the heirs of Susan Roach;

Thence North 66 feet and 7 inches, to the place of beginning.

FOR INFORMATIONAL PURPOSES ONLY:

PPN: A027050001400

Also known as: 63 South Court Street, Athens, Ohio 45701

EXHIBIT 2

SCHEDULE OF SPECIAL ASSESSMENTS

[illegible]

* Pursuant to Ohio Revised Code Chapter 323, the Special Assessment Payment Dates identified in this Exhibit B are subject to adjustment by the Athens County Auditor under certain conditions.

** Pursuant to Ohio Revised Code Section 727.36, the Athens County Auditor may charge and collect a fee in addition to the amounts listed in this Exhibit B.

RECORD OF ORDINANCES

Government Forms and Supplies (844) 224-3338 FORM NO. SHTROR11

Ordinance No. 0-80-24 Passed , 20

Introduced by Alan Swank, Chair
Planning & Development Committee

AN ORDINANCE GRANTING A SPECIAL RIGHT-OF-WAY USE PERMIT AT 49 CENTRAL AVENUE FOR PRE-EXISTING PATIO, STAIRS AND PARKING IN THE CITY RIGHT-OF-WAY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Having satisfactorily met the regulations established pursuant to Title 49, Management, Administration, and Control of the Use of the City's Public Rights-of-Way, a special right-of-way use permit is hereby granted at 49 Central Avenue, owner, James Blackwell, for a pre-existing paving stone patio and stairs to the house in an adjacent unmaintained alley, and to park in said portion of this unmaintained right-of-way to more easily access the front door to the house, as indicated on the application attached hereto and incorporated herein by reference.

SECTION II: James Blackwell, owner, shall agree to indemnify, and save the City of Athens harmless from all claims, demands, costs, expenses, real estate taxes, if any, and compensation which might arise from the encroachment of permittee upon property of the City of Athens that is the subject of this ordinance.

SECTION III: Said permit shall be subject to the following conditions:

1. This special right-of-way permit is personal in nature and will be in effect for a maximum of seven (7) years from the date of issuance unless revoked by City Council ordinance, or there is a change of ownership or use, whichever comes first.
2. James Blackwell, owner, shall be responsible for the maintenance and upkeep of said right-of-way.

SECTION IV: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor



TITLE 49 APPLICATION

Use of the City's Public Rights of Way

In accordance with Title 49, Application Fee: "At the time that a person submits an application for Use of Right of Way Permit, such person shall pay a non-refundable application fee of \$50 payable to the City of Athens."

(For Office Use Only)

Permit # 74924-000000

Date Rec'd 7/9/2024

Applicant shall comply with all sections of Athens City Code Title 49 Right of Way. All required information shall be attached to application, including such things as but not limited to detailed site plans, a certificate of liability insurance listing City of Athens Ohio as certificate holder. Property owner shall be solely responsible for the maintenance and upkeep of said right-of-way.

Applicant James Blackwell Phone 936-715-8464
Mailing Address 49 Central Ave Athens, OH 45701
Email Address jamesharperblackwell3@gmail.com
Address of Project/ Site 49 Central Ave Athens, OH 45701
Parcel Number A02802000600 Zoning Designation R1
Property Owner James Blackwell Phone 936 715 8464
Property Owner Mailing Address 49 Central Ave Athens, OH 45701
Project Description (See Attached Drawing)

I HEREBY SWEAR OR AFFIRM THAT ALL THE INFORMATION PROVIDED AND ATTACHED REQUIRED DOCUMENTATION ARE TO THE BEST OF MY KNOWLEDGE TRUTHFUL AND ACCURATE.

By signing this application, the applicant agrees to comply with all facets of Athens City Code Title 49.

Applicant Signature [Signature] Date 7/9/2024

By signing property owner agrees to indemnify, and save the City of Athens harmless from all claims, demands, costs, expenses, real estate taxes, if any, and compensation which might arise from the encroachment of permittee upon property of the City of Athens that is the subject of this application.

Property Owner Signature [Signature] Date 7/9/2024

For Official Use Only

1. Code Enforcement Admin: Signature [Signature] Date 7/9/24

☒ Supporting Documents Attached ☒ Fee Paid Amount \$ 50

2. Code Directors Review: ☒ Approved ☐ Refused ☐ Missing Documentation

Remarks _____

Signature [Signature] Date 7-15-24

3. City Engineer Review: ☐ Approved ☐ Refused ☐ Missing Documentation

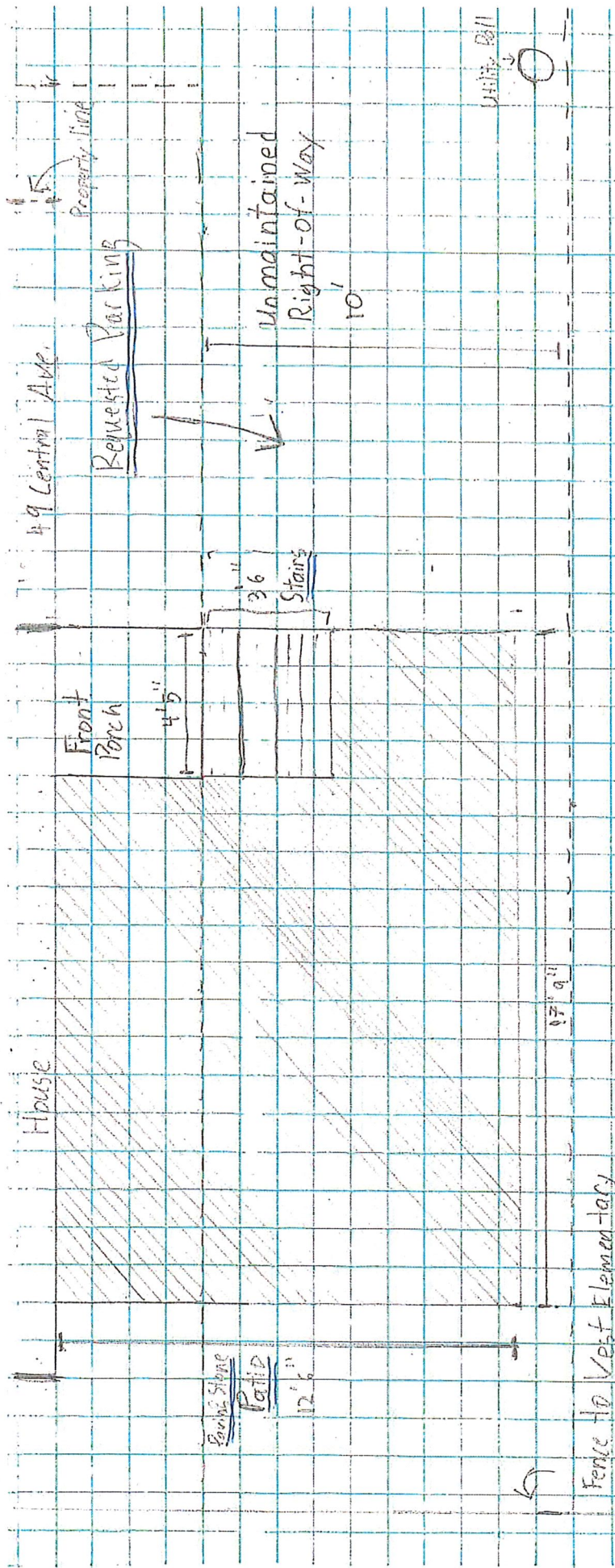
Remarks _____

Signature [Signature] Date 7-15-24

4. Service Safety Director: ☒ Approved ☐ Refused ☐ Missing Documentation

Remarks _____

Signature [Signature] Date 7/17/24



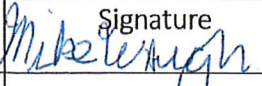
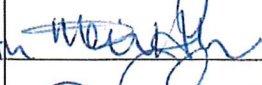
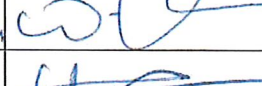
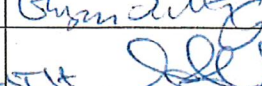
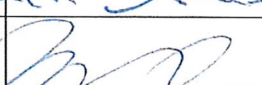
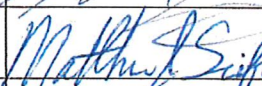
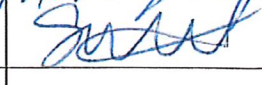
Requesting Special Use of Right-of-Way Permit for pre-existing

Paving Stone patio and stairs in portion of Unmaintained Right-of-Way adjacent to the East side of 49 Central and Permit to park in said portion of Right-of-Way to more easily access front door.



Petition of support for Special Use of Right-of-Way Permit:

I understand by signing this petition I am voicing my support for a permit for pre-existing paving stone patio, and stairs in portion of Unmaintained Right-of-Way located along the east side of 49 Central Ave, and to allow residents of 49 Central to park in said portion of Right-of-Way for easy access to their front door. (See back for details)

Printed Name	Signature	Address	Phone #
MIKE WAUGH		14B CLARKE ST	740 447 8496
Brittany Hanesworth		14 D Clarke St	740 274 2666
Winsome Chum		14 Clarke St Apt	614-886-6886
Aarin Brown		18 Clarke St	220-232-8994
Grayson Schultz		55 Central Ave	608-228-4383
General Smith		17 Curran	740 707 4011
Taylor Long		8 Clarke St	812-614-9599
MATT SEIFERT		55 CENTRAL AVE	740-649-7501
Evon Smith		17 Curran Dr.	740-707-4454



9800 Fredericksburg Road - San Antonio, Texas 78288

RENEWAL DECLARATIONS PAGE

Named Insured and Residence Premises

Policy Number

JAMES H BLACKWELL AND EMILY ELIZABETH BLACKWELL

GAR 00611 84 38 90A

49 CENTRAL AVE

ATHENS, ATHENS, OH 45701-1502

Policy Period From: 06/29/24 To: 06/29/25
(12:01 A.M. standard time at location of the residence premises)**SECTION I - COVERAGES AND AMOUNTS OF INSURANCE**

COVERAGE A - DWELLING PROTECTION	\$408,000
COVERAGE B - OTHER STRUCTURES PROTECTION	\$40,800
COVERAGE C - PERSONAL PROPERTY PROTECTION	\$204,000
COVERAGE D - LOSS OF USE PROTECTION (UP TO 12 MONTHS)	UNLIMITED

SECTION II - COVERAGES AND LIMITS OF LIABILITY

Personal Liability - Each Occurrence	\$500,000
Medical Payments to Others	\$5,000

DEDUCTIBLES (Applies to SECTION I Coverages ONLY)

We cover only that part of the loss over the deductible stated.

WIND AND HAIL	\$4,080	(1%)
ALL OTHER PERILS	\$2,000	

POLICY PREMIUM for Section I and Section II Coverages Above

\$908.47

CREDITS AND DISCOUNTS (Included in policy premium above.) \$765.59 CR
Details on the following page. (If applicable)**OTHER COVERAGES AND ENDORSEMENTS**

\$11.49

Forms and Endorsements are printed on the following page.

STATE SURCHARGES AND TAXES (Shown below if applicable)**TOTAL POLICY PREMIUM**Including Credits, Discounts, Optional Coverages, Endorsements, State Surcharges and Taxes
\$919.96

PREMIUM DUE AT INCEPTION. THIS IS NOT A BILL. STATEMENT TO FOLLOW.

FIRST MORTGAGEE:

PEOPLES BANK

LOAN NR 7230026018

ITS SUCCESSORS AND/OR ASSIGNS

PO BOX 738

MARIETTA, OH 45750-0738

In witness whereof, this policy is signed on 05/01/24

Kelly Armstrong, Secretary
Randy Termeer, President**REFER TO YOUR POLICY FOR OTHER COVERAGES, LIMITS AND EXCLUSIONS.**

HO-D1 (07-08)

ATTACH THIS DECLARATION TO PREVIOUS POLICY

87028-0708

From: USAA USAA.Customer.Service@mailcenter.usaa.com
Subject: USAA Certificate of Insurance
Date: Jul 8, 2024 at 10:01:50 AM
To: jamesharperblackwell3@gmail.com

To ensure delivery to your inbox, please add USAA.Customer.Service@mailcenter.usaa.com to your address book.



Insurance Policy Issued

Dear James Blackwell,

CERTIFICATE OF INSURANCE

Loan number: 90A
Insured's name: James Blackwell
Property address: 49 Central Avenue
Athens, OH 45701

This will affirm and certify that a hazard insurance policy has been issued by the company indicated and is in force on the property described here with the following additional insured:

City of Athens Code Enforcement
28 Curran Drive

COVERAGE (Fire and Extended Coverage Minimum)

Policy Type: Condominium
USAA Policy: GAR 006118438 90A
Effective: July 8, 2024
Policy Term: 1 year
Building Items Coverage: \$0.00
Annual Premium: \$919.96

This certificate of insurance neither affirmatively nor negatively amends, extends, or alters the coverage provided by the referenced insurance policy, nor does it confer any new or additional contractual rights to the certificate holder other than those conveyed by the policy.

If we decide to cancel or not to renew this policy, the mortgagee will be properly notified at least 10 days before the cancellation or nonrenewal takes effect.

How to Contact Us

If you have questions, please contact us at one of the following numbers:

Phone: [210-531-USAA](tel:210-531-USAA) (8722), our mobile shortcut #8722 or [800-531-8722](tel:800-531-8722)

Thank you,
Garrison Property and Casualty Insurance Company

Garrison Property and Casualty Insurance Company, a subsidiary of USAA Casualty Insurance Company, is authorized to use the USAA logo, a registered trademark of United Services Automobile Association.



Go Digital

Review and edit your online document preferences at usaa.com.



Please do not reply to this e-mail.

To contact USAA, visit our secure [contact page](#).



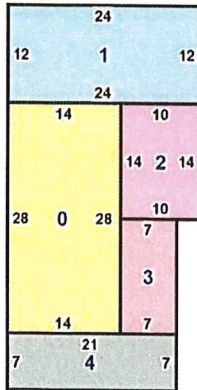
A028020006600

7/18/2024



Jill A. Davidson
County Auditor
Athens County, Ohio
www.athenscountyauditor.org

FIRST SKETCH	LEGAL
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0	Main Building 392 sqft
1	FRAME 288 sqft
2	FRAME 140 sqft
3	FRAME 98 sqft
4	ENCL FRAME PORCH 147 sqft

OWNER BLACKWELL JAMES HARPER EMILY ELIZABETH
ADDRESS 49 CENTRAL AVE
DESCRIPTION 14-09-00 IL R-2071 M-18
SCHOOL DIST ATHENS CSD **TAX DIST** A02
ACREAGE 0.0000

	VALUATION	
	APPRAISED	ASSESSED
LAND	\$6,290.00	\$2,200.00
IMPROVEMENTS	\$113,080.00	\$39,580.00
CAUV	\$0.00	\$0.00
TOTAL	\$119,370.00	\$41,780.00

TAXES		SPECIAL ASSESSMENTS	
TAXABLE VALUE	\$41,780.00	COUNT	0
ROLLBACKS	NONE	DELINQUENT / BALANCE	\$0.00 / \$0.00
HALF (1ST / 2ND)	\$1,056.47 / \$1,056.47	TOTAL / BALANCE	\$0.00 / \$0.00
YEAR (TOTAL / BALANCE)	\$2,112.94 / \$1,056.47		

MOST RECENT SALES

DATE	BUYER	SELLER	# PARCELS	PRICE	VALIDITY
7/7/2023	BLACKWELL JAMES HARPER	WILLOW MANAGEMENT LLC	0	\$154,000.00	QUALIFIED
10/24/2019	WILLOW MANAGEMENT LLC	BIERLEIN JEFFREY R	0	\$0.00	MULTIPLE NOT VALID
12/17/2013	BIERLEIN JEFFREY R	NOSTRANT RENTALS LLC	0	\$84,250.00	QUALIFIED
5/5/2005	NOSTRANT RENTALS LLC	NOSTRANT KURT C & CHERYL A	0	\$0.00	RELATED INDIVIDUALS OR CORPORATIONS
9/16/2003	NOSTRANT KURT C & CHERYL A	DEDDENS MICHAEL J ETAL	0	\$55,000.00	QUALIFIED

LAND		IMPROVEMENTS	
CODE	FRONTAGE DEPTH ACREAGE SQFT	VALUE	
FRONT FOOT Building Site	43 161 0.159 6,923	\$21,710.00	
FRONT FOOT House Lot	43 79 0.078 3,397	-\$15,420.00	

RESIDENTIAL

Building (CARD: 1)	OLD STYLE TWO STORY BUILT 1900	Baths (Full / Half)	1 / 0
Area	1,310 sqft	Rooms (Bedroom / Family)	4 / 0
Basement (Code / Finished / Total)	CRAWL / 0 sqft / 0 sqft	Stories	2.0
Heat Full Type	GAS	Cooling	CENTRAL AIR CONDITION
External Wall	FRAME	Fireplace Stacks	1

RECORD OF ORDINANCES

Government Forms and Supplies (844) 224-3338 FORM NO. SHTROR11

Ordinance No. 0-81-24 Passed , 20

Introduced by Micah McCarey
City & Safety Services Committee

AN ORDINANCE AFFIRMING THE SERVICE-SAFETY DIRECTOR'S EXECUTION OF EASEMENTS WITH THE STATE OF OHIO NECESSARY FOR THE CONSTRUCTION OF CITY SEWER SYSTEM IMPROVEMENTS, PROJECT #330.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Council does hereby affirm the Service-Safety Director's execution of easements with the State of Ohio necessary for the construction of City Sewer System Improvements, Project #330, as follows:

Fifteen (15) years, commencing on June 1, 2024, and expiring on May 31, 2039, on behalf of the Department of Mental Health and Addiction Services, File No. 8900; and

Twenty-Five (25) years, commencing on June 1, 2024, and expiring on May 31, 2049, File No. 8913, copies of said easements are attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

MAY 13 2024

Jill Davidson
Athens County Auditor

STATE OF OHIO EASEMENT

This Agreement (hereinafter referred to as "Agreement"), dated as of May 6th, 2024, is made and entered into by and between the State of Ohio, acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, the Grantor (hereinafter referred to as "State"), for and on behalf of the Department of Mental Health and Addiction Services (hereinafter referred to as "Agency"), and City of Athens, a body politic, duly formed and existing under the laws of the State of Ohio (hereinafter referred to as "Grantee"), having its principal place of business located at 8 East Washington Street, Suite 301, Athens, Ohio 45701, pursuant to the provisions of Section 123.01(A)(5) of the Ohio Revised Code.

RECITALS

WHEREAS, State is the owner, in fee simple, of the land described in Exhibit "A" attached hereto and made a part hereof and more particularly depicted in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as "Easement Area"). Further reference is made to DAS File No. 8900 on file with the State; and

WHEREAS, Grantee desires to obtain from State an easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain sewer force main pipeline upon the Easement Area; and

WHEREAS, Agency requested the State prepare this Agreement; and

NOW, THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. USE OF PREMISES.

State does hereby grant a non-exclusive easement unto Grantee to be used solely to install, construct, reconstruct, use, operate, maintain, repair, replace, remove, service and improve in, on, over, under, across, through and upon the Easement Area a sewer force main pipeline (hereinafter referred to as "Improvement"). On or before the Expiration Date (as defined below) or earlier if this Agreement is terminated pursuant to the provisions hereof, Grantee shall remove, or cause the removal of, all component parts of the Improvement and restore the ground to its original condition at its own cost and expense, unless the parties agree otherwise in writing.

II. TERM.

The term of this Agreement shall be for fifteen (15) years, commencing on June 1, 2024 (hereinafter referred to as "Commencement Date"), and expiring on May 31, 2039 (hereinafter referred to as "Expiration Date"), unless earlier terminated pursuant to a subsequent agreement between the parties or in accordance with the provisions of Paragraph X hereof.

202400001947
ATHENS CITY MAYORS OFFICE

Page 1 of 13

202400001947
FILED FOR RECORD IN
ATHENS COUNTY, OHIO
JESSICA MARKINS, RECORDER
05/13/2024 03:29:47 PM
OR BOOK: 614 PAGE: 1002
EASEMENT 122.00 PG: 13029b10b*x1
b876108:PTC00

III. CONSIDERATION.

Grantee shall pay to Agency the total sum of One and 00/100 Dollars (\$1.00) in consideration of State's granting an easement. Grantee shall tender such payment payable to the "Treasurer, State of Ohio" to Agency upon delivery to Grantee of a fully executed counterpart of this Agreement.

IV. CONSTRUCTION/MAINTENANCE.

- (A) Grantee agrees that the Improvement shall be installed, constructed, reconstructed, used, operated, maintained, repaired, replaced, removed, serviced and improved at all times in accordance with all local, state or federal laws, rules and regulations and applicable industry guidelines, including compliance with all applicable Equal Employment Opportunity laws. If no such laws, rules, regulations or industry guidelines are applicable to the Improvement, then responsible engineering practices shall be the control.
- (B) If the surface of the ground in the Easement Area is disturbed at any time, Grantee shall provide necessary fill, re-sod or re-seed any grassed areas, and make such repairs and replacements for a period of not less than one (1) year after the date of such disturbance as may be needed to restore the ground to its former condition or pay State for all damages caused thereto.
- (C) Grantee shall notify State immediately when any installation belonging to a party other than Grantee, or any unusual condition, is encountered in the Easement Area.
- (D) Grantee shall prior to the commencement of any work permitted hereunder obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc. required by law with respect to said work or the Improvement.
- (E) State or Agency may locate, relocate, install, construct, reconstruct, maintain, operate, repair, remove, use and place property improvements in, on, over, under, across, through and upon the Easement Area, so long as State's or Agency's improvements do not unreasonably impair the strength of or unreasonably interfere with Grantee's ability to use the Easement Area and maintain its Improvement.
- (F) Grantee shall comply with the provisions of Chapter 4115 of the Ohio Revised Code, Prevailing Wage Requirements, as applicable.
- (G) Grantee shall maintain and repair its Improvement at its own cost and expense on a continuous and ongoing basis for the term of this Agreement. Any maintenance and repairs shall be performed in a good and workmanlike manner.

V. LIABILITY.

Grantee shall indemnify and hold State harmless, so far as permitted by Ohio law, from any claims, demands, causes, actions and damages arising out of any act, omission or neglect by Grantee or any of its successors, assigns, agents, servants, employees, contractors, subcontractors and invitees ensuing from or in connection with Grantee's occupation and use of the Easement Area and

operation or maintenance of the Improvement. Nothing contained herein shall be deemed to be a waiver by State of any legal or factual defenses, which State may enjoy.

The provisions of this Paragraph V shall survive the expiration or termination of the term of this Agreement.

VI. INSURANCE.

At all times during the term of this Agreement, Grantee shall maintain adequate reserves and funding to compensate for bodily injury, personal injury, wrongful death and property damage or other claims including defense costs and other loss adjustment expenses arising out of or related to the Easement Area. At the State's request, Grantee shall provide written proof to assure that the appropriate levels of financial responsibility are being retained. Failure to comply with this clause shall constitute a default of this Agreement.

VII. MECHANIC'S LIENS.

- (A) Nothing contained in this Agreement shall be construed as constituting State's consent, express or implied, to or for the performance of any labor or services or furnishing of any materials for the installation, construction, reconstruction, usage, operation, maintenance, repair, replacement or improvement of the Easement Area or any portion thereof or the Improvement or any portion thereof.
- (B) Grantee shall not allow any liens or encumbrances to be filed against the Easement Area, or any portion thereof, other than (i) liens created by or resulting from any act or status of State or failure by State to perform any obligation not required to be performed by Grantee hereunder, or (ii) liens created by or resulting from any act or status or failure to act by Grantee to which State shall have expressly consented in writing. If such a lien or encumbrance is placed of record against the Easement Area, or any portion thereof, Grantee shall, within thirty (30) days after receiving notice thereof, remove or discharge same or bond off such lien or encumbrance.

VIII. TAXES/ASSESSMENTS.

If as a result of this Agreement any taxes and/or assessments, whether general or special, ordinary or extraordinary, unforeseen or foreseen, of any kind or nature whatsoever, shall be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Easement Area and/or the Improvement, Grantee shall be fully responsible for and shall pay same before any fine, penalty, interest or costs may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof.

IX. ASSIGNMENT.

Grantee may not assign or transfer this Agreement, in whole or in part, without the prior written consent of the State, whose consent may be withheld for any reason. Should consent to any such assignment be approved, Grantee shall notify the Agency. Any approved assignment or transfer shall not relieve Grantee of its obligations and duties under the terms, covenants and conditions of this Agreement. Grantee shall cause any assignee or transferee to expressly assume, and by reason

of such assignment or transfer shall be deemed as having assumed, all of the obligations and duties of Grantee hereunder.

X. TERMINATION.

This Agreement may be terminated by State upon ninety (90) days' notice given to Grantee if the Easement Area, or any portion thereof, is needed by State for any public or quasi-public use or purpose. On or before the date stated in such notice of termination, Grantee shall remove, or cause the removal of all component parts of the Improvement and restore the Easement Area to its original condition, at its own cost and expense, if State so requests. Grantee shall have no claim against State for the value of any unexpired portion of the original term of this Agreement or for the Improvement. Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.

This Agreement may be terminated at any time by Grantee by delivering written notice to State and Agency setting forth the date Grantee intends to terminate. Upon either the voluntary termination of this Agreement, or the end of the term hereof, Grantee shall remove all of the Improvement prior to termination, at its own cost and expense, if State so requests, and shall restore the Easement Area to its original condition, unless otherwise agreed to in writing by State and Agency. Grantee's obligations hereunder shall continue until such time as the Improvement is fully removed and the Easement Area fully restored as required herein, notwithstanding the stated date of termination in the notice provided by Grantee, or in the Agreement. Failure to remove the Improvement shall not be considered an extension of the term of the Agreement. No portion of any consideration paid pursuant to the terms of the Agreement will be refunded to Grantee.

XI. DEFAULT.

- (A) State may find Grantee in default of this Agreement when any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (i) Grantee's failure to make any payment required to be paid by Grantee when the same shall become due and payable or (ii) Grantee's failure to perform or observe any other covenant, term, or condition herein contained on Grantee's part to be performed or observed.
- (B) If the State finds Grantee to be in default under Paragraph XI(A), Grantee must cure such default within fifteen (15) days after the giving of notice to Grantee by State of such failure. If Grantee proceeds to promptly and continuously cure the same default with due diligence, then upon receipt by State of notice from Grantee stating the reason that such default cannot be cured within fifteen (15) days and stating that Grantee is proceeding with due diligence to cure such default, the State may extend such time within which such default may be cured for such period as may be necessary to complete the curing of same with due diligence.
- (C) If Grantee fails to cure such default, then State may give to Grantee, at State's option, a notice of election to terminate this Agreement upon the date specified in such notice, which date shall not be less than ten (10) days after the date of such notice, and upon the date specified in such notice the term of this Agreement shall expire and terminate as fully and completely and with the same effect as if such date were the Expiration Date, and all rights of Grantee shall thereupon expire and terminate, and Grantee shall remove or cause the

removal of the Improvements and restore the Easement Area to its original condition at its own cost and expense, if State so requests.

- (D) Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.
- (E) Upon the termination of this Agreement by reason of the happening of any event of default specified in this Paragraph XI, or in any other manner or circumstances whatsoever pursuant to legal process, by reason of or based upon or arising out of the occurrence of any such event of default under this Agreement, Grantee shall pay to Agency all sums required to be paid by Grantee up to the time of such termination.

XII. RECORDATION.

At its expense and within thirty (30) days of its receipt, Grantee shall present for recording a fully executed Agreement in accordance with Chapter 5301 of the Ohio Revised Code in the office of the County where the Easement Area is located. Grantee shall do likewise with respect to any addendum to this Agreement which may be entered into hereafter by the parties. As proof of recording, Grantee shall promptly return a copy of the recorded Agreement to the State.

XIII. RIGHTS CUMULATIVE.

All rights and remedies of State enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised or enforced concurrently and all obligations, rights or remedies shall survive formal termination of this Agreement.

XIV. WAIVER.

The waiver by State of, or the failure of State to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition herein contained. The subsequent acceptance of any payment hereunder by State shall not be deemed to be a waiver of any preceding breach by Grantee of any term, covenant or condition of this Agreement.

XV. NOTICES, DEMANDS OR INSTRUMENTS.

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid,

- (a) with respect to State, addressed to:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning

4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Administrator

- (b) with respect to Agency, addressed to:
Ohio Department of Mental Health & Addiction Services
30 East Broad Street, 11th Floor
Columbus, Ohio 43215
Attention: Chief, Office of Capital Development and Operations Management
and,
- (c) with respect to Grantee, addressed to:
City of Athens
8 East Washington Street, Ste 301
Athens, Ohio 45701
Attention: Service Safety Director

Each party shall have the right from time-to-time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving not less than fifteen (15) days' notice thereof, similarly given, as provided for in this paragraph.

XVI. MODIFICATIONS.

This Agreement may not be changed, modified or discharged except by a writing signed by duly authorized representatives of both State and Grantee.

XVII. GOVERNING LAW.

This Agreement shall be governed by and interpreted under the laws of the State of Ohio. Any action or proceeding arising out of the terms of this Agreement shall be brought only in a court of competent jurisdiction located in Franklin County, Ohio.

XVIII. HEADINGS.

The headings to the various paragraphs and exhibits to this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

XIX. CAMPAIGN CONTRIBUTIONS & ETHICS COMPLIANCE.

Grantee hereby certifies that neither Grantee nor any of Grantee's partners, officers, directors, shareholders, nor the spouse of any such person have made contributions in excess of the limitations specified in Section 3517.13 of the Ohio Revised Code.

Grantee, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws, is currently in compliance and will continue to adhere to the requirements of such laws and will take no action inconsistent with those laws.

XX. INDEPENDENT CONTRACTOR STATUS.

It is fully understood and agreed that Grantee is an independent contractor and neither Grantee nor its personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Agency, or the State of Ohio, or public employees for the purpose of Ohio Public Employees Retirement Systems benefits.

Intentionally Left Blank

The terms of the within State of Ohio Easement are accepted and agreed to by the Ohio Department of Mental Health & Addiction Services.

By: LeeAnne Cornyn
LeeAnne Cornyn, Director

Date: 1/11/2024

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed and delivered this Agreement as of the date first set forth above.

GRANTOR
The STATE OF OHIO

By: Karen C. Madden
Director of Administrative Services or
Signatory Designee
Statutory Agent, RC 123.01(A)(5)

ACKNOWLEDGMENT

State of Ohio, Franklin County, ss:

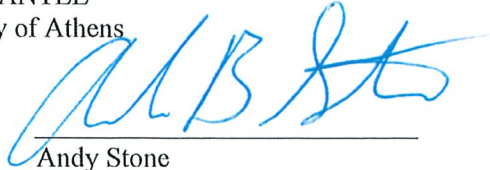
On this 6th day of May, 2024, before me personally appeared Kathleen C. Madden who acknowledged that the foregoing document is being executed for and on behalf of the Department of Administrative Services, acting on behalf of the State of Ohio, that the same is his/her own and the Department of Administrative Services' free and voluntary act and deed and that he/she is duly authorized to enter into said document for and on behalf of the Department of Administrative Services.



Molly Elkins
Notary Public, State of Ohio
My Commission Expires 10-04-27

Molly Elkins
Notary Public, State of Ohio
My Commission Expires: 10/4/27

GRANTEE
City of Athens

By: 
Andy Stone

Title: Service Safety Director

ACKNOWLEDGMENT

State of Ohio, Athens County, ss:

On this 1 day of April, 2024, the foregoing instrument was acknowledged before me by Andy Stone, Service Safety Director of City of Athens, a body politic. Andy Stone acknowledges that he executed the foregoing instrument, that the same is his free and voluntary act and deed, and that he is duly authorized to enter into this instrument for and on behalf of the City of Athens.



