DOCKET
OF A MEETING OF
THE LAKEWOOD CITY COUNCIL
TO BE HELD IN THE COUNCIL CHAMBERS
LAKEWOOD CITY HALL - 12650 DETROIT AVENUE
JULY 18, 2016
7:30 P.M.

The Regular Meetings of Lakewood City Council shall be held on the first and third Mondays of each month at 7:30 P.M., except that when such meeting date falls on a holiday such meeting shall instead be held on the following day. A Docket and Agenda of the business proposed to be transacted by Council will be available in the Clerk's Office and on the City's website www.onelakewood.com as soon after 4 PM on the Friday before a Council meeting as possible.

Section 121.08 of the Codified Ordinances of the City of Lakewood establishes rules for the public to follow when speaking before Council:

ADDRESSING COUNCIL – The President may recognize any non-member for addressing Council on any question then pending. In such cases, the person recognized shall address the chair, state his or her name and address and the subject matter he or she desires to discuss. Speakers must be courteous in their language and avoid personalities. When addressed by the Chair, the speaker must yield the floor and comply with all rulings of the chair, said rulings not being open to debate. Except with permission of Council specifically given, speakers shall be limited to five minutes. No person who has had the floor shall again be recognized until all others desiring an opportunity to speak have been given an opportunity to do so.

AGENDA ITEMS PROTOCOL:
The Clerk at the beginning of the meeting will present the AGENDA ITEMS sign-in sheet to the President of Council. Speakers will be called to address Council by the Chair. A citizen must first write his or her name, address and agenda item number on the designated sign-in sheet in order to be recognized.

PUBLIC COMMENT PROTOCOL:
The Clerk at the end of the meeting will present the PUBLIC COMMENT sign-in sheet to the President of Council. Public Comment will be welcomed at the end of a Council Meeting on miscellaneous issues or issues other than agenda items. A citizen must first write his or her name, address and topic on the designated sign-in sheet in order to be recognized. The forum is not designed to be a question and answer session.

I. Pledge of Allegiance
II. Moment of Silence
III. Roll Call

Reading and disposal of the minutes of the Regular Meeting of Council held July 5, 2016.

Reports, legislation and communications from Members of Council, the Mayor and other City Officials.

****OLD BUSINESS****

1. Committee of the Whole Report regarding July 18, 2016 Committee of the Whole Meeting. Mr. O'Leary; Chair. (Report to Be Provided)

2. Finance Committee Report regarding Ordinance 43-15A. Mr. Bullock; Chair. (Report to Be Provided)

3. **ORDINANCE 43-15A** – AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, amending Ordinance No. 43-15, adopted December 21, 2015, authorizing and directing the Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager to advertise for bid and enter into a contract with the lowest and best bidder in accordance with the Administrative Code of the City of Lakewood for **C.D.B.G. Fund Infrastructure Improvements** in accordance with the administrative code of the City of Lakewood, contracts not to exceed the specified amounts shown without separate resolution of Council. (1ST READING, REFERRED TO FINANCE COMMITTEE 7/5/16) (Pg. 5)

4. Public Safety Committee Report regarding Resolution 8878-16. (To Be Provided) Mr. O'Malley Chair.

5. **RESOLUTION NO. 8878-16** –A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force at the earliest period allowed by law, to impose a moratorium on the granting of building permits or certificates of occupancy for any building, structure, use or change of use that would enable the cultivation, processing, or retail sale of medical marijuana for a period not to exceed six months from the effective date of this resolution, in order to allow Council and the Lakewood Planning Commission to review applicable Ohio statutes, criminal codes and the Lakewood Zoning Code relative to such use. (REFERRED TO PUBLIC SAFETY COMMITTEE 7/5/16) (Pg. 7)

6. Rules and Ordinances Committee regarding Ordinance 32-16. Mr. Litten, Chair. (Report to Be Provided)

7. **ORDINANCE NO. 32-16** - AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect at the earliest period allowed by law, amending Section 1722.01, Location of Family Pools, Section 1121.10, Additional Accessory Structure Regulations, and Section 1123.10, Additional Accessory Structure Regulations, of the Codified Ordinances of the City of Lakewood, in order to provide for the regulation of the location of family swimming pools within the Zoning Code. (1ST READING & REFERRED TO THE RULES & ORDINANCES COMMITTEE 6/20/16, 2nd READING 7/5/16)(Pg. 9)

8. Liquor Permit Application for D5 transfer to YUZU, 13603 Madison Avenue from Bonnie and Clydes same address. (DEFERRED 7/5/16) (Pg. 13)

******NEW BUSINESS******

9. Communication from Councilmember Bullock regarding Enumerating costs to Lakewood taxpayers of defending hospital lawsuit. (Pg. 14)

10. Communication from Councilmember Marx regarding Fitbits. (Pg.15)

11. Communication from Mayor Summers regarding 2016 Grand Marshal of the 4th of July Parade Rear Admiral Janet Russell Donovan. (Pg.16)

12. **RESOLUTION NO. 8879-16** – A RESOLUTION to thank Rear Admiral Janet Russell Donovan for participating as the 2016 Grand Marshal in the City of Lakewood 4th of July Parade. (Pg.17)

13. Communication from Finance Director Pae regarding 2016 3rd Quarter Transfers and Advances. (Pg.18)

14. **ORDINANCE NO. 33-16** – AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the transfer and advance of certain funds. (Pg.19)

15. Communication from Law Director Butler regarding Update to contractor insurance requirements. (Pg. 21)

16. **ORDINANCE NO. 34-16** – AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, to establish minimum coverage limits and fees required under various sections of the Lakewood Codified Ordinances related to insurance. (Pg. 22)

17. Communication from City Planner Russell regarding $1,200 Donation from The Friends of Kauffman Park. (Pg. 24)

18. Communication from City Engineer Papke regarding Council Resolutions – CUY-Lakewood Heights Blvd. PID 100257. (Pg. 25)

19. **RESOLUTION NO. 8880-16** – A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, appropriating $394,070.00 and authorizing the Mayor to enter into an agreement which will allow the City of Lakewood to participate in the resurfacing of Lakewood Heights Boulevard from Chesterland Avenue to Alger Avenue in the Cities of Lakewood and Cleveland with the Ohio Department of Transportation. (Pg.26)

20. **RESOLUTION NO. 8881-16** – A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor to enter into a cooperative agreement with the City of Cleveland for the resurfacing of Lakewood Heights Boulevard from Chesterland Avenue to Alger Avenue in the Cities of Lakewood and Cleveland with the assistance of the Ohio Department of Transportation. (Pg. 45)

21. Liquor Permit Notice for a New C1 class to Food & Fancy Store LLC, 13702 Madison Avenue. (Pg. 53)

First REading & Referred to the
Finance Committee 7/5/16.

ORDINANCE NO. 43-15A BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, amending Ordinance No. 43-15, Adopted December 21, 2015, authorizing and directing the Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager to advertise for bid and enter into a contract with the lowest and best bidder in accordance with the Administrative Code of the City of Lakewood for **C.D.B.G. Fund Infrastructure Improvements** in accordance with the administrative code of the City of Lakewood, contracts not to exceed the specified amounts shown without separate resolution of Council.

