1. Agenda

   Documents:

   20191015.PDF

1.1. October 15, 2019 Workbook

   Documents:

   10-15-2019 WORKBOOK.PDF
MIDDLETOWN CITY COUNCIL AGENDA
TUESDAY, October 15, 2019

CITY COUNCIL BUSINESS MEETING – 5:30 PM – COUNCIL CHAMBERS – LOWER LEVEL

MOMENT OF MEDITATION/PLEDGE OF ALLEGIANCE TO THE FLAG/ ROLL CALL

CITY MANAGER REPORTS
Public Safety Budget

CITIZEN COMMENTS, GUESTS, ORGANIZATIONS’ REPORTS
Ann Munafo, Elderly Services Program

CONSENT AGENDA. . . Matters listed under the Consent Agenda are considered to be routine and will be enacted by one motion and one vote of consent. There will be no separate discussion of these items. If discussion is desired, that item will be removed and considered separately.
(a) Approve the City Council minutes from October 1, 2019
(b) Receive and File Board and Commission minutes:
   Civil Service Commission- May 16, June 20, July 18 & August 15, 2019
   Middletown Visitors Bureau - June 17, 2019
   Library Board- June 18 and July 16, 2019
(c) Confirm the personnel appointments of:
   Wade Addison Gates to the position of Corrections Officer in the Department of Public Safety, Division of Police; and
   Gerry Burris to the position of Water Reclamation Manager in the Department of Public Works & Utilities, Division of Wastewater Treatment; and
   Brandon Reaman to the position of Patrol Officer in the Department of Public Safety, Division of Police
(d) To recommend the purchase of Hydrofluorosilicic Acid (HFS) from Bonded Chemicals, Inc., of Columbus, Ohio, in the amount of $2.44/gallon for use at the Water Treatment Plant during the 2020 calendar year.
(e) To receive and file the Maintenance Bond and Performance Bond, submitted by Grand Communities, LLC for the public improvements in Renaissance II Section 4.
(f) To approve the final plat for Renaissance II Section 4 for a total of 20 single family homes on a total of 5.661 acres.

MOTION AGENDA
(a) Authorize the City Manager to enter into a contract with Ford Development Corp. to proceed with the Dixie Highway Water Main Replacement.
(b) To impose a suspension without pay of one day (8 hours) for City Manager Douglas Adkins

COUNCIL COMMENTS
It is the policy of the City of Middletown to make all public hearings an meetings accessible to all persons, in accordance with state and/or federal laws. If you have a disability which requires accommodation in order for you to attend and/or participate in this meeting, please contact us at 425-7831 at least forty-eight hours prior to the time of the meeting to advise us of the need for accommodation, and reasonable efforts shall be made to provide the same. This agenda may be accessed on the City of Middletown website @ http://www.cityofmiddletown.org.
LEGISLATION

1. **Ordinance No. O2019-58**, an ordinance establishing a procedure for and authorizing a contract with Midas Midwest, LLC for repairs to the Bonita Drive and Jackson Lane storm sewer and declaring an emergency.


3. **Ordinance No. O2019-60**, an ordinance to enact Section 660.22 (Unsolicited Materials) of the Middletown Codified Ordinances. (Second Reading)

4. **Ordinance No. O2019-61**, an ordinance authorizing the City Manager to enter into a Job Incentive Grant Agreement with Midwest Ammunition, LLC. (Second Reading)

5. **Ordinance No. O2019-62**, an ordinance establishing a procedure for and authorizing a contract with SmartBill Ltd. for the printing and mailing of water bills. (Second Reading)

6. **Resolution No. R2019-30**, a resolution authorizing the City Manager to enter into an agreement with the Ohio Department of Transportation for improvements to Central Avenue between University Boulevard and Verity Parkway. (Second Reading)

7. **Resolution No. R2019-31**, a resolution declaring that opiate abuse, addiction, morbidity and mortality is a serious public health crisis in the City of Middletown and is a public nuisance and authorizing, approving and retaining certain law firms in litigation against the contributors of opioid addiction crisis including but not limited to opioid manufacturers and distributors and declaring an emergency.

8. **Ordinance No. O2019-63**, an ordinance establishing a procedure for and authorizing a contract with the Motz Group for the installation of artificial field turf at Rathman Field and declaring an emergency.
9. **Ordinance No. O2019-64**, an ordinance authorizing a lease agreement with Historic Goetz Tower, LLC for office space in the Goetz Tower located at 1000 Central Avenue and declaring an emergency. (No action requested until November 5, 2019.)

10. **Ordinance No. O2019-65**, an ordinance establishing a procedure for and authorizing a contract with AVFuel for the purpose of aviation fuel and declaring an emergency. (No action requested until November 5, 2019.)

11. **Ordinance No. O2019-66**, an ordinance establishing a procedure for and authorizing purchases of asphalt by the City Purchasing Agent in 2020. (First Reading)

12. **Ordinance No. O2019-67**, an ordinance establishing a procedure for and authorizing a contract with Polydyne, Inc. for the purchase of polymer for use at the Water Reclamation Facility for the year 2020. (First Reading)

13. **Ordinance No. O2019-68**, an ordinance amending Sections 1037.05 (Mobile Food Vending; Application) and 1037.07 (Mobile Food Vending; Operating Restrictions) of the Codified Ordinances. (First Reading)

14. **Ordinance No. O2019-69**, an ordinance establishing a procedure for and authorizing a contract for the transfer of City owned property to Arthur Frasik, Jr. (First Reading)

15. **Resolution No. R2019-32**, a resolution to make adjustments to appropriations for current expenses and other expenditures of the City of Middletown, Counties of Butler and Warren, State of Ohio, for the period ending December 31, 2019. (First Reading)
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CITY MANAGER REPORTS
CONSENT

AGENDA
At 5:30 p.m., Mayor Mulligan called the City Council meeting to order in Council Chambers, Lower Level of the City Building.

City Council Members present: A. Vitori, S. Bohannon, T. Moon, J. Mulligan, L. Mulligan.

**Stand with Israel Proclamation**

Mayor Mulligan welcomed Pastor Childers and Rabbi Horvitz to the podium to receive the following proclamation.

**PROCLAMATION**

WHEREAS, the State of Israel is the greatest ally to the United States in the Middle East; and

WHEREAS, the United States of America was the first country to recognize the new state of Israel on May 14, 1948; and

WHEREAS, people from all walks of life and organizations in Middletown, Ohio have come together in support of Israel. One such organization is Christians United for Israel which recently celebrated the achievement of more than seven million members.

NOW THEREFORE, I, Lawrence P. Mulligan, Jr., Mayor of the City of Middletown, Butler and Warren Counties, State of Ohio do recognize the support of the State of Israel by proclaiming October 1, 2019, as **Stand with Israel Day** in the City of Middletown

Rabbi Horvitz thanked the Mayor for the proclamation and explained that ten days starting with Rosh Hashanah and ending with Yom Kippur are commonly known as the Days of Awe (Yamim Noraim) or the Days of Repentance. This is a time for serious introspection and a time to consider our relationships and how we relate to one another.