TONYAL BAKER
Notary Public
State of Ohio
My Comm. Expires
January 8, 2027


Notary Public, State of Ohio
My Commission Expires January 8, 2027

APPROVED AS TO FORM
City of Athens, Ohio
Department of Law

By: 
Lisa Eliason, City Law Director

This State of Ohio Easement prepared by:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Phone No. (614) 387-6049

Exhibit "A"



buckley group
engineering • surveying

6801 State Route 56 Athens, Ohio 45701
Phone: 740-589-5001 Fax: 740-589-5004
www.buckley.group

**DESCRIPTION OF A 20 FOOT WIDE EASEMENT
FOR THE CONSTRUCTION AND MAINTENANCE OF A SANITARY FORCE MAIN**

Situated in Athens Township, Athens County, State of Ohio

Being a 20 foot wide Easement located in part Section 15, Township 9 North, Range 14 West, Ohio Company Purchase, City of Athens, Athens Township, Athens County, State of Ohio and being part of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by a deed recorded in Vol 145 at Page 638 of said county deed records and being 10 foot each side and parallel of the following centerline particularly described as follows:

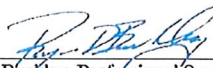
Point of Beginning being a point on the westerly line of said 9.80 acre parcel, and the easterly line of a 22.00 acre parcel as conveyed to Ohio University by Senate Bill 363, from which the calculated northwest corner Out Lot 91, bears N 61° 37' 29" E, 1009.73 feet for reference;

Thence, S 48° 29' 14" E a distance of 48.81 feet to a point;
Thence, S 40° 39' 57" E a distance of 22.66 feet to a point;
Thence, S 33° 26' 32" E a distance of 50.93 feet to a point of terminus;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676

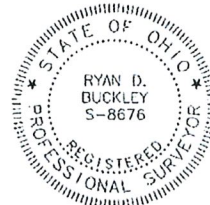


Exhibit "A"
(continued)



6801 State Route 56 Athens, Ohio 45701
Phone: 740-589-5001 Fax: 740-589-5004
www.buckleygroup

**DESCRIPTION OF A 20 FOOT WIDE EASEMENT
FOR THE CONSTRUCTION AND MAINTENANCE OF A SANITARY FORCE MAIN**

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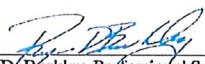
Point of Beginning being a point on the southerly line of said 9.80 acre parcel, and the northerly line of a 22.00 acre parcel as conveyed to Ohio University by Senate Bill 363, from which the calculated northwest corner Out Lot 91, bears N 12° 07' 51" E, 1005.76 feet for reference;;

Thence, line S 71° 45' 11" E a distance of 24.84 feet to a point;
Thence, line S 55° 50' 42" E a distance of 22.45 feet to a point of terminus;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676

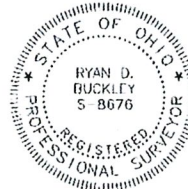
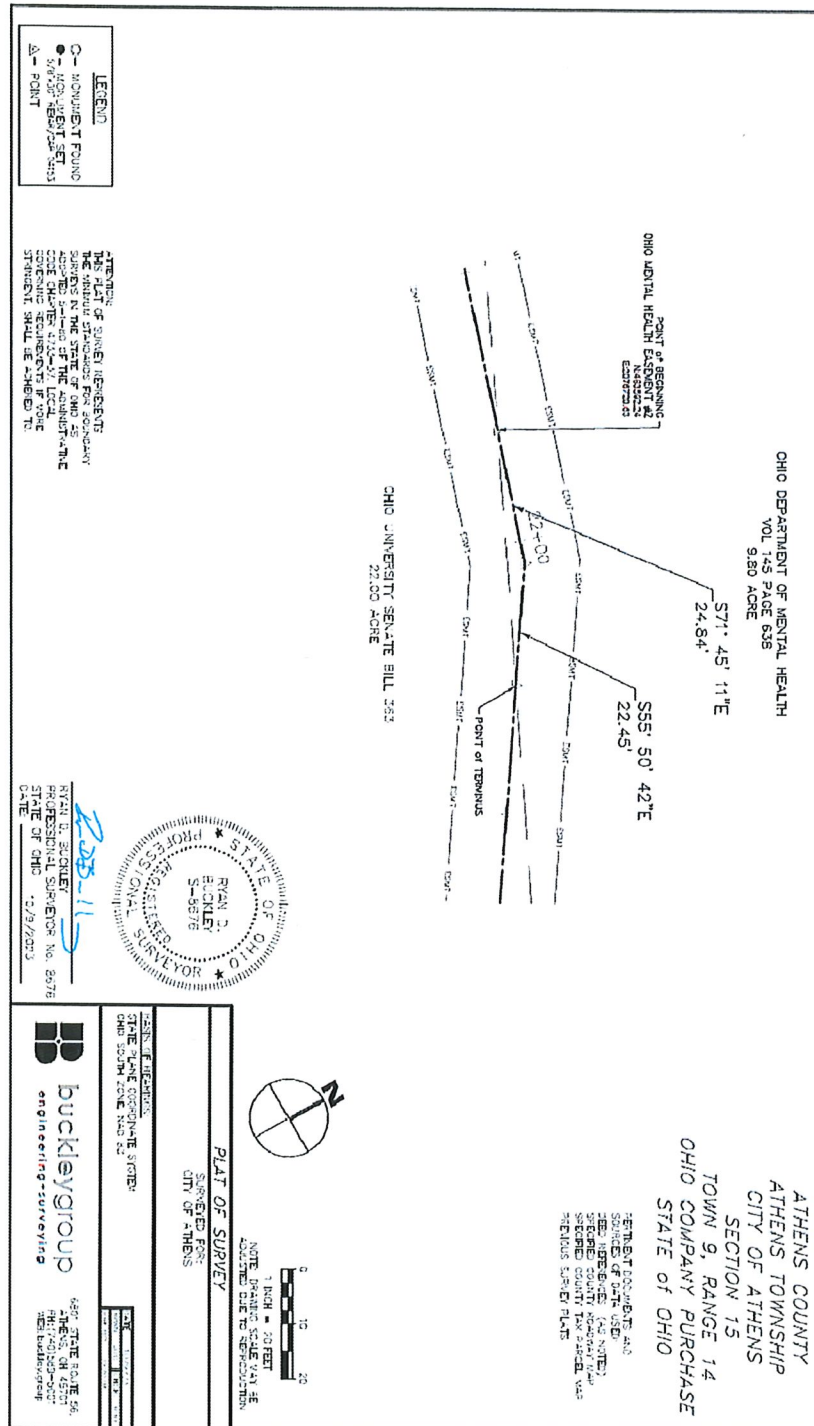


Exhibit "B"
(continued)



TRANSFER NOT NECESSARY

MAY 29 2024

Jill Davidson
Athens County Auditor

202400002158
FILED FOR RECORD IN
ATHENS COUNTY, OHIO
JESSICA MARKINS, RECORDER
05/29/2024 01:45:35 PM
OR BOOK: 614 PAGE: 2009
EASEMENT 154.00 PG: 17

202400002158
ATHENS CITY MAYORS OFFICE

STATE OF OHIO EASEMENT

This Agreement (hereinafter referred to as "Agreement"), dated as of May 17th, 2024, is made and entered into by and between the State of Ohio, acting by and through the Department of Administrative Services, General Services Division, Office of Real Estate and Planning, 4200 Surface Road, Columbus, Ohio 43228-1395, the Grantor (hereinafter referred to as "State"), for and on behalf of Ohio University (hereinafter referred to as "Agency"), and City of Athens, a body politic, duly formed and existing under the laws of the State of Ohio (hereinafter referred to as "Grantee"), having its principal place of business located at 8 East Washington Street, Ste 301, Athens, Ohio 45701, pursuant to the provisions of Section 123.01(A)(5) of the Ohio Revised Code.

RECITALS

WHEREAS, State is the owner, in fee simple, of the land described in Exhibit "A" attached hereto and made a part hereof and more particularly depicted in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as "Easement Area"). Further reference is made to DAS File No. 8913 on file with the State; and

WHEREAS, Grantee desires to obtain from State an easement in order to permit the installation, construction, reconstruction, use, operation, maintenance, repair, replacement, removal, servicing and improvement of a certain sewer force main pipeline upon the Easement Area; and

WHEREAS, Agency requested the State prepare this Agreement; and

NOW, THEREFORE, in consideration of the terms and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. USE OF PREMISES.

State does hereby grant a non-exclusive easement unto Grantee to be used solely to install, construct, reconstruct, use, operate, maintain, repair, replace, remove, service and improve in, on, over, under, across, through and upon the Easement Area a sewer force main pipeline (hereinafter referred to as "Improvement"). On or before the Expiration Date (as defined below) or earlier if this Agreement is terminated pursuant to the provisions hereof, Grantee shall remove, or cause the removal of, all component parts of the Improvement and restore the ground to its original condition at its own cost and expense, unless the parties agree otherwise in writing.

II. TERM.

The term of this Agreement shall be for twenty-five (25) years, commencing on June 1, 2024 (hereinafter referred to as "Commencement Date") and expiring on May 31, 2049 (hereinafter referred to as "Expiration Date"), unless earlier terminated pursuant to a subsequent agreement between the parties or in accordance with the provisions of Paragraph X hereof.



III. CONSIDERATION.

Grantee shall pay to Agency the total sum of Eighteen and 04/100 Dollars (\$18.04) in consideration of State's granting an easement. Grantee shall tender such payment payable to the "Treasurer, State of Ohio" to Agency upon delivery to Grantee of a fully executed counterpart of this Agreement.

IV. CONSTRUCTION/MAINTENANCE.

- (A) Grantee agrees that the Improvement shall be installed, constructed, reconstructed, used, operated, maintained, repaired, replaced, removed, serviced and improved at all times in accordance with all local, state or federal laws, rules and regulations and applicable industry guidelines, including compliance with all applicable Equal Employment Opportunity laws. If no such laws, rules, regulations or industry guidelines are applicable to the Improvement, then responsible engineering practices shall be the control.
- (B) If the surface of the ground in the Easement Area is disturbed at any time, Grantee shall provide necessary fill, re-sod or re-seed any grassed areas, and make such repairs and replacements for a period of not less than one (1) year after the date of such disturbance as may be needed to restore the ground to its former condition or pay State for all damages caused thereto.
- (C) Grantee shall notify State immediately when any installation belonging to a party other than Grantee, or any unusual condition, is encountered in the Easement Area.
- (D) Grantee shall prior to the commencement of any work permitted hereunder obtain and thereafter maintain, at its sole cost and expense, all licenses, permits, etc. required by law with respect to said work or the Improvement.
- (E) State or Agency may locate, relocate, install, construct, reconstruct, maintain, operate, repair, remove, use and place property improvements in, on, over, under, across, through and upon the Easement Area, so long as State's or Agency's improvements do not unreasonably impair the strength of or unreasonably interfere with Grantee's ability to use the Easement Area and maintain its Improvement.
- (F) Grantee shall comply with the provisions of Chapter 4115 of the Ohio Revised Code, Prevailing Wage Requirements, as applicable.
- (G) Grantee shall maintain and repair its Improvement at its own cost and expense on a continuous and ongoing basis for the term of this Agreement. Any maintenance and repairs shall be performed in a good and workmanlike manner.

V. LIABILITY.

Grantee shall indemnify and hold State harmless, so far as permitted by Ohio law, from any claims, demands, causes, actions and damages arising out of any act, omission or neglect by Grantee or any of its successors, assigns, agents, servants, employees, contractors, subcontractors and invitees ensuing from or in connection with Grantee's occupation and use of the Easement Area and

operation or maintenance of the Improvement. Nothing contained herein shall be deemed to be a waiver by State of any legal or factual defenses, which State may enjoy.

The provisions of this Paragraph V shall survive the expiration or termination of the term of this Agreement.

VI. INSURANCE.

At all times during the term of this Agreement, Grantee shall maintain adequate reserves and funding to compensate for bodily injury, personal injury, wrongful death and property damage or other claims including defense costs and other loss adjustment expenses arising out of or related to the Easement Area. At the State's request, Grantee shall provide written proof to assure that the appropriate levels of financial responsibility are being retained. Failure to comply with this clause shall constitute a default of this Agreement.

VII. MECHANIC'S LIENS.

- (A) Nothing contained in this Agreement shall be construed as constituting State's consent, express or implied, to or for the performance of any labor or services or furnishing of any materials for the installation, construction, reconstruction, usage, operation, maintenance, repair, replacement or improvement of the Easement Area or any portion thereof or the Improvement or any portion thereof.
- (B) Grantee shall not allow any liens or encumbrances to be filed against the Easement Area, or any portion thereof, other than (i) liens created by or resulting from any act or status of State or failure by State to perform any obligation not required to be performed by Grantee hereunder, or (ii) liens created by or resulting from any act or status or failure to act by Grantee to which State shall have expressly consented in writing. If such a lien or encumbrance is placed of record against the Easement Area, or any portion thereof, Grantee shall, within thirty (30) days after receiving notice thereof, remove or discharge same or bond off such lien or encumbrance.

VIII. TAXES/ASSESSMENTS.

If as a result of this Agreement any taxes and/or assessments, whether general or special, ordinary or extraordinary, unforeseen or foreseen, of any kind or nature whatsoever, shall be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on the Easement Area and/or the Improvement, Grantee shall be fully responsible for and shall pay same before any fine, penalty, interest or costs may be added thereto, or become due or be imposed by operation of law for the nonpayment thereof.

IX. ASSIGNMENT.

Grantee may not assign or transfer this Agreement, in whole or in part, without the prior written consent of the State, whose consent may be withheld for any reason. Should consent to any such assignment be approved, Grantee shall notify the Agency. Any approved assignment or transfer shall not relieve Grantee of its obligations and duties under the terms, covenants and conditions of this Agreement. Grantee shall cause any assignee or transferee to expressly assume, and by reason

of such assignment or transfer shall be deemed as having assumed, all of the obligations and duties of Grantee hereunder.

X. TERMINATION.

This Agreement may be terminated by State upon ninety (90) days' notice given to Grantee if the Easement Area, or any portion thereof, is needed by State for any public or quasi-public use or purpose. On or before the date stated in such notice of termination, Grantee shall remove, or cause the removal of all component parts of the Improvement and restore the Easement Area to its original condition, at its own cost and expense, if State so requests. Grantee shall have no claim against State for the value of any unexpired portion of the original term of this Agreement or for the Improvement. Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.

This Agreement may be terminated at any time by Grantee by delivering written notice to State and Agency setting forth the date Grantee intends to terminate. Upon either the voluntary termination of this Agreement, or the end of the term hereof, Grantee shall remove all of the Improvement prior to termination, at its own cost and expense, if State so requests, and shall restore the Easement Area to its original condition, unless otherwise agreed to in writing by State and Agency. Grantee's obligations hereunder shall continue until such time as the Improvement is fully removed and the Easement Area fully restored as required herein, notwithstanding the stated date of termination in the notice provided by Grantee, or in the Agreement. Failure to remove the Improvement shall not be considered an extension of the term of the Agreement. No portion of any consideration paid pursuant to the terms of the Agreement will be refunded to Grantee.

XI. DEFAULT.

- (A) State may find Grantee in default of this Agreement when any one or more of the following events shall have occurred and shall not have been remedied as hereinafter provided: (i) Grantee's failure to make any payment required to be paid by Grantee when the same shall become due and payable or (ii) Grantee's failure to perform or observe any other covenant, term, or condition herein contained on Grantee's part to be performed or observed.
- (B) If the State finds Grantee to be in default under Paragraph XI(A), Grantee must cure such default within fifteen (15) days after the giving of notice to Grantee by State of such failure. If Grantee proceeds to promptly and continuously cure the same default with due diligence, then upon receipt by State of notice from Grantee stating the reason that such default cannot be cured within fifteen (15) days and stating that Grantee is proceeding with due diligence to cure such default, the State may extend such time within which such default may be cured for such period as may be necessary to complete the curing of same with due diligence.
- (C) If Grantee fails to cure such default, then State may give to Grantee, at State's option, a notice of election to terminate this Agreement upon the date specified in such notice, which date shall not be less than ten (10) days after the date of such notice, and upon the date specified in such notice the term of this Agreement shall expire and terminate as fully and completely and with the same effect as if such date were the Expiration Date, and all rights of Grantee shall thereupon expire and terminate, and Grantee shall remove or cause the

removal of the Improvements and restore the Easement Area to its original condition at its own cost and expense, if State so requests.

- (D) Upon termination of this Agreement, State shall have the immediate right to re-enter and repossess all or any portion of the Easement Area.
- (E) Upon the termination of this Agreement by reason of the happening of any event of default specified in this Paragraph XI, or in any other manner or circumstances whatsoever pursuant to legal process, by reason of or based upon or arising out of the occurrence of any such event of default under this Agreement, Grantee shall pay to Agency all sums required to be paid by Grantee up to the time of such termination.

XII. RECORDATION.

At its expense and within thirty (30) days of its receipt, Grantee shall present for recording a fully executed Agreement in accordance with Chapter 5301 of the Ohio Revised Code in the office of the County where the Easement Area is located. Grantee shall do likewise with respect to any addendum to this Agreement which may be entered into hereafter by the parties. As proof of recording, Grantee shall promptly return a copy of the recorded Agreement to the State.

XIII. RIGHTS CUMULATIVE.

All rights and remedies of State enumerated in this Agreement shall be cumulative and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity, and said rights or remedies may be exercised or enforced concurrently and all obligations, rights or remedies shall survive formal termination of this Agreement.

XIV. WAIVER.

The waiver by State of, or the failure of State to take action with respect to, any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition, or subsequent breach of the same, or any other term, covenant or condition herein contained. The subsequent acceptance of any payment hereunder by State shall not be deemed to be a waiver of any preceding breach by Grantee of any term, covenant or condition of this Agreement.

XV. NOTICES, DEMANDS OR INSTRUMENTS.

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when hand-delivered or sent by U.S. certified mail, return receipt requested, postage prepaid,

- (a) with respect to State, addressed to:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning

4200 Surface Road
Columbus, Ohio 43228-1395
Attention: Administrator

- (b) with respect to Agency, addressed to:
Ohio University
Office of Real Estate
1 Ohio University
Athens, Ohio 45701
Attention: Director of Real Estate

and,

- (c) with respect to Grantee, addressed to:
City of Athens
8 East Washington Street, Ste 301
Athens, Ohio 45701
Attention: Service Safety Director

Each party shall have the right from time-to-time to specify as its address for purposes of this Agreement any other address in the United States of America upon giving not less than fifteen (15) days' notice thereof, similarly given, as provided for in this paragraph.

XVI. MODIFICATIONS.

This Agreement may not be changed, modified or discharged except by a writing signed by duly authorized representatives of both State and Grantee.

XVII. GOVERNING LAW.

This Agreement shall be governed by and interpreted under the laws of the State of Ohio. Any action or proceeding arising out of the terms of this Agreement shall be brought only in a court of competent jurisdiction located in Franklin County, Ohio.

XVIII. HEADINGS.

The headings to the various paragraphs and exhibits to this Agreement have been inserted for reference only and shall not to any extent have the effect of modifying, amending or changing the express terms and provisions of this Agreement.

XIX. CAMPAIGN CONTRIBUTIONS & ETHICS COMPLIANCE.

Grantee hereby certifies that neither Grantee nor any of Grantee's partners, officers, directors, shareholders, nor the spouse of any such person have made contributions in excess of the limitations specified in Section 3517.13 of the Ohio Revised Code.

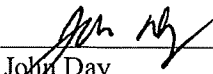
Grantee, by signature on this document, certifies that it has reviewed and understands the Ohio ethics and conflict of interest laws, is currently in compliance and will continue to adhere to the requirements of such laws and will take no action inconsistent with those laws.

XX. INDEPENDENT CONTRACTOR STATUS.

It is fully understood and agreed that Grantee is an independent contractor and neither Grantee nor its personnel shall at any time, or for any purpose, be considered agents, servants, or employees of the Agency, or the State of Ohio, or public employees for the purpose of Ohio Public Employees Retirement Systems benefits.

Intentionally Left Blank

The terms of the within State of Ohio Easement are accepted and agreed to by Ohio University.

By: 
John Day
Interim Vice President of Finance and Administration

Date: 5-1-24

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed and delivered this Agreement as of the date first set forth above.

GRANTOR
The STATE OF OHIO

By:



Director of Administrative Services or
Signatory Designee
Statutory Agent, RC 123.01(A)(5)

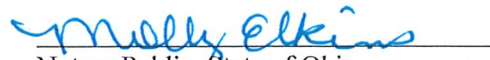
ACKNOWLEDGMENT

State of Ohio, Franklin County, ss:

On this 14th day of May, 2024, before me personally appeared Kathleen C. Madden who acknowledged that the foregoing document is being executed for and on behalf of the Department of Administrative Services, acting on behalf of the State of Ohio, that the same is his/her own and the Department of Administrative Services' free and voluntary act and deed and that he/she is duly authorized to enter into said document for and on behalf of the Department of Administrative Services.



Molly Elkins
Notary Public, State of Ohio
My Commission Expires 10-04-27


Notary Public, State of Ohio
My Commission Expires: 10/4/27

GRANTEE
City of Athens

By: 
Andy Stone

Title: Service Safety Director

APPROVED AS TO FORM
City of Athens, Ohio
Department of Law

By: 
Lisa Eliason, City Law Director

ACKNOWLEDGMENT

State of Ohio, Athens County, ss:

On this 26 day of March, 2024, the foregoing instrument was acknowledged before me by Andy Stone, Service Safety Director of City of Athens, a body politic. Andy Stone acknowledges that he executed the foregoing instrument, that the same is his free and voluntary act and deed, and that he is duly authorized to enter into this instrument for and on behalf of the City of Athens.


Notary Public, State of Ohio
My Commission Expires January 8, 2027



TONYA L. BAKER
Notary Public
State of Ohio
My Comm. Expires
January 8, 2027

This State of Ohio Easement prepared by:
Ohio Department of Administrative Services
General Services Division
Office of Real Estate and Planning
4200 Surface Road
Columbus, Ohio 43228-1395
Phone No. (614) 387-6049

Exhibit "A"



buckleygroup

exploring • conveying

6801 State Route 56 Athens, Ohio 45701
Phone: 740-589-5001 Fax: 740-589-5004
www.buckleygroup

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Point of Beginning being a point on the southerly right of way line of West Union, a variable width right of way, and the northerly line of said State of Ohio parcel, from which the calculated southeast corner of Lot 1208 of John C. Campbell's Fairfield Addition as platted in Envelope 175B of said county plat records, bears N 56° 40' 59" E, 170.30 feet for reference;

Thence, S 10° 00' 44" E a distance of 46.02 feet to a point;

Thence, S 33° 00' 25" E a distance of 24.66 feet to a point;

Thence, S 43° 32' 02" E a distance of 52.45 feet to a point;

Thence, S 48° 58' 33" E a distance of 107.62 feet to a point;

Thence, S 53° 38' 24" E a distance of 132.44 feet to a point;

Thence, S 57° 28' 54" E a distance of 263.58 feet to a point;

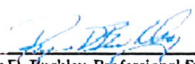
Thence, S 52° 22' 09" E a distance of 390.27 feet to a point;

Thence, S 48° 29' 14" E a distance of 359.54 feet to a point of terminus, being a point on the westerly line of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by deed recorded in Volume 145 at Page 638 of said county deed records;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676

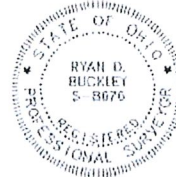


Exhibit "A"
(Continued)



buckleygroup
engineering • surveying

6801 State Route 56 Athens, Ohio 45701
Phone: 740-589-5001 Fax: 740-589-5004
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**DESCRIPTION OF A 20 FOOT WIDE EASEMENT
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Situated in Athens Township, Athens County, State of Ohio

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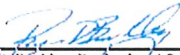
Point of Beginning being a point on the southerly line of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by deed recorded in Volume 145 at Page 638 of said county deed records, and the northerly line of a 22.00 acre parcel as conveyed to Ohio University by Senate Bill 363, from which the calculated northwest corner Out Lot 91, bears N 51° 00' 01" E, 990.31 feet for reference;

Thence, S 33° 26' 32" E a distance of 27.74 feet to a point;
Thence, S 40° 38' 51" E a distance of 27.71 feet to a point;
Thence, S 50° 35' 16" E a distance of 26.51 feet to a point;
Thence, S 54° 13' 41" E a distance of 78.31 feet to a point;
Thence, S 54° 37' 23" E a distance of 232.70 feet to a point;
Thence, S 54° 31' 01" E a distance of 231.80 feet to a point;
Thence, S 55° 15' 22" E a distance of 53.52 feet to a point;
Thence, S 64° 13' 44" E a distance of 26.55 feet to a point;
Thence, S 71° 45' 11" E a distance of 51.88 feet to a point of terminus;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676

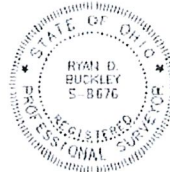


Exhibit "A"
(Continued)



buckleygroup
engineering • surveying

6801 State Route 56 Athens, Ohio 45701
Phone: 740-589-5001 Fax: 740-589-5004
www.buckleygroup

**DESCRIPTION OF A 20 FOOT WIDE EASEMENT
FOR THE CONSTRUCTION AND MAINTENANCE OF A SANITARY FORCE MAIN**

Situated in Athens Township, Athens County, State of Ohio

Being a 20 foot wide Easement located in part Section 15, Township 9 North, Range 14 West, Ohio Company Purchase, City of Athens, Athens Township, Athens County, State of Ohio and being part of a parcel as conveyed to Ohio University by Senate Bill 363 and being 10 foot each side and parallel of the following centerline particularly described as follows:

Point of Beginning being a point on the southerly line of a 9.80 acre parcel as conveyed to Ohio Department of Mental Health by deed recorded in Volume 145 at Page 638 of said county deed records, and the northerly line of a 22.00 acre parcel as conveyed to Ohio University by Senate Bill 363, from which the calculated northwest corner Out Lot 91, bears N 9° 34' 03" E, 1017.64 feet for reference;;

Thence, S 55° 50' 42" E a distance of 107.25 feet to a point;

Thence, S 54° 20' 04" E a distance of 132.09 feet to a point;

Thence, S 62° 09' 25" E a distance of 104.66 feet to a point;

Thence, S 72° 29' 09" E a distance of 42.55 feet to a point of terminus, being a point on the westerly line of a 20.35 acre parcel as conveyed to Sheltering Arms Hospital Foundation by deed recorded in Volume 277 at Page 648 of said county deed records;

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676



Exhibit "A"
(Continued)



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Point of Beginning being a point on the southerly line of a 20.35 acre parcel as conveyed to Sheltering Arms Hospital Foundation by deed recorded in Volume 277 at Page 648 of said county deed records, from which the calculated northeast corner Out Lot 89, bears N 8° 22' 27" W, 1548.70 feet for reference;;

Thence, S 58° 19' 01" E a distance of 101.57 feet to a point;
Thence, S 54° 24' 52" E a distance of 101.07 feet to a point;
Thence, S 52° 18' 28" E a distance of 131.00 feet to a point;
Thence, S 50° 38' 03" E a distance of 208.13 feet to a point;
Thence, S 51° 12' 41" E a distance of 160.12 feet to a point;
Thence, S 48° 52' 51" E a distance of 183.14 feet to a point;
Thence, S 49° 20' 32" E a distance of 310.49 feet to a point;
Thence, S 49° 41' 06" E a distance of 320.85 feet to a point;
Thence, S 50° 30' 50" E a distance of 321.89 feet to a point;
Thence, S 49° 54' 05" E a distance of 391.54 feet to a point;
Thence, S 46° 26' 00" E a distance of 74.57 feet to a point;
Thence, S 51° 25' 49" E a distance of 204.50 feet to a point;
Thence, S 83° 59' 48" E for a distance of 42.65 feet, to point of terminus, being a point on the westerly right of way of Richland Avenue, a variable width right of way.

Subject to all legal easements and rights of way.

This description was prepared under the direct supervision of Ryan D. Buckley, Registered Surveyor No. 8676 and is based on a field survey performed by Buckley Group, LLC completed in October 2023.

October 11, 2023
Date


Ryan D. Buckley, Professional Surveyor No. 8676



Exhibit "B"
(Continued)

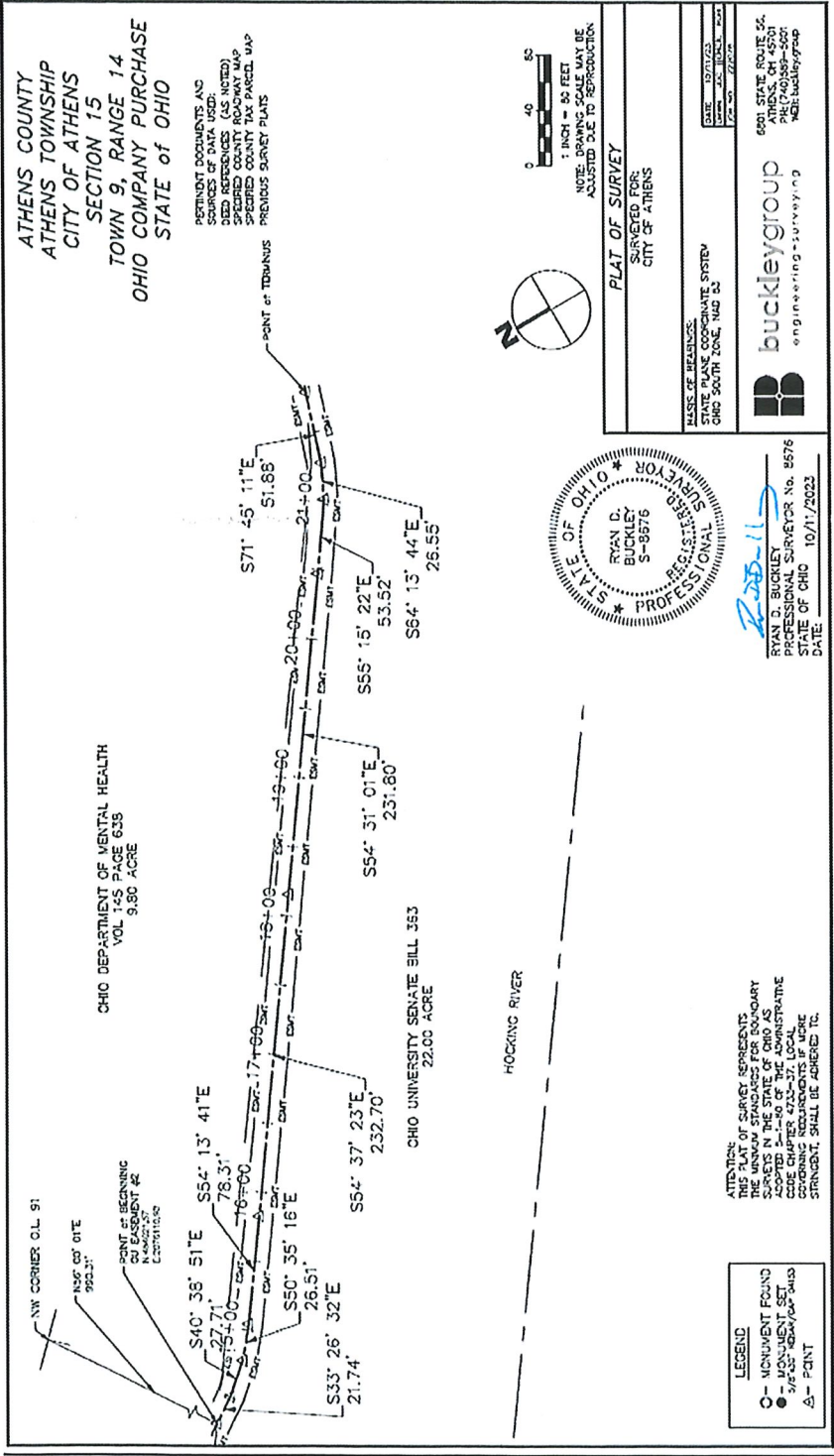
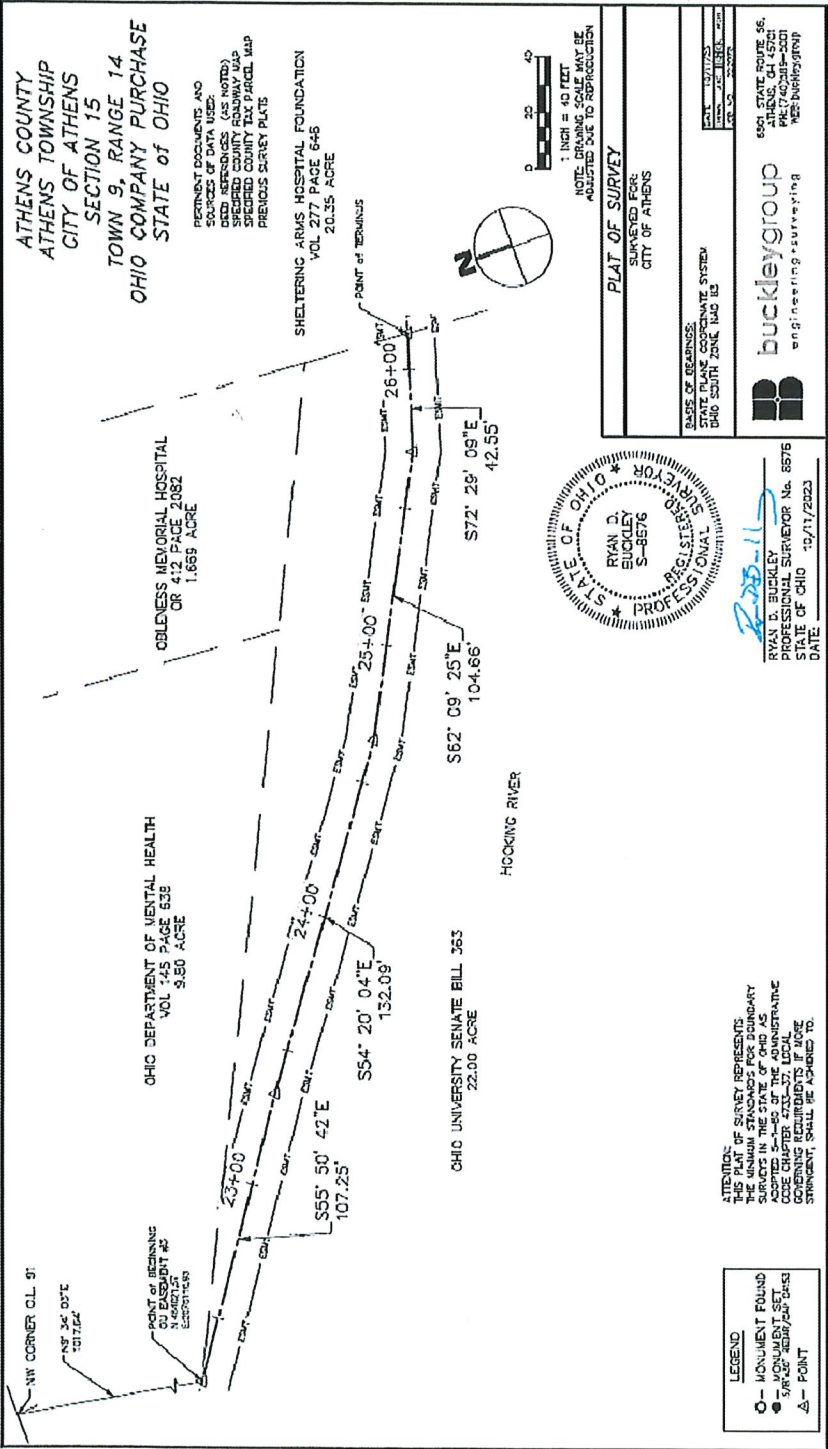


Exhibit "B"
(Continued)



0-84-24

Introduced by Jeff Risner, Chair
Finance & Personnel Committee

AN ORDINANCE AMENDING THE 2024 APPROPRIATION ORDINANCE 130-23;
AND AUTHORIZING AN INTERFUND TRANSFER.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The 2024 Appropriation Ordinance 130-23 is hereby amended by appropriating from the unappropriated balance the following sums:

Fifteen Thousand Four Hundred Dollars (\$15,400.00) to General Fund, Municipal Court, 101.106, T.C. 300, for balance of payment on the 2024 Public Defender Agreement;

Two Thousand Eight Hundred Six and 02/100 Dollars (\$2,806.02) to General Fund, Police, 101.207, T.C. 500, and Three Thousand Five Hundred Twenty-Three and 98/100 (\$3,523.98) to Law Administration Building Improvements Fund, 585, T.C. 500, and closing out said fund, to replace a mount and tablet in a cruiser, and infrastructure for an EV charger for a new cruiser;

Twelve Thousand Dollars (\$12,000.00) to General Fund, Other Administrative, 101.120, T.C. 300, for reimbursed NOPEC grant funds;

Seventy-Four Thousand Five Hundred Dollars (\$74,500.00) to East State Street TIF Fund, 593, T.C. 600; for transfer, and

Seven Thousand Dollars (\$7,000.00) to Garbage Fund, 760.636, T.C. 300, to cover the internal service fee, and increasing the total appropriations by said amounts.

SECTION II: The Auditor is hereby authorized to make the following interfund transfer:

FROM	TO	AMOUNT
East State Street TIF Fund, 593	Street Fund, 220	\$74,500.00

SECTION III: The 2024 Appropriation is further amended by appropriating from the unappropriated balance the sum of Seventy-Four Thousand Five Hundred Dollars (\$74,500.00) to Street Fund, 220, to repave the Hockhocking Adena bikeway in the TIF area.

SECTION IV: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

0-86-24

Introduced by the Finance & Personnel Committee

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN EMPLOYMENT AGREEMENT WITH THE AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES (AFSCME) LOCAL 2403(1) CONCERNING WAGES AND WORKING CONDITIONS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Council does hereby authorize the Mayor to execute an employment agreement with The American Federation of State, County, And Municipal Employees (AFSCME) Local 2403(1), a copy of which is attached hereto and incorporated herein by reference.

SECTION II: The effective date of the terms of said agreement is August 15, 2024, through August 14, 2027.

SECTION III: Any ordinances or resolutions inconsistent with the terms of the attached agreement are hereby repealed.

SECTION IV: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

CITY OF ATHENS

AND

AFSCME LOCAL 2403(1)

Effective Dates:

August 15, 2024 through August 14, 2027

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ARTICLE 1 – PREAMBLE

This Agreement entered into by the City of Athens, Ohio, hereinafter referred to as the Management, and the American Federation of State, County and Municipal Employees, Local No. 2403, and Ohio Council 8, AFL-CIO, hereinafter referred to as the Union, has as its purpose: To comply with the requirements of Chapter 4117 of the Ohio Revised Code and to set forth the complete agreement between the parties, including the providing of an opportunity for Management and Union to negotiate as to wages, hours and conditions of employment as may be agreed upon by the parties and to insure the right to every bargaining unit employee of fair and impartial treatment.