WHEREAS, this Council by a vote of at least five of its members determines that this ordinance is an emergency measure, and that this ordinance shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public peace, property, health and safety, and to provide for the usual daily operation of municipal departments in that certain capital improvements projects are to be undertaken during the current construction season; now therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Section 1 of Ordinance 43-15, adopted December 21, 2015 currently reading as follows:

> Section 1. The Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager is hereby authorized and directed to engage architectural and/or engineering firms to provide professional services for the design, preparation of specifications, construction inspection, contract administration and to advertise for bids and enter into a contract with the lowest and best bidder in accordance with the Administrative Code of the City of Lakewood, for the following Infrastructure Improvements, contracts not to exceed the specified amounts shown, except as hereinafter provided:
>
> C.D.B.G. Infrastructure Projects $600,000

is hereby amended to read:

> Section 1. The Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager is hereby authorized and directed to engage architectural and/or engineering firms to provide professional services for the design, preparation of specifications, construction inspection, contract administration and to advertise for bids and enter into a contract with the lowest and best bidder in accordance with the Administrative Code of the City of Lakewood, for the following Infrastructure Improvements, contracts not to exceed the specified amounts shown, except as hereinafter provided:

C.D.B.G. Infrastructure Projects **$750,000**

Section 2. The Mayor (Director of Public Safety), the Director of Public Works, the Director of Law, the Director of Finance, and/or the Purchasing Manager is hereby authorized and directed to enter into contracts as set forth above in amounts not to exceed the specified amounts without further action from Council; and to enter into contracts in excess of specified amounts only upon consent of Council evidenced by adoption of a resolution specifying the authorized amount.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such 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.

Section 4. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble, and provided it receives the affirmative vote of at least five members of Council, this ordinance shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

_____
President of Council

_____
Clerk of Council

Approved: _____

_____
Mayor

REFERRED TO THE PUBLIC SAFETY COMMITTEE
7/5/16.

RESOLUTION NO. 8878-16 BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force at the earliest period allowed by law, to impose a moratorium on the granting of building permits or certificates of occupancy for any building, structure, use or change of use that would enable the cultivation, processing, or retail sale of medical marijuana for a period not to exceed six months from the effective date of this resolution, in order to allow Council and the Lakewood Planning Commission to review applicable Ohio statutes, criminal codes and the Lakewood Zoning Code relative to such use.

WHEREAS, on June 8, 2016, the Ohio General Assembly has adopted and the Governor has signed into law 131 Sub. H.B. 523, which becomes effective September 8, 2016; and

WHEREAS, 131 Sub. H.B. 523, among other things, permits patients in Ohio to use medical marijuana on the recommendation of physicians; creates state regulatory oversight of the cultivation, processing, retail sale, use and physician recommendation of medical marijuana; authorizes the legislative authority of a city to adopt regulations to prohibit or limit the number of retail medical marijuana dispensaries; and prohibits a cultivator, processor, retail dispensary or laboratory from being located or relocating within 500 feet of a school, church, public library, public playground or public park.

WHEREAS, as such, Council and the Planning Commission require additional time to undertake a review of all applicable codes statewide and within the city in order to formulate a local response to 131 Sub. H.B. 523; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power to enact planning and zoning laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality including restricting areas used for businesses and trades; and

WHEREAS, this Council by a vote of at least five members thereof determines that this resolution is an emergency measure, that this resolution shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood and that it is necessary for the immediate preservation of the public property health and safety and to provide for the usual daily operation of municipal departments in that the affected businesses are able to apply for a permit immediately notwithstanding the potential application of criminal and zoning codes; now, therefore

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Council hereby imposes a moratorium on the granting of building permits or certificates of occupancy for any building, structure, use or change of use that would enable the cultivation, processing, or retail sale of medical marijuana for a period not to exceed six months from the effective date of this resolution, in order to allow Council and the Lakewood Planning Commission to review applicable Ohio statutes, criminal codes and the Lakewood Zoning Code relative to such use

.

Section 2. For the purpose of this resolution, "medical marijuana" shall have the same meaning as that term is defined in Section 3796.01(A)(2) of the Ohio Revised Code, effective September 8, 2016.

Section 3. No building permits, certificates of occupancy or any other permits shall be granted to a business owner who intends to open, use any land or devote any floor area of the business for the purposes of the cultivation, processing, or retail sale of medical marijuana for the period of this moratorium. No valid existing business in the City may expand in any way that would establish cultivation, processing, or retail sale of medical marijuana for the duration of the moratorium.

Section 4. The moratorium shall be in effect for a period of six months from the effective date of this resolution or until changes are enacted to amend the Codified Ordinances of the City of Lakewood to address these issues or until Council approves legislation explicitly revoking this moratorium, whichever occurs first.

Section 5. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least five members of Council this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise shall take effect and be in force after the earliest period allowed by law.

Section 6. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council and that all such 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.

Adopted: _____ _____
PRESIDENT

_____
CLERK

Approved: _____ _____
MAYOR

FIRST READING & REFERRED TO RULES & ORDINANCES COMMITTEE 6/20/16. SECOND READING 7/5/16.

ORDINANCE NO. 32-16 BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect at the earliest period allowed by law, amending Section 1722.01, Location of Family Pools, Section 1121.10, Additional Accessory Structure Regulations, and Section 1123.10, Additional Accessory Structure Regulations, of the Codified Ordinances of the City of Lakewood, in order to provide for the regulation of the location of family swimming pools within the Zoning Code.

WHEREAS, Sections 1722.01, 1121.10 and 1123.10 of the Code stand to be updated to move the regulation of the location of family swimming pools to within the Zoning Code; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power of local self-government; and

WHEREAS, pursuant to the Constitution of the State of Ohio and the Ohio Revised Code, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality; and

WHEREAS, this Council by a vote of at least five of its members determines that this ordinance is an emergency measure and that it shall take effect immediately, as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that it is in the best interest of the City to permit applicants an opportunity to seek Zoning Code variances during the current construction season; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Section 1722.01, Location of Family Swimming Pools, of the Lakewood Codified Ordinances, currently reading as follows:

1722.01 LOCATION OF FAMILY POOLS.

(a) In addition to requirements contained in Section 1123.10(c) and 1121.10(c) of the Lakewood Zoning Code, no family swimming pool or family wading pool shall be placed or located in any front yard or side yard as prescribed by the Lakewood Zoning Code applicable to the lot or parcel upon which such pool is situated.

(b) Unless otherwise specifically provided the standards and regulations of this chapter shall not be applicable to family wading pools.

shall be and hereby is repealed, and new Section 1722.01, Location of Family Pools, of the Lakewood Codified Ordinances is enacted to read as follows:

1722.01 LOCATION OF FAMILY POOLS.

(a) The location of family swimming pools and family wading pools shall be governed by ~~In addition to requirements contained in~~ Section 1123.10(c) and 1121.10(c) of the Lakewood Zoning Code~~, no family swimming pool or family wading pool shall be placed or located in any front yard or side yard as prescribed by the Lakewood Zoning Code applicable to the lot or parcel upon which such pool is situated~~.

(b) Unless otherwise specifically provided the standards and regulations of this chapter shall not be applicable to family wading pools.

Section 2. Section 1121.10, Additional Accessory Structure Regulations, of the Lakewood Codified Ordinances, currently reading as follows:

1121.10 ADDITIONAL ACCESSORY STRUCTURE REGULATIONS.

(a) Accessory structures constructed of wood, excluding family swimming pools, shall:

(1) In an R1L or R1M Zoning District be located not less than three (3) feet from any lot line;

(2) In a R1H Zoning District be located not less than eighteen (18) inches from any lot line.

(b) Accessory structures having masonry walls without openings or roof projections on a lot-line side of the structure shall be not less than six (6) inches from any such lot-line.