Mr. Adkins Middletown addressed local business owners raising concerns about homeless issue. He explained that homelessness in Ohio is back on the rise and provided examples of other cities such as Los Angeles, Dallas, New York, and states such as Iowa and Wisconsin that are also seeing a surge in homelessness. Unemployment in Middletown is at 4%, which is considered full employment. The remaining homeless often are effectively unemployable due to addiction, mental illness, disability, bad luck, or bad decisions, making them chronically homeless due to lack of resources.

Middletown and Hamilton have homeless shelters in Butler County. Some homeless request to come here for shelter, some homeless are dropped here because the city doesn’t have shelter and we do, and some jurisdictions are dumping their homeless. When we know a particular jurisdiction has dropped someone off, we call and investigate and discuss at the Chief or CM level.

Mr. Adkins discussed existing resources such as the Butler County Housing and Homeless Coalition sponsors 386 beds throughout Butler County with supportive services. They are happy to meet with Middletown businesses to hear their concerns and see how existing programs might help.

<table>
<thead>
<tr>
<th>Organization</th>
<th>Services Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Hamilton</td>
<td>Municipality; Community Planning and Funding Support for Homeless Services; Law Enforcement</td>
</tr>
<tr>
<td>City of Middletown</td>
<td>Municipality; Community Planning and Funding Support for Homeless Services; Law Enforcement</td>
</tr>
<tr>
<td>Butler County</td>
<td>Community Planning; PSH (Shelter + Care) Administration; Law Enforcement</td>
</tr>
<tr>
<td>BMHA</td>
<td>Public housing, housing choice vouchers</td>
</tr>
<tr>
<td>Community Development Professionals</td>
<td>Permanent Supportive Housing (Shelter Plus Care)</td>
</tr>
<tr>
<td>Butler Behavioral Health</td>
<td>Mental health; case management; housing</td>
</tr>
<tr>
<td>Community Behavioral Health</td>
<td>Mental health; case management; housing</td>
</tr>
<tr>
<td>Sojourner Recovery Services</td>
<td>Substance abuse treatment – inpatient; outpatient</td>
</tr>
<tr>
<td>Genesis</td>
<td>Substance abuse treatment – inpatient; outpatient</td>
</tr>
<tr>
<td>Transitional Living/PATH</td>
<td>Mental health, street outreach, PIT</td>
</tr>
<tr>
<td>Hope House Rescue Mission</td>
<td>Emergency shelter</td>
</tr>
</tbody>
</table>
He explained that the passage of the new Hope House Community Reinvestment Area was in support of the relocation and expansion of the Hope House Mission. The new Hope House facility had their groundbreaking in August 2018 and the new $11.5 million shelter moves Hope House out of downtown. It will provide 50 temporary shelter beds, 30 permanent apartments (BMHA vouchers), counseling and social services and access to health care professionals. This new facility is scheduled to be completed by year-end.

Mr. Adkins explained that in most cases, coming here as homeless or being brought here as a homeless person is not a crime. We have the shelters that most of Butler County and all of Warren County do not have. If the homeless person or the agency has not committed a crime, then operationally, we are limited in our response. If they commit a crime, then they would be arrested. We don’t see other city’s police cruisers stopping in our town, dropping people off. We get the story second hand, usually from an addict or mentally ill person. That gives us second hand information, insufficient for probable cause to file charges and certainly doesn’t meet the standard of guilty beyond a reasonable doubt. The solution, if there is one, is political, not operational. We may want to have a meeting of Butler County and/or Warren County elected officials to discuss this problem as a policy. He stated that many larger retail businesses have loss prevention personnel. Maybe the downtown business owners would want to establish a special improvement district to be able to fund additional security downtown.

Mr. Moon asked if non-profits are also dumping homeless people in Middletown; Mr. Adkins responded that he was not aware of any.

Mr. J. Mulligan asked if there was documentation of Mr. Adkins contacting other entities about dumping homeless people; Mr. Adkins stated that all of the communication was by phone.

Etha Walters, 230 Park Street, Middletown stated that she lives and works in Middletown, near the Library. She discussed her concerns about some of the new homeless population behaving in a menacing and threatening way to a single, disabled woman living independently. She stated that a minimum wage job does not provide enough money for basic living. She discussed the perils that disabled homeless people face. Ms. Walters stated that she is a member of the Butler County Pagan Gathering and that they would like to build a network to make services interconnected.

Randy Bell, 8049 Snyder Road Mason, Ohio stated that he was born and raised in Butler County and that he is the founder of Butler County Pagan Gatherings. He has been a social worker for more than 30 years. He encouraged the group to look at the deeper reasons for homelessness and to be compassionate. At the core of homelessness is drug addiction, racism and domestic violence. He wanted to see funding for more programs.

Jeremy Loukinas, 214 S. Main Street, Middletown stated that he is a resident of the South Main Historic District. When he moved there it was a safe neighborhood, modern city with a vibrant downtown. In late 2018, he noticed more homeless people. He had some items stolen so he installed high definition cameras. His cameras alerted him to people being dumped off in the alley behind his house at early morning hours.