ARTICLE 2 - MANAGEMENT'S RIGHTS

Except to the extent expressly modified by a specific provision of this Agreement, the Management reserves and retains solely and exclusively all of its rights of authority, as such rights existed prior to the execution of this or any other Agreement with the Union, including, but in no way limited to, these rights:

- A. To establish training programs and upgrade requirements for employees within the City of Athens;
- B. To determine matters of inherent managerial policy which include, but are not limited to, areas of discretion or policy, such as the function and programs of the City of Athens, standard of services, its overall budget, utilization of technology, and/or organizational structure;
- C. To direct, supervise, evaluate, and/or hire employees;
- D. To maintain and improve the efficiency and/or effectiveness of governmental operations;
- E. To determine the methods, process, means, and/or personnel by which governmental operations are to be conducted;
- F. To suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;
- G. To determine the adequacy of the work force;
- H. To determine the overall mission of the City of Athens as a unit of government;
- I. To effectively manage the work force;
- J. To take actions to carry out the mission of the City of Athens as a governmental unit.

ARTICLE 3 - COOPERATION

The Management and the Union shall work together in the interest of maintaining and improving efficiency in all municipal operations, the conserving of materials, supplies, equipment and the improvement in quality of workmanship and services. It is the express goal of the Management and the Union to improve productivity.

ARTICLE 4 - RECOGNITION OF UNION

Section 1. Bargaining Rights

Athens City Employees, Local No. 2403, Ohio Council 8, A.F.S.C.M.E., AFL-CIO, is hereby recognized as the sole and exclusive bargaining agent for the bargaining unit as hereinafter defined.

Section 2. Unit Defined

The bargaining unit shall consist of all employees assigned to classifications listed in Addendum #1.

Section 3. Exclusions

All employees whose classification is not listed in the addendum shall be excluded from the bargaining unit.

In addition, the following groups of employees are excluded from the bargaining unit:

- A. Those classes which, on the effective date of this Agreement, are represented by other established bargaining agents.
- B. Temporary, seasonal and part-time employees.
- C. Confidential, management and supervisory employees, as defined by Ohio's collective bargaining law.

Section 4. "Employee" Defined

The term "employee" or "employees," as used in this Agreement, shall refer to those persons included in the bargaining unit.

Section 5. Union Dues

- A. The City agrees to deduct monthly union dues from the wages of employees upon receipt of written authorization signed by an employee for that purpose.

Union Dues Revocation. Any employee who has submitted a dues checkoff authorization card may withdraw or revoke the same at the time and in the manner specified on the dues checkoff authorization card signed by the employee or as amended by the Union if the amendment specifies a shorter revocation period than one fifteen (15) day period tied to the end of the Collective Bargaining Agreement. Copies of the employee's dues checkoff authorization cards are available from the Union upon request.

The employee must give written notice of revocation to the Union Office, 36 South Plains Road, The Plains Ohio 45780. Council 8 will notify the employer with a letter in regard as to when to stop taking Union dues from the employee.

Union Membership Revocation/Maintenance of Membership. Employees who are members of the Union may revoke their union membership at any time by sending written notice to the Union of their desire to drop their union membership. Revocation of union membership does not revoke union dues authorization, which may only be revoked as set forth below.

- B. Upon the presentation of a written deduction authorization signed by the employee the employer shall deduct union dues, initiation fees, and assessments from the pay of bargaining unit employees in accordance with the terms of the executed authorization. The Union shall notify the Employer of the amounts to be deducted. Deductions shall be made from the pay of employees (Monthly) (Bi-Weekly).

All dues deductions shall be deposited via electronic ACH transfer payment into the commercial bank account of Ohio Council 8, AFSCME, AFL-CIO no later than fifteen (15) days following the end of the pay period in which the deduction is made. The Union shall provide the Employer with authorization to make deposits into the financial institution utilized by the Union along with the routing number and account number of the Union's account. It is the Union's responsibility to notify the Employer in writing of any changes to the Union's account information.

The Employer shall email, with each deduction and transmittal of dues/fees, the following lists of information in PDF format to oc8dues@afscme8.org :subject line: Local, pay date --/--/--:

- (1) Dues List: Name (last name, first name, middle initial) and the amount of the deduction for each employee, as well as the total amount of the dues deducted for all employees for the pay period of the report.
- (2) Total Remittance Amount- This section shall be deemed complied with if one list containing fields with all the above information (including a field showing whether an employee is a union member or non-union member) is provided by the Employer to the Union in PDF format for all bargaining unit employees. The grouping of members and non-members, and the totals required under this section shall be calculated and/or organized by the Union using the fields provided in the PDF format.

The Union will indemnify and save the City harmless from any action growing out of deductions hereunder and commenced by an employee against the City (or the City and Union jointly). In the event there is a change in law so that obtaining or continuing employment may be conditioned on the payment of fair share fee to the Union, the Employer and the Union agree to meet and confer to negotiate any agreeable terms. All employees in the bargaining unit covered by this Agreement, who are members of the Union of the date of this Agreement, all future employees in the bargaining unit who become members of the Union, shall continue to be members of the Union pursuant to the terms and conditions of the membership checkoff card.

Section 6. People Check Off

The Employer will deduct voluntary contributions to the American Federation of State, County and Municipal Employee International Union's Public Employees Organized to Promote Legislative Equality (PEOPLE) Committee from the pay of an employee upon receipt from the Union of an individual written authorization card voluntarily executed by the employee.

The contribution amount will be certified to the Employer by the Union. The employee's deduction shall be deposited via electronic ACH transfer into the Union's bank account within five (5) to fifteen (15) days following the date they are deducted from the employee's payroll. The employer shall provide a dues list that provides the following: employee's first and last name, department, dues deduction amount and the corresponding check date. The dues list is to be uploaded, in PDF format, and the AFSCME-secure file transfer portal through <http://enterprise.afscme.org>. The file shall be uploaded within fifteen (15) days following the pay period in which dues were deducted.

An employee shall have the right to revoke such authorization by giving written notice to the Employer and the Union at any time.

The Employer's obligation to make deductions shall terminate automatically upon receipt of revocation of authorization or upon termination of employment or transfer to a job classification outside the bargaining unit.

All PEOPLE contributions shall be made as a deduction separate from the dues deductions.

ARTICLE 5 - UNION BUSINESS AND RESPONSIBILITIES

Section 1. The Union shall provide to the Human Resource Director official roster of its officers and representatives of Ohio Council 8, local officers, and other local representatives after each annual election and whenever a change has occurred, which shall include:

- A. Name
- B. Address
- C. Home phone number
- D. Department and/or employer
- E. Immediate Supervisor
- F. Union Office held

Section 2. A representative of Local 2403 and/or a representative from Ohio Council 8 has the right to represent an employee(s) in disciplinary and grievance hearings, scheduled negotiations, and Management/Union meetings involving City-Union matters, further provided the representative of Local 2403 will be permitted consultation with an Ohio Council 8 representative. All other union business will be accomplished by the representative of Local 2403 and/or representatives of Ohio Council 8 in a non-city pay status.

The representatives of Local 2403 are required to maintain a record of the authorized time spent on such activities and must submit records of such time spent to the Human Resource Director by the 10th of the month following such activity. In no event will Management capriciously deny authorizing reasonable time for the investigation of filed grievances by a representative of Local 2403.

Section 3. The number of stewards shall not be more than five (5), consisting of one (1) from the Water Treatment Plant, one (1) from the Waste-Water Treatment Plant, one (1) from the West State Street Service Garage, one (1) from Water and Sewer Maintenance and one (1) from the uptown municipal complex.

Section 4. The stewards' names and departments shall be furnished to the Human Resource Director by the Union and be kept current at all times. If a steward's name is not listed, he will not be granted time away from his job.

Union business other than that listed in Section 2 or 5 of this Article shall not be conducted by a representative of Local 2403 on City time unless otherwise approved by Management; and any such Union business authorized under this Article shall not interfere with the work assignment of the representative(s) of Local 2403 involved, or the work assignment of any other employees.

Section 5. Not more than five (5) Union members, designated by the Union, shall participate in negotiation meetings. Such employees shall be paid on a no loss or gain basis for authorized time spent during normal working hours at such meetings.

Section 6. A representative of Ohio Council 8 may consult with employees in the assembly area, designated by the Management, before the start of, and at the completion of, the day's work, and he shall be permitted access to work areas at all reasonable times only for the purpose of adjusting grievances, assisting in the settlement of disputes, attending new employee orientation and for the purpose of carrying into effect the provisions and aims of the Agreement. This privilege is extended subject to the understanding that work assignments are not, in fact, interfered with.

Section 7. The President or Vice President of the Union shall have the same privileges accorded to the Steward for purposes of coordinating and expediting grievances, except that said Union officials shall not be accorded these privileges simultaneously.

Section 8. Administrative leave, at the rate of one-half (1/2) pay per each day of leave, shall be granted for one delegate from Local 2403 to attend Union seminars. Such leave shall not exceed six (6) days per calendar year and shall be permitted with the prior approval of the Service-Safety Director.

Section 9. The Union shall get up to thirty (30) minutes to meet with all new employees (New Employee Orientation). A member of the Human Resources Department shall be permitted to be present.

ARTICLE 6 - DISCIPLINE AND DISMISSAL PROCEDURES

Section 1. When a supervisor suspends, reduces or dismisses an employee, such employee may be conditionally suspended pending a mandatory hearing thereon. Such employee, and the Union, shall thereafter be given or mailed notice of such suspension, reduction, or dismissal. Such notice shall be in writing and state the reasons therefore and set the time and place for a hearing before the appropriate Management representative or his designee, and shall be sent within a reasonable period of time after the employee is alleged to have committed an offense.

Section 2. At any time a supervisor conducts a disciplinary meeting with an employee wherein disciplinary action of record (written reprimand, suspension, reduction or dismissal) is likely to result, the supervisor shall give notice to the employee 24 hours prior to such meeting of the employee's right to have a steward present. At any time a supervisor conducts a disciplinary meeting with an employee, the result of which will be a written warning or a written memorandum of an oral reprimand is to be placed in the personnel file, the supervisor shall give notice to the employee of his/her right to add comments to the written warning or memorandum. Upon request, the employee shall have the right to have a Union steward present.

Section 3. All discipline shall be for just cause. Any disciplinary action of record may be appealed by the employee through the grievance and arbitration procedure set forth in this Agreement, introduced at Step 3.

Section 4. Absence for three (3) consecutive work days without notifying the appropriate Department Head or his designee, may be deemed a voluntary quit and waiver of any appeal rights provided by the Revised Code of Ohio or this Agreement.

Section 5. Upon written request by the employee, written warnings, written memoranda of oral reprimands and written reprimands will be removed from employees' personnel files eighteen (18) months after the effective date of the reprimand, providing there is no intervening written notice of disciplinary action during the eighteen (18) month period.

Section 6. Upon written request by the employee, records of suspensions will be removed from an employee's personnel file thirty (30) months from the date of suspension, provided there are no intervening disciplinary actions against the employee during the said thirty (30) months. Upon written request by the employee, suspensions for discriminatory harassment will be removed from an employee's personnel file sixty (60) months from the date of suspension, provided there are no intervening disciplinary actions against the employee during the said sixty (60) months.

Section 7. In imposing disciplinary action on a current charge, Management shall not consider disciplinary actions which are to be removed under the provisions of paragraphs 5 and 6 of this Article, regardless of whether or not the employee has requested their removal, other than for proof of knowledge of city's policy.

ARTICLE 7 - HOURS OF WORK AND OVERTIME

Section 1. Schedule of Hours

The normal schedule of hours shall consist of eight (8) hours per day, five (5) consecutive days per week, Monday through Friday, except:

- A. Where there is a continuous twenty-four (24) hour per day operation.
- B. Where there is a continuous seven (7) day per week operation.
- C. Where the normal schedule of hours is ten (10) hours per day.
- D. For those employees in the classification of Parking Enforcement Officer.

- E. For those employees who have other than a Monday through Friday normal work week as a condition of their initial employment.

There is no guarantee of a forty (40) hour work week.

Section 2. Changes in Regular Work Schedule

If the union believes that a proposed or actual change in the regular work schedule of a member is arbitrary or discriminatory, it may request a conference with the appropriate work supervisor to review the matter. If said matter is not resolved to either the satisfaction of the City or the Union, then it may be submitted as a grievance.

Section 3. Pay for Overtime

- A. All hours worked in excess of a scheduled work shift or forty (40) hours in one (1) week shall be paid at one and one half (1½) times the employee's regular straight-time hourly rate, including longevity, shift differential, education or other items afforded by the Fair Labor Standards Act. Overtime shall be computed to the nearest half hour.
- B. Work performed on the sixth (6th) consecutive day of the work week shall be compensated at one and one half (1½) times the employee's regular straight-time hourly rate, including longevity, shift differential, education or other items afforded by the Fair Labor Standards Act., and work performed on the seventh (7th) consecutive day of the work week shall be compensated at two (2) times the employee's regular straight-time hourly rate, including longevity, shift differential, education or other items afforded by the Fair Labor Standards Act.
- C. No employee's posted regular work shift shall be changed to avoid the payment of overtime provided that this section shall not be applicable to regularly scheduled rotations of shifts in multiple shift work cycles. Mechanics will maintain their regular schedule and perform operator duties on an overtime basis.
- D. For the purpose of this section, the work week for employees whose normal work week is different than the regular Monday through Friday schedule shall be considered to begin on the first day the employee begins work after his/her two day "weekend". (e.g., Tuesday would be the first day of the work week for a Tuesday through Saturday schedule, Sunday would be the sixth day and Monday would be the seventh day.)
- E. There will be two relief operator/plant mechanics in each plant. Plant relief operators will be assigned to day shift, except when a vacancy occurs on another shift or when an employee is absent from another shift. When it is necessary to assign a relief operator to a different shift, the relief operator will be given a minimum of 48 hours notice. The City agrees not to assign the relief/operator or plant mechanics no more than 50 shifts per operator per calendar year.

Section 4. Pyramiding

There shall be no pyramiding of premium pay for the same hours worked. Overtime worked in a given work week shall not project into a subsequent work week for determination of sixth or seventh day for payment purposes.

Section 5. Equalizing Overtime

- A. Overtime rosters shall be posted in all departments illustrating the total number of overtime hours worked by each employee or offered to each employee.
- B. Employees within the same department and with the same work assignment shall have an equal opportunity to earn overtime pay. The opportunity for overtime work shall be computed by totaling overtime earned plus overtime offered but declined.
- C. On each occasion, the opportunity to work scheduled overtime shall be offered to the employee within the Job Classification who has the least number of overtime hours to his credit at that time, which shall include emergency overtime. If this employee does not accept the assignment or cannot be contacted, the employee with the next fewest number of overtime hours to his credit shall be offered the assignment. This procedure shall be followed until the required employees have been selected for the overtime work. If an employee turns down overtime or cannot be contacted, the number of hours offered to him shall be credited to his overtime hours.
- D. Each department shall post a roster for voluntary overtime callout on a monthly basis. All employees will be assumed to be signed up for voluntary overtime unless he/she removes his/herself for a designated period of time he/she designates in a written notice given to the supervisor. If an employee consistently refuses scheduled overtime, he/she will be asked to verify his/her desire to work overtime. If an employee refuses overtime or is unavailable for emergency call out overtime three times in a row he/she shall be credited with the maximum numbers of hours on the current equalization roster and placed last on the roster. Emergency overtime shall be administered using the same callout procedure as listed above provided that employees who are called out to work must have the ability to do the work. New employees and employees who remove themselves from the voluntary roster and subsequently return to the roster shall be credited with the maximum number of hours and placed last on the roster.

Section 6. Overtime Scheduling

- A. In the event overtime becomes necessary for the midnight shift at the Water or Wastewater treatment plants, employees who work overtime and miss their regular day shift shall take appropriate leave time subject to management approval.
- B. Where practical, overtime shall be administered on a voluntary basis; otherwise, it shall be mandatory that each such employee scheduled or otherwise directed to work overtime must perform the job assignment within his given classification.

Exception to the application of mandatory overtime may be permissible when a valid, reasonable request is made by an employee. Mandatory overtime rotation shall be in reverse order by seniority.

- C. When overtime is necessary at the end of a day for the completion of a job by an auto mechanic, the overtime shall be offered first to the mechanic who has worked on the job through the day, regardless of his/her position on the overtime roster.

Section 7. Rest Periods

All employees' work schedules shall provide for a fifteen (15) minute rest period during each one-half shift. The rest period shall be scheduled at the middle of each one-half shift whenever feasible.

Employees who are scheduled to work more than one (1) hour beyond their regular quitting time shall receive a fifteen (15) minute rest period prior to commencing work for such overtime hours. Thereafter, employees shall be granted additional thirty (30) minute rest periods for each block of subsequent four (4) overtime hours worked.

Section 8. Call-in Pay

Call-in pay is payment for work performed by an employee who has been recalled to work at a time disconnected from normal work hours. Work done in this manner shall be in accordance with Section 3, Article VII of this Agreement and shall be subject to a minimum of three (3) hours' pay at the applicable rate.

Section 9. State of Emergency

If a State of Emergency is declared by the Mayor of the City of Athens or Athens County Sheriff and "Non-Essential Personnel", are directed by the City administration not to report to work, they shall be paid their regular rate of pay for all regular work hours missed. "Non-Essential Personnel" are defined as all bargaining unit employees in the following classifications:

Parking Enforcement Officers
Groundskeeper

Meter Repairer

Custodian

"Essential personnel" who are unable to report for duty shall have the option to use accrued vacation time. All such hours shall be considered as time worked for the purpose of computing overtime pay.

Payment for designated "Essential Personnel" who are directed to report to work in such circumstances shall be on a premium basis of two (2) times their hourly rate for all hours worked during their shift during the term of the declared emergency by the Mayor or Athens County Sheriff. If non-essential personnel are already at work when the emergency is declared, they will be released at the first safe opportunity. If they are required to perform emergency functions, they will be compensated the same as essential personnel until able to leave.

Section 10. Compensatory Time

- A. Employees may convert up to a maximum of 160 hours of overtime to 240 hours of compensatory time. Time will accumulate at the rate of one and one half hours for each overtime hour worked or appropriate overtime rate worked. Upon separation of service for any reason, members shall be paid at their current rate of pay for all accumulated hours of time. If a member dies while in paid status in the City service, any unused compensatory time shall be paid in a lump sum to the surviving spouse or the estate of the deceased.
- B. Compensatory time may be used in one hour minimum segments with supervisor approval. Request for the use of compensatory time must be submitted two work days in advance and be approved by the supervisor or his designee. The supervisor or his designee may waive the advance notice.
- C. Employees shall, at the time they work in an overtime capacity, declare whether they desire overtime or compensatory time. Compensatory time payout will be based on the balance as of the first full pay period in January and will be paid the first pay period in February. The compensatory time shall be paid at the current rate of pay. Compensatory time payouts will be processed on amounts accrued at five hours or more. Any time under five hours will be rolled over.

Section 11. Pay Checks

Effective with new hires, employee checks are direct deposited only into account(s) designated by the employee. Check stubs are accessible online at the e-mail address provided by the employee.

The Auditor's Office can deposit any portion you choose into separate checking or savings account an employee designates. Paychecks can be deposited into as many as four different accounts at four different locations.

ARTICLE 8 - TEMPORARY TRANSFERS AND PLUS RATING

Section 1. Purpose

While Management has the authority to make work assignment within given classifications, the purpose of temporary transfers and plus rating is to afford Management a method of meeting the requirements of production due to temporary absence of an employee or to fill an opening temporarily pending a permanent filling of such opening or temporarily increased workload not to exceed thirty (30) days. An opening, as used herein, is a vacant position that has been duly authorized for filling by the appropriate Management official(s). No position shall be deemed to be an opening when an incumbent employee is on an authorized, paid leave.

Section 2. Payment

Employees required to work and substantially perform the job duties of a higher classification on temporary basis will be paid at the higher rate at any time they are required to

work and substantially perform the job duties in a higher classification for more than four (4) hours in a work day. Payment shall be made at the higher rate for the higher assigned classification that results in a one-step increase but no less than the minimum rate for the higher classification. Employees who are transferred temporarily to a lower rated classification shall retain the rate of pay of the assigned employee's permanent classification. Supervisors will not assign work requiring the performance of other job duties in a higher classification for periods of less than four (4) hours for the purpose of avoiding payment of plus rate.

Employees not qualified for plus rating because of lack of experience may be assigned to the higher classification without plus rating for purposes of training. Such training shall not be more than eighty (80) hours. Training programs in excess of eighty (80) hours shall be mutually agreed upon. This article will not apply to employees entered into a formal training program as determined by the Personnel Director.

Section 3. Assignment Procedure

In making such transfers, Management may select the employee to be transferred without regard to seniority or certification to complete a maximum of five (5) shifts. Thereafter, the transfer to such work shall be based on division seniority as defined in Article 12. After following the posting procedure of Article 10, the assignment(s) shall be given to the more senior eligible employee having division seniority requesting the assignment. If there are no employees following the aforementioned posting procedure, the assignment(s) shall be given to the least senior eligible employee having a division seniority.

Section 4. Inspector Assignment

When an employee is assigned the duties of Inspector on major projects performed by an outside contractor, the employee shall receive one-half hour of overtime at the rate stated in Article 7, Section 3 of this contract, for each eight (8) hour day. This payment shall be in addition to any overtime hours actually worked. The Service-Safety Director shall designate which projects qualify for inspector pay. In order to receive inspection pay, the employee must work eight (8) consecutive hours of assigned inspection duties.

Section 5. Operator of Record

The Employer may designate a qualified bargaining unit employee to serve as the backup Operator of Record for the Water Treatment or Wastewater Treatment Plant. This will generally be the most senior qualified plant employee, but management reserves the right to select other qualified employees as plant operations require. Employees who act as backup Operator of Record shall receive two dollars (\$2.00) per hour for all hours worked as the backup Operator of Record. In instance an employee serves as backup Operator of Record for an entire week, the employee will be designated backup Operator of Record for forty (40) hours during that week.

ARTICLE 9 - LATERAL TRANSFER

An employee shall have the right to exercise his job classification seniority to transfer to an available vacant position within the same classification, with a different work reporting location

and/or shift within the same division, if the employee is able to perform the physical and/or specialized requirements of the work involved. Only one transfer to another shift or another reporting location shall be permitted in any twelve (12) months. An employee who desires such a transfer shall make a written request therefore and deliver the same to his immediate supervisor and the Union. Employees shall not be permitted to transfer during the first twelve (12) months of employment.

Once an employee accepts the transfer and is transferred to the new position, that employee will serve a ninety (90) day probationary period. An additional sixty (60) day probationary period may be added if there are documentable deficiencies in the transferring employee's performance in at least 3 evaluations in the first ninety (90) days. Employees may not lateral transfer again until probationary period is complete.

ARTICLE 10 - POSTINGS AND PROMOTIONS

Section 1. Posting

In the interest of promoting career employment, all job openings within the bargaining unit shall be posted in all departments for minimum of five (5) shifts of the open position before filling the position. Such posting shall contain the minimum qualifications, a description of duties, the hours per day, days per week and the hourly rate range assigned to the position.

Interested, full-time, permanent employees may apply for an identical lower-rated or higher-rated classification and be considered for the opening by notifying the Human Resources Director or designee, in writing, during the posted period.

Section 2. Selection of Applicant

The City shall select the employee applicant with the greatest bargaining unit seniority who possesses the qualifications necessary for the position, provided the City reserves the right to determine reasonable qualifications necessary for a position, and to test for the position if it is deemed appropriate. Testing will be uniformly applied in the same or similar situation.

Section 3. Rate Retention

Employees who are promoted as a result of utilizing the procedure contained in this Article shall be placed in the step of his new classification that is closest to the employee's former hourly rate, which results in an increase in hourly rate, provided no employee may exceed the maximum step of a classification. An employee who is appointed to an identically rated classification shall retain his/her hourly rate. An employee who successfully bids to lower rated classification shall be placed in the same step as in his/her previous classification and shall serve one (1) year in said new classification step.

Section 4. Notification

As soon as practical, but in no case exceeding thirty (30) days after the posting deadline, Management agrees to notify, in writing, all applicants of Management's decision concerning the selection of an applicant.

ARTICLE 11 - SENIORITY

Section 1. Definitions

- A. Classification seniority is the length of service of an employee, while in a paid status in a specific classification of the City, inclusive of his probationary period, provided such probationary period has been satisfactorily completed.
- B. Divisional classification seniority for vacation purposes shall be as follows:
Water Crew, Sewer Crew, Street Crew, Water Treatment Plant, Wastewater Treatment Plant, Lands and Buildings, Recreation, and Parking Enforcement
- C. Bargaining unit seniority is the period of continuous length of service as an employee covered by this contract, as determined by the provisions of Section 3 of this Article.
- D. City wide seniority is the period of continuous length of service as an employee of the city, as determined by the provisions of Section 3 of this Article.

Section 2. Probationary Period

All new employees shall be considered probationary employees until they have completed management prescribed number of calendar days of employment in probationary status. Likewise, no other appointment shall be deemed to be complete until the appointed employee has satisfactorily completed the management prescribed number of calendar days of probationary employment in his / her classification. Probationary period shall begin on the first day the employee begins work on the job to which he has been appointed. Probationary period shall apply to new hires, promotions, and lateral transfers. An employee who fails to complete his/her probation shall be returned to his/her former position. New employees shall not have the right to grieve dismissal during their probationary period. Management hereby agrees that all probationary periods for employees covered hereunder shall consist of Ninety calendar days however, management solely at their discretion may invoke up to an additional 60 days of probationary period where documented deficiencies require remedial training. New employees should be evaluated 3 time within the 90 days of probation.

Section 3. Date of Seniority

Upon completion of the probationary period, and if retained in service, the employee's seniority shall be computed as of his date of hire. If an employee is discharged or quits and is later rehired within one (1) year, his seniority shall be continuous but recalculated to subtract the period of his interrupted service.

Section 4. Seniority Lists

Seniority lists shall be maintained and be brought up to date, posting new lists in all departments during January and July of each calendar year of this Agreement's existence. Seniority lists shall contain the name, job classification, department, date of classification entry and date of last hire of all employees in the bargaining unit.

Section 5. Vacation Preference

Divisional seniority shall be used for the purpose of exercising vacation preference in accordance with divisional practices and for the exercise of rights as granted in Article 9, Lateral Transfer.

Section 6. Continued Accumulation of Seniority

An employee who is unable to work because of City service-connected disability shall accumulate seniority during this period of sickness or disability not to exceed one (1) year's duration, unless otherwise extended, or provided such employee continues to be employed by the City.

Section 7. Tie Breaker

If two or more employees have the same date of hire, the employee with the earliest date of birth shall be the most senior.

ARTICLE 12 - LAYOFFS AND RECALL

Section 1. Layoff

When the City determines that it is necessary to reduce the work force due to lack of work or funds, the City shall notify the Union at least ten (10) calendar days prior to any such reduction. Upon such notice, the Union and the City shall meet to discuss layoff and/or a reduction in the work week. When the City has made a decision concerning layoff and/or reduction in the work week, it shall provide to the Union a list of employees to be displaced and a current seniority list.

Section 2. Order of Layoff

If reduction in the work force is deemed necessary by the City in an affected classification, the following order of layoff shall prevail:

- a) casual and intermittent employees;
- b) temporary employees;
- c) part-time employees;
- d) employees serving in a new-hire probationary status.

Thereafter, any additional reduction of the work force shall be made in the inverse order of classification seniority of the remaining employees in the affected classification (least classification seniority employees first).

Section 3. Bumping Rights

An employee who is displaced from his/her classification by a reduction in the work force, may within five (5) days of his/her notice of layoff, exercise his/her bargaining unit seniority to bump the employee with the least bargaining unit seniority in the same grade rated classification or the employee with the least bargaining unit seniority in a lower grade rated classification. Bumping is limited to employees within the bargaining unit covered by this

Agreement and is subject to the employee being qualified and physically able to perform the work of the job he/she seeks to obtain by bumping.

Section 4. Waiver of Bumping Rights

In the event an employee does not desire to take any of the positions to which he is entitled under the layoff procedure, he can elect in writing to take a layoff without impairment of his recall rights under Section 5 of this Article.

Section 5. Recall

Prior to any job posting, employees displaced from their classification through a reduction in the work force, shall be recalled in the order of their classification seniority (most senior laid off employee recalled first) to:

- a) the employee's original job classification held prior to layoff;
- b) any vacancies which occur in the classification for which the employee is qualified and physically able to perform;
- c) any other available job classification for which the employee is qualified and physically able to perform provided there is no other employee laid off in that job classification described in Section 3 above.

Section 6. Notice

The City shall provide written notice of recall to the affected employees, by Certified Mail, to the employee's last known address. It shall be the responsibility of each employee to keep the Human Resource Director informed of his/her current residence or mailing address. The laid-off employee shall have fifteen (15) calendar days after mailing or dispatching of said notification in which to exercise his/her rights to recall. After the expiration of this time, the next employee in line on the eligibility register shall be notified in accordance with the above paragraph and be given his right to recall.

The employee who has properly notified the Human Resource Director, must report to work within five (5) days, or at the discretion of the Service-Safety Director. Employees who fail to report for work as specified above shall forfeit their recall rights and the next employee in line on the eligibility register shall be notified.

Laid-off employees shall have recall rights for two (2) calendar years from the effective date of layoff.

Section 7. Retention in Case of Equal Seniority

Should two (2) or more employees affected by a reduction in the work force have the same seniority, the retention shall be determined as prescribed by Article 11, Section 7, provided the older employee is qualified for, and physically able to perform the work in the job to which he seeks to bump.

ARTICLE 13 – TYPES OF LEAVE

A. Sick Leave

Section 1. Accumulation

An employee in the service of the City shall accumulate sick leave at the rate of four and six-tenths (4.6) hours per two (2) week pay period. All sick leave shall be charged in multiples of one (1) hour. Sick leave shall accumulate without limit for use purpose.

Section 2. Conversion

An employee who retires shall be eligible for liquidated sick leave pay on a four (4) to one (1) ratio of accumulation to pay basis. The maximum accumulation that may be converted is limited to nine hundred sixty (960) hours. No reimbursement shall be made to an employee with less than twenty-four (24) work days accumulated sick leave credit.

On or before October 30th of each year, an employee may elect in writing to the Human Resource Director to receive cash payment for those hours accumulated in excess of 960 hours but less than 1200 hours on a four (4) to one (1) ratio of accumulation to pay basis. Payment shall be made on the first pay date in December.

Section 3. Leave Without Pay

After an employee has exhausted all sick leave and is still unable to perform his/her normal duties, for other than a service connected disability, he/she may request a leave of absence without pay. Such request shall be submitted in writing to the Service-Safety Director, along with medical evidence of disability, which is acceptable to the Service-Safety Director. Such leave may be approved for up to thirty (30) calendar days. Extensions may be requested in the same manner as the original request and may be approved for periods of up to thirty (30) calendar days. However, no leave hereunder shall exceed a total of one hundred eighty (180) calendar days. The City shall continue to pay the City's share of the medical, dental, and vision insurance cost. This benefit shall only be offered during the time an employee is actually on an approved leave of absence. At the end of one-hundred eighty (180) days, medical insurance benefits shall terminate in accordance with COBRA regulations.

To continue to receive medical benefits, an employee on leave without pay must continue to pay his/her medical premium. The premium is due the first of each month and must be written as a separate check to the City of Athens. Employees will be provided with the dollar amount of the premium along with a payroll calendar to determine future payment dates. Payments are to be mailed to the Human Resources Director at the City Building. For all other payroll deductions (including dental, vision, and Community Center dues), the employee will be provided with contact information for all respective companies and advised to reach out to representatives to discuss future payment options. For union dues, employees will be asked to contact their union president or union representative about future payments.

Section 4. Granting of Sick Leave

An employee may use sick leave:

- A. In case of their own illness, injury or exposure to a contagious disease and for medical, psychological, dental or optical examinations by an appropriate practitioner of an employee, or a member of the employee's immediate family when actually accompanied by the employee or when the employee's presence is required in the home.
- B. For attendance upon members of their immediate family whose illness or injury requires the care of the employee. "Immediate family" shall mean husband, wife, child, stepchild, parent, mother-in-law, father-in-law, stepparent, brother, or sister, brother-in-law or sister-in-law, grandchild, grandparent or any person that took the place of natural parents of the employee. Proof of relationship and illness or injury may be required by Management as a condition of granting such leave.
- C. Any employee in an active work status and who does not utilize any of their sick leave for any ninety (90) day consecutive calendar day period, shall be entitled to one paid absence day. Paid absence days off must be requested in the same manner as a vacation request and are subject to approval based upon the work load requirements of the employer. The ninety (90) calendar day consecutive period begins the first day following the last incident of sick leave usage and ends ninety (90) calendar days later. Paid absence days must be taken within one year of the date of earning and are to be deducted from sick leave.

Section 5. Bereavement Leave

Up to five (5) days of accumulated sick leave, vacation or compensatory time may be used to attend the funeral of a member of the employee's immediate family as defined in Section 4 above. Proof of death and relationship of the deceased must be furnished upon the request of the Human Resource Director. Employees may use paid vacation time if more time is required to attend to the arrangements or travel.

Section 6. Donation of Sick Leave

An employee may donate up to a maximum of eighty (80) hours of accumulated and unused sick leave each calendar year. In order to qualify for the receipt of donated sick time, the employee's absence must qualify as an event under family medical leave and they must have exhausted all available sick leave, vacation leave and compensatory time. Donating employees must have a minimum bank of one hundred sixty (160) hours of accumulated and unused sick leave after the donation. The employee receiving the donation of leave must be on a leave of at least one hundred sixty (160) hours or longer. Nothing in this section prohibits an employee from donating to multiple employees; however, the cumulative donation shall not exceed eighty (80) hours. Requests for donations will not be accepted before an employee has used all available paid leave. Once sick leave has been donated from one employee to another, whether the donation is used in its entirety or not, the donation is final.

B. Vacation Leave

Section 1. Employees who have had an active work status for six (6) months will be eligible to use accrued vacation and will then be granted time off for vacations during each year based on the following table:

One (1) year, but less than six (6) years: Two (2) weeks (80) hours

Six (6) years, but less than twelve (12) years: Three weeks (120 hours)

Twelve (12) years, but less than eighteen (18) years: Four weeks (160 hours)

Eighteen (18) years, or over: Five (5) weeks (200 hours)

<u>Length of Service</u>	<u>Vacation Credit</u>
After 1 Year	10 days
After 6 Years	15 days
After 12 Years	20 days
After 18 Years	25 days

Employees shall receive an additional 40 hours of vacation at the beginning of each new vacation accrual rate.

Section 2. The vacation period shall extend throughout the calendar year.

Section 3. If an employee is laid off, terminated, resigns or retires, their shall be entitled to, and receive payment for all accrued and unused vacation leave to his/her credit at the time of separation.

Section 4. Employees shall be able to accumulate vacation credits up to three (3) years.

Section 5. Vacation will be taken at the time most desired by the employee who will indicate their choice of vacation time off and will be by seniority. All employees shall notify the City in writing, no later than March 15, of their vacation preferences. The City, however, reserves the final right to allocate vacations.

Section 6. Vacations will be taken in the amounts desired by the employee, subject to staffing requirements of the City, in increments of at least one (1) week, except that under special circumstances, the City may honor an employee's request in writing for vacation in increments of one (1) day. The minimum chargeable vacation increment shall be one-half ($\frac{1}{2}$) day increments. All such requests shall require a two (2) day notification.