(c) No family swimming pool shall be located closer than ten (10) feet to the side or rear property line of the lot upon which it is situated. The Commissioner may grant a variance to the ten (10) foot side and/or rear line requirement for portable family swimming pools, provided that written consent from each abutting property owner is filed with the application for variance.

shall be and hereby is repealed, and new Section 1121.10, Additional Accessory Structure Regulations, of the Lakewood Codified Ordinances is enacted to read as follows:

1121.10 ADDITIONAL ACCESSORY STRUCTURE REGULATIONS.

(a) Accessory structures constructed of wood, excluding family swimming pools, shall:

(1) In an R1L or R1M Zoning District be located not less than three (3) feet from any lot line;

(2) In a R1H Zoning District be located not less than eighteen (18) inches from any lot line.

(b) Accessory structures having masonry walls without openings or roof projections on a lot-line side of the structure shall be not less than six (6) inches from any such lot-line.

(c) No family swimming pool or family wading pool, as those terms are defined in Section 1722.02, shall be located in any front yard or side yard, and no family swimming pool or family wading pool shall be located closer than ten (10) feet to the side or rear property line of the lot upon which it is situated. The Commissioner may grant a variance to the ten (10) foot side and/or rear line requirement for portable family swimming pools, as that term is defined in Section 1722.02, provided that written consent from each abutting property owner is filed with the application for variance.

Section 3. Section 1123.10, Additional Accessory Structure Regulations, of the Lakewood Codified Ordinances, currently reading as follows:

1123.10 ADDITIONAL ACCESSORY STRUCTURE REGULATIONS.

(a) Accessory structures constructed of wood, excluding family swimming pools, may not be located within eighteen (18) inches of a side and rear property line.

(b) Accessory structures having masonry walls without openings and roof projections on the property line side of the structure may be set back from the rear property line and one (1) side line not less than six (6) inches.

(c) No family swimming pool shall be located closer than five (5) feet to the side or rear property line of the lot upon which it is situated. The Commissioner may grant a variance to the five (5) foot side and/or rear line requirement for portable family swimming pools, provided that written consent from each abutting property owner is filed with the application for variance.

shall be and hereby is repealed, and new Section 1123.10, Additional Accessory Structure Regulations, of the Lakewood Codified Ordinances is enacted to read as follows:

1123.10 ADDITIONAL ACCESSORY STRUCTURE REGULATIONS.

(a) Accessory structures constructed of wood, excluding family swimming pools, may not be located within eighteen (18) inches of a side and rear property line.

(b) Accessory structures having masonry walls without openings and roof projections on the property line side of the structure may be set back from the rear property line and one (1) side line not less than six (6) inches.

(c) No family swimming pool or family wading pool, as those terms are defined in Section 1722.02, shall be located in any front yard or side yard, and no family swimming pool or family wading pool shall be located closer than five (5) feet to the side or rear property line of the lot upon which it is situated. The Commissioner may grant a variance to the five (5) foot side and/or rear line requirement for portable family swimming pools, as that term is defined in Section 1722.02, provided that written consent from each abutting property owner is filed with the application for variance.

Section 4. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all such 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.

Section 5. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in its preamble, and provided it receives the affirmative vote of at least five members of Council this ordinance shall take effect and be in force immediately, or otherwise shall take effect and be in force after the earliest period allowed by law.

Adopted: _____ _____
PRESIDENT

_____
CLERK

Approved: _____ _____
MAYOR

NOTICE TO LEGISLATIVE AUTHORITY

OHIO DIVISION OF LIQUOR CONTROL
6606 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-9005
(614)644-2360 FAX(614)644-3166

TO

9811576 PERMIT NUMBER	TRFO TYPE	YAKUZA FOOD SERVICES LLC DBA YUZU 1ST FL & BSMT FRONT 13603 MADISON AV & PATIO LAKEWOOD OHIO 44107
10 01 2015 ISSUE DATE		
06 20 2016 FILING DATE		
D5 PERMIT CLASSES		
18 286 C F16366 TAX DISTRICT RECEIPT NO.		

FROM 06/22/2016

0826937 PERMIT NUMBER	TYPE	BONNIE AND CLYDES LLC 1ST FL & BSMT FRONT 13603 MADISON AV & PATIO LAKEWOOD OHIO 44107
10 01 2015 ISSUE DATE		
06 20 2016 FILING DATE		
D5 PERMIT CLASSES		
18 286 TAX DISTRICT RECEIPT NO.		

MAILED 06/22/2016 RESPONSES MUST BE POSTMARKED NO LATER THAN. 07/25/2016

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES C TRFO 9811576
(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT THE HEARING BE HELD ☐ IN OUR COUNTY SEAT. ☐ IN COLUMBUS.

WE DO NOT REQUEST A HEARING. ☐

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature) (Title)- ☐ Clerk of County Commissioner (Date)

☐ Clerk of City Council

☐ Township Fiscal Officer

CLERK OF LAKEWOOD CITY COUNCIL
12650 DETROIT AV
LAKEWOOD OHIO 44107

DLC 4052 REV. 03/09

12650 DETROIT AVENUE 44107 216/529-6055 FAX 216/226-3650
www.onelakewood.com
Lakewood City Council
SAM O'LEARY, PRESIDENT
DAVID ANDERSON, VICE PRESIDENT

Council at Large
RYAN NOWLIN
TOM BULLOCK
CINDY MARX

Ward Council
WARD I – DAVID ANDERSON
WARD II – SAM O'LEARY
WARD III – JOHN LITTEN
WARD IV – DAN O'MALLEY

July 18, 2016

Lakewood City Council
Mayor Michael P. Summers
12650 Detroit Avenue
Lakewood, Ohio 44107

Re: Enumerating costs to Lakewood taxpayers of defending hospital lawsuit

Dear Mayor and Members of Council:

For more than a year, the City of Lakewood has been conducting a legal defense against a lawsuit brought by five Lakewood citizens against the City and other parties related to the plan, now in effect, to preserve dozens of medical services in the heart of Lakewood's downtown by transitioning Lakewood Hospital to an outpatient medical center.

Those citizens filed the lawsuit relying on their legal standing as taxpayers, speaking in those legal documents as if they represent all taxpayers, although they do not. Not only do the plaintiffs not speak for all Lakewood taxpayers: they are *costing* their fellow Lakewood taxpayers a significant sum of money due to the costs of the legal representation required by the City necessitated by their lawsuit.

Those costs comprise both direct costs, such as payments to the law firm providing outside counsel, and indirect costs, such as the personnel costs of employee time required for legal and public records work entailed by the lawsuit.

By this letter, I am officially requesting that the Administration provide an exact enumeration of all direct costs involved with the lawsuit to date as well as an accounting of indirect costs. I also request a projection of additional costs, both direct and indirect, that will be incurred by the City in conducting the remainder of the still-pending lawsuit, to the degree that is possible.

Finally, I request that the Administration state whether the City can pursue a legal avenue in the lawsuit that could compensate Lakewood taxpayers, in whole or in part, for the costs of this lawsuit which five of their neighbors have filed without their consent.

Sincerely,

Thomas R. Bullock III

Thomas R. Bullock III
Member of Council, at Large

12650 DETROIT AVENUE 44107 216/529-6055 FAX 216/226-3650
www.onelakewood.com
Lakewood City Council
SAM O'LEARY, PRESIDENT
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Council at Large
RYAN P. NOWLIN
THOMAS R. BULLOCK III
CINDY MARX

Ward Council
DAVID W. ANDERSON, WARD 1
SAM O'LEARY, WARD 2
JOHN LITTEN, WARD 3
DAN O'MALLEY, WARD 4

July 18, 2016

Dear Colleagues,

Thanks to Director Yousefi's and Council's approval Fitbits were purchased at a cost of $117.95 and sold them to employees for $60 each, reflecting about a 50% savings. Many City employees are wearing the Fitbit to track their healthy living! The enthusiasm for the Fitbit is infectious, so much so, that when I picked up my Fitbit on the first day of distribution Director Yousefi distributed all the Fitbits ordered and had calls with requests that she could not fulfill.