Heather Gibson, 3215 Morgan Street, Middletown stated that she is the owner of Triple Moon Coffee and that she has great relationships with the local homeless population. The new group of homeless people are mentally unstable, mean and aggressive. Recently, a woman pulled her pants down and pooped on the sidewalk in front of the Pendleton Art Center, then she came into the.
<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>Statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amy Wray</td>
<td>4818 Roosevelt Avenue, Middletown</td>
<td>Stated that she owns Gypsy Soul inside Living Tree at 1040 Central Avenue. It is inhumane to dump people. She stated that several homeless people told her that they had come to Middletown on a travel voucher from Hamilton. These new homeless people are backpack wearing, stolen bicycle riding, entitled drug addicts that are aggressive. She stated that the downtown business owners are mad as hell. There is zero reason for business owners and customers to feel unsafe. Recently, a homeless man on acid came into her shop and claimed he was a vampire and undressed in the shop. Another homeless man followed and harassed a 16 year old female child when she left the shop. She discussed the safety measures that she has taken in her shop and provided Council with a list of possible solutions.</td>
</tr>
<tr>
<td>Renae Theiss</td>
<td>1728 Sheffield Street, Middletown</td>
<td>Stated that she is the owner of the Living Tree and the manager at Triple Moon Coffee. She stated that these new homeless people are disrespectful, unpredictable, and aggressive. She expressed her extreme concern for the safety of the businesses, and the residents. Children that attend Midd State have been harassed, followed and sexually propositioned by these transient men. The City needs to develop and implement short and long term solutions to this escalating crisis.</td>
</tr>
<tr>
<td>Courtney Gross</td>
<td>2089 Franklin Madison, Middletown</td>
<td>Stated that she works downtown at the Square, Don’s Pizza and at Triple Moon and that she feels threatened by manic and aggressive homeless men.</td>
</tr>
<tr>
<td>Jeff Payne</td>
<td>Downtown Middletown Inc. Director, 1050 Central Avenue, Suite 2750, Middletown</td>
<td>Reported that the DMI Board has not had a chance to meet on this issue. This is an interjurisdictional problem that needs to be dealt with immediately. This problem jeopardizes the image of downtown and goes against the work that DMI has done to transform Downtown. DMI will be meeting with downtown businesses.</td>
</tr>
<tr>
<td>Monica Nenni</td>
<td>7 N. Highview Drive, Middletown</td>
<td>Stated that in the past she lived in Over the Rhine and did not feel unsafe. She discussed establishing a special improvement district to enhance the safety downtown. She stated that something must be done immediately or the downtown business owners will lose progress and investment.</td>
</tr>
<tr>
<td>Josh Laubach</td>
<td>220 Aberdeen Drive, Middletown</td>
<td>Stated that he is the co-founder of Rolling Mill Brewing Company. In May or June a Butler County Sheriff’s deputy dropped off a mentally ill person with a knife near the brewery; this person harassed an employee. Another time, he encountered a woman from Mason that had been dropped off. He stated that Chief Muterspaw and the Police department have done an incredible job and that Chief Muterspaw said what needed to be said on social media. He encouraged City Council to support Chief Muterspaw and to stand up for Middletown.</td>
</tr>
<tr>
<td>Nicole Condrey</td>
<td>1407 Wren Street, Middletown</td>
<td>Stated that she is proud of Middletown and the work that they have done taking care of the homeless. She stated that we need to put on our own oxygen mask first and take care of our own local homeless population. She suggested improving the relationships with other entities, being aware of documentation and vouchers, officers dropping off homeless people. She suggested changing other cities, requiring documentation and requesting that the state legislature reduce their transportation funds if they don’t take care of their homeless.</td>
</tr>
<tr>
<td>Brandy Slavens</td>
<td>4464 Dixie Highway, works for Access Counseling</td>
<td>Stated that Access Counseling works closely with the homeless population. She stated that the state requires a “point of time” count of the homeless every year. Middletown usually runs 200-250, and Hamilton usually runs 350-500 homeless annually. Middletown has one homeless shelter, Hamilton has four and Warren County has two. She stated that resources and programming are continuously being reduced. She suggested establishing a Community Engagement Center. It would address some of the issues that have been raised tonight. It would have washers and dryers, showers, and kitchen facilities. She stated that this facility could be up and running in a month with the right building. She reported that the preferable drug use has gone from heroin to meth; meth makes people mean, angry with active psychosis.</td>
</tr>
</tbody>
</table>
| Gabriel Schoenlein| 121 S. Main Street, Middletown                | Discussed the increase of homeless people trespassing, littering, loitering and criminal activity in his neighborhood. He apprehended a repeat trespassing offender and when the police arrived, no charges were filed. Another time a man and woman riding bicycles and wearing back packs went by his home screaming and yelling at each other. The woman claimed that the man had assaulted her, Mr. Schoenlein called the police. When the police arrived they stated that there had been no crime committed because the victim was not there to describe it. Mr. Schoenlein wanted a report submitted and the officer said that even if he
submitted a report, nothing would be done about it. He stated his appreciation and support for the police department but was disappointed in the police response to these incidents. He expects the leaders to do something about the situation immediately.

Jamie Beth Loukinas, 214 S. Main Street, Middletown thanked Council for hearing the concerns of the residents and business owners. She applauded the work that had been accomplished in the downtown and suggested that a task force be created to pinpoint the problems.

Ja

mie Beth Loukinas

At 6:50 p.m. Mayor Mulligan called a short recess.

At 6:55 p.m. Mayor Mulligan called the meeting back to order.

Mr. Adkins presented the 2020 non-public safety budget and discussed the significant changes for 2020 including:

• 2.5% cost of living raise for all employees
• No performance based compensation program in 2020
• Income tax revenue is projected to increase 3.5% over 2019 budget in 2020; 2.4% decrease compared to projected actual 2019 year end revenues
• City’s share of health insurance costs increase 6%
• 27 bi-weekly pays in 2020 (extra $745k in 2020 General Fund budget)
• Beginning stages of paramedicine program
• Adding two dedicated traffic officers to Police

Mr. Adkins provided a recap of 2019 & 2018 budget presentation and explained that we always try to be conservative on revenues and budget every possible expenditure.

2018 BUDGET

| Year End 2017 Expected General Fund Balance | $5,353,747 | 18.6% |
| Year End 2018 Budgeted GF Balance | $4,512,890 | 15.0% |

2019 BUDGET

| Year End 2018 Expected General Fund Balance | $6,566,828 | 21.1% |
| Year End 2019 Budgeted GF Balance | $4,778,914 | 15.5% |

• Expected year-end 2019 GF Balance as of 8/31/19 is now $7,818,397 or 24.4%, or $3,039,483 higher than last year’s budget presentation.

| Year End 2019 Expected General Fund Balance | $7,818,397 | 24.4% |
| Year End 2020 Budgeted GF Balance | $4,877,992 | 15.1% |

• 2020 Increase in Non-Public Safety Personnel Costs | $155,848 | 3.2% |
  * without extra bi-weekly | $5,361 | 0.1% |

• 2020 Increase in Public Safety Personnel Costs | $1,381,152 | 7.0% |
  * without extra bi-weekly | $785,938 | 4.0% |

• No Water rate increase in 2020
• Sewer rate increase 10% in 2020
• Sewer rate increases consistent with Long Term Control Plan Projections.
• Solid Waste increase of $0.50 in 2020 due to increase in Rumpke contract
• No Storm Water Fee increase in 2020
• We can confirm receiving an estimate of $608,000 in 2019 construction income tax through August 31st. This is not included in 2020 revenue budget which results in the 2.4% decrease in income tax revenue vs. 2019 projected actual.