Section 7. A vacation period, once determined, may not be changed or postponed, except with the approval of the supervisor and for good reasons considered by the authorized representative of the City to be good and sufficient.

Section 8. If a holiday occurs during a period of sick or vacation leave of an employee, the employee shall draw eight (8) hours of regular pay and shall not be charged for sick leave or vacation for the holiday.

Section 9. No employee shall be required to give a reason for taking vacation time.

C. Family and Medical Leave (FMLA)

In accordance with the Family and Medical Leave Act of 1993 (FMLA) the City will grant job protected family and medical leave to eligible employees for up to 12 weeks per 12-month period consistent with the provision of state and federal law. Employees on medical leave that qualify for family medical leave under the guidelines of the FMLA must use any accrued sick leave, vacation time, and compensatory time to the extent available during and concurrent with FMLA leave. Employees are asked to refer to the Human Resources Director for further questions and information.

D. Parental Leave

Parental leave up to a maximum of 200 hours shall be provided by and paid for by the City for full time employees for a single event birth or adoption (single or multiple children). Any employee granted leave under this section shall continue to be covered under the City's group health, life and AD&D insurance. The parent shall be entitled to receive a full salary up to the maximum of 200 hours maternity/parental leave. To receive full pay all maternity/parental leave hours must be used within 10 weeks of the qualifying birth or adoption and at least 120 hours must be taken consecutively.

The remaining 80 hours may be taken on a part-time schedule with the approval of the employee's immediate supervisor. Employees on approved maternity/parental leave are not required to use any accrued sick leave. FMLA leave will be taken concurrent with maternity/parental leave. Any paid holidays that occur during maternity/parental leave will not count against the allowed maternity/parental leave time.

E. Military Leave

Eligible bargaining unit employees will be granted Military Leave of Absence in accordance with the terms in the current Non-Union Fringe Benefit ordinance but no less than the Federal and State law.

F. Injury Leave

Physical injury for purposes of this section shall be defined as any injury which occurs on or after the effective date of this agreement compensable under the Workers' Compensation laws of the State of Ohio.

- A. Any full-time employee who is disabled as a result of a service connected physical injury shall be entitled to receive his full salary during such period of disability up to a maximum of 240 hours or until the employee is deemed eligible as a service-connected disability under the Bureau of Workers' Compensation (BWC), whichever is shorter. If the employee is still unable to return to work at the end of the paid injury leave he/she may request a leave without pay, and compensation under Worker's Compensation. However, no leave hereunder shall exceed a total of 12 months. An employee granted a leave under this section shall continue to be covered under the City's group health and life insurance plans under the same conditions as coverage would have been otherwise provided. Payments for medical premiums and other payroll deductions while on leave without pay are to be processed as indicated in Section 3 of this Article.
- B. The following conditions will apply to injury leave:
 - 1. The employee must submit a physician's statement to the Human Resource Director to qualify for injury leave. The statement shall include a diagnosis and an estimated return to work date. If the estimated return to work date extends beyond 6 weeks, or if the physician extends the return to work date during the leave, the employee may file a lost-time claim with the Bureau of Workers' Compensation. Leave without pay may be requested in accordance with Section 2 of this article.
 - 2. An employee will not be required to substitute accrued sick, vacation, or compensatory time for any part of an injury leave. An employee may elect to use accrued leave after using the 240 hours of paid injury leave.
 - 3. An employee may request intermittent leave for medical appointments related to the injury or due to a reduced work schedule as a result of the injury. The intermittent leave will be deducted from the 240 hours of paid injury leave.
 - 4. The City reserves the right to obtain a second and, if necessary, a third opinion at its expense, periodic reports on the employee's status and intent to return to work, and a fitness-for-duty report to return to work. If it is necessary to obtain a third opinion, the City and the employee will mutually agree on the selection of the physician.
 - 5. If an employee receives temporary total disability payments for any portion of the paid injury leave the payment will be turned over to the City. Vacation and compensatory time are exempt from the reimbursement to the City.

6. An employee on an unpaid injury leave will not accrue vacation or sick leave. Seniority shall continue to accrue for the full term of the injury leave.

G. Modified Duty

1. The City of Athens' goal is to assist employees to return to work at the earliest date possible following an injury or illness. This Modified Duty Policy outlines under what conditions an employee would be eligible, as well as the benefits to both the employee and the City. All full-time employees are eligible under this policy.

This policy is not intended to supersede or modify the procedures applicable to employees eligible for reasonable accommodation under the Americans with Disabilities Act (ADA) or leave benefits under the Family and Medical Leave Act (FMLA). Inquiries about the ADA or FMLA should be directed to the human resources (HR) department.

2. Modified Duty is an assignment that is for a specified and limited period and fulfills a necessary job function, appropriate to the employee's skill and level experience as determined by the employer, and which the employee can perform without violating any medical restrictions imposed as a result of a temporary disability, sickness or injury, for which the employee is compensated at their normal rate of pay and benefits. Modified Duty may not be available for certain positions based on the nature of the job and operational needs.

Modified Duty assignments are not guaranteed. The number, availability, and duration of such assignments are limited by departmental needs as defined by the department head and Human Resources.

If restrictions as noted on the physician's release to return to work form or "Certification of Health Care Provider" form are determined to be permanent. The employee is not eligible for a medical duty assignment.

Modified duty assignments may not exceed beyond 240 hours per event. In the event an employee refuses modified duty (outside the employee's FMLA benefits period) and the employee satisfies the restrictions and ability to perform modified duty assignments, the city is under no obligation to provide employment.

3. Applying for and Performing Modified Duty Assignments

Upon receipt of a Certification of Health Care Provider form releasing an employee back to work, a modified duty assignment will be considered. Once an assignment is approved by the department head and Human Resources, the employee may be provided with a temporary position for modified duty. The employee will receive a modified job description along with goals and objectives for the modified role.

Together with the employee, the city will determine appropriate work hours based on the employee's ability to perform the temporary position. The city

reserves the right to determine the availability and appropriateness of all modified duty work assignments.

4. Managers will routinely monitor work performance to ensure the employee is meeting the expectations of the role and not exceeding the requirements set forth by the employee's healthcare provider. The employee will review their progress and ability to transition back to full-time work duties after a maximum of 240 hours of modified duty. Should an employee require additional time to recover, a doctor's note is to be provided to HR detailing the return date to full duty status and the employee will be required to use vacation, sick, comp time under the employees current FMLA claim.

H. Jury and Witness Duty

Section 1. Jury Duty

An employee required to serve on a jury before a court empowered by law to require such service, shall be excused from duty for the time required for such service and shall be paid his/her regular hourly rate, provided he/she notifies his/her supervisor five (5) days prior to such jury service date. This benefit shall be administered as follows:

- A. If excused from jury service on any day in reasonable time to report for at least three (3) hours' work before the end of his shift, he/she shall be paid an amount equivalent to the number of unworked hours of his/her regular scheduled shift at his/her straight time rate, and he/she shall report for work as soon as reasonably possible.
- B. If not excused from jury service in time to perform at least three (3) hours' work during his/her regular shift hours, the employee shall receive an amount equivalent to eight (8) hours' pay at his/her straight time rate.
- C. Jury fees are to be turned into the Auditor's office.
- D. When an employee receives notice he/she has been selected to serve jury duty in federal court (in Columbus), he/she shall provide the Human Resource Director with a copy of the notice to serve, at which time the Human Resource Director, the employee's immediate supervisor and the Local Union President or his/her designee shall meet to determine the effect of the employee's absence for the shift preceding or following the required time for jury duty.

Section 2. Witness Duty

Employees subpoenaed to appear as a witness before a court of another public body on any matter not related to their work in which they are not personally involved (as a plaintiff or defendant) may be granted a leave of absence with pay for a period not to exceed two (2) working days in any calendar year. Such employee shall be paid his/her regular hourly rate provided he/she notifies his supervisor five (5) days prior to such appearance date. Witness fees are to be turned into the Auditor's office. This benefit shall be administered in accordance with the administration set forth in Section 1 of this Article for Jury Duty. In order to receive payment from the City, the employee must furnish to Management a certificate of service and a

sworn statement of the compensation received, signed by the Clerk of Courts or other authorized official of the court.

I. Union Leave

A. The Employer agrees that an employee may be selected by the Union to participate in Union activities for up to a one (1) year period; therefore, the Employer agrees to permit an employee selected by Council 8, AFL-CIO, a leave of absence for duration of more than one (1) week up to one (1) year upon thirty (30) days' written notice. At any given time, one (1) employee may be on an unpaid leave of absence for a period in excess of one (1) week but not more than one (1) year.

Said selected employee shall not receive hourly base rate pay for the duration of said leave and shall receive no benefits of any kind whatsoever other than transactional hospital benefits, if such benefits are payable under the insurance policy.

B. The Employer may replace said employee according to the terms of this agreement; however, upon said employee taking such leave returning, the Employer may return the employee filling the vacant position to their prior position or displace a newly hired employee without the removed or displaced employee having any recourse against the Employer, when such is done to permit the returning employee to return from their leave to their prior position. This shall apply to any other employee removed or displaced as a result of the returning employee.

C. Two (2) employees in active work status shall, upon approval of the Human Resources Director, be granted three (3) days annually for attending Ohio Council 8 meetings without loss of pay or benefits. Approval to attend Ohio Council 8 meetings shall not be unreasonably denied.

J. Educational Leave

Any employee may be granted a leave of absence without pay for educational purposes.

The period of the leave of absence shall not exceed one (1) year, unless otherwise extended.

Such leave of absence shall be granted only with the approval of the Mayor. Every month the employee shall provide the Mayor with verification of continuance in an accredited educational system.

K. Service Connected Disability

An employee who is unable to perform their normal duties due to a service connected disability may request a leave of absence without pay. Such requests shall be submitted in

writing to the Service-Safety Director and must be accompanied by medical evidence of disability. In order for the leave to be approved, the employee shall be required to file a claim with the Bureau of Workers' Compensation. Such leave may be approved for up to ninety (90) calendar days, unless the Bureau issues a determination letter disallowing the claim. Extensions may be requested in the same manner as the original request and may be approved for periods up to ninety (90) calendar days. However, no leave hereunder shall exceed a total of twelve (12) months, unless otherwise extended by management. The employee will be expected to continue paying their share of medical insurance premiums and make arrangements for existing voluntary and involuntary payroll deductions. City shall continue to pay the City's share of the medical insurance cost. Seniority shall continue to accrue for the full term of the service connected leave of absence. The City shall continue to offer medical insurance. This benefit shall only be offered during the time an employee is actually on an approved leave during the time an employee is actually on an approved leave of absence. Medical insurance benefits shall terminate in accordance with COBRA regulations, after a determination has been made by the Bureau of Workers' Compensation that the employee is permanently totally disabled or the leave has ended.

L. General

Vacation and sick leave credits shall not continue to accrue for any period an employee is off in a non-pay status.

To continue to receive medical benefits, an employee on leave without pay must continue to pay their medical, dental and vision premiums. The premium is due the first of each month and must be written as a separate check to the City of Athens. Employees will be provided with the dollar amount of the premium along with a payroll calendar to determine future payment dates. Payments are to be mailed to the Human Resources Director at the City Building. For all other payroll deductions (including dental and vision premiums and Community Center dues), the employee will be provided with contact information for all respective companies and advised to reach out to representatives to discuss future payment options. For union dues, employees will be asked to contact the union president or union representative about future payments.

ARTICLE 14 - HOLIDAYS

Section 1. Designated Holidays

New Years Day	January 1st
Martin Luther King Day	3rd Monday in January
Presidents Day	3rd Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19th
Independence Day	July 4th
Labor Day	1st Monday in September
Columbus Day	2nd Monday in October
Veterans Day	November 11th
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25th
Employee's Birthday	

The days shall be celebrated as set forth in this Section, unless otherwise designated by the appropriate governmental official or body. The employee's birthday must be used between pay 1 and pay 26 annually. Whenever a holiday falls on a Saturday, then the preceding Friday shall be observed as a holiday; or when any of the holidays fall on a Sunday, then the following Monday shall be observed as a holiday.

Section 2. Pay for Holidays

Employees shall be paid for the holidays declared in Section 1 of this Article and shall not be required to work on such holidays unless, in the opinion of the employee's responsible administrative supervisor, failure to work on such holidays would impair the public service.

Employees covered by this Agreement who are required to work on a holiday as specified in Section 1 above shall be compensated at the rate of one and one-half (1-1/2) times the employee's regular straight-time hourly rate including longevity, shift differential, education, or other items afforded by the Fair Labor Standards Act in addition to holiday pay.

Payment hereunder shall be at the employee's applicable straight time rate, exclusive of any forms of premium pay.

Section 3. Personal Day

The personal day provides employees with an authorized paid absence from work for the purpose of attending to personal business and/or emergency situations. All full-time employees are eligible for Personal day absences after completing their probationary period. Eligible employees are granted one personal day (8 hours) as of pay 1 each year. Personal Days must be used between pay 1 and pay 26. Personal Days do not carry forward or accumulate from one calendar year to the next and cannot be used in less than 8 hour increments.

ARTICLE 15 – WAGES

All employees hired or re-hired after the effective date of this Agreement shall be paid on a one (1) pay period delayed period as opposed to current pay status.

Section 1. Wages

All employees in the bargaining unit shall receive a wage in accordance with the wage rates set forth in Addendum #2 of this Agreement.

Each step of the pay scale shall reflect the following:

Effective August 15, 2024	\$1.50/hr.
Effective August 14, 2025	4.25%
Effective August 13, 2026	4.25%

Section 2. Wage Supplements

All permanent wage supplements shall be as set forth in Addendum #3, attached hereto and made a part hereof.

Section 3. Longevity Pay Supplement

- A. All employees in the bargaining unit shall receive a longevity pay supplement in addition to the wages specified in Addendum #2 and #3, in accordance with the following schedule based upon base rate of pay and 2080 hours of work:

Years of Service	Longevity Supplement
After 5 years	1% of base hourly rate
After 7 years	2% of base hourly rate
After 9 years	3% of base hourly rate
After 11 years	4% of base hourly rate
After 13 years	5% of base hourly rate
After 15 years	6% of base hourly rate

Employees hired or re-hired after October 1, 2003 shall not be eligible for longevity pay supplement.

B. Definitions:

The years of service shall be determined by starting with the beginning of an employee's continuous full-time employment with the City of Athens. Personnel in a full-time employment status as of September 15, 1985, who have had discontinuous service, other than seasonal, contract or casual employment, with the City shall have longevity pay computed on the basis of total actual years of service. Full-time employees hired after September 15, 1985, who have had previous service with the City shall have their longevity status computed in the basis of years of service from the most recent date of hire with no provision for previous years of service.

Payment shall be made in a lump sum amount no later than December 15th of each year following the completion of the employee's anniversary period set forth in Paragraph A above.

In the event that an employee who is eligible for payment under this Article terminates his/her employment during the term of this Agreement, the annual payment provided herein shall be prorated for the period of his/her employment.

Section 4. PERS Pickup

Effective with the first pay of 1995, the City's method of payment of annual wages to bargaining unit employees who are participants in the public employees retirement system (PERS) is hereby modified as follows, in order to provide for an annual wage reduction "pick-up" of employee contributions to PERS:

The total annual wage for each employee shall be the annual wage payable under the terms of the labor Agreement. Such total annual wage of each employee shall be payable by the city in two parts: (A) deferred wages and (b) cash wages. An employee's deferred wages shall be equal to that percentage of that employee's total annual wage which is required from time to time by PERS to be paid as an employee contribution by that employee, and shall be paid by the city to PERS on behalf of that employee as a "pick up" and in lieu of the PERS employee contribution otherwise payable by that employee. An employee's cash salary shall be equal to that employee's total salary less the amount of the "pick up" for that employee, and shall be payable, subject to applicable payroll deductions, to that employee. The city shall compute and remit its employer contributions to PERS based upon an employee's total annual wage. The total combined expenditures of the city for such employees' total annual wage payable under the terms of the labor Agreement and the "pick up" provisions shall not be greater than the amounts it would have paid for those items had the "pick up" provision not been in effect.

ARTICLE 16 – INSURANCE

Section 1. Coverage

A. Life Insurance

The City shall provide and pay the premiums on Group Life Insurance in the Amount of twenty-five thousand dollars (\$25,000) and Accidental Death and Dismemberment Insurance in the amount of twenty-five thousand dollars (\$25,000). Coverage will be effective from the date of full-time employment and terminate on the last day of full-time employment.

B. Prescriptions

The City will provide:

1. Retail: A prescription drug plan in which employees will be responsible for the copayments listed below for covered prescriptions and refills dispensed for not more than a 34 day supply or 100 unit doses, whichever is greater.

2. Mail-in or On-line Ordering System: A prescription drug plan in which employees will be responsible for the copayments listed below for covered prescriptions and refills dispensed for a 90 day supply.

	Retail	Mail-in or On-Line
Generic	\$10.00	\$10.00
Brand name where there is <u>no</u> generic equivalent	\$25.00	\$45.00
Brand name where there is a generic equivalent	\$45.00	\$85.00

If the prescribing physician determines that a brand name drug is medically necessary when there is a generic equivalent, the physician must submit a letter of medical necessity to the Human Resources Director for consideration. If the exception is approved, the prescription will be dispensed at the same co-pay as brand name drugs which have no generic equivalent.

C. Medical Benefits

Employees will select health benefits under the Flexible Benefits Plan during December of each year. Employees who were not enrolled in the Group Health Benefit Plan at their time of hire are eligible to enroll under the annual enrollment period. Employees may also enroll at the time of a special qualifying event.

D. City Plan

1. Fixed costs are the stop-loss premium (single or family rate for specific and aggregate per employee) plus the monthly per employee fee for the third party administrator.
2. Employees will pay a monthly contribution equal to thirty-five percent (35%) of the fixed costs of the medical insurance plan. Every January 1st hereafter, the fixed cost will be adjusted in order that employees continue to contribute thirty-five percent (35%) of fixed costs not to exceed the following monthly premiums: Single - \$75.00/month, Employee and one Dependent - \$90.00/month, Family - \$110.00/month.

Deductibles are as follows:

	In Network	Out-of-Network
Single	\$100.00	\$150.00
Employee + 1	\$200.00	\$300.00
Family	\$300.00	\$600.00

3. Benefits and co-pays are as stated in the plan document prepared by the City's third party administrator. A summary plan booklet is provided to each employee.

Section 2. Eligibility

- A. Employees hired or rehired on or after the effective date of this agreement shall be eligible to enroll in the Group Health and Prescription Drug Benefit Plans the first day of the second calendar month following date of hire. Coverage will terminate on the last day of the month in which employment terminates. Should an employee die in the performance of their duties; the City shall continue coverage for the covered dependents for a period of three (3) months following the date of death.
- B. When a husband and wife are both employed by the City and are eligible for health benefits, the employee with the earliest date of hire will be the insured employee.
- C. Employees hired prior to August 26, 2012, who provide satisfactory evidence of family coverage for health care benefits to the Human Resources Director, other than provided by the City of Athens, may waive family coverage by the City and receive a \$1,500 annual bonus, prorated each pay period. The change from family coverage to single coverage does not qualify the employee for the bonus. Single employees may not waive coverage and are not eligible for the bonus. Married couples working for the City are not eligible for the bonus. No employee shall receive the bonus while on unpaid leave.
- D. The parties agree that in an effort to contain health benefit costs, the pre-certification on all non-emergency inpatient admissions is mandatory.

Section 3. Employee Assistance Program

The city will make available a list of agencies and providers in the local area who specialize in mental health and substance abuse counseling. Coverage for these services are governed by the terms and conditions of the city=s group health benefit plan. The city will not be responsible for charges incurred by employees who are not covered under the city=s benefit plan.

Section 4. Flexible Benefits Plan

The City agrees to maintain a flexible benefits plan under the provisions of Code Section 125. All employees are bound by the enrollment provisions of the Plan.

Section 5. Dental and Vision Insurance

The City shall provide the same arrangement for dental and vision care insurance that is currently in effect.

Section 6. Affordable Care Act

The parties understand that the Affordable Care Act (ACA) was enacted by the federal government on March 23, 2010. The parties further understand that many of the ACA mandates may be implemented over the period of this Agreement. The parties that the Employer is required to comply with this Act. The Employer will notify the union of any changes contemplated to maintain legal compliance and schedule a labor management meeting to discuss such changes.

Section 7. Alternative Plan

If, during the term of the agreement, the city develops an alternative plan for delivering medical and prescriptions benefits that differs from this article, and decides to extend the opportunity to union members to participate, employees may voluntarily switch during open enrollment to the alternative plan. Such a switch shall be subject to the terms and condition that the city determines at that time.

Employees have the choice to enroll in a high deductible health plan/health savings account option (HSA). This plan allows employees to set up a health savings account that is specifically used for paying deductible. The city will contribute money each year to the HSA and the employee can contribute to the HSA based on IRS regulations. Employees may also liquidate up to 240 hours of sick leave per year at a pay rate of three to one (3:1) ratio that can be used for the employee's contribution.

Section 8 Hearing

The Employer agrees to pay \$.050 per month per bargaining unit employee toward the cost for the coverage provided by the AFSCME Hearing Plan. The cost shall remain constant for the term of the contract.

ARTICLE 17 - BULLETIN BOARDS

Management will provide bulletin boards for use by the Union in appropriate locations. Such bulletin boards may be used by the Union for posting notices approved by the Union and the Department Head or his designated representative. Notices shall be restricted to:

- A. Notices of Union elections;
- B. Notices of Union meetings;
- C. Notices of Union appointments and results of Union elections;
- D. Notices of Union recreational and social affairs; and
- E. Such other notices as may be mutually agreed to.

Any change in the location of such bulletin boards shall be decided by the Management and the duly authorized officers of the Union.

There shall be no other posting by employees of notices, pamphlets, advertising or political matter or any kind of literature upon City property other than herein provided.

ARTICLE 18 - GRIEVANCE PROCEDURE

Section 1. General

There shall be an earnest, honest effort to settle disputes and controversies promptly, and the procedures of this Article shall serve as a means of settlement of all grievances. A grievance is a complaint that Management has violated the terms of this Agreement. Both

parties recognize their responsibility to follow the procedure laid out in this agreement. The grievance process should be a good faith attempt to settle disputes. The Union and Management should agree to follow the timelines set forth in this procedure.

Section 2. Procedure

The aggrieved employee shall first discuss his/her complaint with his/her immediate supervisor, with or without a representative present, and attempt to solve the dispute. The parties agree that any matter that may be pursued as a grievance may not be pursued through the Civil Service Commission. The grievance form will be time stamped and dated at receipt of each step. If any grievance is not initiated within the applicable time frames set forth below, the grievance shall be considered waived, shall no longer be deemed a grievance, and may not be processed as such. All written grievances should contain the following information:

1. Aggrieved employee's name, classification and signature.
2. Date grievance is being filed.
3. Date, time and location (if appropriate) of incident giving rise to the grievance.
4. A description of the incident or statement of perceived facts.
5. Section(s) of the Agreement alleged to have been violated.
6. Desired remedy to resolve the grievance.

Any grievance not answered by the Employer's representative within the stipulated time limits shall be considered to have been answered in the negative.

Step 1. In the event the dispute is not resolved in accordance with the above paragraph, the aggrieved employee shall deliver his/her grievance, signed and in writing, to his/her immediate supervisor within five (5) work days after the employee has knowledge of, or should have knowledge of, the incident upon which the alleged grievance is based. Such supervisor will answer the grievance in writing within five (5) work days if not satisfied with the written answer of the first line supervisor, the Union may refer the grievance to the second step of the grievance procedure. If the grievance is not referred to Step 2 of this procedure within five (5) work days after receipt of the decision rendered in this step, it shall be considered to be satisfactorily resolved based on the Employer's last response.

Step 2. The grievance, in the event it is appealed from Step 1, shall be submitted to the department head, along with all correspondence. The department head or his/her representative shall investigate the grievance and hold a grievance meeting within five (5) work days following receipt of said grievance. The department head shall reply to the Union and the grievant in writing within five (5) work days after completion of the grievance meeting. If the answer of the department head is not satisfactory to the Union, the grievance may be appealed to Step 3 within five (5) work days after receipt of reply from the department head. If the intent to invoke the third step of the grievance procedure is not received by the Service-Safety Director within five (5) work days after receipt of the second line supervisor's answer, it shall be considered to be satisfactorily resolved based on the Employer's last name.

Step 3. The grievance, in the event it is appealed from Step 2, shall be submitted to the Service-Safety Director. The President of Local 2403 or his/her designee will sign all grievances prior to being submitted at the 3rd step. The Service-Safety Director shall investigate the grievance and, hold a joint grievance meeting within five (5) work days after receipt of the grievance by the Service-Safety Director. The Service-Safety Director shall reply to the Union and the grievant in writing within thirty (30) work days after completion of the grievance meeting or receipt of the grievance, whichever is later. If the answer of the Service-Safety Director is not satisfactory to the Union, the grievance may be appealed to Step 4. If the written notice of intent to invoke the fourth step of the grievance procedure is not received by the Service-Safety Director within thirty (30) work days after the receipt of the Step 3 answer, it shall be considered to be satisfactorily resolved based on the Employer's last response.

Step 4. Mediation

IN THE EVENT STEP 4 IS SELECTED BY EITHER PARTY, THE FOLLOWING PROCESS SHALL BE FOLLOWED:

- a. The selection procedure of the Mediator shall be in accordance with the procedure outlined in Step 3 of this Agreement, or from assignment of a Federal Mediation and Conciliation Service (FMCS) Mediator.
- b. The conduct of the Step 4 Mediation hearing shall be in accordance with Step 3 Arbitration, and the list below.
- c. The Mediator shall make his/her decision in conformity with this Agreement and shall not modify or change this Agreement and shall render a decision in writing within seventy-two (72) hours from the close of the hearing. The acceptance or rejection of the Mediator's decision is voluntary for both parties.

Accordingly, under Step 4 of the grievance procedure, the parties shall use the mediation approach and procedure for resolving grievances.

- d. When either party choose the Step 4 alternative, the parties and the designated mediator (arbitrator) will select a mutually agreeable date for holding the mediation. If a mutually agreeable date cannot be selected, the Mediator will select the date and both parties will abide by this selection. This same procedure shall apply to selecting a time and location for holding the mediation.
- e. The Mediation hearing shall be conducted in accordance with the following:
 1. The hearing shall be informal. No hearing shall last longer than eight (8) hours in a twenty-four (24) hour period.

2. No briefs shall be filed or transcripts made. The Mediator will set break and meal periods and time limits.
 3. There shall be no formal rules of evidence.
 4. Each party's case must be presented by a representative of their own choice.
 5. The Mediator shall attempt to mediate the grievance after the facts presented by both parties.
- f. Any recommendations of the Mediator in this procedure shall not be used as a precedent in any other grievance or hearing, except the grievance for which the Mediator has issued his recommendations.
 - g. The parties may agree to present more than one grievance to the Mediator for his/her recommendations. Each party will submit to the Mediator a copy of the grievance and any information that has been submitted as part of the grievance record prior to the hearing. The Mediator will be provided a copy of the Collective Bargaining Agreement.
 - h. The parties shall split the cost of the Mediator and hearing room.
 - i. If the grievance is not satisfactorily resolved as provided in Step 4, the Union may appeal the grievance to arbitration.

Step 5. Within **thirty (30) work days** following receipt of the Union's intent to invoke the arbitration procedure, **the Union shall request the** Federal Mediation and Conciliation Service to submit the names of seven (7) arbitrators will be signed and mailed. Upon receipt of such names, the Union and Management shall alternately cross off one name until one name remains, that person being selected as the arbitrator. Either party may once reject a list and request from FMCS another panel of names until a mutually agreeable arbitrator is selected. The party requesting the additional panel shall be responsible to pay any fee associated with the request.

All decisions of the arbitrator will be final and binding upon all parties participating. **The Arbitrator** shall have no power to add to, subtract from, change, modify or amend any of the provisions of this Agreement. Both Management and the Union shall share equally the expenses and fees of the arbitrator and other neutral expenses incident to the arbitration hearing.

The arbitrator shall limit his decision strictly to the interpretation, application or enforcement of the specific articles and sections of this Agreement. The arbitrator shall decide the issues presented on the basis of the reliable, substantial and preponderance of the evidence in the record of the proceedings and the express terms of this Agreement.

Section 3. Miscellaneous

It is understood that the time limits imposed in this Article may be extended at any step by mutual consent. Likewise, any step in the grievance procedure may be eliminated by mutual consent. In any case where a decision of the appropriate Management representative is not given at any step of the grievance procedure within the time limits specified, or within the period that may have been extended by mutual agreement, the grievance may be referred by the Union to the next higher step of the grievance procedure.

The Union and Management, based on the facts presented, have the sole right to decide whether to appeal any grievance.

ARTICLE 19 - SAFETY

- A. The City and employees agree to maintain all buildings, facilities, vehicles, tools and equipment owned and operated by the City in a safe and healthful manner. The employees accept the responsibility to maintain tools, equipment and work areas in a safe and healthful manner, and accept responsibility to follow all safety rules and safe working methods of the City.
- B. Protective devices and other safety equipment necessary to properly protect employees from injury shall be provided by the City. The employees will be held accountable for wearing personal protective devices as directed.
- C.
 - 1. A joint City and Union Safety Committee shall be established for the purpose of developing recommendations regarding safety issues, identification of personal protective equipment, safety policies, practices, procedures, cost and training. Recommendations will be forwarded in writing to the Service/Safety Director for implementation, modification, further clarification, exploration, rejection, etc. The Committee will achieve recommendations through a consensus building process.
 - 2. The Safety Committee will be comprised of the following membership:

Deputy Director of Development Enforcement & Facilities (DEF)
Water Plant Manager
Wastewater Plant Manager
Sewer Maintenance Supervisor
Water Maintenance Supervisor
Street Maintenance Supervisor

A bargaining unit member from each of the above areas.
One bargaining unit member collectively representing Parking Enforcement, Custodians, City Parking garage employees.
Human Resource Director - Chairperson
 - 3. The Committee will meet when agenda items are submitted in writing to the Human Resource Director by a member(s) of the Committee or by

representatives of management. The Committee will meet not more than once per month nor less than once per year.

4. Unresolved issues of the Safety Committee will be referred to the Labor/Management Committee for resolution.

ARTICLE 20 - LABOR-MANAGEMENT COMMITTEE

In the interest of sound industrial relations, the joint members, half of whom shall be from Management and half of whom shall be from the Union, will convene not less than once every calendar quarter at a mutually agreeable time, unless waived by mutual consent, including review of grievances and unsafe working conditions. It shall be the express purpose of this committee to build and maintain a climate of mutual understanding and respect in the solution of common problems. Each party shall prepare and submit an agenda to the other party at least one (1) week prior to the scheduled meeting. The City shall pay the Union representatives in attendance their normal rate for meetings held during their normal work schedule; however, no pay for time beyond the regular work schedule shall accrue.

ARTICLE 21 - SHIFT DIFFERENTIAL

Employees who are normally assigned to work on the afternoon shift shall, in addition to their base rate of pay, receive a shift differential of one dollar (\$1.00) per hour of work, and employees who are normally assigned to work the midnight shift shall, in addition to their base rate of pay, receive a shift differential of one dollar and twenty-five cents (\$1.25) per hour of work.

ARTICLE 22 - NO STRIKE OR LOCKOUT

Section 1. Strike Prohibition

The services performed by the employees included in this Agreement are essential to the public health, safety and welfare. There shall be no interruption of work for any cause whatsoever, nor shall there be any work slowdown or other interference with public services.

In the event of a work stoppage by any employee or group of employees not covered by this Agreement, it is expressly understood that the employees hereunder shall continue to work during such activity, provided that the safety and security of all employees shall be guaranteed by the City of Athens.

There shall be no sympathy strike, wildcat strike or any other strike activity for the duration of this Agreement, provided, however, that it shall not be a cause for discipline if any employee declines to enter upon the property of another employer (not the City of Athens) which is involved in a primary labor dispute, except in an emergency situation declared by the Mayor. An emergency is a situation in which the public peace, health or safety within the City of Athens is in jeopardy.

Section 2. Notice

In the event any employee hereunder is engaged in any violation of Section 1 above, the Union shall, upon notification by Management, immediately order such employee or employees to resume normal work activities and shall publicly denounce any such violation of Section 1.

Section 3. No Lockout

The Management shall engage in no lockout of employees in the bargaining unit.

ARTICLE 23 - SAVINGS CLAUSE

Section 1.

This Agreement is subject to all future and existing applicable State laws, and if any provision contained herein is contrary to the above, such provisions herein contained shall automatically be terminated.

Section 2.

Should any article, section or portion of this Agreement be held unlawful and unenforceable by any court, legislative or administrative tribunal of competent jurisdiction, then such decision or legislation shall apply only to that specific article, section or portion of the Agreement. The parties will meet and discuss the abrogated provision. The remainder of the Agreement shall remain in full force and effect.

ARTICLE 24 - COMMERCIAL DRIVER'S LICENSE

Section 1.

As a condition of continued employment, employees who are required to drive vehicles which require a Commercial Driver's License (CDL) shall obtain a Commercial Driver's License as required by state law prior to driving for the City of Athens. The City shall reimburse the employee for the cost of the Commercial Driver's License within thirty days after obtaining the license and the tendering to the Auditor of proof of the payment of the fee for the license. The employee shall also deposit with the Human Resource Director a copy of his/her currently valid commercial driver's license. If the employee does not pass the first licensure exam, the employee is obligated to pay for subsequent exams.

Any employee who is unable to obtain or maintain his/her CDL license shall be placed on unpaid, inactive status for a period of up to ninety (90) days during which time the employee shall be eligible to bid on a vacant position in the classification of Custodian, Parking Enforcement Officer, or Meter Repairer, for which a CDL license is not required. Should there be no vacant positions during the ninety (90) day period described above, or, should said employee fail to qualify for a vacant position described above, said employee shall be laid off. Said employee shall not be eligible for benefits during the ninety (90) day period.

Section 2. OTETA

Effective January 1, 1995, all employees who are required to have a CDL and the Mechanics who service the vehicles will be covered by the terms and conditions of the Omnibus Transportation Employee Testing Act of 1991. The City will provide drivers with training and education regarding alcohol and substance abuse, as well as information regarding post-accident testing procedures.

Section 3.

Use of controlled substances which cause intoxication or impairment on-the-job poses risks to the employer, the affected employee and to co-workers. Recognizing that drug and alcohol abuse are treatable illnesses which should be dealt with initially by treatment and education, it is the employer's policy to prevent and rehabilitate rather than to terminate the employment of drivers who are alcohol or drug dependent. No driver will be discharged without first having an opportunity to seek treatment, if treatment is needed.

- A. The policy will be implemented in a consistent, non-discriminatory manner. All drivers will be provided a copy of the employer's drug testing policy prior to its implementation. In addition, drivers will be provided information concerning the impact the use of drugs has on job performance. Drivers and supervisors will be trained to recognize the symptoms of drug abuse, impairment and intoxication. All drivers will be informed of the causes for testing, how well the tests perform and what tests will be conducted.
- B. All newly employed drivers will receive the information no later than their initial hire date. No driver shall be tested until this information is provided to the employee.

Section 4. Random Testing

As required by the Omnibus Transportation Employee Testing Act of 1991 (OTETA), the City will conduct random drug and alcohol testing. The City will submit all drivers to a random selection system. Random drug testing will not be performed except where required by OTETA.