I suggest Council consider approving the additional purchase of Fitbits by Director Yousefi allowing City employees who desire to monitor their healthy lifestyles the opportunity to do so. Studies show that employers engaging employees in healthy living and exercise programs save overall in health care expenses. I hope that the City of Lakewood not only reaps the benefits of health care savings but also demonstrates to the community commitment to becoming one of the healthiest cities in the USA.

Thank you for your consideration.

Sincerely,

Cindy Marx
Councilmember At-Large

12650 DETROIT AVENUE • 44107 • 216/521-7580• fax 216/521-1379
Website: www.onelakewood.com

MICHAEL SUMMERS
MAYOR

July 18, 2016

Lakewood City Council
Lakewood, OH 44107

Re: 2016 Grand Marshal of the 4th of July Parade
Rear Admiral Janet Russell Donovan

Dear Members of Council:

This evening I invite members of Council to join me in recognizing Admiral Janet Russell Donovan as the 2016 July 4th Parade Grand Marshal. Lakewood is proud to recognize Admiral Donovan and we would like to take this opportunity to thank her for all she has done for the community and our country.

In addition, I want to recognize the following parade winners:

Best Color Guard: Veterans of Foreign Wars Post #387
Best Float: Lakewood Child Care Center
Most Original Entry: Beck Center for the Arts
Best Bicycle: Emerson Unicycle Club
Most Spirit: H2O "Help to Others"

Following our presentation to Admiral Donovan, I invite representatives of the winning parade entrants to come forward to receive their plaques and to be recognized by the members of Lakewood City Council.

Sincerely,

Michael P. Summers

RESOLUTION NO. BY:

A RESOLUTION to thank Rear Admiral Janet Russell Donovan for participating as the 2016 Grand Marshal in the City of Lakewood 4th of July Parade.

WHEREAS, Admiral Donovan is a native of Lakewood, a product of Lakewood Public Schools and an inductee into the Lakewood High School distinguished Alumni Hall of Fame; and,

WHEREAS, Mayor Michael Summers and the 2016 City of Lakewood Parade Committee chose Admiral Donovan to be the Grand Marshal; and,

WHEREAS, Admiral Donovan is to be recognized and honored for her support and commitment to her community and country. Now therefore;

BE IT RESOLVED BY THE CITY OF LAKEWOOD, STATE OF OHIO:

Section 1. That this council and Mayor, hereby extend to Admiral Donovan their appreciation as well as the appreciation of all the citizens of this city for her exceptional service and dedication.

Section 2. That the Clerk of Council be and she is hereby authorized and directed to forward this Resolution to Admiral Donovan and that a copy of the Resolution be spread upon the minutes of the meeting.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such 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.

Adopted:_____ _____
PRESIDENT

_____
CLERK

Approved:_____ _____
MAYOR

Jennifer R. Pae
Director of Finance

12650 DETROIT AVENUE . 44107 . 216/529-6092 . FAX 216/529-6806

July 18, 2016

Lakewood City Council
Lakewood, OH 44107

Re: 2016 3rd Quarter Transfers and Advances

Dear Members of Council:

The 2016 3rd Quarter Transfer Ordinance reflects 25 percent of the total anticipated transfers between funds that were included within the 2016 appropriations.

Please place on first reading and refer to the Finance Committee for further discussion.

Sincerely,

Jennifer R. Pae
Director of Finance

ORDINANCE NO. BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the transfer and advance of certain funds.

WHEREAS, this Council by a vote of at least five of its members determines that this ordinance is an emergency measure, and that this ordinance shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public peace, property, health and safety, and to provide for the usual daily operation of municipal departments to provide for the usual daily operation of the City in that the City must record all financial transactions within the appropriate fiscal period; now, therefore,

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Director of Finance is hereby authorized to make the following transfers and advances:

			2016	
		3rd Quarter		
	Fund	**Transfers Out**		**Transfers In**
101	General Fund	$ 219,039		
	Special Revenue Funds			
250	Office on Aging IIIB			$ 172,500
	Internal Service Funds			
600	Hospitalization			$ 43,093
601	Workers' Compensation			$ 3,446
	Debt Service Payment s			
101	General Fund (HB 300 Lease)	$ 55,000		
211	SCMR (HB 300 Lease)	$ 6,250		
260	Lakewood Hosptl (HB 300 Lease)	$ 300		
501	Water (HB 300 Lease)	$ 3,813		
510	WWC (HB 300 Lease)	$ 800		
511	WWTP (HB 300 Lease)	$ 18,750		
520	Parking (HB 300 Lease)	$ 1,125		
530	Winterhurst (HB 300 Lease)	$ 20,000		
301	Debt Service Fund	$ -		$ 106,038
512	WWTP Improvements	$ 400,000		
301	Debt Service Fund			$ 400,000

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such 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.

Section 3. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble, and provided it receives the affirmative vote of at least five members of Council, this ordinance shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

_____
President of Council

_____
Clerk of Council

Approved: _____

_____
Mayor

KEVIN M. BUTLER
DIRECTOR OF LAW

PAMELA L. ROESSNER
CHIEF PROSECUTOR

JENNIFER L. SWALLOW
CHIEF ASSISTANT
LAW DIRECTOR

ANDREW N. FLECK
ASSISTANT PROSECUTOR/
ASSISITANT LAW DIRECTOR

LAW DEPARTMENT
OFFICE OF PROSECUTION
12650 Detroit Avenue, Lakewood, Ohio 44107
(216) 529-6030 | Fax (216) 228-2514
www.onelakewood.com
law@lakewoodoh.net

Direct dial: (216) 529-6034
kevin.butler@lakewoodoh.net

July 18, 2016

Lakewood City Council
12650 Detroit Avenue
Lakewood, Ohio 44107

Re: Update to contractor insurance requirements

Dear Members of Council:

The ordinance that follows is intended to revise Ord. 59-14, which was adopted in early 2015 to amend the insurance requirements the city imposes on contractors registering with the Division of Housing and Building.

Since then we in the law department, working with our colleagues in Housing and Building, have found that the automobile liability insurance minimum coverage brought a significant hardship on many small contractors seeking to do business in the city. On further reflection, and after consulting with our municipal risk advisor, we have determined that the auto coverage minimum may be adjusted downward in a way that still protects the city and its citizens but is more commercially reasonable.

Please forward the ordinance to a committee of your choice for further deliberation.

Very truly yours,

Kevin M. Butler

Kevin M. Butler

ORDINANCE NO. BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, to establish minimum coverage limits and fees required under various sections of the Lakewood Codified Ordinances related to insurance.

WHEREAS, Ordinance No. 59-14, which was adopted January 20, 2015, and which established certain fees and minimum limits of insurance required within various sections of the Codified Ordinances, stands to be amended; and

WHEREAS, pursuant to the Constitution of the State of Ohio, the Ohio Revised Code and the Second Amended Charter of the City of Lakewood, municipalities have the power to enact laws that are for the health, safety, welfare, comfort and peace of the citizens of the municipality, and to provide for local self-government, including establishing insurance limits and insurance-related fees; and

WHEREAS, this Council by a vote of at least five of its members determines that this ordinance is an emergency measure, and that this ordinance shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public property, health and safety, and to provide for the usual daily operation of municipal departments in that these changes need to be incorporated in order to permit contractors the ability to register quickly in the City; now, therefore

BE IT ORDAINED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The minimum limit of insurance required under Section 506.04(a)(3) of the Codified Ordinances shall be $250,000.00.