Mr. Adkins provided an Employee Benefits Fund Update and reminded everyone that the payback of General Fund loan began in 2018 and will continue in 2019 & 2020*

Recap - 2018 Fund Balance

| Beg. Balance | 390,298.53 |
| Revenues | 5,617,773.50 |
| Expenditures | (5,287,425.88) |
| Loan Payback | (500,000) |
| End Balance | 220,646.15 |

Estimates for 2019 as of 8/31/19:

| Beg. Balance | 220,646 |
| Revenues | 5,782,071 |
| Expenditures | 4,971,131 |
| End Balance | 1,031,586 |

**plan to pay back $500,000 of loan from GF in December if trend continues**

2020 BUDGET:

| Beg. Balance | 531,586 |
| Revenues | 6,137,204 |
Expenditures 5,801,617
End Balance 867,173

<table>
<thead>
<tr>
<th>General Fund Analysis</th>
<th>2020</th>
<th>2019</th>
<th>$ Change</th>
<th>% Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Non-Public Safety)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Council</td>
<td>$165,610</td>
<td>$157,732</td>
<td>$7,878</td>
<td>5.0%</td>
</tr>
<tr>
<td>City Manager</td>
<td>$428,886</td>
<td>$476,163</td>
<td>($47,277)</td>
<td>-9.9%</td>
</tr>
<tr>
<td>Finance Department</td>
<td>$634,831</td>
<td>$579,796</td>
<td>$55,035</td>
<td>9.5%</td>
</tr>
<tr>
<td>Information Systems</td>
<td>$727,072</td>
<td>$717,266</td>
<td>$9,806</td>
<td>1.4%</td>
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<tr>
<td>Economic Development</td>
<td>$1,553,475</td>
<td>$1,139,679</td>
<td>$413,796</td>
<td>36.3%</td>
</tr>
<tr>
<td>Administrative Services</td>
<td>$2,547,319</td>
<td>$2,398,491</td>
<td>$148,828</td>
<td>6.2%</td>
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<tr>
<td>Public Works &amp; Utilities</td>
<td>$2,100,800</td>
<td>$2,030,867</td>
<td>$69,933</td>
<td>3.4%</td>
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<tr>
<td>Non Departmental</td>
<td>$1,690,462</td>
<td>$1,668,201</td>
<td>$22,261</td>
<td>1.3%</td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>$9,866,740</td>
<td>$9,168,195</td>
<td>$698,545</td>
<td>7.6%</td>
</tr>
</tbody>
</table>

2020 Primary Goals/Changes – City Manager
• Continue work on new City Master Plan
• Continued response to the Heroin Epidemic
• Long Term Housing Policy – begin implementation to strengthen Middletown’s housing stock
• Continue work on restructuring of Fire Stations and staffing to assure a safer community
• 2019 Budget had funding for Transportation Plan which is removed in 2020 budget.

Finance

<table>
<thead>
<tr>
<th>Finance Department</th>
<th>2020</th>
<th>2019</th>
<th>Change</th>
</tr>
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<td></td>
<td>$634,831</td>
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<tr>
<td>* without extra bi-weekly</td>
<td>$617,143</td>
<td></td>
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2020 Primary Goals/Changes – Finance
• Implement a new payment portal for utility customers with autopay, text pay, reminders, etc.
• Continue working on an improved online tax filing option for residents.
• Continue to receive “Certificate of Achievement for Excellence in Financial Reporting Award” (CAFR), “Outstanding Achievement in Popular Annual Financial Reporting Award” (PAFR) and “Distinguished Budget Presentation Award” from Government Finance Officers Association (GFOA).
• Research auto-pay options for vendor payments in an effort to reduce mailing and check costs.

Information Systems

<table>
<thead>
<tr>
<th>Information Systems</th>
<th>2020</th>
<th>2019</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$745,357</td>
<td>$717,266</td>
<td>3.9%</td>
</tr>
<tr>
<td>* without extra bi-weekly</td>
<td>$725,854</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2020 Primary Goals/Changes Information Systems
• Complete telephone system upgrade
• Upgrade Network Infrastructure to install a city-wide high-speed wireless network to link locations
• Upgrade Public Works Software
• The addition of security cameras in the building and other areas

Economic Development

<table>
<thead>
<tr>
<th>Economic Development*</th>
<th>2020</th>
<th>2019</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$911,061</td>
<td>$732,854</td>
<td>24.3%</td>
</tr>
<tr>
<td>Communications**</td>
<td>$253,530</td>
<td>$168,972</td>
<td>50.0%</td>
</tr>
<tr>
<td>Planning ***</td>
<td>$388,884</td>
<td>$237,853</td>
<td>63.5%</td>
</tr>
<tr>
<td>Total Expenditures</td>
<td>$1,553,475</td>
<td>$1,139,679</td>
<td>36.3%</td>
</tr>
<tr>
<td>* without extra bi-weekly</td>
<td>$1,528,219</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Oakland Phase III, Paperboard Brownfield Work
** Includes $50,000 increase in recreation & additional money for continued upgrade of City
2020 Budget Priorities

Airport

<table>
<thead>
<tr>
<th>2020</th>
<th>2019</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Airport Operations</td>
<td>$1,241,993</td>
<td>$502,600</td>
</tr>
<tr>
<td>Airport Capital</td>
<td>$630,000</td>
<td>$2,400,000</td>
</tr>
</tbody>
</table>

Increase includes City taking over day-to-day operations at the Airport. Increase offset by fuel sale revenues & wellfield revenues – no change in GF supplement.

Capital includes ODOT Grants for: pond safety area and runway markings-$595,000 ODOT funded and $35,000 City match.

Administrative Services

<table>
<thead>
<tr>
<th>2020</th>
<th>2019</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Development</td>
<td>$295,421</td>
<td>$227,962</td>
</tr>
<tr>
<td><em>Code Enforcement moved to Police in 2019</em></td>
<td>$0</td>
<td>$23,800</td>
</tr>
<tr>
<td>Community Center</td>
<td>$120,000</td>
<td>$120,000</td>
</tr>
<tr>
<td>Law</td>
<td>$610,017</td>
<td>$594,296</td>
</tr>
<tr>
<td>HR</td>
<td>$433,932</td>
<td>$411,796</td>
</tr>
<tr>
<td>Building Inspection</td>
<td>$581,037</td>
<td>$532,130</td>
</tr>
<tr>
<td>Building Maintenance</td>
<td>$506,912</td>
<td>$488,507</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td>$2,547,319</td>
<td>$2,398,491</td>
</tr>
<tr>
<td>*without extra bi-weekly</td>
<td>2,500,373</td>
<td></td>
</tr>
</tbody>
</table>

2020 Primary Goals/ Changes Administrative Services
- Complete utilization of the Land Bank Demolition Grant
- Planning and implementation of the City’s New Housing Policy
- Continued Transition of HR adding a HR Manager position, implement a comprehensive staff development program & position classification plan to accurately reflect position descriptions & classifications

Public Works

<table>
<thead>
<tr>
<th>2020</th>
<th>2019</th>
<th>Change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineering</td>
<td>$484,486</td>
<td>$461,588</td>
</tr>
<tr>
<td>Street Lighting</td>
<td>$717,221</td>
<td>$710,120</td>
</tr>
<tr>
<td>Parks Maintenance</td>
<td>$899,093</td>
<td>$859,159</td>
</tr>
<tr>
<td><strong>Total Expenditures</strong></td>
<td>$2,100,800</td>
<td>$2,030,867</td>
</tr>
</tbody>
</table>