Section 5. Post-Accident Testing

When a driver is involved in an accident where a fatality is involved, the driver shall submit to post-accident drug and alcohol testing. Where a driver is involved in a recordable accident and receives a citation for a moving violation arising from the accident, the driver must submit to a drug and alcohol test.

In the event a driver is so seriously injured that the driver cannot provide a specimen at the time of the accident, the driver must provide necessary authorization for the City to obtain medical records, or other documents that would indicate whether there were controlled substances or alcohol in the driver's system at the time of the accident. All testing shall be done in accordance with the provisions of OTETA.

Section 6. Reasonable Cause/Suspicion Test

Drug testing may be administered only where there is reasonable suspicion to believe that the driver is demonstrating the symptoms of intoxication, impairment or drug abuse through use of a controlled substance while on duty.

- A. The term "reasonable suspicion" shall for the purposes of this policy be defined as follows:

Aberrant or unusual on-duty behavior of an individual driver which:

- 1. Is observed on duty by the driver's Supervisor who is trained to recognize the symptoms of intoxication, impairment or drug abuse;
- 2. Is the type of behavior which is recognized and accepted as symptoms of intoxication or impairment caused by controlled substances or alcohol;

- B. Reasonable suspicion must be based on specific personal observation by supervisors which must be documented in writing within 24 hours of the observation or prior to the release of the test results, whichever is later. (OTETA §382.307)

One copy of this documentation shall be given to the driver and to the Union within 24 hours of the observation or prior to the release of the test results, whichever is later. (OTETA §382.307)

- C. Violations of the procedures outlined under OTETA will render the test results invalid. The test results will be destroyed and no discipline will be administered to the affected employee.
- D. Drivers will be given an opportunity to give an explanation of their condition to the City. A Union steward or representative may be present during such an explanation.

Refusal to submit to toxicology testing after being properly ordered to do so may result in disciplinary action. Said driver, after refusing to be tested, will be deemed to be on leave without pay pending disciplinary action.

Those drivers tested will be deemed to be on leave with pay for any portion of the work day necessary to perform the testing. Should the employee's test results be positive, the employee will not be paid for those hours of work following completion of the testing.

Section 7. Testing Procedures

The following test procedure shall apply to urine tests administered to drivers:

- A. The driver shall not be observed when the urine specimen is given unless required by OTETA.
- B. At the time the urine specimen is collected, two samples will be taken; the primary and the split specimen. Both samples will be sent to the laboratory to be tested at the employer's expense, with the primary specimen being tested initially with the split specimen to be tested only upon the request of the employee within

72 hours of his/her notification of a positive test result of the primary sample. All test results are to be reviewed by a medical review officer before being released. Test results must be completed by the employer and Union within 48 hours of the testing.

The testing shall be done by a certified laboratory as required by OTETA.

- C. If the results of the tests administered by the employer on the two samples show that the driver while on duty demonstrated the symptoms of intoxication, impairment or drug abuse through use of a controlled substance, the driver and the Union shall be given a copy of the laboratory report of both specimens before discipline is imposed in accordance with this labor agreement.

Section 8. Testing Procedures - Alcohol

The following test procedure shall apply to alcohol testing:

- A. This section is applicable for random, post-accident, return-to-duty, follow-up, reasonable suspicion, and pre-transfer testing using procedures specified in the federal regulations. These procedures use an Evidential Breath Testing device (EBT), approved by the National Highway Traffic Safety Administration.

For the purposes of this section, *alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

Alcohol concentration means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

Refuse to submit to an alcohol test means that a safety sensitive employee (1) fails to provide adequate breath for testing without a valid medical explanation, or (2) engages in conduct that clearly obstructs the testing process.

Substance abuse professional (SAP) means a licensed physician (of medicine or osteopathy), a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol disorders.

- B. The Federal Highway Administration (FHWA) rules prohibit the performance of safety-sensitive functions in the following circumstances:

1. While having prohibited concentrations of alcohol in the system.
2. While using alcohol.
3. Within four hours after using alcohol.

4. Using alcohol within eight hours after an accident or until tested, whichever occurs first.
5. While having possession of alcohol.

A screening test is conducted first, with any result of less than 0.02 alcohol concentration being considered a "negative test". If the alcohol concentration is 0.02 or greater, a second or confirmation test must be conducted.

- C. Following a determination that an employee has violated the alcohol prohibitions by having a test result of 0.04 Blood Alcohol Content (BAC) or greater, the employee must be removed from the safety-related functions and meet the following minimum requirements before being returned to duty:

1. The employee undergoes evaluation, and where necessary, rehabilitation;
2. A Substance Abuse Professional (SAP) determines that the employee has successfully complied with any required rehabilitation, and
3. The employee undergoes a return-to-duty test with a result of less than 0.02. An employee with an alcohol concentration of 0.02 or greater, but less than 0.04 is not permitted to perform safety-sensitive functions for a minimum of 24 hours and therefore will be released from duty without pay and may not be recalled to duty during this period.

- D. Random testing:

A safety sensitive employee may only be tested while the safety sensitive employee is performing safety-sensitive functions, just before the safety sensitive employee is to perform safety-sensitive functions, or just after the safety sensitive employee has ceased performing such functions. After notification, the safety sensitive employee selected for random testing shall proceed to the testing site immediately.

- E. Post-accident testing:

As soon as practicable following an accident, each safety sensitive employee shall test for alcohol:

1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or
2. Who receives a citation under state or local law for a moving traffic violation arising from the accident.

A safety sensitive employee who is subject to post-accident testing shall remain readily available for such testing or he/she may be deemed by the City to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a safety sensitive employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

The results of a breath or blood test for the use of alcohol, conducted by federal, state, or local officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to applicable federal, state or local requirements, and that the results of the tests are obtained by the City.

F. Return-to-duty testing:

Before a safety sensitive employee returns to duty requiring the performance of a safety-sensitive function after engaging in prohibited conduct (see Section 8-B), the safety sensitive employee shall undergo an alcohol test with a result indicating an alcohol concentration of less than 0.02.

G. Follow-up testing:

Following a determination that a safety sensitive employee is in need of assistance in resolving problems associated with alcohol misuse, the City shall ensure that the safety sensitive employee is subject to unannounced follow-up alcohol testing as directed by a SAP, following the safety sensitive employee's return to duty. The number and frequency of such follow-up testing shall be as directed by the SAP, and consist of at least six tests in the first twelve months following the safety sensitive employee's return to duty. Any such testing shall be performed in accordance with the requirements of 49CFR Part 40 and shall not exceed 60 months from the date of the safety sensitive employee's return to duty. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the SAP determines that such testing is no longer necessary. During the 60-month period the employee remains separately subject to random testing as well.

H. Reasonable suspicion testing:

The City shall require a safety sensitive employee to submit to an alcohol test when a supervisor has reasonable suspicion to believe that the safety sensitive employee has violated the prohibitions of Section 8-B. The City's determination that reasonable suspicion exists to require the safety sensitive employee to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the safety sensitive employee.

The required observations for alcohol reasonable suspicion testing shall be made by a supervisor or City official who is trained in accordance with the federal regulations.

Alcohol testing is authorized by this section only if the observations required are made during, just preceding, or just after the period of the work day that the safety sensitive employee is required to be in compliance with this part. A safety sensitive employee may be directed by the City to only undergo reasonable suspicion testing while the safety sensitive employee is performing safety-sensitive functions, just before the safety sensitive employee is to perform safety-sensitive functions, or just after the safety sensitive employee has ceased performing such functions.

Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no safety sensitive employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the safety sensitive employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the City permit the safety sensitive employee to perform or continue to perform safety-sensitive functions, until:

1. An alcohol test is administered and the safety-sensitive employee's alcohol concentration measures less than 0.02; or
2. Twenty-four hours have elapsed following the determination that there is reasonable suspicion to believe that the safety sensitive employee has violated the prohibitions concerning the use of alcohol.

I. Pre-transfer testing:

Prior to the first time a covered employee performs Safety-sensitive functions, the City shall ensure that the employee undergoes testing for alcohol which indicates an alcohol concentration less than 0.04. If the employee is found to have an alcohol concentration of 0.02 or greater but less than 0.04, the employee shall not be permitted to perform safety-sensitive functions until:

1. The employee's alcohol concentration measures less than 0.02; or
2. The start of the employee's next regularly scheduled duty period, but not less than eight hours following administration of the test.

Section 9.

Drivers who seek voluntary assistance for alcohol or drug abuse may not be disciplined for seeking such assistance. All requests from employees for assistance shall remain confidential. Drivers at their option shall be entitled to take accrued sick leave, vacation leave, or leave without pay during absences required as part of the rehabilitation process.

Section 10.

The parties agree that any provision mandated under OTETA and not covered by the provisions of this contract shall be governed by the federal act.

Section 11.

Any disputes which may arise over compliance with this policy shall be resolved through the grievance procedure and arbitration provisions of this agreement.

ARTICLE 25- ALCOHOL/DRUG TESTING-NON-CDL EMPLOYEES

1. Alcoholism and drug abuse or addiction are recognized by the parties as interfering with the employer's services and as posing a danger to the public's health and safety, as well as that of the employees. It is recognized that the employer and the employees have the right to insist on an alcohol and drug-free environment. The parties agree to cooperate in encouraging employees afflicted with alcoholism or drug addiction to undergo a coordinated rehabilitation program. Any questions regarding this article should be directed to the Human Resources Director. The Human Resources Director shall be responsible for the administration of this article.
2. The Service- Safety Director or his designee may order any employee to undergo a drug or alcohol screening test randomly and/ or whenever there is reasonable cause to believe an employee has used or is under the influence of illicit drugs, alcohol or controlled substances. Reasonable cause must be based upon specific facts indicating that a particular employee in question has used or is under the influence of illicit drug, alcohol or controlled substances. All alcohol/ drug tests shall be conducted by laboratories certified by a Department of Health & Human Services (DHHS) recognized certification program. The procedures utilized by the Employer and testing laboratory shall include an evidentiary chain of custody, Medical Review Officer, and control and split sample collection and testing.
3. If the test(s) are positive, indicating that the employee has used illicit drugs, alcohol or controlled substances, the employer may order the employee to undergo a confirmatory test. A positive result from an alcohol test means a level of impairment of .05 percent as registered on a certified Breathalyzer. The employer may place the employee on administrative leave without a loss of pay before the time the confirmatory test results are complete. The city will attempt to arrange for safe transportation away from the workplace. Confirmatory test shall be made by a medical professional or institution qualified to administer such a test.
4. If the screening test and confirmatory test are positive, the employer may discipline the employee up to and including discharge. An employee who self-reports and notifies the employer that he/she is an alcoholic or a drug addict, shall be required to participate in a rehabilitation or detoxification program. For up to one (1) year, no employee who participates in a rehabilitation or detoxification program shall be discharged because of the handicapped condition during the time he/she participates in a rehabilitation or detoxification program. An employee who participates in a rehabilitation or detoxification program shall be allowed to use sick leave, vacation leave, personal days or compensatory time while he/she participates in a rehabilitation or detoxification program. If no such leave credits are available, such employee will be placed on a leave of absence without pay for the period of the rehabilitation or detoxification program. However, the total leave period including sick leave, vacation leave, personal days, compensatory time or leave of absence without pay shall not exceed one (1) year. Upon completion of such program, if a retest demonstrates that the employee is no longer using alcohol or drugs, the employee shall return to his/her position. An employee who participates in a rehabilitation program shall be allowed, after completion of the suspension, to use sick time, compensatory time, and vacation leave for the period of the rehabilitation program. If no such leave time is available, the employee shall be placed on disability leave without pay for the period of the rehabilitation program. Upon completion such programs, as certified by a substance abuse professional, and upon receiving results from a return-to-duty test demonstrating that the employee is no longer under the influence of controlled substances, the employee will be returned to his/her

former position. Such employee may be subject to up to six (6) follow- up tests during the first twelve (12) months following his/her return to work for one (1) year.

5. Employee shall be subject to disciplinary action up to and including discharge if the employee: Refuses to take a screening or confirmatory test or to undergo rehabilitation or detoxification and fails to complete or participate in a program of rehabilitation or detoxification.
6. All test results and actions taken under or pursuant to this article shall be kept confidential in accordance with state and federal law.
7. The employer shall pay for drug and alcohol screening and confirmatory tests which are ordered by the employer.

ARTICLE 26 - MAINTENANCE OVERTIME

An overtime roster will be kept for each department of: Sewer Maintenance; Water Maintenance; Street Maintenance; Custodian; Custodial/Parking Garage Attendant; Parking Enforcement; Meter Reader; Water Plant; Wastewater Plant; Internal Service (Mechanics).

Meter Readers will be given overtime opportunities in Street, Water and Sewer Maintenance when appropriate and necessary.

Overtime assignments for maintenance areas will be as follows:

Overtime in Water Maintenance

Water Maintenance
Sewer Maintenance
Street Maintenance
Meter Reader
Internal Services/ any available qualified plant personnel

Overtime in Sewer Maintenance

Sewer Maintenance
Water Maintenance
Street Maintenance
Meter Reader
Internal Services/ any available qualified plant personnel

Overtime in Street Maintenance

Street Maintenance
The lowest in either Water or Sewer Maintenance and then exhaust the area before moving to the other area.
Internal Services
Meter Reader/ any available qualified plant personnel

The responsibility shall fall on the employee to report any hours of overtime worked from another area to their plant supervisor.

ARTICLE 27- RETIREMENT AWARENESS

Employees who wish to attend retirement awareness seminars sponsored by the Ohio Public Employees Retirement System (OPERS) will be permitted leave time without loss or gain of pay.

Employees may request leave under this section to attend each of the following seminars, or their successor seminars, one time:

1. Providing Long-Term Awareness Now (PLAN)

Employee must have five (5) years of service credit.

2. Retirement Awareness Program (RAP)

Employee must have five (5) years of service credit and be within five (5) years of retirement.

3. Retirement Readiness

Employee must be within 12-18 months of retirement.

4. Remote Interview Schedule

Any fees associated with the seminar will be the responsibility of the employee. Employees will attend the seminars when offered in Athens. If travel to another location is necessary, appropriate travel time will be allowed within the normal workday. The employee will not be reimbursed for travel expenses.

This article will be administered under guidelines established by the Human Resource Director.

ARTICLE 28 - DURATION OF AGREEMENT

All provisions of this Agreement shall be effective as of 12:01 a.m., August 15, 2024, and shall remain in effect until 11:59 p.m., August 14, 2027, and successive periods of twelve (12) months, unless either party to this Agreement, on or before sixty (60) days prior to the expiration of any such period, notifies the other Party, in writing, of its intention to terminate this Agreement. Within ten (10) days after receipt of such notice, a conference shall be arranged between the Parties hereto, and such conference shall be held at a time mutually agreeable to the Parties.

ARTICLE 29 - NON-DISCRIMINATION

Section 35.1

There shall be no discrimination, harassment or pressure by the City or the Union and Ohio Council 8 against any employee on the basis of such employee's membership or non-membership in the Union. Additionally, neither the City, the Union nor Ohio Council 8 shall discriminate on account of race, color, creed, ancestry religion, sex, ~~political affiliation~~, age, ~~handicap~~, disability, military status, veteran status, or sexual orientation. The City of Athens, by ordinance also prohibits discrimination based on national origin, martial or family status and

gender identity or expression. Both parties to this Agreement agree that they shall abide this ordinance and shall not discriminate against any employee based on national origin, martial or family status and/ or gender identity or expression.

Section 35.2 Gender

Whenever the context so requires, the use of words herein in the singular shall be construed to include the plural, and words in the plural, the singular. Words, whether in the masculine, feminine, or neuter genders, shall be construed to include all of those genders. By the use of either the masculine or feminine genders, it is understood that the use is for convenience purposes only and is not to be interpreted to be discriminatory by reasons of sex.

ARTICLE 30 - TOTAL AGREEMENT

This agreement supersedes any and all previous agreements between the parties hereto and is a final and complete agreement of all negotiated items that are in effect throughout the term of the said agreement. Acceptance of this agreement precludes further negotiations of any issues until the time specifically provided herein unless otherwise mutually agreed.

It is understood and agreed that where this agreement is silent, applicable state Civil Service Laws will be followed.

ADDENDUM # 1
BARGAINING UNIT

CLASSIFICATION	GRADE
Custodian	A-1
Groundskeeper	A-1
Custodian/Garage Attendant	A-2
Maintenance Specialist	A-3
Parking Enforcement Officer	A-4
Laborer, Meter Reader, Maintenance Technician Trainee	A-4
Water/Wastewater Operator Trainee	A-4
Electrician Trainee	A-4
Meter Repairer/Parking Enforcement Officer	A-5
Plant Maintenance Mechanic/Plant Relief Operator	A-6
Plant Maintenance Mechanic	A-6
Licensed WTP Operator I	A-6
Licensed WWTP Operator I	A-6
Licensed WTP Operator II	A-6
Licensed WWTP Operator II	A-6
Maintenance Technician	A-6
Master Mechanic	A-7
Electrician	A-7
Licensed WTP Operator III	A-7
Licensed WWTP Operator III	A-7

All new hires after September 8, 1997, in the Water Treatment Plant and Wastewater Treatment Plant shall enter into the classification of A-4 (Water/Wastewater Operator Trainee) and shall be appropriately licensed as Operator I within three (3) years from their date of hire as a condition of continued employment, unless already licensed, in which case they will be placed in the proper classification.

The City will pay for the first licensure certification exam according to the requirements of the job classification. If the employee does not pass the first exam, the employee is obligated to pay for subsequent exams.

Plant Maintenance Mechanics are placed in pay grade A-6, or in the appropriate pay grade for EPA license.

Plant Master Mechanics who obtain or possess a Plant Operator II license, or above will receive additional compensation of \$1.00 per hour.

Licensed Class II Water Treatment and Wastewater Treatment Operators shall receive \$1.00 additional to their hourly rate.

Maintenance Specialist I and Maintenance Specialist II shall receive the pay of a Maintenance Technician within their current step while operating the following equipment: backhoe, unloader, grinder, and snowplow (if necessary).

ADDENDUM #2
BARGAINING UNIT

Employees of the Public Services and Utilities Services who obtain Water Distribution and/or Wastewater Collection Licenses as issued through the Ohio Environmental Protection Agency, shall be compensated as follows as a supplemental pay benefit.

Class I Distribution	\$.60/hr.
Class I Collection	\$.60/hr.
Class I Water/Wastewater Operator	\$.60/hr.
Back Flow Prevention License	\$.60/hr.
Class II Distribution	\$ 1.00/hr.
Class II Collection	\$ 1.00/hr.
Class II Water/Wastewater Operator	\$ 1.00/hr.

Should an employee obtain licenses in both fields, they shall be compensated for both licenses based on the highest class of license possessed in each respective field. This classification chart shows the hierarchy of certifications eligible for education pay:

<https://codes.ohio.gov/ohio-administrative-code/rule-3745-7-05>

If the City recreates the positions of Equipment Operator I, Equipment Operator II, Plant Operator II, Automotive Mechanic I, or Garage Attendant, they will be in the bargaining unit.

Effective August 29, 2009, employees who are required to have Continued Education Units to maintain their licenses for recertification shall be paid for all hours in attendance. The City shall pay for all courses and all license fees.

ADDENDUM #3

Addendum #3 – Wage Scale

First Year, Effective August 15th, 2024 (\$1.50/hr)

Step	C	D	E	F	G	H
A1	\$21.52	\$21.93	\$22.25	\$22.63	\$22.90	\$23.27
A2	\$22.89	\$23.33	\$23.69	\$23.97	\$24.35	\$24.64
A3	\$23.34	\$23.78	\$24.11	\$24.44	\$24.78	\$25.09
A4	\$23.80	\$24.26	\$24.56	\$24.92	\$25.23	\$25.57
A5	\$24.05	\$24.51	\$24.86	\$25.15	\$25.54	\$25.83
A6	\$24.46	\$24.91	\$25.23	\$25.58	\$25.95	\$26.24
A7	\$27.21	\$27.74	\$28.11	\$28.41	\$28.77	\$29.09

Second Year, Effective August 14th, 2025 (4.25%)

Step	C	D	E	F	G	H
A1	\$22.43	\$22.86	\$23.20	\$23.59	\$23.87	\$24.26
A2	\$23.86	\$24.32	\$24.70	\$24.99	\$25.38	\$25.69
A3	\$24.33	\$24.79	\$25.13	\$25.48	\$25.83	\$26.16
A4	\$24.81	\$25.29	\$25.60	\$25.98	\$26.30	\$26.66
A5	\$25.07	\$25.55	\$25.92	\$26.22	\$26.63	\$26.93
A6	\$25.50	\$25.97	\$26.30	\$26.67	\$27.05	\$27.36
A7	\$28.37	\$28.92	\$29.30	\$29.62	\$29.99	\$30.33

Third Year, Effective August 14th, 2026 (4.25%)

Step	C	D	E	F	G	H
A1	\$23.39	\$23.83	\$24.18	\$24.59	\$24.89	\$25.29
A2	\$24.88	\$25.36	\$25.75	\$26.05	\$26.46	\$26.78
A3	\$25.37	\$25.84	\$26.20	\$26.56	\$26.93	\$27.27
A4	\$25.87	\$26.37	\$26.69	\$27.08	\$27.42	\$27.79
A5	\$26.14	\$26.64	\$27.02	\$27.33	\$27.76	\$28.07
A6	\$26.58	\$27.07	\$27.42	\$27.80	\$28.20	\$28.52
A7	\$29.57	\$30.15	\$30.55	\$30.88	\$31.27	\$31.62

Emergency Overtime Responsiveness Bonus

Bargaining members who have 15 or more years of service are eligible for an Emergency Overtime Response Bonus. This bonus is available to members who work 50% or more of all offered emergency overtime. The formula is $\frac{1}{2} \times \text{Base Pay rate} \times \# \text{ of Emergency Overtime Hours Worked in a Year}$.

ADDENDUM #3

All employees, except new hires after September 8, 1997, will advance a step on the first day of the pay period closest to their classification anniversary date, unless topped out.

All new hires will advance on the first day of the pay period closest to the anniversary of their date of hire. New hires will be placed in either Step C or D at the discretion of management based on qualifications. Employees who change pay grade will serve one year in their pay step before moving up.

When necessary, the Human Resources Director shall reclassify a Custodian (A-1) to Custodian/Garage Attendant (A-2) upon determining the employee has satisfactorily completed training in the parking garage and has demonstrated the ability to satisfactorily perform the duties of the Garage Attendant. The Human Resources Director alone shall determine the appropriateness of the move. Not all Custodians will be required to perform the duties of Garage Attendant.

ADDENDUM # 4

CLOTHING & TOOLS

Management shall furnish uniforms and protective clothing as deemed necessary by the responsible department head to protect the employees' in their on-the-job assignments, as well as identify them as a member of the city staff. Failure to wear the provided clean, serviceable uniforms and safety gear may be subject to disciplinary action. Management shall determine the personnel protective equipment needs by job site, for example "hard hat area" or "high noise area" etc. Supervisors and/or department heads shall determine if uniforms are no longer serviceable and may not be worn on duty.

Management agrees, whenever practicable, to make a good faith effort to provide uniforms and protective clothing in a timely manner each year. In order to receive uniforms or use any uniform allowance, the employee must be in an active work status, cannot be on leave of any kind, and cannot plan to retire within three (3) months.

Management shall provide the items in the following manner;

A. Service Workers

City will provide new hires with an initial issue of five (5) uniforms. Should a new hire not pass probation and does not return initially issued clothing, the city may take the cost of the initial issue clothing from the new hire's last payroll check.

Boots shall be replaced on an as needed basis by the City.

Complete Initial Issue:

5 jeans/ pants*	1 summer jacket
2 bibs or insulated overalls	1 pair of winter gloves
1 winter coat	1 rain suit
1 toboggan	All Foul Weather Gear
1 pair muck boots	10 shirts (combination of long sleeve and short sleeve*)
2 safety-toed boots or shoes	

Uniform replacement stipend shall be offered quarterly by separate check.

	Maintenance Tech Plant Maintenance Auto Mechanic	Parking	Other
Year 1	\$800.00	\$800.00	\$500.00
Year 2	\$825.00	\$800.00	\$525.00
Year 3	\$850.00	\$800.00	\$550.00

Quarterly payouts will occur on the last pays of January, April, July and October.

All employees required to communicate at work by cell phone shall receive fifty dollars (\$50.00) per month for a cell phone, which they will be required to keep on and accessible during all work hours.

- B. Management shall provide the following items on an as-needed basis outside of the aforementioned allowance via bulk purchase and distribution by supervisors: hard hats, ear plugs, gloves, safety glasses, knee pads, harnesses, special electric hazard equipment, and other special protective equipment (visors, masks, aprons, etc.) as needed for specific duties, and are the property of the city after use. Supervisors will determine if they are to be disposed of or kept.
- C. The Employer agrees to reimburse automotive mechanics for purchase or repair of tools needed for use on the job up to **six hundred dollars (\$600.00)** maximum annually. The mechanic must first purchase or pay for the repair of the tool(s) needed and furnish the Employer with a receipt for reimbursement. The tools purchased shall remain the property of the employee.
- D. Parking Enforcement Officers:

Allowance: All Parking Enforcement Officers shall receive **eight hundred dollars (\$800.00)** per year on an account basis per approved purchase order after first year (pro-rated) for uniform replacement and dry cleaning.

Complete Initial Issue

1 breast badge
5 short sleeve shirts
5 long sleeve shirts
5 uniform pants
2 uniform shorts
1 winter coat
1 summer jacket/pullover
1 name plate
1 tie
1 radio belt
5 pair winter socks
12 pair summer socks
1 pair gloves
1 scarf
1 set base layer-shirt & leggings
1 winter hat
4 pair shoes

SIGNATURE PAGE

IN WITNESS THEREOF, the Parties have hereunto set their hands this
____ day of August, 2024.

FOR THE CITY OF ATHENS:

FOR LOCAL 2403 AND AFSCME
OHIO COUNCIL 8:

Steve Patterson, Mayor

Glen Goins, Jr., Local President

Lisa Eliason, Law Director

John Young, Bargaining Committee
Member

Andrew B. Stone, Service Safety Director

Robert Esdale, Bargaining Committee
Member

Ronald Lucas
Human Resources Director

Jason McKibben, Bargaining Committee
Member

Rusty Haning, Bargaining Committee
Member

Deborah L. Chonko
Staff Representative
AFSCME Ohio Council 8

0-87-24

Introduced by Alan Swank, Chair
Planning & Development Committee

AN ORDINANCE AMENDING ATHENS CITY CODE TITLE 21, SUBDIVISION REGULATIONS, CHAPTERS 21.03, APPLICATION, PROCEDURE FOR SUBDIVISION APPROVAL, 21.04, DESIGN AND CONSTRUCTION STANDARDS, AND 21.10, HILLSIDE REGULATIONS.

WHEREAS, on May 1, 2024, the Athens City Planning Commission recommended approving Case #24-03, modifications to the Subdivision Regulations to streamline the approval process and to be more in line with less restrictive Ohio Revised Code requirements;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Code Title 21, Subdivision Regulations, Chapter 21.03, Application, Procedure for Subdivision Approval, Section 21.03.02(A), General Procedure, is hereby amended to read as follows:

21.03.02. - General procedure.

Before any land is subdivided the owner of the property, or their authorized agent, shall apply for and secure approval of the proposed subdivision in accordance with the following procedures:

(A) Parcel split, minor subdivision, or similar development. ~~Where all of the proposed lots front on a public street and are greater than 5.00 acres in size, the proposed division shall not be considered a subdivision under this section. These~~ All other parcel splits, minor subdivisions, or similar developments less than 5.00 acres shall be handled by planning commission and may require a plat of survey, a deed with a legal description, and fees. However, approval without a plat may be granted if the proposal meets all of the following conditions as noted in Section [21.03.03](#) below.

SECTION II: Athens City Code Title 21, Subdivision Regulations, Chapter 21.03, Application, Procedure for Subdivision Approval, Section 21.03.03, Requirements for Minor Subdivisions and Similar Developments, is hereby amended to add the following:

21.03.03. – Requirements for minor subdivisions and similar developments.

(12) Proposed access easement(s) must be clearly dimensioned with fully described maintenance agreements between grantee and grantor.

SECTION III: Athens City Code Title 21, Subdivision Regulations, Chapter 21.03, Application, Procedure for Subdivision Approval, Section 21.03.07, Outline of Conditions for Major Subdivision, is hereby amended to read as follows:

21.03.07. - Outline of conditions for major subdivision.

A proposal involving any of the following shall be subject to major subdivision procedures:

(A) More than five lots, any one of which is less than five acres, including the original tract.

(B) Creation, widening or extension of a street or access easement.

(C) Creation of an access easement for two or more lots.

(D) Division or allocation of land as a utility or drainage easement.

SECTION IV: Athens City Code Title 21, Subdivision Regulations, Chapter 21.04, Design and Construction Standards, Table 1, is hereby amended as attached hereto and incorporated herein by reference.

SECTION V: Athens City Code Title 21, Subdivision Regulations, Chapter 21.10, Hillside Regulations, Section 21.10.08, Minimum Hillside Requirements, is hereby deleted as follows.

~~21.10.08. - Minimum hillside requirements.~~

~~The following regulations shall govern the front yard, side yard, street right of way, and pavement requirements in hillside subdivisions:~~

Table 10: Minimum Hillside Requirements

<i>Group</i>	<i>Slope</i>	<i>Front Yard Setback</i>	<i>Side Yard % of Lot Width</i>	<i>Right of Way</i>	<i>Pavement</i>
1	15-25%	25'	10%	50'	24'
2	26-30%	23'	10%	45'	22'
3	31% over	20'	10%	45'	20'

SECTION VI: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

Title 21.04 - Design and Construction Standards

Table 1

Minimum Lot Development Requirements: Residential, **IN COUNTY***

Type of Development	Public Water (Y/N)	Public Sewer (Y/N)	Curb and Gutter (Y/N)	Min. Lot Area (s.f.)	Min. Lot Width (ft.)	Min. Front Yard (ft.)	Min. Lot Side Yard (ft.)	Min. Lot Rear Yard (ft.)	Max. ¹ Height (ft./stories)	Max. Lot Cover. (percent)
In County	Y	Y	Y	9,450	70	30	10/20	30	N/A	30
In County	Y	Y	N	20,000	90	30	10/20	30	N/A	30
In County	Y	N	Y	42,560	90	30	10/20	30	N/A	30
In County	Y	N	N	42,560	90	30	10/20	30	N/A	30
In County	N	N	N	42,560	90	30	10/20	30	N/A	30
In County	N	N	Y	42,560	90	30	10/20	30	N/A	30
In County	N	Y	N	20,000	90	30	10/20	30	N/A	30
In County	N	Y	Y	20,000	90	30	10/20	30	N/A	30
City R-1	Y	Y	Y	8,000	66	25	8/20	30	35/2½	30
City R-1	Y	Y	N	20,000	66	25	8/20	30	35/2½	30
City R-2	Y	Y	Y	6,000 OR 3,500/unit	50	25	8/10	30	35/2½	30
City R-2	Y	Y	N	20,000	50	25	8/10	30	35/2½	30
City R-3	Y	Y	Y	6,000 OR 3,500/unit	60	25	8/10	30	45/3½ ²	40
City R-3	Y	Y	N	20,000	60	25	8/10	30	45/3½ ²	40

* PLEASE REFER TO TITLE 23 TABLE A – SCHEDULE OF BULK CONTROLS FOR MINIMUM LOT DEVELOPMENT REQUIREMENTS: RESIDENTIAL, IN CITY.

0-88-24

Introduced by Alan Swank, Chair
Planning & Development Committee

AN ORDINANCE AMENDING ATHENS CITY CODE TITLE 23, ZONING, CHAPTER 23.03, GENERAL REGULATIONS AND PERMITTED MODIFICATIONS, SECTIONS 23.03.08(C), YARD REGULATIONS, AND 23.03.14, FENCES, WALLS, TERRACES, AND STOOPS; AND TABLE A, SCHEDULE OF BULK CONTROLS.

WHEREAS, on May 1, 2024, the Athens City Planning Commission recommended approving Case #24-03, modifications to the City Zoning Code that will begin the process of addressing housing affordability as it relates to the guiding principles in housing and neighborhoods and housing priorities of the City's 2040 Comprehensive Plan; and

WHEREAS, on October 7, 2024, Athens City Council will hold a public hearing to discuss the Planning Commission's recommendation on said Case #24-03;

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Athens City Code Title 23, Zoning, Chapter 23.03, General Regulations and Permitted Modifications, Sections 23.03.08 (C), Yard Regulations, and 23.03.14, Fences, Walls, Terraces, and Stoops, is hereby amended to read as follows:

23.03.08. - Yard regulations.

(C) When a principal building is destroyed or demolished by any means, or if a vacant lot is situated between two improved lots, ~~each having a principal building within 25 feet of any side lot line of such unimproved lot, the front yard may be reduced to the greatest depth of the front yard of the two adjoining improved lots.~~ the required front yard setback shall be no more than five (5) feet in front of and no more than five (5) feet behind the average building line as established by the nearest principal buildings to each side of the subject property, provided those buildings are located in the same block front and within one hundred (100) feet of the subject property. In no event shall the setback be less than ten (10) feet, unless the specific zone does not require a front yard setback. If averaging is not possible, then the front yard setback required for the specific zone shall be used.

23.03.14. – Fences, walls, terraces, and stoops.

Unless specifically noted, the provisions of this chapter shall not apply to fences, terraces or walls less than six feet in height above the average natural grade, nor to terraces, steps, or unroofed stoops not over three feet high above the level of the floor of the ground story. However, no fence or wall, regardless of height, shall extend

beyond the building front setback line in accordance with these zoning standards and regulations.

SECTION II: Table A, Schedule of Bulk Controls, is hereby amended to read as attached hereto and incorporated herein by reference.

SECTION III: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

Title 23 Table A -- Schedule of Bulk Controls

Zone	Min. Lot (sq. ft.)	Min. Lot Area Per Dwelling Unit (sq. ft.)	Min. Lot Width (ft.)	Max. Height (ft./story) ¹	Min. Front Yard ² (ft.)	MIN. Side Yard one/both (ft.)	Min. Rear Yard (ft.)	Max. STRUCTURE Lot Coverage (percent)	Total MAX. IMPERVIOUS Lot Coverage (percent)
R-1 ³									
One Family	8,000 4,000	8,000 4,000	66 40	35/2.5	25 10	0/20 5	00 20	00 50	60 70
R-2 ³									
One Family	6,000 3,500	6,000 3,500	50 35	35/2.5 SAME AS R-1	25 SAME AS R-1	0/20 SAME AS R-1	00 SAME AS R-1	00 60	60 80
Two Family	7,000 5,000	7,000 2,500	50	SAME AS R-1	SAME AS R-1	SAME AS R-1	SAME AS R-1	60	80
R-3 ³									
One Family	Same as R-2 3,000	Same as R-2 3,000	Same as R-2 30	Same as R-2 45/3.5	Same as R-2 SAME AS R-1	Same as R-2 SAME AS R-1	Same as R-2 SAME AS R-1	Same as R-2 60	60 90
Two Family	4,000	2,000	40	45/3.5	SAME AS R-1	SAME AS R-1	SAME AS R-1	60	90
Apartment/ Rooming Houses	10,000 5,000	1,250	60 50	45/3.5 55/4.5	25 SAME AS R-1	0/20 SAME AS R-1	40 SAME AS R-1	40 60	60 90
Non-Residential and Mixed Uses	10,000 5,000	1,250	60 50	45/3.5 55/4.5	25 SAME AS R-1	0/20 SAME AS R-1	40 SAME AS R-1	40 60	60 90
B-1 ³ Non-Residential	None 5,000	—	None 50	35/2.5 40/3	25 SAME AS R-1	None ⁴ 5	10 ⁴	None	None
B-2 ³ Non-Residential Downtown	None	—	None	50/4	None	None	None	None	None
B-2D	NONE	—	NONE	70/6	NONE	NONE	NONE	NONE	NONE
B-3 ³ General Business ⁴	None	—	00 NONE	45/3½ 60/5	NONE	NONE	140 ⁴ NONE	None	None
M-1 ³ Industrial	None	—	None	25/1½ 35/2½ 45/3½ 70/6	25 25 25 NONE	None ⁴ None ⁴ None ⁴	00 40 50 ⁴ NONE	— NONE	— NONE

(1) Whichever is less.