Section 2. The minimum limit of insurance required under Section 901.18(c)(2) of the Codified Ordinances shall be $1 million.

Section 3. The minimum limit of insurance required under Section 1160.14 of the Codified Ordinances shall be $1 million.

Section 4. The minimum limit of insurance required under Section 1321.02(a)(2) of the Codified Ordinances shall be $1 million for general liability and $100,000.00 per occurrence/$300,000.00 aggregate for automobile liability. Proof of workers' compensation coverage shall also be provided.

Section 5. The fees required by Section 1321.02(a)(4) of the Codified Ordinances shall be $100.00 as to registration and $100.00 as to testing.

Section 6. The minimum limit of insurance required under Section 1323.04 of the Codified Ordinances shall be $1 million for general liability and $100,000.00 per occurrence/$300,000.00 aggregate for automobile liability. Proof of workers' compensation coverage shall also be provided.

Section 7. This ordinance supersedes Ordinance No. 59-14, adopted January 20, 2015.

Section 8. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council, and that all such 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.

Section 9. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this ordinance, and provided it receives the affirmative vote of at least five members of Council this ordinance shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

_____
PRESIDENT

_____
CLERK

Approved: _____

_____
MAYOR

12650 DETROIT AVENUE • 44107 • 216/529-6600 • fax 216/529-5652
Website: www.onelakewood.com
PLANNING AND DEVELOPMENT

July 13, 2016

Dear Members of Council,

The Friends of Kauffman Park are providing a bench ($1,200 investment) to be placed under the scoreboard at Kauffman Park to provide a resting point along the new walking path at the park. This subtle but important improvement to the park is greatly appreciated. This correspondence shall serve as formal notice of the acceptance of the donation as required by L.C.O. 111.14.

Lakewood is very fortunate to have organizations such as the Friends of Kauffman Park, who are committed stewards of our public park. We look forward to working with Friends of Kauffman Park to implement this project and others.

Sincerely,

Jason M. Russell
City Planner II

JOSEPH J. BENO, PE
Director of Public Works

MARK K. PAPKE, PE, CPESC
City Engineer

DEPARTMENT OF PUBLIC WORKS
12650 DETROIT AVENUE • 44107 • (216) 529-6800

July 13, 2016

Lakewood City Council and Mayor

RE: Council Resolutions – CUY-Lakewood Heights Blvd. PID 100257

Dear Members of City Council and Mayor Summers,

Attached are two agreements for your consideration for the above referenced project: 1) ODOT LPA Agreement between the City of Lakewood and ODOT; and, 2) a City of Lakewood and City of Cleveland Cooperation Agreement.

The project entails the resurfacing of Lakewood Heights Boulevard from Chesterland Avenue to Alger Avenue within the cities of Lakewood and Cleveland. The project will include: resurfacing; base repairs, curb and median rehabilitation as needed, installation of ADA curb ramps, sign replacement and other appurtenances. The work within the limits of the City of Cleveland is 57% and the remaining 43% lies within the City Lakewood. The City of Lakewood will be the project lead. Design would begin in 2016 and extend into 2017. Construction is planned to begin in spring of 2018 and be completed by the fall of 2018.

The project estimated costs are $1,970,351.25. The attached LPA agreement represents ODOT's commitment to the project by funding 80% of the construction and construction engineering/inspection activities with a capped amount of $1,576,281. The design/engineering costs and remaining 20% construction costs are the responsibility of Lakewood and Cleveland. Those costs will be divided in proportion to the work in each city. The cooperation agreement defines the City of Lakewood as the project lead and the agreement to divide the costs as stated herein. I request that Council approve both agreements such that the project may proceed.

Please let me know if you have any further questions.

Respectfully,
THE CITY OF LAKEWOOD

Mark K. Papke, PE, CPESC
City Engineer

Copy to: Joe Beno – Lakewood Public Works Director

RESOLUTION NO. BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, appropriating $394,070.00 and authorizing the Mayor to enter into an agreement which will allow the City of Lakewood to participate in the resurfacing of Lakewood Heights Boulevard from Chesterland Avenue to Alger Avenue in the Cities of Lakewood and Cleveland with the Ohio Department of Transportation.

WHEREAS, the City shall cooperate with the Director of Transportation in the above-described project by assuming and bearing 100 percent of the entire cost of the improvement within city limits, less the amount of Federal-aid NOACA funds set aside by the Director of Transportation for the financing of this improvement from funds allocated by the Federal Highway Administration, U.S. Department of Transportation; and assuming and bearing 100 percent of the cost of preliminary engineering and right of way charges, excluding in-house preliminary engineering and right of way charges, incurred by the State; and

WHEREAS, the share of the cost of the Lakewood is now estimated in the amount of $394,070.00, but said estimated amount is to be adjusted in order that the City's ultimate share of said improvement shall correspond with said percentages of actual costs when said actual costs are determined; and

WHEREAS, the Director of Transportation has approved said legislation proposing cooperation and has caused to be made plans and specifications and an estimate of cost and expense for improving the above described highway and has transmitted copies of the same to this legislative authority; and

WHEREAS, the City desires the Director of Transportation to proceed with the aforesaid highway improvement; and

WHEREAS, this Council by a vote of at least five members thereof determines that this resolution is an emergency measure, and that this resolution shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public property, health and safety, and to provide for the usual daily operation of municipal departments and for the scheduling of street improvement projects; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The estimated sum of $394,070.00 is hereby appropriated for the improvement described above and the fiscal officer is hereby authorized and directed to issue an order on the treasurer for said sum upon the requisition of the Director of Transportation to pay the cost and expense of said improvement. Lakewood hereby agrees to assume in the first instance, the share of the cost and expense over and above the amount to be paid from federal funds.

Section 2. Lakewood hereby requests the Director of Transportation to proceed with the aforesaid highway improvement.

Section 3. The Mayor is hereby authorized to enter into an agreement, attached as Exhibit "A", on behalf of Lakewood, with the state providing for the payment of the sum of money set forth herein above for improving the described project.

Section 4. The Clerk of Council is hereby directed to transmit a certified copy of this legislation to the Director of Transportation.

Section 5. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberation of the 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.

Section 6. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least five members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

_____
President of Council

_____
Clerk of Council

Approved: _____

_____
Mayor

Rev. 6/23/2016

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the **City of Lakewood, Ohio**, hereinafter referred to as the LPA, **12650 Detroit Ave., Lakewood, Ohio 44107.**

1. PURPOSE

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

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

1.3 The **CUY-LAKEWOOD HEIGHTS BLVD.** (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.

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

2. LEGAL REFERENCES

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

a. Section 5501.03(D) of the ORC;
b. ODOT Locally Administered Transportation Projects, Manual of Procedures;
c. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
d. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT);
e. 2 CFR Part 200; and
f. Federal Funding Accountability and Transparency Act (FFATA)

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

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be **$ 1,970,351.25** as set forth in Attachment 1. ODOT shall provide to the LPA **80** percent of the eligible costs, up to a maximum of **$ 1,576,281** in Federal NOACA funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

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

4. PROJECT DEVELOPMENT AND DESIGN

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

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

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

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

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

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

5. ENVIRONMENTAL RESPONSIBILITIES

5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance

responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.