2020 Primary Goals/ Changes
- Implement Long Term Control Plan
- Continue design-build process for Lakeside Storm Water Redirection Project
- Continue Sewer System Condition Assessment Program
- Initiate planning for Downtown Storage Basin Project
- Continue development of Water System Asset Management Program

2020 Goals – Traffic/Electronic Maintenance

2020 Goals - Parks
- Continue to evaluate and implement traffic calming measures
- Continue replacement program for older LED traffic signals, and signal heads, at various intersections
- Update additional intersections with new control equipment to be compatible with new Centrac’s central master system
- Finalize development of a Parks Master Plan
Local Street Paving $3.7 Million in 2020 Paving

Contractor Paving
Estimated Cost = $3,350,000 ($1.4M General Capital Fund, $250k Storm Water Capital Fund, $1.2M Auto & Gas Tax Fund from new gas tax increase, $700k assessments for sidewalk, curb and gutter).

STREETS:
- Bonita Dr. between Roosevelt and Breiel
- Burton Rd. between Central and Grand
- Calumet Ave. between Yankee and Garfield
- Casper Ave between Carmody and Main
- Central Ave. between Carmody and Main
- Dorset Dr. between McGee and Grand
- 11th Ave. between Main and Lincoln
- Elsmere St. between Van and Crescent
- Gladys Dr. between Sherman and Grand
- McGee between McKnight and Dorset
- 16th Ave. between Main and Ohio
- Vermont St. between 17th and dead-end
- 500k additional – streets TBD

City Crew Paving
Estimated Cost = $300K (Auto & Gas Tax Fund) plus assessments for sidewalk, curb and gutter
STREETS: Antrim Ct., Court Donegal, Galway Circle, and Helton Dr. between Bonita and East S. University Bridge Project

$2,050,000 total projected cost - $800,000 funded by OPWC Grant & paving included with overall project budget

2020 Capital Projects

General Capital Fund:
- Local Street Paving $1,400,000
- Gateway Enhancements (I-75) $75,000
- City Building South Pavers $100,000
- University Bridge Rehab Design $1,550,000
- Bike Path connection to Franklin $160,000
- Traffic/Parks/Buildings $217,000
Total: $3,502,000

Water Fund:
- Water Facility Upgrades $550,000
- System Replacement Program $2,000,000
- GIS Improvements $10,000
Total: $2,560,000

Sewer Fund:
- WWTP Upgrades $550,000
- System Replacement $3,000,000
- Long Term Control Plan $10,000,000
- GIS Improvements $10,000
Total: $13,560,000

Storm Water Fund:
- Local Street Paving $250,000
- System Replacement Program $375,000
- University Bridge Rehab $500,000
- City Building South Pavers $75,000
- NPDES Compliance $50,000
Total: $1,250,000

Other Funds

<table>
<thead>
<tr>
<th>Fund</th>
<th>2020</th>
<th>2019</th>
<th>% change</th>
</tr>
</thead>
<tbody>
<tr>
<td>City Income Tax (230)</td>
<td>$24,220,419</td>
<td>$23,584,612</td>
<td>2.7%</td>
</tr>
<tr>
<td>* without extra bi-weekly</td>
<td>24,200,625</td>
<td></td>
<td>2.6%</td>
</tr>
<tr>
<td>Auto &amp; Gas Tax (210) *</td>
<td>$4,121,265</td>
<td>$3,471,299</td>
<td>18.7%</td>
</tr>
<tr>
<td>* without extra bi-weekly</td>
<td>4,080,759</td>
<td></td>
<td>17.6%</td>
</tr>
<tr>
<td>Health (228)**</td>
<td>$721,670</td>
<td>$585,338</td>
<td>23.3%</td>
</tr>
<tr>
<td>* without extra bi-weekly</td>
<td>701,756</td>
<td></td>
<td>19.9%</td>
</tr>
<tr>
<td>Municipal Court (250)</td>
<td>$1,934,275</td>
<td>$1,812,600</td>
<td>6.7%</td>
</tr>
<tr>
<td>* without extra bi-weekly</td>
<td>1,883,535</td>
<td></td>
<td>3.9%</td>
</tr>
<tr>
<td>Nuisance Abatement (260)</td>
<td>$330,000</td>
<td>$330,000</td>
<td>0.0%</td>
</tr>
<tr>
<td>Water Fund (510)</td>
<td>$9,650,398</td>
<td>$8,848,007</td>
<td>9.1%</td>
</tr>
<tr>
<td>* without extra bi-weekly</td>
<td>9,571,849</td>
<td></td>
<td>8.2%</td>
</tr>
<tr>
<td>Sewer Fund (520)</td>
<td>$14,369,275</td>
<td>$13,921,425</td>
<td>3.2%</td>
</tr>
<tr>
<td>* without extra bi-weekly</td>
<td>14,269,700</td>
<td></td>
<td>2.5%</td>
</tr>
</tbody>
</table>
Judge Sherron discussed the Municipal Court budget. He stated that the Court’s budget is essentially flat except for the 2.5% pay increase and the 27 pays in 2020. He stated that the Court’s reserves continue to trend down. The court has tried to increase collections but has not seen much success. He explained that the court applied for 2 grants for new software that will make the system much more efficient. He discussed the mental health challenges that the Court sees on a daily basis. Access Counseling has 7 offices in Middletown and they provide significant services. His discussed the need to expand the probation department. Currently three probation officers see 600 probationers, there are more people on probation. The court is seeing more out of town, out of county offenders. He gave an example of a woman that was brought to Middletown because of an outstanding speeding ticket. She had to go to Hope House to get a voucher to get back to her home. He discussed a man that was in rehab when in rehab he became suicidal. Instead of transporting him to a nearby full-service hospital for treatment, he was brought to a Middletown hospital 15-20 miles away. While at the Middletown hospital, he assaulted a police officer; the police officer sustained an injury. He stated that some criminals are opportunistic and stated that they came to Middletown because they knew the judge wouldn’t put them in jail.

Mr. Moon asked that information like that be shared with City staff.

Mayor Mulligan thanked the Judge for asking these questions in open court.

Judge Sherron discussed some of the changes from the Supreme Court that affect how the court pays visiting judges and the upcoming changes to a unified bond system. He discussed the financial impact of indigent status; this status would waive the filing fees which is a large portion of the court’s income.

Mr. Moon asked if a larger reserve balance in the General Fund would improve the bond rating; Mr. Adkins responded that it would, but the reserves would have to be significantly higher for a significant amount of time to be beneficial to the bond rating.

Mayor Mulligan asked about the additional permissive motor vehicle tax; Mr. Adkins responded that it is an option. Council asked to see the legislation that Hamilton recently passed. Mayor Mulligan also asked to see a report on water and sewer delinquencies.