(2) All newly platted lands **LOTS** must meet minimum dimensional requirements of the subdivision **AS LISTED IN TITLE 23 TABLE A -- SCHEDULE OF BULK CONTROLS. FOR ALL OTHER LOTS, PLEASE REFER TO 23.03.08 - YARD REGULATIONS.**

(3) Except when adjoining and R-Zone, then not less than THAT of the building height but not less than 15 feet.

(4) Except when adjoining and R-Zone, then not less than required in that R-Zone.

(5) Except when adjoining and R-Zone, then not less than 25 feet.

(6) An additional foot for each foot of building height over 45 feet.

⁴Except when abutting R-Zone

0-89-24

Introduced by Alan Swank, Chair
Planning & Development Committee

AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN ANNEXATION AGREEMENT WITH THE ATHENS TOWNSHIP TRUSTEES FOR PROPERTY LOCATED EAST OF CABLE LANE.

SECTION I: The Mayor of the City of Athens is hereby authorized to enter into an Annexation Agreement with the Athens Township Trustees for property located east of Cable Lane, a copy of which is attached hereto and incorporated herein by reference.

SECTION II: This Ordinance shall be in effect and full force upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

ATTACHMENT A

ANNEXATION AGREEMENT

The Annexation Parcel consists of the following parcel as numbered and in the records of the County Auditor of Athens County, Ohio, and as further depicted and shown on the Annexation Parcel Map attached as Attachment B:

Parcel Number: A010010082100

**ANNEXATION AGREEMENT BY AND BETWEEN
ATHENS TOWNSHIP (ATHENS COUNTY), OHIO AND
THE CITY OF ATHENS, OHIO**

Dated as of _____

ANNEXATION AGREEMENT

This Annexation Agreement (hereinafter the “Agreement”) is made and entered into on or as of the day of _____, 2024 (hereinafter the “Effective Date”) by and between the Athens Township Trustees, the legislative authority of and for Athens Township, a political subdivision duly organized and validly existing under the laws of the State of Ohio (hereinafter the “Township” or “Trustees”), and the Council of the City of Athens, Ohio, the legislative authority of and for the City of Athens, Ohio, a municipal corporation duly organized and validly existing under the Constitution and the laws of the State of Ohio (hereinafter the “City”, collectively with the Township, the “Parties” and each a “Party” hereto).

WHEREAS, the Township and City are political subdivisions located adjacent and contiguous to each other and having, to a certain extent, overlapping jurisdictions within Athens County, Ohio (hereinafter the “County”); and

WHEREAS, the Township and City have cooperated in numerous matters, including but not limited to, cooperation in the development, annexation, and services to citizens and properties within the Township and the City in order to foster and promote harmony and development within each of the Parties’ respective jurisdictional areas; and

WHEREAS, a certain landowner has expressed a desire to pursue annexation of property located east of and in part immediately adjacent to Cable Lane; and

WHEREAS, the annexation of this property will, if successful, require development assistance in various forms, including the extension of public water and sanitary sewer utility service lines from the City to said property; and

WHEREAS, the Parties believe that annexation of certain real property located within Athens Township, which is further described in attached “Attachment A,” and incorporated herein, will benefit their mutual interests if annexed to the City, the subject property more specifically consisting of one (1) parcel of real property designated as Athens County Auditor Tax Parcel Numbers A010010082100 (the “Annexation Parcel”); and

WHEREAS, the Annexation Parcel is further depicted and shown on the map labeled “Annexation Parcel Map” attached hereto and incorporated herein as “Attachment B”; and

WHEREAS, this Agreement is authorized under the provisions of Section 709.192 of the Ohio Revised Code and other applicable laws of the state of Ohio, and has been approved by the respective legislative authority of both Parties;

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

ARTICLE 1

ANNEXATION OF ANNEXATION PARCEL AND LIMITATIONS

Section 1.1. Designation of Annexation Parcel. This Agreement shall apply to the annexation of the Annexation Parcel enumerated on "Attachment A." The perimeter boundary of the Annexation Parcel is graphically set forth on "Attachment B" for purposes of reference only.

Section 1.2. Annexation of Annexation Parcel. The Township agrees and consents to the annexation of the Annexation Parcel to the City in accordance with the terms of the Agreement.

- A. **Procedure:** The petitioners for the annexation of the Annexation Parcel to the City shall file the annexation pursuant to and shall comply with the provisions of "Expedited Procedure No. 1" as contained in Sections 709.021 and 709.022 of the Ohio Revised Code. Any such annexation of the Annexation Parcel shall also comply with the terms of this Agreement.
- B. **Scope of Petition:** The agent for the annexation petitioner(s) shall process the annexation of the Annexation Parcel under one (1) annexation petition which includes all of the Annexation Parcel.
- C. **Time Frame:** This Agreement shall only apply if the annexation petition for the Annexation Parcel is filed with the Clerk of the Board of the Athens County Commissioners on or before December 31, 2024 and, upon filing, is diligently processed to completion in order to accomplish the annexation of the Annexation Parcel to the City pursuant to the terms of this Agreement.
- D. **Effect of Annexation:** The City shall not exclude the Township from any portion of the Annexation Parcel by changing Township boundaries under Chapter 503 of the Ohio Revised Code or any future statute of like tenor or effect. In other words, it is the express intention and agreement of the Parties that there shall exist an overlay of the City and Township boundaries for all portions of the Annexation Parcel which will be annexed to the City under the terms of this Agreement and that the Annexation Parcel shall be subject to the regular and customary property tax rates for all other parcels similarly situated. If any proceedings or other effort is initiated or made which seeks to initiate a change to the Township boundaries in order to exclude all or any portion of this property from the Township, the City and the Township shall exercise their best efforts in resisting such change, including, without limitation, denying any petition seeking such change; refraining from supporting such change; vigorously resisting, in both administrative and judicial forums, and with the assistance of the City's and Township's legal counsel, any effort or action seeking such change; and otherwise undertaking such actions as may be reasonably

requested by either Party which will be detrimental to the success of any effort seeking such change.

- E. Cooperative Efforts: Upon the filing of any annexation petition for the annexation of the Annexation Parcel to the City in accordance with the terms of this Agreement, the Township and the City shall cooperate in good faith to facilitate the approval and success of such petition. In such an instance, each Party shall refrain from taking any action that would directly or indirectly delay the annexation process or endanger the possible approval of the annexation petition by the Commissioners. If such annexation petition does not comply with the terms of this Agreement, the City shall refrain from any act which would, directly or indirectly, contribute to the success of the petition. This obligation shall include refraining from acceptance of a petition seeking to annex any such property.

ARTICLE 2

SERVICES

Section 2.1. Contribution of Services.

- A. Upon the annexation of the Annexation Parcel to the City, the City shall furnish to said property all the customary governmental services furnished by the City to other areas of the City including, but not limited to the following services:
1. Public water and sanitary sewer;
 2. Athens Police Department services;
 3. Athens Fire Department services;
 4. Code Enforcement services;
 5. Solid waste collection services;
 6. Other services customary for typical city residents.
- B. With respect to Cable Lane, the City of Athens shall notify the Ohio Department of Transportation, Division of Planning, Office of Technical Services, to amend the road inventory system of Athens County, Athens Township by removing a total of 0.104 miles of Cable Lane, also known as Township Road 1141, and adding the description and mileage to the City of Athens ODOT road inventory for general maintenance and emergency services, as Cable Lane, subsequent to annexation, will in its entirety be located in and served by the City.

ARTICLE 3

TERM OF AGREEMENT

Section 3.1 Term and Renewal. The term of this Agreement (hereinafter the “Initial Term”) shall be perpetual.

ARTICLE 4

GENERAL PROVISIONS

Section 4.1. Support of Agreement. In the event that this Agreement, or any of its terms, conditions, or provisions, is challenged by any third party or parties in a court of law, the Parties agree to cooperate with one another and to use their best efforts in defending this Agreement with the object of upholding this Agreement. Each Party shall bear its own costs in any such proceeding challenging this Agreement or any terms or provisions thereof.

Section 4.2. Signing Other Documents. The Parties agree to cooperate with one another and to use their best efforts in the implementation of this Agreement and to sign or cause to be signed, in a timely fashion, all other necessary instruments, legislation, petitions, and similar documents, and to take such other actions as either Party may reasonably request in order to effectuate the purposes of this Agreement.

Section 4.3. Mediation. In the event the Parties have a dispute as to any of the terms of applicability of this Agreement, the Parties agree to use their best efforts to resolve the dispute through a mutually acceptable mediation process prior to any party filing a lawsuit. Each Party participating in mediation shall pay its own costs of mediation, including its proportionate share of the compensation and administrative expenses required by the mediator and by the mediation services provider selected by the Parties. If a mediator has not been selected by the Parties within sixty (60) days after one of the Parties has requested that a dispute arising under this Agreement be mediated, or if the dispute has not been resolved within ninety (90) days after notice of the dispute has been provided to the other Party, then any of the Parties may commence a lawsuit or commence such other method of pursuing such remedies as may be available to any of the Parties.

Section 4.4. Default. A failure to comply with the terms of this Agreement shall constitute a default hereunder. The Party in default shall have ninety (90) days, after receiving written notice from the other Party of the event of default, to cure that default. If the default is not cured within that time period, the non-defaulting Party may sue the defaulting Party for specific performance under this Agreement or for damages or both; or may pursue such other remedies as may be available.

Section 4.5. Character of Payments. Nothing in this Agreement is to be interpreted as the sharing of the proceeds of any tax levy by and between any Parties. Any language within this Agreement which employs an amount of any tax to be collected as part of a calculation for determining a sum to be paid by one Party to the other Party is intended, and therefore to be interpreted, as a reasonable, practical, and convenient mechanism which the Parties have agreed to use to compute, in a less controversial manner, the payments to be made by one Party to another for services and other items of value to be received by the paying Party. No payments to be made under this Agreement are intended to be a sharing of proceeds of any tax levy proscribed by Section 709.192(D) of the Ohio Revised Code.

Section 4.6. Amendments. This Agreement may be amended only by a writing approved by the legislative authorities of all of the Parties by means of appropriate legislation authorizing such amendment. Any amendment, in order to be effective, must be authorized by appropriate legislation passed by each of the Parties.

Section 4.7. Immunities Preserved. By entering into this Agreement, none of the Parties intend to relinquish or waive any of the immunities they now have or may hereafter be accorded under state and/or federal laws, including, without the limitation of any such immunities, all those immunities accorded to governmental entities and their officers and employees under O.R.C. Chapter 2744.

Section 4.8. No Personal Liability. All covenants, obligations, and agreements of the Parties contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation, or agreement shall be deemed to be a covenant, obligation, or agreement of any present or future member, officer, agent, or employee of any Party in other than their official capacity, and no official or member of a legislative authority executing this Agreement on behalf of any Party or any present or future member, officer, agent, or employee of any Party shall be liable personally by reason of the covenants, obligations, or agreements of the Parties contained in this Agreement.

Section 4.9. Powers Preserved. This Agreement is not intended to be in derogation of the powers granted to municipal corporations by Article XVIII, Ohio Constitution, or any other provisions of the Ohio Constitution or of the Ohio Revised Code; nor is it intended to be in derogation of the powers granted to townships under any provisions of the Ohio Constitution or of the Ohio Revised Code. The Parties hereby acknowledge their belief as to the lawfulness of this Agreement and agree not to challenge or contest it, or any provisions contained herein.

Section 4.10. Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors. This Agreement shall not inure to the benefit of anyone other than as provided in the immediately preceding sentence. Except for the Parties, this Agreement is not intended to and does not create rights or benefits of any kind for any other persons or entities that are not a party to this Agreement.

Section 4.11. Agreement. The Parties acknowledge and agree that this Agreement is intended to and shall serve as an annexation agreement pursuant to Section 709.192 of the Ohio Revised Code.

Section 4.12. Liberal Construction. The Parties agree that just as Section 709.192 of the Ohio Revised Code is to be liberally construed to allow the Parties to enter into Annexation Agreements, the Parties further agree that this Agreement shall be liberally construed in order to facilitate the desires of each of the Parties to carry out this Agreement. Each provision of this Agreement shall be construed and interpreted so as to permit maximum advantage to the Parties allowed by Section 709.192 of the Ohio Revised Code.

Section 4.13. Notices. All notices, demands, requests, consents, or approvals given, required, or permitted to be given hereunder shall be in writing and shall be deemed sufficiently

given if actually received or if hand-delivered or sent by a generally recognized overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other Party at the address set forth in this Agreement, or to such other address as the recipient shall have previously notified the sender of in writing, and shall be deemed received upon actual receipt, unless sent by certified mail, in which event such notice shall be deemed to have been received when the return receipt is signed or refused. For purposes of this Agreement, notices shall be addressed to:

(a) The Township at:

Athens Township Trustees
Attention: Brenda Cox, Fiscal Officer
P.O. Box 193
The Plains, Ohio 45780

With a copy simultaneously sent or delivered to:

Timothy L. Warren
Assistant Athens County Prosecutor
1 South Court St.
Athens, Ohio 45701

(b) The City at:

The City of Athens, Ohio
Attention: Debbie Walker, Clerk of Council
8 E. Washington St.
Athens, Ohio 45701

With a copy simultaneously sent or delivered to:

Lisa Eliason
Law Director for the City of Athens
8 E. Washington St.
Athens, Ohio 45701

The Parties, by notice given hereunder, may designate any further or different address to which subsequent notices, consents, certificates, requests or other communications shall be sent.

Section 4.14. Captions and Headings. The captions and headings herein are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Sections hereof.

Section 4.15. Counterparts. This Agreement may be executed in one or more counterparts or duplicate signature pages with the same force and effect as if all required signatures were contained in a single original instrument. Any one or more of such counterparts or duplicate

signature pages may be removed from any one or more original copies of this Agreement and annexed to other counterparts or duplicate signature pages to form a completely executed original instrument.

Section 4.16. Governing Law and Choice of Forum. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio or applicable federal law. All claims, counterclaims, disputes, and other matters in question between the Parties or their respective agents and employees arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within Athens County, Ohio.

IN TESTIMONY WHEREOF, the Parties have caused multiple counterparts hereof to be executed by their duly authorized officers on or as of the date first set forth above.

ATTEST:

**THE CITY OF ATHENS,
ATHENS COUNTY, OHIO**

Debbie Walker
Athens City Council Clerk

By: _____
Steve Patterson
Mayor

APPROVED AS TO FORM:

Lisa Eliason
City of Athens Law Director

Keller Blackburn
Athens County Prosecutor
Timothy L. Warren
Assistant Athens County Prosecutor

ATTEST:

**ATHENS TOWNSHIP TRUSTEES,
ATHENS COUNTY, OHIO**

Brenda Cox
Athens Twp. Fiscal Officer

By: _____
Ted J. Linscott
Chair, Athens Twp. Board of Trustees

ATTACHMENT B
ANNEXATION AGREEMENT

Professional Surveyor

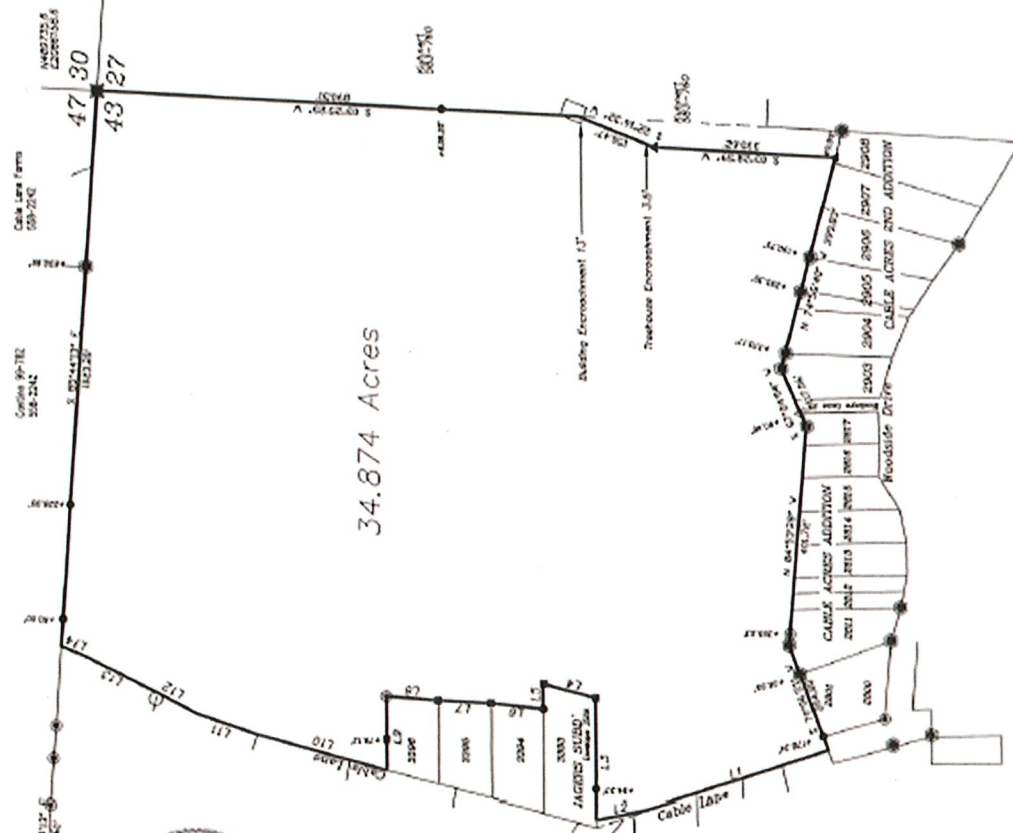
740-594-1884
FAX 740-594-9413

[illegible]

LINE TABLE		
LINE	BEARING	LENGTH
L1	N17°37'42"W	952.56'
L2	N10°25'58"W	920.18'
L3	S89°10'30"E	200.78'
L4	N12°33'24"E	100.50'
L5	N87°53'55"W	44.58'
L6	N05°37'07"E	97.22'
L7	N01°35'07"E	96.77'
L8	N04°43'07"E	96.90'
L9	N89°53'55"W	134.54'
L10	N15°25'01"E	248.15'
L11	N18°48'23"E	116.39'
L12	N28°10'20"E	84.10'
L13	N27°25'21"E	155.63'
L14	N31°42'54"E	39.30'

GRAPHIC SCALE

DESCRIPTION CHECKED FOR
MATHEMATICAL ACCURACY
ATHENS COUNTY
ENGINEER'S OFFICE
By: Thomas J. H. H. H. H.
DATE: 1/24/25



Legal Description

34.874 Acres

Situate Ohio Company Purchase, Town 9, Range 14, Farm Lot 43, Athens Township, Athens County, Ohio.
Being a resurvey of the lands deeded to:
Frander Properties LLC, Official Record Book 600, pages 936-939.
Parcel A010010082100.

Beginning at a stone found at the northeast corner of Farm Lot 43;

- 1.) Thence S03°25'25"W 890.51 feet along a common boundary to Kuhnert 583-760 to a point, passing an iron pin set at 638.20 feet;
- 2.) Thence S22°16'32"W 150.47 feet along said common boundary to an iron pin found capped Highland;
- 3.) Thence S03°28'59"W 335.62 feet along said common boundary to an iron pin found capped Highland;
- 4.) Thence N74°56'40"W 399.83 feet along a common boundary with the north line of the Cable Acres 2nd Addition to a one-inch diameter pipe found, passing other one-inch diameter pipes found at 190.75 feet, 255.30 feet, and at 370.17 feet;
- 5.) Thence S67°24'04"W 117.06 feet to a one-inch diameter pipe found, passing an iron pin found at 90.46 feet capped England at the northeast corner of Lot 2817 of Cable Acres Addition;
- 6.) Thence N84°53'28"W 401.72 feet along the north line of the Cable Acres Addition to one-inch diameter pipe found, passing a #5 rebar found at 395.53 feet;
- 7.) Thence S70°06'21"W 204.80 feet along the north line of the Cable Acres Addition to a point in the center of Cable Lane, passing a one-inch diameter pipe found at 56.95 feet, and an iron pin set at 178.34 feet;
- 8.) Thence N17°37'40"W 352.58 feet to a point in the center of Cable Lane;
- 9.) Thence N10°25'58"W 95.10 feet to a point in the center of Cable Lane;
- 10.) Thence S89°53'53"E 220.78 feet along the south boundary of Lot 3393 of the Jagers Subdivision to a one-inch diameter square steel found, passing an iron pin set at 54.23 feet;
- 11.) Thence N15°33'24"E 100.52 feet along the east line of Lot 3393 to a one-inch diameter square steel found;
- 12.) Thence N89°53'53"W 46.96 feet along the north line of Lot 3393 to an iron pin set;
- 13.) Thence N06°37'07"E 97.22 feet along the east line of Lot 3394 to a one-inch diameter square steel found;
- 14.) Thence N03°35'07"E 96.77 feet along the east line of Lot 3395 to a one-inch diameter square steel found;
- 15.) Thence N04°43'07"E 96.90 feet along the east line of Lot 3396 to a #5 rebar found;
- 16.) Thence N89°53'53"W 134.54 feet along the north line of Lot 3396 to a point in the center of Cable Lane, passing a one-inch diameter square steel found at 79.12 feet;
- 17.) Thence N15°21'31"E 248.15 feet to a point in the center of Cable Lane;
- 18.) Thence N18°48'23"E 116.39 feet to a point in the center of Cable Lane;
- 19.) Thence N28°29'04"E 84.10 feet to a point in the center of Cable Lane;
- 20.) Thence N27°25'21"E 155.63 feet to a point in the center of Cable Lane;
- 21.) Thence N21°42'54"E 39.50 feet to a point in the center of Cable Lane;
- 22.) Thence S85°44'13"E 1023.20 feet along a common boundary to Cantino 99-782, and Cable Lane Farms 558-2242, (Passing an iron pin set at 50.00 feet, passing an iron pin set at 259.90 feet, and passing a one-inch diameter pipe found at 698.86 feet) to the point of beginning containing a total of 34.874 acres.

Plat of Survey is attached herewith and made a part thereof.

Subject to all easements, rights-of-way, covenants, and agreements of record.

Iron Pins Set are number 5 rebar, 30-inches in length capped NEWMAN PS-8043

Basis of Bearings: Ohio State Plane Coordinate System, Ohio South Zone, NAD83.

Survey completed by Charles T. Newman, Licensed Professional Surveyor 8043 on January 12, 2023.



Charles T. Newman PS
66 Elmwood Place
Athens, Ohio 45701

Legal Description Pre-Approval
APPROVED
All transfers are subject to
Athens County Conveyance Standards

Description Checked for
Mathematical Accuracy
Athens County
ENGINEER'S OFFICE

BY: *Thompson*
DATE: 1/24/23

JAN 25 2023

Jill Thompson
Athens County Auditor

0-90-24

Introduced by All Members of Council
Committee of the Whole

AN ORDINANCE AMENDING TITLE 7, TRAFFIC CODE, SECTIONS 7.02.11, 7.02.17, 7.02.23, 7.03.07, 7.03.07.1, 7.03.25, 7.04.58, AND 7.05.31; AND REPEALING ALL ORDINANCES INCONSISTENT THEREWITH.

WHEREAS, the duly elected governing authority of the City of Athens, Ohio is authorized by ORC § 715.01 to adopt ordinances relating to its property, affairs and local government;

BE IT ORDAINED BY THE CITY OF ATHENS, STATE OF OHIO:

SECTION I: The Code of Ordinances of the City of Athens, Ohio (meaning City Municipal Code) is hereby amended by adding certain provisions.

SECTION II: The addition, amendment, or removal of Municipal Athens City Code Sections when passed in such form as to indicate the intention of the governing authority of the City of Athens, Ohio to make the same a part of the Municipal Code shall be deemed to be incorporated in the Municipal Code, so that reference to the Municipal Code includes the additions, amendments, and removals.

SECTION III: The codifier (meaning the person, agency or organization authorized to prepare the supplement to the Code of Ordinances of the City of Athens, Ohio) is authorized to exclude and omit any provisions of this ordinance that are inapplicable to the City's Municipal Code.

SECTION IV: Supplementation of Code.

(a) In preparing a supplement to the City's Municipal Code, all portions of this ordinance which have been repealed shall be excluded from the City's Municipal Code by the omission thereof from reprinted pages.

(b) When preparing a supplement to the City's Municipal Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non-substantive changes in this ordinance and parts of this ordinance included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the City's Municipal Code printed in the supplement, and make

changes in such catchlines, headings, and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the City's Municipal Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections 7.02.11, 7.02.17, 7.02.23, 7.03.07, 7.03.07.1, 7.03.25, 7.04.58, AND 7.05.31; and

(5) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the City's Municipal Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the City's Municipal Code.

(c) In preparing a supplement to the City's Municipal Code, the pages of a supplement shall be so numbered that they will fit properly into the City's Municipal Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the City's Municipal Code will be current through the date of the adoption of the latest ordinance included in the supplement.

SECTION V: If any section, subsection, sentence, clause, phrase or portion of the Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances. The governing authority of the City of Athens, Ohio hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION VI: Any ordinances or resolutions inconsistent herewith are hereby repealed.

SECTION VII: Provisions of Section VIII that duplicate or track State statutes which do not become effective until after the effective date of this ordinance, shall not take effect until such statutes take effect.

SECTION VIII: The Athens City Municipal Code, Title 7, Traffic Code, is hereby amended as attached hereto and incorporated herein by reference.

SECTION IX: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

7.02.11. ~~Lights on s~~Slow moving vehicles.

~~(A) All vehicles other than bicycles, including animal drawn vehicles and vehicles referred to in Paragraph (G) of Section 4513.02 of the Revised Code, not specifically required to be equipped with lamps or other lighting devices by Sections 4513.03 to 4513.10 of the Ohio Revised Code, shall, at all times specified in Section 4513.03 of the Ohio Revised Code, be equipped with at least one lamp displaying a white light visible from a distance of not less than 1,000 feet to the front of the vehicle, and shall also be equipped with two lamps displaying red light visible from a distance of not less than 1,000 feet to the rear of the vehicle, or as an alternative, one lamp displaying a red light visible from a distance of not less than 1,000 feet to the rear and two red reflectors visible from all distances of 600 feet to 100 feet to the rear when illuminated by the lawful lower beams of headlamps. Every animal drawn vehicle shall at all times be equipped with a slow moving vehicle emblem complying with Paragraph (B) of this section.~~

~~Lamps and reflectors required by this section shall meet standards adopted and promulgated by the director of public safety.~~

~~(B) All boat trailers, farm machinery, and other machinery including all road construction machinery, upon a street or highway, except when being used in actual construction and maintenance work in an area guarded by a flagperson, or where flares are used, or when operating or traveling within the limits of a construction area designated by the director of transportation, a city engineer, or the county engineer of the several counties, when such construction area is marked in accordance with requirements of the director and the manual of uniform traffic control devices, as set forth in Section 4511.09 of the Ohio Revised Code, which is designed for operation at a speed of 25 miles an hour or less shall be operated at a speed not exceeding 25 miles per hour, and shall display a triangular slow moving vehicle emblem (SMV). The emblem shall be mounted so as to be visible from a distance of not less than 500 feet to the rear. The director of public safety shall adopt standards and specifications for the design and position of mounting the SMV emblem. The standards and specifications for SMV emblems referred to in this section shall correlate with and, so far as possible, conform with those approved by the American Society of Agricultural Engineers.~~

~~A unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour may be operated on a street or highway at a speed greater than 25 miles per hour provided it is operated in accordance with this section.~~

~~As used in this division, "machinery" does not include any vehicle designed to be drawn by an animal.~~

~~(C) The use of this emblem shall be restricted to animal drawn vehicles, and to the slow moving vehicles specified in Paragraph (B) of this section operating or traveling within the limits of the highway. Its use on slow moving vehicles being transported~~

~~upon other types of vehicles or on any other type of vehicle or stationary object on the highway is prohibited.~~

- ~~(D) No person shall sell, lease, rent, or operate any boat trailer, farm machinery, or other machinery defined as a slow-moving vehicle, as defined in subsection (B) of this section, except those units designed to be completely mounted on a primary power unit, which is manufactured or assembled on or after April 1, 1966, unless the vehicle is equipped with a slow-moving vehicle emblem mounting device as specified in subsection (B) of this section.~~

~~No person shall sell, lease, rent, or operate on a street or highway any unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour unless the unit displays a slow-moving vehicle emblem as specified in subsection (B) of this section and a speed identification symbol that meets the specifications contained in the American Society of Agricultural Engineers Standard ANSI/ASAE S584 JAN2005, agricultural equipment: speed identification symbol (SIS).~~

- ~~(E) The boat trailer, farm machinery, or other slow-moving vehicles specified in subsection (B) of this section may, in addition to the use of the slow-moving vehicle emblem, and any unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour, in addition to the display of a speed identification symbol, may be equipped with a red flashing light which shall be visible from a distance of not less than 1,000 feet to the rear at all times specified in Section 4513.03 of the Ohio Revised Code. When a double-faced light is used, it shall display amber light to the front and red light to the rear.~~

~~In addition to the lights described in this division, farm machinery and motor vehicles escorting farm machinery may display a flashing, oscillating, or rotating amber light, as permitted by Section 4513.17 of the Revised Code, and also may display simultaneously flashing turn signals or warning lights, as permitted by that section.~~

- ~~(F) Every animal-drawn vehicle upon a street or highway shall at all times be equipped in one of the following ways:~~

- ~~(1) With a slow-moving vehicle emblem complying with subsection (B) of this section;~~
- ~~(2) With alternate reflective material complying with rules adopted under this division;~~
- ~~(3) With both a slow-moving vehicle emblem and alternate reflective material as specified in this division.~~

~~The director of public safety, subject to Chapter 119 of the Revised Code, shall adopt rules establishing standards and specifications for the position of mounting of the alternate reflective material authorized by this division. The rules shall permit, as a minimum, the alternate reflective material to be black, gray, or silver in color. The alternate reflective material shall be mounted on the animal-drawn vehicle so as to be visible, at all times specified in Section 4513.03 of the Revised Code, from a distance of not less than 500 feet to the rear when illuminated by the lawful lower beams of headlamps.~~

~~(G) Every unit of farm machinery that is designed by its manufacturer to operate at a speed greater than 25 miles per hour shall display a slow-moving vehicle emblem and a speed identification symbol that meets the specifications contained in the American society of agricultural engineers standard ANSI/SAE S584 JAN 2005, agricultural equipment: speed identification symbol (SIS) when the unit is operated upon a street or highway, irrespective of the speed at which the unit is operated on the street or highway. The speed identification symbol shall indicate the maximum speed in miles per hour at which the unit of farm machinery is designed by its manufacturer to operate. The display of the speed identification symbol shall be in accordance with the standard prescribed in this division.~~

~~If an agricultural tractor that is designed by its manufacturer to operate at a speed greater than 25 miles per hour is being operated on a street or highway at a speed greater than 25 miles per hour and is towing, pulling, or otherwise drawing a unit of farm machinery, the unit of farm machinery shall display a slow-moving vehicle emblem and a speed identification symbol that is the same as the speed identification symbol that is displayed on the agricultural tractor.~~

~~(H) When an agricultural tractor that is designed by its manufacturer to operate at a speed greater than 25 miles per hour is being operated on a street or highway at a speed greater than 25 miles per hour, the operator shall possess some documentation published or provided by the manufacturer indicating the maximum speed in miles per hour at which the manufacturer designed the agricultural tractor to operate.~~

~~(I) Whoever violates this section is guilty of a minor misdemeanor.~~

~~(J) As used in this section, "boat trailer" means any vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of 25 miles per hour or less.~~

~~(RC 5624.22)~~

As used in sections 7.02:

(A) "Boat trailer" means any vehicle designed and used exclusively to transport a boat between a place of storage and a marina, or in and around a marina, when drawn or towed on a street or highway for a distance of no more than ten miles and at a speed of twenty-five miles per hour or less.

(B) "Slow-moving vehicle" and "SMV" mean a boat trailer, unit of farm machinery, road construction machinery, or other machinery designed by the manufacturer to operate at a speed of twenty-five miles per hour or less. "Slow-moving vehicle" and "SMV" do not include a bicycle, motorized bicycle, electric bicycle, or animal-drawn vehicle.

(RC 4513.11)

(Ord. No. 0-134-21, § I, 11-15-2021)

7.02.17. Number of lights permitted; red and flashing lights.

- (A) Whenever a motor vehicle equipped with headlights is also equipped with any auxiliary lights or spotlight or any other light on the front thereof projecting a beam of an intensity greater than 300 candle power, not more than a total of five of any such lights on the front of a vehicle shall be lighted at any one time when said vehicle is upon a highway.
- (B) Any lighted light or illuminating device upon a motor vehicle, other than headlights, spotlights, signal lights, or auxiliary driving lights, which projects a beam of light of an intensity greater than 300 candle power shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.
- (C) (1) Flashing lights are prohibited on motor vehicles, except as a means for indicating a right or a left turn, or in the presence of a vehicular traffic hazard requiring unusual care in approaching or overtaking or passing.

(2) The prohibition in division (C)(1) of this section does not apply to any of the following:

- ~~(C) (1) Flashing lights are prohibited on motor~~ a) Emergency vehicles, except as a means for indicating a right or a left turn, or in the presence of vehicular traffic hazard requiring unusual care in approaching, or overtaking or passing.
- ~~(2) The prohibition in subsection (C)(1) of this section does not apply to any of the following:~~
 - (a) ~~Emergency vehicles,~~ road service vehicles servicing or towing a disabled vehicle, stationary waste collection vehicles actively collecting garbage, refuse, trash, or recyclable materials on the roadside, rural mail delivery vehicles, vehicles as provided in Section 4513.182 of the Ohio Revised Code, highway maintenance vehicles, and similar equipment operated by the department or local authorities, provided such vehicles are equipped with and display, when used on a street or highway for the special purpose necessitating such lights, a flashing, oscillating, or rotating amber light;
 - (b) Vehicles or machinery permitted by Section 4513.111 of the Ohio Revised Code to have a flashing red light;
 - (c) Farm machinery and vehicles escorting farm machinery, provided such machinery and vehicles are equipped with and display, when used on a street or highway, a flashing, oscillating, or rotating amber light. Farm machinery also may display the lights described in Section 4513.111 of the Ohio Revised Code.
 - (d) A funeral hearse or funeral escort vehicle, provided that the funeral hearse or funeral escort vehicle is equipped with and displays, when used on a street or highway for the special purpose necessitating such lights, a flashing, oscillating, or rotating purple or amber light.