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

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

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

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

5.6 The LPA shall provide a letter indicating the proposed Best Management Practices (BMPs) to be utilized for post construction storm water management in accordance with the Ohio EPA National Pollutant Discharge Elimination System (NPDES) Construction General Permit. If no BMPs are proposed, a letter stating concurrence is required from the Ohio EPA.

6. RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION

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

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

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

6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to

perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.

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

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

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

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

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

7. ADVERTISING, SALE AND AWARD

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

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

7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of twenty-one (21) calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials.

ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and selling the contracts.

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

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

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

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

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

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

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

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

8. CONSTRUCTION CONTRACT ADMINISTRATION

8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC sections 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this agreement.

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

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

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

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

8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the ORC may result in the

termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.

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

Mayor Mike Summers
City of Lakewood
12650 Detroit Ave.
Lakewood, Ohio 44107
216-521-7580

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

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

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

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

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

9. CERTIFICATION AND RECAPTURE OF FUNDS

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

9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the project, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

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

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

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

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

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

GOOD FAITH EFFORTS (GFEs)

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

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

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

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

Office of Small & Disadvantaged Business Enterprise

The Ohio Department of Transportation

1980 West Broad Street, Mail Stop 3270

Columbus, Ohio 43223

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

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

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

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

As part of this reconsideration, the Contractor will have the opportunity to provide written documentation or an argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. ODOT will send the Contractor a written decision on reconsideration explaining the basis for finding that

the Contractor did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is not administratively appealable.

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

(a) Letter of reprimand;

(b) Contract termination; and/or

(c) Other remedies available by law including administrative suspension.

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

(a) The magnitude and the type of offense;

(b) The degree of the Consultant's culpability;

(c) Any steps taken to rectify the situation;

(d) The Contractor's record of performance on other projects including, but not limited to:

(1) Annual DBE participation over DBE goals;

(2) Annual DBE participation on projects without goals;

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

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

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

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

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

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

(2) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex, age, or disability, in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination

prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.

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

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

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

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

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

(6) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs (1) through (5) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

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

11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save

harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.

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

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

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

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

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

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

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

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

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

14. NOTICE

14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

Mayor Mike Summers
City of Lakewood
12560 Detroit Ave.
Lakewood, Ohio 44107

If to ODOT:

Myron S. Pakush
Deputy Director, District 12
5500 Transportation Boulevard
Garfield Heights, OH 44125

15. GENERAL PROVISIONS

15.1 Recovery of Direct Labor, Overhead, and/or Fringe Costs:

To be eligible to recover any costs associated with the LPA's internal labor forces used on this project, the LPA shall make an appropriate selection below:[1]

- [x] 1. Direct Labor only (no indirect cost recovery for fringe benefit or overhead costs)
- [ ] 2. Direct Labor plus indirect costs determined using the Federal De Minimis Indirect Cost Rate[2]
- [ ] 3. Direct Labor plus Approved Fringe Benefit Costs (fringe benefits only)[3]
- [ ] 4. Direct Labor plus indirect costs determined using the approved applicable Cost Allocation Plan rate[4]
- [ ] 5. No cost recovery of any LPA direct labor, fringe benefits, or overhead costs.

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[1] Note: If a timely election is not made at the time of contract execution, the cost recovery method will default to Option 5: No cost recovery of any LPA direct labor, fringe benefits, or overhead costs.

[2] The De Minimis Indirect Cost Rate is 10 percent of modified total direct costs (MTDC) per 2 CFR §200.414. Regardless of whether the LPA prepares a CAP or uses the 10-percent de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs and associated indirect costs only if such costs are accumulated, tracked, and allocated in accordance with such systems. Before an LPA is eligible to elect the de minimis rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. To obtain this approval, LPAs will be required to complete an Internal Control Questionnaire (ICQ), and LPAs with compliant time-tracking systems will be granted approval (be prequalified) to apply the de minimis rate.

[3] Annually, the LPA shall submit an updated rate for review and approval by the ODOT Office of External Audits.

[4] Annually, the LPA shall submit an updated rate for review and approval by the ODOT Office of External Audits.

For any labor costs to be eligible for reimbursement with Federal and State funds, the LPA shall meet all timekeeping requirements outlined in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers[5] and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall follow 2 CFR Part 200 and the LATP Manual of Procedures.

15.2 Financial Reporting and Audit Requirements: The LPA shall comply with the financial reporting and audit requirements of 2 CFR Part 200.

The LPA must submit performance reports at the interval required by the Federal awarding agency and pass-through entity. Annual reports must be due 90 calendar days after the reporting period; quarterly and semi-annual reports must be due 30 calendar days after the reporting period. Alternatively, ODOT may require annual reports before the anniversary dates of multiple year Federal awards.[6]

LPAs that expend $750,000 or more in the LPA's fiscal year in Federal awards must have a Single Audit, or program-specific audit, conducted for that year in accordance with 2 CFR §200.501.

Federal and State funds expended to or on behalf of a subrecipient must be recorded by the subrecipient (LPA). The LPA is responsible for tracking these payments throughout the life of the project in order to ensure an accurate Schedule of Expenditures of Federal Award (hereinafter referred to as *Schedule*) is provided for 20.205 funding. The LPA must identify each ODOT PID and/or Project and the corresponding expenditures on its Schedule separately. LPAS are responsible for ensuring funds related to this PROJECT are reported when the activity related to the Federal award occurs.[7] The LPA is required to report its own expenditures, in addition to any expenditures made by ODOT for the project in the applicable Schedule when the expenditure was made. When a Schedule is not accurately reported for the project, the LPA will be required to make corrections to past, current, and possibly future Schedules and Audit Reports to ensure Federal funds are accurately reported in the correct fiscal year matching the project expenditure. The LPA is required to report all Federal funds received, or expended on its behalf, regardless to differences in the LPA expenditure date and ODOT reimbursement date.

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

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

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[5] Question and Answer guidance can be found at the following web address: http://www.dot.state.oh.us/Divisions/Planning/LocalPrograms/Locallet%20Manual/LPA%20Questions%20and%20Answers%20Re%202%20CFR%20200%20(latest)%20(2).pdf

[6] See 2 CFR §200.328.

[7] Per 2 CFR §200.502

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

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

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

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

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

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

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

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

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

LPA: Lakewood, Ohio

By: _____

Title: _____

Date: _____

STATE OF OHIO
OHIO DEPARTMENT OF TRANSPORTATION

By: _____
Jerry Wray
Director

Date: _____

Attachment 1

PROJECT BUDGET – SOURCES AND USES OF FUNDS

SOURCES USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT										
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS										
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION										
PROJECT CONSTRUCTION COSTS										
INSPECTION										
TOTALS	$394,070.25	20	LNTP	$1,576,281	80	4TA7				$1,970,351.25

Attachment 2

COUNTY-ROUTE-SECTION

PID NUMBER

AGREEMENT NUMBER

DUNS NUMBER

DIRECT PAYMENT OF CONTRACTOR

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

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

We_____*(INSERT NAME OF LPA)*_____request that all payments for the Federal/State share of the construction costs of this agreement performed by _____*(CONTRACTOR'S NAME)*_____be paid directly to _____*(CONTRACTOR'S NAME)*_____.

_____

Contractor Name:
Oaks Vendor ID:
Mailing Address:

LPA signature

LPA Name:
Oaks Vendor ID:
Mailing Address:

_____

Approved, ODOT signature

RESOLUTION NO. BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor to enter into a cooperative agreement with the City of Cleveland for the resurfacing of Lakewood Heights Boulevard from Chesterland Avenue to Alger Avenue in the Cities of Lakewood and Cleveland with the assistance of the Ohio Department of Transportation.