CONSENT
AGENDA
Mr. Moon moved to approve the issues and actions listed on the Consent Agenda. Mr. J. Mulligan seconded. Motion carried. Ayes: Mr. Bohannon, Mr. Moon, Mr. J. Mulligan, Mr. L. Mulligan, Ms. Vitori.

COUNCIL COMMENTS
Mr. J. Mulligan
Mr. J. Mulligan expressed his appreciation to the community members and business owners for voicing their concerns. He stated that Council and staff will look at the issue with a new urgency. He stated his support for all available options to fix the issue including additional appropriations, staff investigations and Council action. He stated that Middletown and downtown have come too far to let this happen. He suggested using different tactics to work with neighboring communities to put a stop to people being dropped off in Middletown from other jurisdictions. Mr. Adkins stated that many times it is difficult to get factual information about those people being dropped off; the information comes second or third hand and does not have the details necessary to take action on it.

Ms. Vitori stated that this is a big problem with no silver bullet. In September 2018, she had brought the issue of increased homelessness to the attention of the City Manager and the City Council. After Hamilton and Cincinnati announced that they would be cutting down homeless camps, it left Middletown as a soft spot. She reminded everyone that City Council had a workshop in January about the homeless issue. She stated that now, a year later Middletown needs to do something specific. She applauded Rodney Muterspaw for speaking out and getting the conversation started. She stated for the short term she would support a task force and additional appropriations to fund an increased police presence downtown at appropriate hours of the day. She stated that mid-term solutions include talking to homeless service providers and determining what services and programming that the new Hope House facility will provide. She stated that she has asked questions about the residency of clients and available programming from the current Hope House but not received good answers. She discussed the need for daytime programming and stated that she is open to giving Access Counseling a building. She discussed long term solutions such as providing programming through the new Hope House or building a facility. She stated that neighboring jurisdictions that drop off homeless people need to be called out. Mr. Adkins stated that many times it is difficult to get factual information about those people being dropped off; the information
comes second or third hand and does not have the details necessary to take action on it. She stated that Mica Glaser has video of probation officers dropping people off. Mr. Adkins said that he has never seen that video. Ms. Vitori suggested using existing video cameras to document drop offs and violations. She suggested that the task force could formalize a process that these videos and reports could be received. She wants to make a public statement to other jurisdictions that it is not okay to dump homeless humans in our City. She suggested legislation that would fine jurisdictions that continue to do it. She provided photos of homeless camps around the City.

Council concurred to ask Mr. Adkins to put together some short and long term solutions to this problem. Mayor Mulligan suggested looking at the issue regionally and stressed the importance of having data. Council concurred to draft legislation to allow for appropriations to provide an increased police presence downtown and the Mayor suggested that the Communication Manager craft a statement for Council to consider. The group discussed the best way to submit information and video to the police department and the City Manager. Mr. Bohannon remarked that the City is suffering because it tried to be kind and helpful to the homeless. The group discussed the abundance of services that are available in Middletown. Ms. Vitori asked the Law Department to look at legislation that Los Angeles passed to combat the issue of people being dropped off from other jurisdictions.

Mr. Moon thanked everyone for coming out and stated that it is obvious we have a major issue. I look forward to working on it with you all. If I was a resident or Council member in a City that is dropping people off, I would be disappointed and embarrassed.

Waive Charter

Mr. Moon moved to suspend the Charter provision that requires reading on two separate days and to declare Ordinance No. O2019-57 an emergency measure to be read one time only. Mr. Bohannon seconded. Motion carried. Ayes: Mr. Moon, Mr. J. Mulligan, Mr. L. Mulligan, Mr. Bohannon, Ms. Vitori.

Ord. No. O2019-54

Bridge Rehab

Ordinance No. O2019-54, an ordinance authorizing the City Manager to enter into a contract with the Ohio Department of Transportation for the rehabilitation of the bridge on eastbound State Route 122 over University Boulevard was read for the second time.

Mr. Bohannon moved to approve Ordinance No. O2019-54, an ordinance authorizing the City Manager to enter into a contract with the Ohio Department of Transportation for the rehabilitation of the bridge on eastbound State Route 122 over University Boulevard. Mr. J. Mulligan seconded. Motion carried. Ayes: Mr. J. Mulligan, Mr. L. Mulligan, Ms. Vitori, Mr. Bohannon, Mr. Moon.


Amend PBO


Mr. Bohannon moved to approve Ordinance No. O2019-55, an ordinance amending the pay and benefits ordinances, Ordinance No. O2019-81 and Ordinance No. O2019-82. Mr. J. Mulligan seconded. Motion carried. Ayes: Mr. L. Mulligan, Ms. Vitori, Mr. Bohannon, Mr. Moon, Mr. J. Mulligan.

Ord. No. O2019-56

Shepherd Chemical

Ordinance No. O2019-56, an ordinance amending a development agreement with Shepherd Chemical to waive permit fees was read for the second time.

Mr. Bohannon moved to approve Ordinance No. O2019-56, an ordinance amending a development agreement with Shepherd Chemical to waive permit fees. Mr. J. Mulligan seconded. Motion carried. Ayes: Ms. Vitori, Mr. Bohannon, Mr. Moon, Mr. J. Mulligan, Mr. L. Mulligan.

Ord. No. O2019-57

Amend Agreement With NTE Ohio

Ordinance No. O2019-57, an ordinance approving an amendment to an agreement with NTE Ohio, LLC providing for the construction of a power generation facility as a development project and tax exemption pursuant to the State Urban Jobs and Enterprise Zone Program, and making determination in connection therewith, and declaring an emergency was read.

Mr. Bohannon moved to approve Ordinance No. O2019-57, an ordinance approving an amendment to an agreement with NTE Ohio, LLC providing for the construction of a power generation facility as a development project and tax exemption pursuant to the State Urban Jobs and Enterprise Zone Program, and making determination in connection therewith, and declaring an emergency. Mr. J. Mulligan seconded. Motion carried. Ayes: Mr. Bohannon, Mr. Moon, Mr. J. Mulligan, Mr. L. Mulligan, Ms. Vitori.

Ord. No. O2019-58

Contract with Midas Midwest

Ordinance No. O2019-58, an ordinance establishing a procedure for and authorizing a contract with Midas Midwest, LLC for repairs to the Bonita Drive and Jackson Lane storm sewer and declaring an emergency was read with no action requested until October 15, 2019.
Ord. No. O2019-59
Contract with Insight Pipe Contracting LLC

Ordinance No. O2019-59, an ordinance establishing a procedure for and authorizing a contract with Insight Pipe Contracting, LLC for the 2019 Sanitary Sewer Lining Part 2 Project and declaring an emergency was read with no action requested until October 15, 2019.