(e) A vehicle being used for emergency preparedness, response, and recovery activities, as those terms are defined in section 5502.21 of the Revised Code, that is equipped with and displays, when used on a street or highway for the special purpose necessitating such lights, a flashing, oscillating, or rotating amber or red and white light, provided that the vehicle is being operated by a person from one of the following and the vehicle is clearly marked with the applicable agency's or authority's insignia:

(i) The Ohio emergency management agency;

(ii) A countywide emergency management agency established under section 5502.26 of the Revised Code;

(iii) A regional authority for emergency management established under section 5502.27 of the Revised Code;

(iv) A program for emergency management established under section 5502.271 of the Revised Code.

- (3) Subsection **Division** (C)(1) of this section does not apply to animal-drawn vehicles subject to Section 4513.144 of the Ohio Revised Code.
- (D) (1) Except a person operating a public safety vehicle, as defined in subsection (E) of Section 4511.01 of the Ohio Revised Code, or a school bus, no person shall operate, move, or park upon, or permit to stand within the right-of-way of any public street or highway any vehicle or equipment that is equipped with and displaying a flashing red or a flashing combination red and white light, or an oscillating or rotating red light, or a combination red and white oscillating or rotating light.
- (2) Except a public law enforcement officer, or other person sworn to enforce the criminal and traffic laws of the state, operating a public safety vehicle when on duty, no person shall operate, move, or park upon, or permit to stand within the right-of-way of any street or highway any vehicle or equipment that is equipped with, or upon which is mounted, and displaying a flashing blue or a flashing combination blue and white light, or an oscillating or rotating blue light, or a combination blue and white oscillating or rotating light.
- (E) This section does not prohibit the use of warning lights required by law or the simultaneous flashing of turn signals on disabled vehicles or on vehicles being operated in unfavorable atmospheric conditions in order to enhance their visibility. This section also does not prohibit the simultaneous flashing of turn signals or warning lights either on farm machinery or vehicles escorting farm machinery, when used on a street or highway.
- (F) Whoever violates this section is guilty of a minor misdemeanor.

(R.C. 4513.17)

7.02.23. Signs on windshield; wipers required.

- (A) No person shall drive any motor vehicle on a street or highway, other than a motorcycle or motorized bicycle, that is not equipped with a windshield.
- (B) (1) No person shall drive any motor vehicle, other than a bus, with any sign, poster, or other nontransparent material upon the front windshield, side or rear windows of the such vehicle other than a certificate or other paper required to be so displayed by law, except that there may be in the lower right-hand corner of the windshield a sign or poster not to exceed four inches in height by six inches in width. No sign, poster, or decal shall be displayed in the front windshield in such a manner as to conceal the vehicle identification number for the motor vehicle when, in accordance with federal law, that number is located inside the vehicle passenger compartment and so placed as to be readable through the vehicle glazing without moving any part of the vehicle.
- (2) Subsection (B)(1) of this section does not apply to a person who is driving a passenger car with an electronic device, including an antenna, electronic tolling or other transponder, camera, directional navigation device, or other similar electronic device located in the front windshield if **either of the device meets both of the following apply to the device:**
- (a) **It is a "vehicle safety technology" as defined in 49 C.F.R. 393.5. and complies with 49 C.F.R. 393.60(e)(1)(ii).**
- (ab) **It does not restrict the vehicle operator's sight lines to the road and highway signs and signals, and it does not conceal the vehicle identification number.**
- ~~(b) It does not conceal the vehicle identification number.~~
- (3) Subsection (B)(1) of this section does not apply to a person who is driving a commercial car with an electronic device, including an antenna, electronic tolling or other transponder, camera, directional navigation device, or other similar electronic device located in the front windshield if **either of the device meets both of the following apply to the device:**
- (a) **It is a "vehicle safety technology" as defined in 49 C.F.R. 393.5. and complies with 49 C.F.R. 393.60(e)(1)(ii).**
- (ab) **It does not restrict the vehicle operator's sight lines to the road and highway signs and signals, and it is mounted not more than eight and one-half inches below the upper edge of the windshield.**
- ~~(b) It is mounted not more than six inches below the upper edge of the windshield and is outside the area swept by the vehicle's windshield wipers.~~
- (C) The windshield on every motor vehicle, streetcar, and trackless trolley shall be equipped with a device for cleaning rain, snow or other moisture from the windshield, which device shall be maintained in good working order and so constructed as to be controlled or operated by the operator of the vehicle.

(D) No person shall operate any vehicle in which the operator's view through the windshield or any window is obstructed due to the glass being dirty, cracked, blurred or nontransparent.

(E) Whoever violates this section is guilty of a minor misdemeanor.

(RC 4513.24)

(Ord. No. 0-134-21, § I, 11-15-2021)

7.03.07. Prohibition against driving while under the influence of alcohol or drugs with certain concentration of alcohol in bodily substances; chemical analysis.

(A) (1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if any of the following apply:

(a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.

(b) The person has a concentration of 0.08 percent or more but less than 0.17 percent by weight per unit volume of alcohol in the person's whole blood.

(c) The person has a concentration of 0.096 percent or more but less than 0.204 percent by weight per unit volume of alcohol in the person's blood serum or plasma.

(d) The person has a concentration of 0.08 grams or more but less than 0.17 grams by weight of alcohol per 210 liters of the person's breath.

(e) The person has a concentration of 0.11 grams or more but less than 0.238 grams by weight of alcohol per 100 milliliters of the person's urine.

(f) The person has a concentration of 0.17 percent or more by weight per unit volume of alcohol in the person's whole blood.

(g) The person has a concentration of 0.204 percent or more by weight per unit volume of alcohol in the person's blood serum or plasma.

(h) The person has a concentration of 0.17 grams or more by weight of alcohol per 210 liters of the person's breath.

(i) The person has a concentration of 0.238 grams or more by weight of alcohol per 100 milliliters of the person's urine.

(j) Except as provided in subsection (K) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:

1. The person has a concentration of amphetamine in the person's urine of at least 500 nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of

amphetamine per milliliter of the person's whole blood or blood serum or plasma.

2. The person has a concentration of cocaine in the person's urine of at least 150 nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.
3. The person has a concentration of cocaine metabolite in the person's urine of at least 150 nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.
4. The person has a concentration of heroin in the person's urine of at least 2,000 nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least 50 nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.
5. The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or blood serum or plasma.
6. The person has a concentration of L.S.D. in the person's urine of at least 25 nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.
7. The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marijuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.
8. Either of the following applies:
 - a. The person is under the influence of alcohol, a drug of abuse, or combination of them, and the person has a concentration of marihuana metabolite in the person's urine or at least 15 nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five

nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.

- b. The person has a concentration of marihuana metabolite in the person's urine of at least 35 nanograms of marijuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least 50 nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.
 9. The person has a concentration of methamphetamine in the person's urine of at least 500 nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least 100 nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.
 10. The person has a concentration of phencyclidine in the person's urine of at least 25 nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or blood serum or plasma.
 11. The State Board of Pharmacy has adopted a rule pursuant to R.C. § 4729.041 that specifies the amount of salvia divinorum and the amount of salvinorin A that constitute concentrations of salvia divinorum and salvinorin A in a person's urine, in a person's whole blood, or in a person's blood serum or plasma at or above which the person is impaired for purposes of operating any vehicle within this state, the rule is in effect, and the person has a concentration of salvia divinorum or salvinorin A of at least that amount so specified by the rule in the person's urine, in the person's whole blood, or in the person's blood serum or plasma.
- (2) No person who, within 20 years of the conduct described in subsection (A)(2)(a) of this section, previously has been convicted of or pleaded guilty to a violation of this division or a substantially equivalent state law or municipal ordinance, a violation of subsection (A)(1) or ~~(B)~~ of this section or a substantially equivalent state law or municipal ordinance, or any other equivalent offense shall do both of the following:
- (a) Operate any vehicle within this municipality while under the influence of alcohol, a drug of abuse, or a combination of them:
 - (b) Subsequent to being arrested for operating the vehicle as described in subsection (A)(2)(a) of this section, being asked by a law enforcement officer to submit to a chemical test or tests under R.C. § 4511.191 or any substantially equivalent municipal ordinance, and being advised by the officer in accordance with R.C. § 4511.192 or any substantially equivalent

municipal ordinance of the consequences of the person's refusal or submission to the test or tests, refuse to submit to the test or tests.

- (B) No person under 21 years of age shall operate any vehicle within this municipality, if, at the time of the operation, any of the following apply:
- (1) The person has a concentration of at least 0.02 percent but less than 0.08 percent by weight per unit volume of alcohol in the person's whole blood.
 - (2) The person has a concentration of at least 0.03 percent, but less than 0.096 percent by weight per unit volume of alcohol in the person's blood serum or plasma.
 - (3) The person has a concentration of at least 0.02 grams but less than 0.08 grams by weight of alcohol per 210 liters of the person's breath.
 - (4) The person has a concentration of at least 0.028 grams but less than 0.11 grams by weight of alcohol per 100 milliliters of the person's urine.
- (C) In any proceeding arising out of one incident, a person may be charged with a violation of subsection (A)(1)(a) or (A)(2) and a violation of subsection (B)(1), (B)(2), or (B)(3) of this section, but the person may not be convicted of more than one violation of these divisions.
- (D) (1) (a) In any criminal prosecution or juvenile court proceeding for a violation of subsection (A)(1)(a) of this section or for an equivalent offense that is vehicle-related, the result of any test of any blood or urine withdrawn and analyzed at any health care provider, as defined in R.C. § 2317.02, may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocent of the defendant.
- (b) In any criminal prosecution for a violation of subsection (A) or (B) of this section or for any equivalent offense that is vehicle-related, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of controlled substance, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two hour time limit specified in R.C. § 4511.192(A) as the maximum period of time during which a person may consent to a chemical test or tests as described in that section. The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood test at the request of a law enforcement officer under R.C. § 4511.191 or a substantially equivalent municipal ordinance, or a blood or urine sample is obtained pursuant to a search warrant. Only a physician, a registered nurse, an emergency medical technician-intermediate, an emergency medical technician-paramedic, or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample for the purpose of determining the alcohol, drug,

controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood. The bodily substance withdrawn under this subsection (D)(1)(b) shall be analyzed in accordance with methods approved by the director of health by an individual possessing a valid permit issued by the director pursuant to R.C. § 3701.143.

- (c) As used in subsection (D)(1)(b) of this section, "emergency medical technician—intermediate" and "emergency medical technician—paramedic" have the same meanings as in R.C. § 4765.01.
- (2) In a criminal prosecution for a violation of subsection (A) of this section or for an equivalent offense that is vehicle-related. If there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in subsections (A)(1)(b), (A)(1)(c), (A)(1)(d) and (A)(1)(e) of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of subsection (A)(1)(j) of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution for a violation of subsection (B) of this section.
- (3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis. If the chemical test was obtained pursuant to subsection (D)(1)(b) of this section, the person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. If the person was under arrest as described in R.C. § 4511.191(A)(5), the arresting officer shall advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. If the person was under arrest other than described in R.C. § 4511.191(A)(5), the form to be read to the person to be tested as required under Section 7.03.07.1, shall state that the person may have an independent test performed at the person's expense. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer.
- (4) (a) As used in subsection (D)(4)(b) and (D)(4)(c) of this section, "National Highway Traffic Safety Administration" means the National Highway Traffic Safety Administration established as an administration of the United States Department of Transportation under 96 Stat 2415 (1983), 49 U.S.C. § 105.

- (b) In any criminal prosecution or juvenile court proceeding for a violation of subsection (A) or (B) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including but not limited to any testing standards then in effect that were set by the National Highway Traffic Safety Administration, all of the following apply:
1. The officer may testify concerning the results of the field sobriety test so administered.
 2. The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.
 3. If testimony is presented or evidence is introduced under subsection (D)(4)(b)(1) or (D)(4)(B)2. of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.
- (c) Subsection (D)(4)(b) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by subsection (D)(4)(b) of this section.
- (E) (1) Subject to subsection (E)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of subsection (A)(1)(b), (A)(1)(c), (A)(1)(d), (A)(1)(e), (A)(1)(f), (A)(1)(g), (A)(1)(h), (A)(1)(i), or (A)(1)(j) or (B)(1), (B)(2), (B)(3) or (B)(4) of this section or for any equivalent offense that is substantially equivalent to any of those divisions, a laboratory report from any laboratory personnel issued a permit by the department of health authorizing an analysis as described in this division that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified in this division shall be admitted as prima facie evidence of the information and statements that the report contains. The laboratory report shall contain all of the following:
- (a) The signature, under oath, of any person who performed the analysis;

- (b) Any findings as to the identify and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;
 - (c) A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;
 - (d) An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the Department of Health.
- (2) Notwithstanding any other provision of law regarding the admission of evidence, a report of the type described in subsection (E)(1) of this section is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.
- (3) A report of the type described in subsection (E)(1) of this section shall not be prima facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice.
- (F) (1) Except as otherwise provided in this division, any physician, registered nurse, emergency medical technician-intermediate, emergency medical technician-paramedic, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section or R.C. § 4511.19, 4511.191, or 4511.192, and any hospital first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section or R.C. § 4511.19, 4511.191 or 4511.192, is immune from criminal liability and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division also extends to an emergency medical service organization that employs an emergency medical technician-intermediate or emergency medical technician-paramedic who withdraws blood under this section. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.
- (2) As used in subsection (F)(1), "emergency medical technician—intermediate" and "emergency medical technician—paramedic" have the same meaning as in R.C. § 4765.01.

- (G) (1) Whoever violates any provision of subsections (A)(1)(a) through (A)(1)(i) or (A)(2) of this section is guilty of operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them. Whoever violates subsection (A)(1)(j) of this section is guilty of operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance. The court shall sentence the offender for either offense under R.C. Chapter 2929, except as otherwise authorized for or required by subsections (G)(1)(a) through (G)(1)(e) of this section:
- (a) Except as otherwise provided in subsection (G)(1)(b), (G)(1)(c), (G)(1)(d), or (G)(1)(e) of this section, the offender is guilty of a misdemeanor of the first degree, and the court shall sentence the offender to all of the penalties and sanctions provided in R.C. § 4511.19(G)(1)(a)(i) through (G)(1)(a)(iv).
 - (b) Except as otherwise provided in subsection (G)(1)(e) of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to one violation of subsection (A) ~~or (B)~~ of this section or one other equivalent offense is guilty of a misdemeanor of the first degree. The court shall sentence the offender to all of the penalties and sanctions provided in R.C. § 4511.19(G)(1)(b)(i) through (G)(1)(b)(v).
 - (c) Except as otherwise provided in subsection (G)(1)(e) of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to two violations of subsection (A) ~~or (B)~~ of this section or other equivalent offenses is guilty of a first degree misdemeanor. The court shall sentence the offender to all of the penalties and sanctions provided in R.C. § 4511.19(G)(1)(c)(i) through (G)(1)(c)(vi).
 - (d) Except as otherwise provided in subsection (G)(1)(e) of this section, an offender who, within ten years of the offense, previously has been convicted of or pleaded guilty to three or more violations of subsection (A) ~~or (B)~~ of this section or other equivalent offenses ~~or~~ an offender who, within 20 years of the offense, previously has been convicted of or pleaded guilty to five or more violations of that nature, or an offender who previously has been convicted of or pleaded guilty to a specification of the type described in R.C. § 2941.1413 is guilty of a felony to be prosecuted under appropriate state law.
 - (e) An offender who previously has been convicted of or pleaded guilty to a violation of R.C. § 4511.19(A) that was a felony, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony to be prosecuted under appropriate state law.
- (2) An offender who is convicted of or pleads guilty to a violation of subsection (A) of this section and who subsequently seeks reinstatement of the driver's or occupational driver's license or permit or nonresident operating privilege suspended under this section or R.C. § 4511.19 as a result of the conviction or guilty plea shall pay a reinstatement fee as provided in R.C. § 4511.191(F)(2).
- (3) (a) If an offender is sentenced to a jail term under R.C. § 4511.19(G)(1)(b)(i) or (G)(1)(b)(ii) or (G)(1)(c)(i) or (G)(1)(c)(ii) and if, within 60 days of sentencing

of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the term, the offender will not be able to begin serving that term within the 60-day period following the date of sentencing, the court may impose an alternative sentence as specified in R.C. § 4511.19(G)(3) that includes a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring.

- (b) As an alternative to the mandatory jail term as required by R.C. § 4511.19(G)(1), the court may sentence the offender as provided in R.C. § 4511.19(G)(3).
- (4) If an offender's driver's or occupational driver's license or permit or nonresident operating privilege is suspended under subsection (G) of this section or R.C. § 4511.19(G) and if R.C. § 4510.13 permits the court to grant limited driving privileges, the court may grant the limited driving privileges in accordance with that section. If subsection (A)(7) of that section requires the court impose as a condition of the privileges that the offender must display on the vehicle that is driven subject to the privileges restricted license plates that are issued under R.C. § 4503.231, except as provided in subsection (B) of that section, the court shall impose that condition as one of the conditions of the limited driving privileges as granted to the offender, except as provided in R.C. § 4503.231(B).
- (5) Fines imposed under this section for a violation of subsection (A) of this section shall be distributed as provided in R.C. 4511.19(G)(5).
- (6) If title to a motor vehicle that is subject to an order of criminal forfeiture under subsection (G)(1)(c), (G)(1)(d), or (G)(1)(e) of this section is assigned or transferred and R.C. § 4503.234(B)(2) or (B)(3) applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the National Automobile Dealers Association. The proceeds of any fine so imposed shall be distributed in accordance with subsection (C)(2) of that section.
- (7) In all cases in which an offender is sentenced under subsection (G) of this section, the offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, the court, in addition to any other penalties provided by law, may order restitution pursuant to § 130.99(G) or R.C. § 2929.18 or 2929.28 in an amount not exceeding \$5,000.00 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during or after committing the offense for which the offender is sentenced under subsection (G) of this section.
- (8) A court may order an offender to reimburse a law enforcement agency for any costs incurred by the agency with respect to a chemical test or tests administered to the offender if all of the following apply:
 - (a) The offender is convicted of or pleads guilty to a violation of subsection (A) of this section.

- (b) The test or tests were of the offender's whole blood, blood serum or plasma, or urine.
- (c) The test or tests indicated that the offender had a prohibited concentration of a controlled substance or a metabolite of a controlled substance in the offender's whole blood, blood serum or plasma, or urine at the time of the offense.
- (9) As used in subsection (G) of this section "Electronic monitoring" has the same meaning as in R.C. § 2929.01.
- (H) Whoever violates subsection (B) of this section is guilty of operating a motor vehicle after underage alcohol consumption and shall be punished as follows:
 - (1) Except as otherwise provided in subsection (H)(2) of this section, the offender is guilty of a misdemeanor of the fourth degree. In addition to any other sanction imposed for the offense, the court shall impose a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(6). The court may grant limited driving privileges relative to the suspension under R.C. § 4510.021 and 4510.13. The court may grant unlimited driving privileges with an ignition interlock device relative to the suspension and may reduce the period of suspension as authorized under R.C. § 4510.022. If the court grants unlimited driving privileges under R.C. § 4510.022, the court shall suspend any jail term imposed under subsection (H)(1) of the section as required under that section.
 - (2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more violations of subsection (A) ~~or (b)~~ of this section or other equivalent offense or offenses, the offender is guilty of a misdemeanor of the third degree. In addition to any other sanction imposed for the offense, the court shall impose a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license or nonresident operating privilege from the range specified in R.C. § 4510.02(A)(4). The court may grant limited driving privileges relative to the suspension under R.C. § 4510.021 and 4510.13.
 - (3) ~~If the offender also is convicted of or also pleads guilty to a specification of the type described in R.C. § 2941.1414 and if the Court imposes a jail term for the violation of subsection (B) of this section, the court shall impose upon the offender an additional definite jail term pursuant to R.C. § 2929.24(E).~~
 - (34) The offender shall provide the court with proof of financial responsibility as defined in R.C. § 4509.01. If the offender fails to provide that proof of financial responsibility, then, in addition to any other penalties provided by law, the court may order restitution pursuant to § 130.99(G) or R.C. § 2929.28 in an amount not exceeding \$5,000.00 for any economic loss arising from an accident or collision that was the direct and proximate result of the offender's operation of the vehicle before, during, or after committing the violation of subsection (B) of this section.

- (I) (1) No court shall sentence an offender to an alcohol treatment program under this section unless the treatment program complies with the minimum standards for alcohol treatment programs adopted under R.C. Chapter 5119 by the Director of Mental Health and Addiction Services.
 - (2) An offender who stays in a drivers' intervention program or in an alcohol treatment program under an order issued under this section shall pay the costs of the stay in the program. However, if the court determined that an offender who stays in an alcohol treatment program under an order issued under this section is unable to pay the costs of the stay in the program, the court may order that the costs be paid from the court's Indigent Drivers' Alcohol Treatment Fund.
 - (J) If a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under this section or R.C. § 4511.19 files an appeal regarding any aspect of the person's trial or sentence, the appeal itself does not stay the operation of the suspension.
 - (K) Subsection (A)(1)(j) of this section does not apply to a person who operates a vehicle while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the follow apply:
 - (1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribed drugs.
 - (2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.
 - (L) The prohibited concentrations of a controlled substance or a metabolite of a controlled substance listed in subsection (A)(1)(j) of this section also apply in a prosecution of a violation of R.C. § 2923.16(D) in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol.
 - (M) All terms defined in R.C. § 4510.01 apply to this section. If the meaning of a term defined in R.C. § 4510.01 conflicts with the meaning of the same term as defined in R.C. § 4501.01 or 4511.01, the term as defined in R.C. § 4510.01 applies to this section.
- (R.C. § 4511.19(A)—(M) (Rev. 2018))
- (N) As used in this section:
 - Community residential sanctions* has the same meaning as in R.C. § 2929.01.
 - Continuous alcohol monitoring* has the same meaning as in R.C. § 2929.01.
 - Drug of abuse* has the same meaning as in R.C. § 4506.01.
 - Equivalent offense* means any of the following:
 - (1) A violation of R.C. § 4511.19(A) ~~or (B)~~;
 - (2) A violation of a municipal OVI ordinance.

- (3) A violation of R.C. § 2903.04 in a case in which the offender was subject to the sanctions described in subsection (D) of that section;
- (4) A violation of R.C. § 2903.06(A)(1) or R.C. § 2903.08 or a municipal ordinance that is substantially equivalent to either of those divisions;
- (5) A violation of R.C. § 2903.06(A)(2), (A)(3), or (A)(4), R.C. § 2903.08(A)(2), or former R.C. § 2903.07, or a municipal ordinance that is substantially equivalent to any of those divisions or that former section, in a case in which a judge or jury as the trier of fact found that the offender was under the influence of alcohol, a drug of abuse, or a combination of them;
- (6) A violation of R.C. § 1547.11(A) ~~or (B)~~;
- (7) A violation of a municipal ordinance prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on the waters of this state while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating or being in physical control of any vessel underway or from manipulating any water skis, aquaplane, or similar device on the waters of this state with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine;
- (8) A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to R.C. § 4511.19(A) ~~or (b)~~ or R.C. § 1547.11(A) ~~or (B)~~;
- (9) A violation of a former law of this state that was substantially equivalent to R.C. § 4511.19(A) ~~or (b)~~ or R.C. § 1547.11(A) ~~or (B)~~.

Equivalent offense that is vehicle related means an equivalent offense that is any of the following:

- (1) A violation described in division (a), (b), (c), (d), or (e) of the definition for "equivalent offense" provided in this division (N);
- (2) A violation of an existing or former municipal ordinance, law of another state, or law of the United States that is substantially equivalent to R.C. § 4511.19(A) ~~or (B)~~;
- (3) A violation of a former law of this state that was substantially equivalent to R.C. § 4511.19(A) ~~or (B)~~.

Jail has the same meaning as in R.C. § 2929.01.

Mandatory jail term means the mandatory term in jail of 3, 6, 10, 20, 30, or 60 days that must be imposed under R.C. § 4511.19(G)(1)(a), (G)(1)(b), or (G)(1)(c) upon an offender convicted of a violation of subsection (A) of that section and in relation to which all of the following apply:

- (1) Except as specifically authorized under R.C. § 4511.19, the term must be served in a jail.

- (2) Except as specifically authorized under R.C. § 4511.19, the term cannot be suspended, reduced, or otherwise modified pursuant to R.C. § 2929.21 through 2929.28 or any other provision of the Ohio Revised Code.

Mandatory prison term has the same meaning as in R.C. § 2929.01.

Mandatory term of local incarceration has the same meaning as in R.C. § 2929.01.

Municipal OVI ordinance and *municipal OVI offense* mean any municipal ordinance prohibiting a person from operating a vehicle while under the influence of alcohol, a drug of abuse, or a combination of them or prohibiting a person from operating a vehicle with a prohibited concentration of alcohol, a controlled substance or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

Prison term has the same meaning as in R.C. § 2929.01.

Sanction has the same meaning as in R.C. § 2929.01. (R.C. § 4511.181)(Rev. 2009).

(RC 4511.19)

(Ord. No. 0-134-21, § I, 11-15-2021)

Cross reference— Endangering children see § R.C. 2919/22 power to suspend driver's license, see § R.C. 4510.05.

State Law reference— Mandatory suspension periods; immobilizing or disabling device; restricted license, R.C. § 4510.13; trial judge to suspend driver's license, R.C. § 4510.05.

7.03.07.1 Implied consent.

(A) (1) As used in this section:

Alcohol monitoring device means any device that provides for continuous alcohol monitoring, any ignition interlock device, any immobilizing or disabling device other than an ignition interlock device that is constantly available to monitor the concentration of alcohol in a person's system or any other device that provides for the automatic testing and periodic reporting of alcohol consumption by a person and that a court orders a person to use as a sanction imposed as a result of the person's conviction of or plea of guilty to an offense.

Community addiction services provider has the same meaning as in R.C. § 5119.01.

Physical control has the same meaning as in R.C. § 4511.194.

- (2) Any person who operates a vehicle upon a highway or any public or private property used by the public for vehicular travel or parking within this municipality

or who is in physical control of a vehicle shall be deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for a violation of subsection 7.03.07(A) or (B), Section 7.03.07.2, R.C. § 4511.19(A) or (B), R.C. § 4511.194 or a substantially equivalent municipal ordinance, or any other municipal OVI ordinance.

- (3) The chemical test or tests under subsection (A)(2) of this section shall be administered at the request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle in violation of a division, section, or ordinance identified in subsection (A)(2) of this section. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.
- (4) Any person who is dead or unconscious, or who otherwise is in a condition rendering the person incapable of refusal, shall be deemed to have consented as provided in subsection (A)(2) of this section, and the test or tests may be administered, subject to R.C. §§ 313.12 through 313.16.
- (5)
 - (a) If a law enforcement officer arrests a person for a violation of R.C. § 4511.19(A) or (B), R.C. § 4511.194 or a substantially equivalent municipal ordinance, or a municipal OVI ordinance and if the person if convicted would be required to be sentenced under R.C. § 4511.19(G)(1)(c), (d), or (e), the law enforcement officer shall request the person to submit, and the person shall submit, to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine. A law enforcement officer who makes a request pursuant to this division that a person submit to a chemical test or tests is not required to advise the person of the consequences of submitting to, or refusing to submit to, the test or tests and is not required to give the person the form described in subsection (C) of this section, but the officer shall advise the person at the time of the arrest that if the person refuses to take a chemical test the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. The officer shall also advise the person at the time of the arrest that the person may have an independent chemical test taken at the person's own expense. Subsections (A)(3) and (A)(4) of this section apply to the administration of a chemical test or tests pursuant to this division.
 - (b) If a person refuses to submit to a chemical test upon a request made pursuant to subsection (A)(5)(a) of this section, the law enforcement officer who made the request may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma. A law enforcement officer

who acts pursuant to this division to ensure that a person submits to a chemical test of the person's whole blood or blood serum or plasma is immune from criminal and civil liability based upon a claim for assault and battery or any other claim from the acts, unless the officer so acted with malicious purpose, in bad faith or in a wanton or reckless manner. (R.C. § 4511.191(A)(Rev. 2016)

- (B) Except as provided in subsection (A)(5) of this section, the arresting law enforcement officer shall give advice in accordance with this section to any person under arrest for a violation of subsection 7.03.07(A) ~~or (B)~~, Section 7.03.07, R.C. § 4511.19(A) ~~or (B)~~, § ~~73.07.2~~ 7.03.07(A) ~~or (B)~~, R.C. § 4511.194 or a substantially equivalent municipal ordinance, or any other municipal OVI ordinance. The officer shall give that advice in a written form that contains the information described in subsection (C) of this section and shall read the advice to the person. The form shall contain a statement that the form was shown to the person under arrest and read to the person by the arresting officer. One or more persons shall witness the arresting officer's reading of the form and the witnesses shall certify to this fact by signing the form. The person must submit to the chemical test or tests, subsequent to the request of the arresting officer within two hours of the time of the alleged violation and, if the person does not submit to the test or tests within the two-hour time limit, the failure to submit automatically constitutes a refusal to submit to the test or tests.
- (C) Except as provided in subsection (A)(5) of this section, if a person is under arrest as described in subsection (B) of this section, before the person may be requested to submit to a chemical test or tests to determine the alcohol, drug of abuse, controlled substance, metabolite of a combined substance, or a combination content of the person's whole blood, blood serum or plasma, breath, or urine, the arresting officer shall read the following form to the person:

"You now are under arrest for (specifically state the offense under state law or a substantially equivalent municipal ordinance for which the person was arrested- operating a vehicle under the influence of alcohol, a drug, or a combination of them; operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance, operating a vehicle after underage alcohol consumption; or having physical control of a vehicle while under the influence).

If you refuse to take any chemical tests required by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated. If you have a prior conviction of OVI, OVUAC, or operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance under state or municipal law within the preceding 20 years, you are now under arrest for state OVI, and, if you refuse to take a chemical test, you will face increased penalties if you subsequently are convicted of the state OVI.

(Read this part unless the person is under arrest for solely having physical control of a vehicle while under the influence.) If you take any chemical test required by law and are found to be at or over the prohibited amount of alcohol, a controlled substance, or a metabolite of a controlled substance in your whole blood, blood serum or plasma,

breath, or urine as set by law, your Ohio driving privileges will be suspended immediately, and you will have to pay a fee to have the privileges reinstated.

If you take a chemical test, you may have an independent chemical test taken at your own expense."

(D) If the arresting law enforcement officer does not ask a person under arrest as described in subsection (B) of this section or subsection (A)(5) of this section to submit to a chemical test or tests under R.C. § 4511.191 or this section, the arresting officer shall seize the Ohio or out-of-state driver's or commercial driver's license or permit of the person and immediately forward it to the court in which the arrested person is to appear on the charge. If the arrested person is not in possession of the person's license or permit or it is not in the person's vehicle, the officer shall order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the arrest and, upon the surrender, the agency immediately shall forward the license or permit to the court in which the person is to appear on the charge. Upon receipt of the license or permit, the court shall retain it pending the arrested person's initial appearance and any action taken under R.C. § 4511.196.

(E) (1) If a law enforcement officer asks a person under arrest as described in subsection (A)(5) of this section to submit to a chemical test or tests under that division and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, or if a law enforcement officer asks a person under arrest as described in subsection (B) of this section to submit to a chemical test or tests under R.C. § 4511.191 or this section, if the officer advises the person in accordance with this section of the consequences of the person's refusal or submission, and if either the person refuses to submit to the test or tests or, unless the arrest was for a violation of Section 7.03.07.2, R.C. § 4511.194 or a substantially equivalent Municipal ordinance, the person submits to the test or tests and the test results indicate a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense, the arresting officer shall do all of the following:

(a) On behalf of the registrar of motor vehicles, notify the person that, independent of any penalties or sanctions imposed upon the person, the person's Ohio driver's or commercial driver's license or permit or nonresident operating privileges is suspended immediately, that the suspension will last at least until the person's initial appearance on the charge, which will be held within five days after the date of the person's arrest or the issuance of a citation to the person, and that the person may appeal the suspension at the initial appearance or during the period of time ending 30 days after that initial appearance.

(b) Seize the driver's or commercial driver's license or permit of the person and immediately forward it to the registrar. If the arrested person is not in

possession of the person's license or permit or it is not in the person's vehicle, the officer shall order the person to surrender it to the law enforcement agency that employs the officer within 24 hours after the person is given notice of the suspension, and, upon the surrender, the officer's employing agency immediately shall forward the license or permit to the registrar;

- (c) Verify the person's current residence and, if it differs from that on the person's driver's or commercial driver's license or permit, notify the registrar of the change.
- (d) Send to the registrar, within 48 hours after the arrest of the person, a sworn report that includes all of the following statements:
 - 1. That the officer had reasonable grounds to believe that, at the time of the arrest, the arrested person was operating a vehicle in violation of R.C. § 4511.19(A) ~~or (B)~~ or a municipal OVI ordinance or for being in physical control of a stationary vehicle in violation of R.C. § 4511.194 or a substantially equivalent municipal ordinance;
 - 2. That the person was arrested and charged with a violation of R.C. § 4511.19(A) ~~or (B)~~, R.C. § 4511.194 or a substantially equivalent municipal ordinance, or a municipal OVI ordinance;
 - 3. Unless subsection (E)(1)(d)5 of this section applies, that the officer asked the person to take the designated chemical test or tests, advised the person in accordance with this section of the consequences of submitted to, or refusing to take, the test or tests, and gave the person the form described in subsection (C) of this section;
 - 4. Unless subsection (E)(1)(d)(5). Of this section applies, that either the person refused to submit to the chemical test or tests, or unless the arrest was for a violation of R.C. § 4511.194 or a substantially equivalent municipal ordinance, the person submitted to the chemical test or tests and the test results indicated a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense.
 - 5. If the person was under arrest as described in subsection (A)(5) of this section and the chemical test or tests were performed in accordance with that division, that the person was under arrest as described in that division, that the chemical test or tests were performed in accordance with that division, and that test results indicated a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the person's whole blood, blood serum or plasma, breath, or urine at the time of the alleged offense.
- (2) Subsection (E)(1) of this section does not apply to a person who is arrested for a violation Section 7.03.07.2, R.C. § 4511.194 or a substantially equivalent municipal ordinance, who is asked by a law enforcement officer to submit to a

chemical test or tests under this section, and who submits to the test or tests, regardless of the amount of alcohol, a controlled substance, or a metabolite or a controlled substance that the test results indicate is present in the person's whole blood, blood serum or plasma, breath, or urine.

- (F) The arresting officer shall give the officer's sworn report that is completed under this section to the arrested person at the time of the arrest, or the registrar of motor vehicles shall send the report to the person by regular first class mail as soon as possible after receipt of the report, but not later than 14 days after receipt of it. An arresting officer may give an unsworn report to the arrested person at the time of the arrest provided the report is complete when given to the arrested person and subsequently is sworn to by the arresting officer. As soon as possible, but not later than 48 hours after the arrest of the person, the arresting officer shall send a copy of the sworn report to the court in which the arrested person is to appear on the charge for which the person was arrested.
- (G) The sworn report of an arresting officer completed under this section is prima facie proof of the information and statements that it contains. It shall be admitted and considered as prima facie proof of the information and statements that it contains in any appeal under R.C. § 4511.197 relative to any suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege that results from the arrest covered by the report. (R.C. § 4511.192)(Rev. 2010)
- (H) (1) A suspension of a person's driver's or commercial driver's license or permit or nonresident operating privilege under this section for the time described in R.C. § 4511.191(B) or (C) is effective immediately from the time at which the arresting officer serves the notice of suspension upon the arrested person. Any subsequent finding that the person is not guilty of the charge that resulted in the person's being requested to take the chemical test or tests under subsection (A) of this section does not affect the suspension.
- (2) If a person arrested for operating a vehicle in violations of subsections 7.03.07.2(A) or (B), R.C. § 4511.19(A) or (B), or any other municipal OVI ordinance, or for being in physical control of a vehicle in violation of Section 7.03.07.2 or R.C. § 4511.194 or a substantially equivalent municipal ordinance, regardless of whether the person's driver's or commercial driver's license or permit or nonresident operating privilege is or is not suspended under R.C. § 4511.191(B) or (C) or R.C. Chapter 4510, the person's initial appearance on the charge resulting from the arrest shall be held within five days of the person's arrest or the issuance of the citation to him or her, subject to any continuance granted by the court pursuant to R.C. § 4511.197 regarding the issues specified in that section.