WHEREAS, Lakewood Heights Boulevard is located with the Cities of Lakewood and Cleveland; and

WHEREAS, Lakewood will be the lead on the resurfacing project and will enter into all necessary agreements with the Ohio Department of Transportation and necessary contractors for the performance of the work as well as oversee the project; and

WHEREAS, the cost of the project to be shared by Lakewood and Cleveland is now estimated in the amount of $394,070.00, with Lakewood to pay 43% of the final cost and Cleveland to pay 57% of the final cost; and

WHEREAS, this Council by a vote of at least five members thereof determines that this resolution is an emergency measure, and that this resolution shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public property, health and safety, and to provide for the usual daily operation of municipal departments and for the scheduling of street improvement projects; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Mayor is hereby authorized to enter into an agreement, attached as Exhibit "A," with Cleveland providing for the cooperation in the resurfacing of Lakewood Heights Boulevard with the assistance of the Ohio Department of Transportation.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberation of the 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.

Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least five members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: _____

_____
President of Council

_____
Clerk of Council

Approved: _____

_____
Mayor

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT (the "Agreement") between the CITY OF LAKEWOOD, OHIO ("Lakewood") and the CITY OF CLEVELAND, OHIO ("Cleveland"), is made and entered into as of this _____ day of _____, 2016, under the following circumstances:

WHEREAS, Lakewood and Cleveland have agreed to cooperate pursuant to authority provided under the Constitution and laws of the State of Ohio, including, without limitation, Section 715.02 of the Revised Code, to provide for the improvement of Lakewood Heights Boulevard between certain termini as follows (collectively, the "Lakewood Heights Boulevard Improvements"):

- The improvement of Lakewood Heights Boulevard from Chesterland Avenue to Alger Road by preparing the surface, resurfacing and constructing and reconstructing ADA-compliant curb ramps, replacing City roadway signs, concrete sidewalks, driveway approaches and curbs, where necessary together with the necessary appurtenances and work incidental thereto (the "Lakewood Heights Boulevard Resurfacing Project").

WHEREAS, the approximate centerline of Lakewood Heights Boulevard between the termini described above constitutes a portion of the municipal boundary between Lakewood and Cleveland, and the parties hereto wish to provide for the construction and financing of the Lakewood Heights Boulevard Improvements to be undertaken pursuant to this Agreement in an efficient and economical manner to improve eliminate potential hazards to pedestrian and vehicular traffic; and

WHEREAS, Lakewood and Cleveland have accordingly applied for and expect to receive (i) from the Northeast Ohio Area Coordinating Agency (NOACA) through ODOT up to [$1,576,281] for the eligible costs of the Lakewood Heights Boulevard Resurfacing Project (ODOT Project ID No. 100257) under a Local Public Authority Agreement between Lakewood and ODOT (the ODOT LPA Agreement attached as Exhibit A); and

WHEREAS, Lakewood and Cleveland have agreed to share the additional costs of the Lakewood Heights Boulevard Resurfacing Project based on the square footage of the improvements in each municipality that being 57% within the City of Cleveland limits and 43% in the City of Lakewood limits; and

WHEREAS, Lakewood and Cleveland have determined that Lakewood should be the lead or contracting party in the planning, design, construction and inspection of the Lakewood Heights Boulevard Resurfacing Project; and

WHEREAS, the execution and delivery of this Agreement have been duly authorized by the Council of Lakewood by the passage of its Ordinance No. __-2016 and by the Council of Cleveland by the passage of its Ordinance No. 622-16.

NOW, THEREFORE, in consideration of the premises and of the covenants set forth in this Agreement, and of other good and valuable consideration, Lakewood and Cleveland agree, that:

Section 1. Planning, Design, Construction and Inspection. Lakewood shall enter into all contracts required for the construction of the Lakewood Heights Boulevard Improvements undertaken pursuant to this Agreement, including the construction contract or contracts and any contracts for the planning, design and inspection, and shall be responsible for the bidding (if required by law), award, supervision and enforcement of such contacts and, subject to the further provisions of this Agreement, for the payment of all costs of the Lakewood Heights Boulevard Improvements of the kinds enumerated in Section 727.08 of the Revised Code. Both parties agree to attend planning and construction meetings throughout the project. Time is of the essence, plan review, comments and approvals shall be performed within 30 calendar days of receipt. Inspections, punch list creation, and final walk through shall be performed in a timely manner generally within 48 hour notice excluding weekends and legal holidays.

[Notwithstanding any provision in this Agreement to the contrary, the parties agree that Lakewood will not proceed with the planning, design or construction of the Lakewood Heights Boulevard Resurfacing Project prior to its receipt of fully executed copies of the ODOT LPA Agreement.]

Section 2. Allocation of Costs. All contracts for the construction of the Lakewood Heights Boulevard Improvements undertaken pursuant to this Agreement, including the construction contract or contracts and any contracts for the surveying, engineering, planning, design and inspection, shall contain provisions (i) requiring the contractor or party performing the work to identify, in each request for payment under the contract, the portions of the costs for which payment is then sought that are allocable to each of the Lakewood Heights Boulevard Resurfacing Project, and (ii) permitting Cleveland, at its option, to inspect the contractor's performance and actual costs of construction from time to time during the construction period and for up to six months following the completion thereof. Cleveland shall have the right to communicate to Lakewood any dissatisfaction with contractor's performance. Lakewood shall not accept said contractor's performance unless and until Cleveland gives written notice of its approval.

The costs of the Lakewood Heights Boulevard Resurfacing Project shall be allocated as follows: (i) all costs eligible to be paid from moneys provided by ODOT under the ODOT LPA Agreement shall be allocated between ODOT (the State share) and parties hereto (the local share) as set forth in the ODOT LPA Agreement and (ii) any costs ineligible to be paid from moneys provided by ODOT under the ODOT LPA Agreement shall be allocated to the parties hereto and become a part of the local share. Lakewood shall submit invoices to ODOT for the State share of the eligible costs.

All local share costs of the Lakewood Heights Boulevard Resurfacing Project allocated to the parties hereto shall be divided based on the square footage of improvements in each municipality that being as follows: Lakewood is 43% and Cleveland is 57%. No additional

costs and/or change orders shall be incurred and/or approved by Lakewood without the prior written approval of Cleveland.

Section 3. Deposit of Funds; Allocation of Investment Earnings; Final Allocation. Within 30 days after the execution of this Agreement, Cleveland shall pay to Lakewood an amount equal to $79,800, (Invoices to be sent to Rick Switalski, PE - Manager Division of Engineering and Construction, 601 Lakeside, Room 518) Cleveland shall pay to the Director of Finance of Lakewood for deposit into the appropriate construction fund or funds created or to be created by Lakewood for the payment of costs of the Improvements, and for no other purpose whatsoever, an amount equal to Cleveland's portion of the costs of engineering services for the Lakewood Heights Boulevard Resurfacing Project.

Within 30 days after Lakewood shall have provided to Cleveland a copy of the revised estimated cost of the Lakewood Heights Boulevard Improvements to be undertaken pursuant to this Agreement based on the lowest and best bid for labor and materials, Cleveland shall pay to the Director of Finance of Lakewood for deposit into the appropriate construction fund or funds created or to be created by Lakewood for the payment of costs of the Improvements, and for no other purpose whatsoever, an amount equal to Cleveland's portion of the local share of the cost of the Improvements based on the revised estimate of cost.