Ord. No. O2019-60
Enact Section 660.22

Ordinance No. O2019-60, an ordinance to enact Section 660.22 (Unsolicited Materials) of the Middletown Codified Ordinances was read for the first time.

Ord. No. O2019-61
Job Incentive Grant

Ordinance No. O2019-61, an ordinance authorizing the City Manager to enter into a Job Incentive Grant Agreement with Midwest Ammunition, LLC was read for the first time.

Ord. No. O2019-62
SmartBill LTD.
Water Bills

Ordinance No. O2019-62, an ordinance establishing a procedure for and authorizing a contract with SmartBill Ltd. for the printing and mailing of water bills was read for the first time.

Res. No. R2019-30
ODOT Central Ave Improvements

Resolution No. R2019-30, a resolution authorizing the City Manager to enter into an agreement with the Ohio Department of Transportation for improvements to Central Avenue between University Boulevard and Verity Parkway was read for the first time.

EXECUTIVE SESSION

At 8:03 p.m. Mr. Moon moved to adjourn to executive session under the authority of O.R.C. 121.22 (G) (2) To consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage; and under the authority of O.R.C. 121.22 (G) (8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that both of the following conditions apply:

(1) The information is directly related to a request for economic development assistance that is to be provided or administered under any provision of Chapter 715., 725., 1724., or 1728. or sections 701.07, 3735.67 to 3735.70, 5709.40 to 5709.43, 5709.61 to 5709.69, 5709.73 to 5709.75, or 5709.77 to 5709.81 of the Revised Code, or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(2) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project. Ms. Vitori seconded. Motion carried. Ayes: Mr. Moon, Mr. J. Mulligan, Mr. L. Mulligan, Mr. Bohannon, Ms. Vitori.

ADJOURNMENT

At 9:00 p.m., the meeting was declared adjourned until October 15, 2019 at 5:30 p.m. in Council Chambers.

______________________________
Lawrence P. Mulligan, Jr., Mayor

Attest: ______________________
ROLL CALL

Meeting called to order

Members present:   Tom Brickey
                 Bill Becker, Vice-Chair
                 Kathleen Batliner

Staff Present:  Kay Sauer, Civil Service Secretary
                Brittany Grimes, HR Specialist

APPROVAL OF MINUTES

Motion: Moved by Ms. Batliner to approve the minutes of the meeting held April 18, 2019. Mr. Becker seconded the motion. Motion passed.

NEW BUSINESS

1. Eligibility List – Patrol Officer

   Kay Sauer informed Commission that a Patrol Officer test was held on April 27 and a make-up exam on May 4. She stated that the make-up exam was scheduled to accommodate students from the Greene County Career Center who were scheduled to attend a training class. She further stated that all applicants were given the opportunity to choose the day they would be available to test. She said that the Police Department has done an excellent job in recruiting and that several students from Greene County were interested in testing for Middletown. She stated that there were 61 applicants and 42 who passed both the written and physical portion of the exam and are recommended for the eligibility list. Motion: Moved by Mr. Brickey to approve the eligibility list for the position of Patrol Officer. Mr. Becker seconded the motion. Motion passed.

2. Update on Job Announcements/Exams

   Corrections Officer - Kay Sauer informed Commission that a job posting for Corrections Officer would be announced soon. She stated that a test was held in April however there were only 7 people on the eligibility list after testing was completed. She said that the upcoming list would be merged with the current list.

   Fire Lieutenant – Kay Sauer reported that an upcoming test will be held for the position of Fire Lieutenant. She stated that Ohio Fire Chiefs Association will be used for the written and assessment portion of the exam.

REPORTS

Personnel Transactions for the month of April 2019 were received by Commission.

ADJOURN

Motion: Moved by Mr. Brickey to adjourn the meeting. Ms. Batliner seconded the motion. Motion passed.

Ms. Sauer advised that the next meeting date is June 20, 2019 at 8 a.m.
ROLL CALL

Meeting called to order

Members present:  Tom Brickey  
Bill Becker, Vice-Chair  
Kathleen Batliner

Staff Present:  Kay Sauer, Civil Service Secretary  
Brittany Grimes, HR Specialist

APPROVAL OF MINUTES

Motion:  Moved by Mr. Brickey to approve the minutes of the meeting held May 16, 2019.  Ms. Batliner seconded the motion.  Motion passed.

NEW BUSINESS

1. Eligibility List – Maintenance Worker
   Kay Sauer informed Commission that a Maintenance Worker test was held on June 18. She stated that there were 24 applicants and 18 who passed the written exam and are recommended for the eligibility list. Motion:  Moved by Ms. Batliner to approve the eligibility list for the position of Maintenance Worker. Mr. Becker seconded the motion. Motion passed.

2. Position Descriptions
   Kay Sauer informed Commission that the Customer Relations Specialist, Senior Account Clerk and the Executive Account Clerk position descriptions have been updated. She stated that all of the updates requested for approval are in bold lettering within the job description. Motion:  Moved by Mr. Brickey to approve the updates to the position descriptions for Customer Relations Specialist, Senior Account Clerk and the Executive Account Clerk positions. Ms. Batliner seconded the motion. Motion passed.

3. Update on Job Announcements/Exams

   Corrections Officer - Kay Sauer informed Commission that an upcoming test for Corrections Officer would be held June 29. She stated that a test was held in April however there were only 7 people on the eligibility list after testing was completed. She said that the upcoming list would be merged with the current list.

   Fire Lieutenant – Kay Sauer reported that an upcoming test will be held on August 12 for the position of Fire Lieutenant. She stated that Ohio Fire Chiefs Association will be used for the written and assessment portion of the exam.

   Treatment Plant Operator – Kay Sauer informed Commission that a job posting has been opened for a Waste Water Treatment Plant Operator due to an upcoming retirement. She stated the exam is scheduled for July 10.
REPORTS
Personnel Transactions for the month of May 2019 were received by Commission.

ADJOURN
Motion: Moved by Ms. Batliner to adjourn the meeting. Mr. Becker seconded the motion. Motion passed.

Ms. Sauer advised that the next meeting date is July 18, 2019 at 8 a.m.
ROLL CALL

Meeting called to order

Members present:   Tom Brickey
   Bill Becker, Vice-Chair
   Kathleen Batliner

Staff Present:  Kay Sauer, Civil Service Secretary

APPROVAL OF MINUTES

Motion:  Moved by Mr. Brickey to approve the minutes of the meeting held June 20, 2019.  Mr. Becker seconded the motion.  Motion passed.