(R.C. § 4511.191(D))(Rev. 2005)

Statutory reference:

Continuous alcohol monitoring, R.C. § 4511.198.

Disposition of fines, immobilization of vehicle and impoundment of license plates, criminal forfeiture for the municipal ordinance conviction, R.C. § 4511.193.

Effect of refusal to submit to test, seizure of license, suspension periods, appeal procedures, occupational driving privileges, and Indigent Drivers Alcohol Treatment Funds, R.C. § 4511.191.

Judicial pretrial suspension, initial appearance, R.C. § 4511.196.

Mandatory suspension periods; immobilizing or disabling device; restricted license, R.C. § 4510.13.

Seizure of vehicles upon arrest, R.C. § 4511.195.

(R.C. 4511.191)

(Ord. No. 0-134-21, § I, 11-15-2021)

7.03.25. Display of license plates.

(A) (1) No person who is the owner or operator of a motor vehicle shall fail to display in plain view on the rear of the motor vehicle a license plate that displays the distinctive number and registration mark assigned to the motor vehicle by the director of public safety, including any county identification sticker and any validation sticker **when required by and** issued under Sections 4503.19 and 4503.191 of the Revised Code, **However,** except that a commercial tractor shall display the license plate and validation sticker on the front of the commercial tractor.

(2) The license plate shall be securely fastened so as not to swing and shall not be covered by any material that obstructs its visibility.

(3) No person to whom a temporary **motor vehicle** license placard or windshield sticker **registration** has been issued for the use of a motor vehicle under Section 4503.182 of the Revised Code, and no operator of that motor vehicle, shall fail to display the temporary **motor vehicle** license placard **registration** in plain view from the rear of the vehicle either in the rear window or on an external rear surface of the motor vehicle, or fail to display the windshield sticker in plain view on the rear window of the motor vehicle. ~~No temporary license placard or windshield sticker shall be covered by any material that obstructs its visibility.~~

(4) No person shall cover a temporary motor vehicle license registration by any material that obstructs its visibility.

(B) Whoever violates this section is guilty of a minor misdemeanor.

(RC 4503.21 Amended by 133rd General Assembly HB 62, § 101.01, eff. 7/1/2020)

(Ord. No. 0-134-21, § I, 11-15-2021)

7.04.58. Operating school buses.

- (A) The driver of a vehicle, streetcar, or trackless trolley upon meeting or overtaking from either direction any school bus stopped for the purpose of receiving or discharging any school child or person attending programs offered by community boards of mental health and developmental disabilities, or child attending a program offered by a head start agency, shall stop at least ten feet from the front or rear of the school bus and shall not proceed until such school bus resumes motion, or until signaled by the school bus driver to proceed.

It is no defense to a charge under this division that the school bus involved failed to display or be equipped with an automatically extended stop warning sign as required by subsection (B) of this section.

- (B) Every school bus shall be equipped with amber and red visual signals meeting the requirements of Section 4511.771 of the Ohio Revised Code, and an automatically extended stop warning sign of a type approved by the ~~state board~~ **department of education and workforce**, which shall be actuated by the driver of the bus whenever but only whenever the bus is stopped or stopping on the roadway for the purpose of receiving or discharging school children or persons attending programs offered by community boards of mental health and developmental disabilities and county boards of mental health. A school bus driver shall not actuate the red visual signals or the stop warning sign in designated school bus loading areas where the bus is entirely off the roadway or at school buildings when children or persons attending programs offered by community boards of mental health and developmental disabilities and county boards of mental health are loading or unloading at curbside the visual signals and stops warning sign shall be synchronized or otherwise operated as required by rule of the board.
- (C) Where a highway has been divided into four or more traffic lanes, a driver of a vehicle, streetcar, or trackless trolley need not stop for a school bus approaching from the opposite direction which has stopped for the purpose of receiving or discharging any school child or persons attending programs offered by community boards of mental health and developmental disabilities and county boards of mental health . The driver of any vehicle, streetcar, or trackless trolley overtaking the school bus shall comply with subsection (A) of this section.
- (D) School buses operating on divided highways or on highways with four or more traffic lanes shall receive and discharge all school children or persons attending programs offered by community boards of mental health and developmental disabilities and county boards of mental health on their residence side of the highway.
- (E) No school bus driver shall start their bus until after any child or person attending programs offered by community boards of mental health and mental retardation and county boards of mental retardation who may have alighted therefrom has reached a place of safety on their residence side of the road.
- (F) (1) Whoever violates subsection (A) of this section may be fined an amount not to exceed \$500.00. A person who is issued a citation for a violation of subsection (A) of this section is not permitted to enter a written plea of guilty and waive the

person's right to contest the citation in a trial but instead must appear in person in the proper court to answer the charge.

- (2) In addition to and independent of any other penalty provided by law, the court or mayor may impose upon an offender who violates this section a class seven suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in subsection (A)(7) of Section 4510.02 of the Revised Code. When a license is suspended under this section, the court or mayor shall cause the offender to deliver the license to the court, and the court or clerk of the court immediately shall forward the license to the registrar of motor vehicles, together with notice of the court's action.

(RC 4511.75)

(Ord. No. 0-134-21, § I, 11-15-2021; Res. No. R-05-22, 8-1-2022)

7.05.31. Private tow-away zones.

- (A) The owner of a private property may establish a private tow-away zone, but may do so only if all of the following conditions are satisfied:
 - (1) The owner of the private property posts on the property a sign that is at least 18 inches by 24 inches in size, that is visible from all entrances to the property and that contains at least all of the following information:
 - (a) A statement that the property is a private tow-away zone and that vehicles not authorized to park on the property will be towed away;
 - (b) A description of persons authorized to park on the property. If the property is a residential property, the owner of the private property may include on the sign a statement that only tenants and guests may park in the private tow-away zone, subject to the terms of the property owner. If the property is a commercial property, the owner of the private property may include on the sign a statement that only customers may park in the private tow-away zone. In all cases, if it is not apparent which persons may park in the private tow-away zone, the owner of the private property shall include on the sign the address of the property on which the private tow-away zone is located or the name of the business that is located on the property designated as a private tow-away zone;
 - (c) If the private tow-away zone is not enforceable at all times, the times during which the parking restrictions are enforced;
 - (d) The telephone number and the address of the place from which a towed vehicle may be recovered at any time during the day or night; and
 - (e) A statement that the failure to recover a towed vehicle may result in the loss of title to the vehicle as provided in Section 4505.101(B) of the Ohio Revised Code.

In order to comply with the requirements of division (A)(1) of this section, the owner of a private property may modify an existing sign by affixing to the existing sign stickers or an addendum in lieu of replacing the sign.

- (2) A towing service ensures that a vehicle towed under this section is taken to a location from which it may be recovered that complies with all of the following:
 - (a) It is located within 25 linear miles of the location of the private tow-away zone, unless it is not practicable to take the vehicle to a place of storage within 25 linear miles.
 - (b) It is well-lighted.
 - (c) It is on or within a reasonable distance of a regularly scheduled route of one or more modes of public transportation, if any public transportation is available in the municipal corporation or township in which the private tow-away zone is located.
- (B) (1) If a vehicle is parked on private property that is established as a private tow-away zone in accordance with division (A) of this section, without the consent of the owner of the private property or in violation of any posted parking condition or regulation, the owner of the private property may cause the removal of the vehicle by a towing service. The towing service shall remove the vehicle in accordance with this section. The vehicle owner and the operator of the vehicle are considered to have consented to the removal and storage of the vehicle, to the payment of the applicable fees established by the public utilities commission in rules adopted under Section 4921.25 of the Ohio Revised Code, and to the right of a towing service to obtain title to the vehicle if it remains unclaimed as provided in Section 4505.101 of the Ohio Revised Code. The owner or lienholder of a vehicle that has been removed under this section, subject to subsection (C) of this section, may recover the vehicle in accordance with subsection (G) of this section.
- (2) If a municipal corporation requires tow trucks and tow truck operators to be licensed, no owner of a private property located within the municipal corporation shall cause the removal and storage of any vehicle pursuant to subsection (B) of this section by an unlicensed tow truck or unlicensed tow truck operator.
- (3) No towing service shall remove a vehicle from a private tow-away zone except pursuant to a written contract for the removal of vehicles entered into with the owner of the private property on which the private tow-away zone is located.
- (C) If the owner or operator of a vehicle that is being removed under authority of subsection (B) of this section arrives after the vehicle has been prepared for removal, but prior to its actual removal from the property, the towing service shall give the vehicle owner or operator oral or written notification at the time of such arrival that the vehicle owner or operator may pay a fee of not more than one-half of the fee for the removal of the vehicle established by the public utilities commission in rules adopted under Section 4921.25 of the Ohio Revised Code in order to obtain release of the vehicle. That fee may be paid by use of a major credit card unless the towing service uses a mobile credit card processor and mobile service is not

available at the time of the transaction. Upon payment of that fee, the towing service shall give the vehicle owner or operator a receipt showing both the full amount normally assessed and the actual amount received and shall release the vehicle to the owner or operator. Upon its release, the owner or operator immediately shall move the vehicle so that the vehicle is not parked on the private property established as a private tow-away zone without the consent of the owner of the private property or in violation of any posted parking condition or regulation.

- (D) (1) Prior to towing a vehicle under subsection (B) of this section, a towing service shall make all reasonable efforts to take as many photographs as necessary to evidence that the vehicle is clearly parked on private property in violation of a private tow-away zone established under subsection (A) of this section.

The towing service shall record the time and date of the photographs taken under this section. The towing service shall retain the photographs and the record of the time and date, in electronic or printed form, for at least 30 days after the date on which the vehicle is recovered by the owner or lienholder or at least two years after the date on which the vehicle was towed, whichever is earlier.

- (2) A towing service shall deliver a vehicle towed under subsection (B) of this section to the location from which it may be recovered not more than two hours after the time it was removed from the private tow-away zone, unless the towing service is unable to deliver the motor vehicle within two hours due to an uncontrollable force, natural disaster, or other event that is not within the power of the towing service.

- (E) (1) If an owner of a private property that is established as a private tow-away zone in accordance with subsection (A) of this section causes the removal of a vehicle from that property by a towing service under subsection (B) of this section, the towing service, within two hours of removing the vehicle, shall provide notice to the sheriff of the county or the police department **law enforcement agency** of the municipal corporation, township, port authority, **conservancy district**, or township or joint police district in which the property is located concerning all of the following:

- (a) The vehicle's license number, make, model, and color.
- (b) The location from which the vehicle was removed.
- (c) The date and time the vehicle was removed.
- (d) The telephone number of the person from whom the vehicle may be recovered.
- (e) The address of the place from which the vehicle may be recovered.

- (2) Each county sheriff and each chief of police **law enforcement agency** of a municipal corporation, township, port authority, **conservancy district**, or township or joint police district shall maintain a record of any vehicle removed from private property in the sheriffs or chief's jurisdiction that is established as a private tow-away zone of which the sheriff or chief has received notice under

this section. The record shall include all information submitted by the towing service. The sheriff or chief shall provide any information in the record that pertains to a particular vehicle to a person who, either in person or pursuant to a telephone call, identifies self as the owner, operator, or lienholder of the vehicle and requests information pertaining to the vehicle.

(F) (1) When a vehicle is removed from private property in accordance with this section, within three business days of the removal, the towing service or storage facility from which the vehicle may be recovered shall cause a search to be made of either of the following to ascertain the identity of the owner and any lienholder of the vehicle:

- (a) The records of the bureau of motor vehicles;
- (b) The records of any vendor or vendors, approved by the registrar of motor vehicles, that are capable of providing real-time access to owner and lienholder information.

The towing service or storage facility may search the national motor vehicle title information system in order to determine the state in which the vehicle is titled. The entity that provides the record of the owner and any lienholder under this division shall ensure that such information is provided in a timely manner.

(2) Subject to subsection (F)(5) of this section, the towing service or storage facility shall send notice to the vehicle owner and any known lienholder as follows:

- (a) Within five business days after the applicable entity provides the identity of the owner and any lienholder of the motor vehicle, if the vehicle remains unclaimed, to the owner's and lienholder's last known address by certified or express mail with return receipt requested, by certified mail with electronic tracking, or by a commercial carrier service utilizing any form of delivery requiring a signed receipt;
- (b) If the vehicle remains unclaimed 30 days after the first notice is sent, in the manner required under subsection (F)(2)(a) of this section.

(3) Sixty days after any notice sent pursuant to subsection (F)(2) of this section is received, as evidenced by a receipt signed by any person, or the towing service or storage facility has been notified that delivery was not possible, the towing service or storage facility, if authorized under Section 4505.101(B) of the Ohio Revised Code, may initiate the process for obtaining a certificate of title to the motor vehicle as provided in that section.

(4) A towing service or storage facility that does not receive a signed receipt of notice, or a notification that delivery was not possible, shall not obtain, and shall not attempt to obtain, a certificate of title to the motor vehicle under Section 4505.101(B) of the Ohio Revised Code.

(5) With respect to a vehicle concerning which a towing service or storage facility is not eligible to obtain title under Section 4505.101 of the Ohio Revised Code, the

towing service or storage facility need only comply with the initial notice required under subsection (F)(2)(a) of this section.

- (G) (1) The owner or lienholder of a vehicle that is removed under subsection (B) of this section may reclaim it upon both of the following:
- (a) Presentation of proof of ownership, which may be evidenced by a certificate of title to the vehicle, a certificate of registration for the motor vehicle, or a lease agreement;
 - (b) Payment of the following fees:
 - (i) All applicable fees established by the public utilities commission in rules adopted under Section 4921.25 of the Ohio Revised Code, except that the lienholder of a vehicle may retrieve the vehicle without paying any storage fee for the period of time that the vehicle was in the possession of the towing service or storage facility prior to the date the lienholder received the notice sent under subsection (F)(2)(a) of this section;
 - (ii) If notice has been sent to the owner and lienholder as described in subsection (F) of this section, a processing fee of \$25.00.
- (2) A towing service or storage facility in possession of a vehicle that is removed under authority of subsection (B) of this section shall show the vehicle owner, operator, or lienholder who contests the removal of the vehicle all photographs taken under subsection (D) of this section. Upon request, the towing service or storage facility shall provide a copy of all photographs in the medium in which the photographs are stored, whether paper, electronic, or otherwise.
- (3) When the owner of a vehicle towed under this section retrieves the vehicle, the towing service or storage facility in possession of the vehicle shall give the owner written notice that if the owner disputes that the motor vehicle was lawfully towed, the owner may be able to file a civil action under Section 4513.611 of the Ohio Revised Code.
- (4) Upon presentation of proof of ownership, which may be evidenced by a certificate of title to the vehicle, a certificate of registration for the motor vehicle, or a lease agreement, the owner of a vehicle that is removed under authority of subsection (B) of this section may retrieve any personal items from the vehicle without retrieving the vehicle and without paying any fee. The owner of the vehicle shall not retrieve any personal items from a vehicle if it would endanger the safety of the owner, unless the owner agrees to sign a waiver of liability. For purposes of subsection (G)(4) of this section, "personal items" do not include any items that are attached to the vehicle.
- (H) No person shall remove, or cause the removal of, any vehicle from private property that is established as a private tow-away zone under this section or store such a vehicle other than in accordance with this section, or otherwise fail to comply with any applicable requirement of this section.
- (I) This section does not affect or limit the operation of Section 4513.60 or Sections 4513.61—4613.65 of the Ohio Revised Code as they relate to property other than

private property that is established as a private tow-away zone under subsection (A) of this section.

- (J) Whoever violates subsection (H) of this section is guilty of a minor misdemeanor.
 - (K) As used in this section, "owner of a private property" or "owner of the private property" includes, with respect to a private property, any of the following:
 - (1) Any person who holds title to the property;
 - (2) Any person who is a lessee or sublessee with respect to a lease or sublease agreement for the property;
 - (3) A person who is authorized to manage the property;
 - (4) A duly authorized agent of any person listed in subsection (K)(1)—(3) of this section.
 - (L) The city shall make available to any resident the above-described signs for a price equal to the city's cost for said signs.
 - (M) By parking on a properly posted private tow-away zone without the consent of the owner of the property, the owner or operator of a vehicle shall be deemed to have consented to the removal and storage of such vehicle and the payment of the costs of removal and storage in an amount not to exceed the rates established in Section 4921.25 of the Ohio Revised Code and Rule 4901:2-24-03 of the Ohio Administrative Code.
- (R.C. 4513.601)

(Res. No. R-05-22, 8-1-2022; Ord. No. 0-138-22, § I, 12-5-2022; Ord. No. 0-44-23, § I, 5-15-2023)

0-91-24

Introduced by All Members of Council
Committee of the Whole

AN ORDINANCE AMENDING TITLE 13, GENERAL OFFENSES, SECTIONS 13.02.04, 13.03.01, 13.05.01, 13.05.08, AND 13.05.13; AND REPEALING ALL ORDINANCES INCONSISTENT THEREWITH.

WHEREAS, the duly elected governing authority of the City of Athens, Ohio is authorized by ORC § 715.01 to adopt ordinances relating to its property, affairs and local government;

BE IT ORDAINED BY THE CITY OF ATHENS, STATE OF OHIO:

SECTION I: The Code of Ordinances of the City of Athens, Ohio (meaning City Municipal Code) is hereby amended by adding certain provisions.

SECTION II: The addition, amendment, or removal of Municipal Athens City Code Sections when passed in such form as to indicate the intention of the governing authority of the City of Athens, Ohio to make the same a part of the Municipal Code shall be deemed to be incorporated in the Municipal Code, so that reference to the Municipal Code includes the additions, amendments, and removals.

SECTION III: The codifier (meaning the person, agency or organization authorized to prepare the supplement to the Code of Ordinances of the City of Athens, Ohio) is authorized to exclude and omit any provisions of this ordinance that are inapplicable to the City's Municipal Code.

SECTION IV: Supplementation of Code.

(a) In preparing a supplement to the City's Municipal Code, all portions of this ordinance which have been repealed shall be excluded from the City's Municipal Code by the omission thereof from reprinted pages.

(b) When preparing a supplement to the City's Municipal Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non-substantive changes in this ordinance and parts of this ordinance included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

- (1) Organize the ordinance material into appropriate subdivisions;
- (2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the City's Municipal Code printed in the supplement, and make changes in such catchlines, headings, and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the City's Municipal Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections 13.02.04, 13.03.01, 13.05.01, 13.05.08, and 13.05.13; and

(5) Make other non-substantive changes necessary to preserve the original meaning of ordinance sections inserted into the City's Municipal Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the City's Municipal Code.

(c) In preparing a supplement to the City's Municipal Code, the pages of a supplement shall be so numbered that they will fit properly into the City's Municipal Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the City's Municipal Code will be current through the date of the adoption of the latest ordinance included in the supplement.

SECTION V: If any section, subsection, sentence, clause, phrase or portion of the Ordinance or its application to any person or circumstance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances. The governing authority of the City of Athens, Ohio hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION VI: Any ordinances or resolutions inconsistent herewith are hereby repealed.

SECTION VII: Provisions of Section VIII that duplicate or track State statutes which do not become effective until after the effective date of this ordinance, shall not take effect until such statutes take effect.

SECTION VIII: The Athens City Municipal Code, Title 13, General Offenses, is hereby amended as attached hereto and incorporated herein by reference.

SECTION IX: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

13.02.04. Menacing.

(A)(1) No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of such other person or member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause physical harm to the person or property of the other person, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

(2) No person shall knowingly place or attempt to place another in reasonable fear of physical harm or death by displaying a deadly weapon, regardless of whether the deadly weapon displayed is operable or inoperable, if either of the following applies:

(a) The other person is an emergency service responder, the person knows or reasonably should know that the other person is an emergency service responder, and it is the person's specific purpose to engage in the specified conduct against an emergency service responder.

(b) The other person is a family or household member or co-worker of an emergency service responder, the person knows or reasonably should know that the other person is a family or household member or co-worker of an emergency service responder, and it is the person's specific purpose to engage in the specified conduct against a family or household member or co-worker of an emergency service responder.

(B) Whoever violates this section is guilty of menacing.

Except as otherwise provided in this division, menacing is a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties or if the victim of the offense is an emergency service responder in the performance of the responder's official duties, menacing is one of the following:

(1) Except as otherwise provided in division (B)(2) of this section, a misdemeanor of the first degree;

~~(BC) Whoever violates this section is guilty of menacing, a misdemeanor of the fourth degree. If the victim of the offense is an officer or employee of a public children services agency or a private child placing agency and the offense relates to the officer's or employee's performance or anticipated performance of official responsibilities or duties, menacing is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to an offense of violence, the victim of that prior offense was an officer or employee of a public children~~

services agency or private child placing agency or an emergency service responder, and that prior offense related to the officer's or employee's performance or anticipated performance of official responsibilities or duties or to the responder's performance of the responder's official duties, such is a felony under state law.

(C) A prosecution for a violation of this section does not preclude a prosecution of a violation of any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted under this section or any other section of the Revised Code may be prosecuted under this section, the other section of the Revised Code, or both sections. However, if an offender is convicted of or pleads guilty to a violation of this section and also is convicted of or pleads guilty to a violation of R.C. 2903.13 based on the same conduct involving the same victim that was the basis of the violation of this section, the two offenses are allied offenses of similar import under R.C. 2941.25.

(D) As used in this section:

(1) "Emergency service responder," "family or household member," and "co-worker" have the same meanings as in R.C. 2903.13.

(2) ~~As used in this section, "organization"~~ "Organization" includes an entity that is a governmental employer.

(R.C. 2903.22)

(Ord. No. 0-135-21, § I, 11-15-2021)

13.03.01. Petty theft.

(A) No person, with purpose to deprive the owner of property or services, shall knowingly exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat;

(5) By intimidation.

(B) This section does not apply if the value of the property involved is \$1,000.00 or more, or is any of the property listed in Section 2913.71 of the Ohio Revised Code, or is a motor vehicle as defined in Section 4501.01 of the Ohio Revised Code.

(C) Whoever violates this section is guilty of petty **misdemeanor** theft, a misdemeanor of the first degree.

(R.C. 2913.02)

13.05.01. Definitions.

For the purposes of this chapter the words and phrases defined hereunder shall have the meanings therein respectively ascribed to them:

- (A) A "habitual sex offender" includes any person who is convicted two or more times, in separate criminal actions, for commission of any of the sex offenses set forth in Paragraph (M) of this section. Convictions which result from or are connected with the same act, or result from offenses committed at the same time, shall be counted for the purpose of this section as one conviction. Any conviction set aside pursuant to law, is not a conviction for purposes of this section.
- (B) "Harmful to juveniles." Any material or performance is "harmful to juveniles" if it is offensive to prevailing standards in the adult community with respect to what is suitable for juveniles, and if any of the following apply:
 - (1) It tends to appeal to the prurient interests of juveniles;
 - (2) It contains a display, description, or representation of sexual activity, masturbation, sexual excitement, or nudity;
 - (3) It contains a display, description, or representation, of bestiality or extreme or bizarre violence, cruelty, or brutality;
 - (4) It contains a display, description, or representation of human bodily functions of elimination;
 - (5) It makes repeated use of foul language;
 - (6) It contains a display, description, or representation in lurid detail of the violent physical torture, dismemberment, destruction, or death of a human being;
 - (7) It contains a display, description, or representation of criminal activity which tends to glorify or glamorize such activity, and which with respect to juveniles has a dominant tendency to corrupt.
- (C) "Juvenile," shall mean an unmarried person under 18 years of age.
- (D) "Material," shall mean any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record or tape, or other tangible thing capable of arousing interest through sight, sound, or touch.
- (E) "Nudity," shall mean the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than full, opaque covering, or of a female breast with less than full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernible turgid state.
- (F) "Obscene"—When considered as a whole, and judged with reference to ordinary adults, or, if it is designed for sexual deviates or other especially susceptible groups, judged with reference to such group, any material or performance is "obscene" if any of the following apply:

- (1) Its dominant appeal is to prurient interests;
 - (2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way which tends to represent human beings as mere objects of sexual appetite;
 - (3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;
 - (4) Its dominant tendency is to appeal to scatological interests by displaying or depicting human bodily functions of elimination in a way which inspires disgust or revulsion in persons with ordinary sensibilities without serving any genuine scientific, educational, sociological, moral, or artistic purpose;
 - (5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interests, when the appeal to such interests is primarily for its own sake or for commercial exploitation, rather than primarily for scientific, educational, sociological, moral, or artistic purpose.
- (G) "Performance," shall mean any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.
- (H) "Prostitute," shall mean a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.
- (I) "Sexual activity," shall mean sexual conduct or sexual contact, or both. "Sexual activity for hire" means an implicit or explicit agreement to provide sexual activity in exchange for anything of value paid to the person engaging in such sexual activity, to any person trafficking that person, or to any person associated with either such person.
- ~~(R.C. 2907.231 and R.C. 2907.04)~~
- (J) "Sexual conduct," shall mean vaginal intercourse between a male and a female, and anal intercourse, fellatio, and cunnilingus between persons regardless of sex. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.
- (K) "Sexual contact," shall mean any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if such person is a female, a breast, for the purpose of sexually arousing or gratifying either person.
- (L) "Sexual excitement," shall mean the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (M) A "Sex offense"
- (1) A violation of Section 2907.02, 2907.03, 2907.05, 2907.08, or 2907.09, of the Revised Code, a felony violation under Section 2907.04 of the Revised Code, a violation of Division (A)(4) of Section 2907.06 of the Revised Code, and a violation of Division (A) or (B) of Section 2907.07 of the Revised Code;

- (2) A violation of Paragraph (A) or (B) of Section 13.05.02, a violation of Paragraph (A)(4) of Section 13.05.03, a violation of Sections 13.05.04, 13.05.05, or a violation of Section 13.05.13 of the Athens City Code;
- (3) A violation of any former law of this state, substantially equivalent to any offense listed in Paragraph (M)(1) of this section;
- (4) An offense under an existing or former municipal ordinance or law of another state of the federal government, substantially equivalent to any offense listed in Paragraph (M)(1) of this section;
- (5) Violation of any prohibition against conspiracy or attempt to commit, or complicity in committing, any offense listed in Paragraph (M)(1), (2) or (3) of this section.

(N) "Place where a person has a reasonable expectation of privacy" means a place where a reasonable person would believe that the person could fully disrobe in private.

(O) "Private area" means the genitals, pubic area, buttocks, or female breast below the top of the areola, where nude or covered by an undergarment.

(Ord. No. 0-139-22, § I, 12-5-2022)

(R.C 2907.01)

13.05.08. Prostitution.

- (A) No person shall recklessly induce, entice, or procure another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person.
- (B) No person shall recklessly induce, entice, or procure another to engage in sexual activity for hire in exchange for the person giving anything of value to the other person if the other person is a person with a developmental disability and the offender knows or has reasonable cause to believe that the other person is a person with a developmental disability. A person with a developmental disability has the same meaning as found in R.C. 2905.32.
- (~~BC~~) Whoever violates this section (A) is guilty of prostitution, a misdemeanor of the third- first degree.
- (D) Whoever violates section (B) is guilty of engaging in prostitution with a person with a developmental disability, a felony of the third degree.

(R.C. 2907.231)

(Ord. No. 0-139-22, § I, 12-5-2022)

13.05.13. Corruption of a minor.

- (A) No person, 18 years of age or older, shall engage in sexual conduct with another, ~~not the spouse of the offender~~, when the offender knows such other person is over 12 but less than 16 years of age, or the offender is reckless in that regard.
- (B) This section shall not apply if the offender is four or more years older than the other person.
- (C) Whoever violates this section is guilty of corrupting a minor, a misdemeanor of the first degree.

(R.C. 2907.04)

(Ord. No. 0-135-21, § I, 11-15-2021)

0-92-24

Introduced by Jeff Risner, Chair
Finance & Personnel Committee

AN ORDINANCE AMENDING THE 2024 APPROPRIATION ORDINANCE 130-23.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The 2024 Appropriation Ordinance 130-23 is hereby amended by decreasing General Fund, Mayor, 101.101, T.C. 500, capital outlay, by Four Thousand Dollars (\$4,000.00), and increasing T.C. 300, travel expense, by the same amount, for mayoral travel that will be reimbursed by the National League of Cities, and increasing and decreasing the total appropriations by said amount.

SECTION II: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

0-93-24

Introduced by Jessica Thomas
Member of Council

AN ORDINANCE AMENDING ORDINANCES 74-21, 116-22, and 36-24;
AUTHORIZING ATHENS UPTOWN DESIGNATED OUTDOOR REFRESHMENT
AREA (DORA) HOURS OF OPERATION.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: Section II of Ordinance 36-24 is hereby amended to read as follows:

Section II: Section I of Ordinance 116-22 is hereby amended to read as follows:

3. Hours of Operation:

The hours of DORA operation for the district are proposed as follows:

Season Runs	May 7-	August 15
	Friday of Ohio University Spring commencement weekend through Sunday of the week prior to the beginning of Ohio University fall semester classes.	

Day	Start Time	End Time
Monday	12:00 p.m.	11:00 p.m.
Tuesday	12:00 p.m.	11:00 p.m.
Wednesday	12:00 p.m.	11:00 p.m.
Thursday	12:00 p.m.	11:00 p.m.
Friday	12:00 p.m.	11:00 p.m.
Saturday	12:00 p.m.	11:00 p.m.
Sunday	12:00 p.m.	8:00 p.m.

SECTION II: This Ordinance shall be in full force and effect at the earliest moment permitted by law upon its passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

0-94-24

Introduced by Jeff Risner, Chair
Finance & Personnel Committee

AN ORDINANCE AMENDING THE 2024 APPROPRIATION ORDINANCE 130-23.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATHENS, OHIO:

SECTION I: The 2024 Appropriation Ordinance 130-23 is hereby amended by appropriating from the unappropriated balance the following sums:

Twenty-Four Thousand Two Hundred Ninety-Four Dollars (\$24,294.00) to Street Fund, 220, T.C. 500, grant award for H2 Ohio Rivers Initiative Chloride Reduction; and

Fifteen Thousand Dollars (\$15,000.00) to Community Center Fund, 271, T.C. 500, for elevator pit repairs, and increasing the total appropriations by said amounts.

SECTION II: This Ordinance shall be in effect and full force upon passage and approval by the Mayor.

President of Council

ATTEST:

APPROVED:

Clerk of Council

Mayor

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

Revised Code, Secs. 5705.34, - 35.

*The Council of the **City of Athens**, Athens County, Ohio met in _____
(Regular or Special) session on the _____ day of _____, 2024
at the office of _____ with the following members present:*

_____ *moved the adoption of the following Resolution:*

*WHEREAS, This Council in accordance with the provisions of law has previously adopted
a Tax Budget for the next succeeding fiscal year commencing January 1st, 2025; and*

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

*RESOLVED, By the Council of the **City of Athens**, Athens County, Ohio that the amounts
and rates, as determined by the Budget Commission in its certification, be and the same are
hereby accepted; and be it further*

*RESOLVED, That there be and is hereby levied on the tax duplicate of said City
the rate of each tax necessary to be levied within and without the ten mill limitation as follows:*

SCHEDULE A				
SUMMARY OF AMOUNTS REQUIRED FROM GENERAL PROPERTY TAX APPROVED BY BUDGET COMMISSION, AND COUNTY AUDITOR'S ESTIMATED TAX RATES				
FUND	Amount to Be Derived from Levies Outside 10 Mill Limitation	Amount Approved by Budget Commission Inside 10 Mill Limitation	County Auditor's Estimate of Tax Rate to Be Levied	
			Inside 10 Mill Limit	Outside 10 Mill Limit
	Column II	Column IV	V	VI
General Fund				
Athens Township		1,159,868	2.60	
Canaan Township		54,830	2.40	
TOTAL	-	1,214,699	5.00	0.00

SCHEDULE B LEVIES OUTSIDE 10 MILL LIMITATION, EXCLUSIVE OF DEBT LEVIES		
Fund	Maximum Rate Authorized to Be Levied	County Auditor's Estimate of Yield of Levy (Carry to Schedule A, Column II)
General Fund:		
Total General Fund Outside 10 Mill Limitation		

and be it further

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

_____ seconded the Resolution and the roll being called upon its adoption the vote resulted as follows:

Adopted the _____ day of _____, 2024.

President of Council

Clerk of Council

CERTIFICATE OF COPY

ORIGINAL ON FILE

The State of Ohio, Athens County, ss.

I, _____, Clerk of the Council of the **City of Athens**, within
and for said County, and in whose custody the Files and Records of said Council are required
by the Laws of the State of Ohio to be kept, do hereby certify that the foregoing is taken and
copied from the original:

now on file, that the foregoing has been compared by me with said original document, and that
the same is a true and correct copy thereof.

Witness my signature, this _____ day of _____, 2024.

Clerk of Council

A copy of this Resolution must be certified to the County Auditor before the first day of October in each year, or at such later date as
may be approved by the Board of Tax Appeals.

No. _____

COUNCIL OF THE CITY OF

ATHENS

Athens County, Ohio

RESOLUTION

**ACCEPTING THE AMOUNTS AND
RATES AS DETERMINED BY THE
BUDGET COMMISSION AND
AUTHORIZING THE NECESSARY TAX
LEVIES AND CERTIFYING THEM TO
THE COUNTY AUDITOR.
(City Council)**

Adopted _____, 2024

Clerk of Council

Filed _____, 2024

Jill A. Thompson

Athens County Auditor

By _____
Deputy

**Athens City
Tax Revenue Estimates for 2025 (Tax Year 2024)**

<u>Tax Rate</u>	<u>Type</u>	<u>Date Voted</u>	<u>Levied Years</u>
2.60 Mills GF - Athens Twp n/a	Inside	n/a	Continuing
2.40 Mills GF - Canaan Twp n/a	Inside	n/a	Continuing

<u>Athens City</u>	<u>Athens Township</u>	<u>Canaan Township</u>	<u>Total</u>
AGR-RES	268,215,500	575,810	268,791,310
OTHER	175,448,800	22,682,680	198,131,480
UTILITY REAL	-	-	-
UTILITY PERS	25,918,040	789,930	26,707,970
PERSONAL	-	-	-
TOTAL	469,582,340	24,048,420	493,630,760

<u>Levy</u>	<u>Eff. Rate A</u>	<u>Eff. Rate B</u>	<u>Full Rate</u>	<u>Estimated Revenue</u>
GF - Athens Twp	2.600000	2.600000	2.60 \$	1,159,868
GF - Canaan Twp	2.400000	2.400000	2.40 \$	54,830
Total Tax Levy Estimate:			\$	1,214,699

Estimates are calculated using tax year 2023 rates and valuation

Total Estimated Revenue does not include PU or PPT Reimbursements.