Investment earnings derived from the investment by Lakewood of money in the construction fund or funds for the Improvements shall be divided between and credited or paid to Lakewood and Cleveland in proportion to the respective amounts paid by them into such fund or funds.

In the event Cleveland's portion of the local share of the final cost of the Improvements shall be in excess of the revised estimate, Lakewood shall give to Cleveland a detailed statement of that final cost, and Cleveland shall within 45 days after that notice pay to Lakewood any additional portion of the cost allocated to Cleveland in accordance with this Agreement. In the event Cleveland's portion of the local share of the final cost of the Improvements shall be less than the estimated Cleveland share based on the revised estimate of cost, Lakewood shall promptly refund to Cleveland the excess amount paid by Cleveland under this Section together with a detailed statement of such final cost and Cleveland's share. Any amount in excess of the estimate must be approved in writing prior to Cleveland incurring an obligation for such.

Section 4. Permission for Use of Right-of-Way. Cleveland will by appropriate legislation grant to Lakewood and to its contractors, officers, employees and agents the right to enter upon, occupy, excavate, and restore streets in located in Cleveland as shall be necessary for the construction of the Lakewood Heights Boulevard Improvements undertaken pursuant to this Agreement; provided that Lakewood shall restore or replace, or cause to be restored or replaced, any public improvements damaged in the construction of those Improvements and the cost of that restoration or improvement shall be a cost of the Improvements.

Section 5. Lead Party's Authority. Both parties recognize that it is necessary to have a lead party to work directly with the contractor(s). Lakewood (lead party) shall not incur and/or approve any additional expenses on behalf of Cleveland without Cleveland's prior written

approval. Lakewood shall not approve and/or accept any work performed in Cleveland without the prior written approval of Cleveland. Cleveland shall act in good faith and timely in approving expenses and/or acceptances of the quality of the work.

Section 6. Nature of Duties. All of the agreements, covenants and duties of Lakewood and Cleveland under this Agreement are hereby established as duties specifically enjoined by law or resulting from an office, trust or station upon Lakewood and Cleveland within the meaning of Section 2731.01, Ohio Revised Code.

Section 7. Notices. Any and all notices required or permitted hereunder shall be deemed sufficiently given if made in writing either delivered in person or deposited, postage prepaid, in the United States first class mail, addressed as follows:

If to Lakewood: City of Lakewood
12650 Detroit Avenue
Lakewood, Ohio 44107
Attention: Mayor

If to Cleveland: City of Cleveland
601 Lakeside Ave.
Cleveland, Ohio 44114
Attention: Mayor

Section 8. Effect of Partial Invalidity. A determination that any part of this Agreement is invalid shall not invalidate or impair the force or effect of any other part hereof or any other proceeding relating to the Improvement, except to the extent that such other part or proceeding is wholly dependent upon the part declared invalid.

Section 9. Entire Agreement; Amendments. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and it may not be effectively amended, changed, modified, altered or terminated except by written mutual agreement of the parties.

Section 10. No Personal Liability. No obligation hereunder shall constitute the personal obligation, whether jointly or severally, of the members of the Council of Lakewood, the members of the Council of Cleveland or any other officer of Lakewood or Cleveland.

Section 11. Captions and Headings. The captions and headings in this Agreement are solely for convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall be regarded as an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have each executed this Agreement as of the date first written above.

Approved as to form:

By: _____
Assistant Director of Law

CITY OF LAKEWOOD, OHIO

By: _____
Mayor

CITY OF CLEVELAND, OHIO

By: _____
Director,
Mayor's Office of Capital Projects

City of Cleveland
Clerk of Council

ORDINANCE NO. 622-16

By Council Members Kazy, Keane, K. Johnson and Kelley (by departmental request).
An emergency ordinance authorizing the Director of Capital Projects to enter into one or more agreements regarding the public improvement of resurfacing Lakewood Heights Boulevard; and to cause payment to the City of Lakewood for the City's portion of the improvement.

WHEREAS, the City of Lakewood will be making the public improvement of resurfacing Lakewood Heights Boulevard from Alger Road to Chesterland Avenue in the Cities of Lakewood and Cleveland ("Lakewood Heights Boulevard Resurfacing Project"); and

WHEREAS, the approximate centerline of Lakewood Heights Boulevard between the termini constitutes a portion of the municipal boundary between the City of Lakewood and Cleveland; and

WHEREAS, in order to ensure a seamless border between Lakewood and Cleveland, to provide the most economical and efficient solution, and to eliminate potential hazards to pedestrian and vehicular traffic, the City of Cleveland desires to partner with the City of Lakewood to allow Lakewood to include the Cleveland portion in the Lakewood Resurfacing Project; and

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Director of Capital Projects is authorized to enter into any agreement or agreements with the City of Lakewood regarding the Lakewood Resurfacing Project to, among other things, allow Lakewood to make the public improvement of resurfacing the portion of Lakewood Heights Boulevard which is located in the City of Cleveland; and to allow Lakewood to apply for and accept federal funds designated for this purpose.

Section 2. That this Council authorizes payment to the City of Lakewood of Cleveland's share of the Lakewood Resurfacing Project, for the portion that is located in the City of Cleveland, from Fund Nos. 20 FS 520, 20 SF 528, 20 SF 534, 20 SF 540, 20 SF 546, 20 SF 554, 20 SF 563, 20 SF 568, 20 SF 574, and from the fund or funds to which are credited the proceeds from the sale of bond funds authorized by Ordinance No. 366-16, passed March 21, 2016, and any future bonds if issued for this purpose.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

Passed June 6, 2016.
Effective June 7, 2016.

I, Patricia J. Britt, City Clerk, Clerk of Council, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 622-16, passed by the Council of the City of Cleveland on June 6, 2016.

WITNESS my hand and seal at Cleveland, Ohio, this 10th day of June, 2016.

Patricia J. Britt
City Clerk, Clerk of Council

City Hall, Room 216 • 601 Lakeside Avenue • Cleveland, Ohio 44114 • (216) 664-2840 • Fax (216) 664-3837
www.clevelandcitycouncil.org

NOTICE TO LEGISLATIVE AUTHORITY

OHIO DIVISION OF LIQUOR CONTROL
6606 TUSSING ROAD, P.O. BOX 4005
REYNOLDSBURG, OHIO 43068-9005
(614)644-2360 FAX(614)644-3166

2804673 PERMIT NUMBER	NEW TYPE	TO FOOD & FANCY STORE LLC 13702 MADISON AV LAKEWOOD OH 44107
ISSUE DATE		
06 28 2016 FILING DATE		
C1 PERMIT CLASSES		
18 286 TAX DISTRICT	C B25819 RECEIPT NO.	

FROM 06/30/2016

PERMIT NUMBER	TYPE	
ISSUE DATE		
FILING DATE		
PERMIT CLASSES		
TAX DISTRICT	RECEIPT NO.	

MAILED 06/30/2016 RESPONSES MUST BE POSTMARKED NO LATER THAN. 08/01/2016

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.

REFER TO THIS NUMBER IN ALL INQUIRIES C NEW 2804673
(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT THE HEARING BE HELD ☐ IN OUR COUNTY SEAT. ☐ IN COLUMBUS.

WE DO NOT REQUEST A HEARING. ☐

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature) (Title)- ☐ Clerk of County Commissioner (Date)

☐ Clerk of City Council

☐ Township Fiscal Officer

CLERK OF LAKEWOOD CITY COUNCIL
12650 DETROIT AV
LAKEWOOD OHIO 44107

DLC 4052 REV. 03/09