NEW BUSINESS

1. ELIGIBILITY LISTS

   a. Corrections Officer
      Kay Sauer informed Commission that Corrections Officer testing was held on
         June 29, 2019.  She stated that there were 8 applicants who applied, 3 passed
         written, 2 failed written, 3 no shows for written and 5 passed the physical portion
         of the exam.  She stated that the 3 who passed both portions of the exam are
         recommended for the eligibility list. She further stated that this list will be merged
         with the previous list. Motion: Moved by Ms. Batliner to approve the eligibility
         list for the position of Corrections Officer. Mr. Brickey seconded the motion. Motion passed.

   b. Treatment Plant Operator
      Kay Sauer informed Commission that due to only one applicant passing the
         unlicensed Treatment Plant Operator exam on July 10, 2019 that the position is
         being re-advertised and the passing candidate will be approved on the eligibility
         list that will be certified when the re-advertised testing is completed. She stated
         that re-advertising will provide the department with a broader pool of candidates.

      Commission discussed the low number of applicants on the eligibility lists and the
      number of employees that are leaving to take jobs in other cities that pay higher
      salaries.  Tom Brickey asked if the City is currently doing exit interviews.  Kay
      Sauer informed Commission that exit interviews were discontinued a few years
      ago, however, resignation letters at times state the reason for leaving and she
      further stated that we are typically made aware from their supervisors/department
      leaders of why they are leaving also.  Motion: Moved by Mr. Brickey to recommend that the City resume the practice of exit interviews due to the
      number of resignations from the City and the low number of applicants on the eligibility lists.  Mr. Becker seconded the motion. Motion passed.
2. **Update on Job Announcements/Exams**

**Corrections Officer** – Kay Sauer advised that they are re-advertising for the Corrections Officer position due to the low turn-out at the exam on June 29 and the limited number of applicants on the eligibility list. She further stated that they currently have openings for Male CO’s which is mandated by the State. In order to meet the State requirement, re-advertising is necessary.

**Fire Lieutenant** – Kay Sauer reported that an upcoming written test will be held on August 12 for the position of Fire Lieutenant. She further stated that Ohio Fire Chiefs Association will conduct the assessment portion of the exam on September 14 and an informational session for the candidates will be held on September 13.

**REPORTS**

Personnel Transactions for the month of June 2019 were received by Commission.

**ADJOURN**

**Motion:** Moved by Ms. Batliner to adjourn the meeting. Mr. Becker seconded the motion. **Motion passed.**

Ms. Sauer advised that the next meeting date is August 15, 2019 at 8 a.m.
ROLL CALL

Meeting called to order

Members present:   Tom Brickey  
Bill Becker, Vice-Chair  
Kathleen Batliner

Staff Present:  Kay Sauer, Civil Service Secretary  
Brittany Grimes, HR Specialist  
Rodney Muterspaw, Police Chief

APPROVAL OF MINUTES

Motion: Moved by Mr. Brickey to approve the minutes of the meeting held July 18, 2019. Mr. Becker seconded the motion. Motion passed.

NEW BUSINESS

1. POLICE/FIRE ENTRY LEVEL EXAMS AND POLICE PROMOTIONAL EXAMS

Kay Sauer provided Commission with recommended amendments to Sections 250.24 and 250.241 of the Codified Ordinances. Chief Rodney Muterspaw was present for the discussion. Ms. Sauer advised that the purpose was to amend the entry level positions process in the Police and Fire Divisions to eliminate language regarding positions that no longer exist and to amend the promotional process in the Police Division. Ms. Sauer noted that in order to proceed with the upcoming Police promotional exams due to the retirement of Chief Muterspaw, the ordinance needs to be amended. Mr. Becker and Mr. Brickey commented that past ordinance changes were not always brought to Civil Service and there are processes in place and need to be followed going forward. Chief Muterspaw explained the changes and discussed the elimination of the Lieutenant position last year. Mr. Becker and Mr. Brickey stated they understand the need for eliminating the Lieutenant position and the recommended changes but felt the changes at that time should have been presented to the Civil Service Commission before being made. Motion: Moved by Mr. Becker to approve the amendments to Sections 250.24 and 250.241 of the Codified Ordinances. Mr. Brickey seconded the motion. Motion Passed.

2. ELIGIBILITY LISTS

   a. Corrections Officer

Kay Sauer informed Commission that Corrections Officer testing was held on August 10, 2019. Ms. Sauer stated that there were 10 applicants who applied, 1 female passed the written, 4 failed the written, and 5 were no shows and 5 passed the physical portion of the exam. She further advised that the one female who passed both portions is being recommended for the eligibility list and will be merged with the previous list. Ms. Sauer also advised that the openings in the Police Department at this time are for male Corrections Officers which is mandated by the State. Chief Muterspaw explained that this is a nationwide problem and all cities are struggling to recruit applicants. Ms. Sauer recommended to Commission that the City hold open testing for this position.
since it is so difficult to recruit applicants and constantly advertising is costly.
Chief Mutterspaw agreed that open testing would be a possible solution.  Mr.
Becker cited the Civil Service Rules, Rule VI, Eligible Lists, and Transfer to a
Lower Class.  Ms. Sauer and Chief Mutterspaw agreed that it is something to
consider especially since we are having trouble recruiting.

b. Treatment Plant Operator
Kay Sauer informed Commission that testing for the Treatment Plant Operator
position was held on July 10, 2019 and August 7, 2019. She stated that there
were 7 applicants who applied for the first exam, 1 passed the written, 3 failed
written, and 3 no shows for written. For the second exam she stated that there
were 6 applicants who applied, 2 passed the written and 4 failed the written. The
lists from both exams were combined bringing a total of 3 applicants who passed
the written exam.

Motion: Moved by Ms. Batliner to approve the eligibility lists for the positions of
Corrections Officer and Treatment Plant Operator and to approve open testing
for the position of Corrections Officer. Mr. Brickey seconded the motion. Motion
passed.

3. Position Descriptions
Commission reviewed the updated position descriptions for Income Tax Auditor, Police
Chief, Police Deputy Chief, and Police Sergeant. Ms. Sauer advised that they are in the
process of making their way through the departments to update descriptions and will be
bringing them to Commission for review and approval. Motion: Moved by Ms. Batliner
to approve the amendments to the position descriptions for the positions of Income Tax
Auditor, Police Chief, Deputy Police Chief, and Police Sergeant. Mr. Brickey seconded the motion. Motion passed.

4. Update on Job Announcements/Exams
Fire Lieutenant – Kay Sauer reported that the written test was held on August 12 for the
position of Fire Lieutenant. She stated that 8 applicants passed and 3 failed. She further
stated that Ohio Fire Chiefs Association will conduct the assessment portion of the exam
on September 14 and an informational session for the candidates will be held on
September 13.

Police Promotionals – Kay Sauer reported that due to the retirement of Chief
Mutterspaw, promotional testing will take place in the near future. Ms. Sauer and Chief
Mutterspaw discussed the promotional process with Commission. Ms. Sauer stated that
that they will be using Ohio Association of Chiefs of Police during the testing process.

REPORTS
Personnel Transactions for the month of July 2019 were received by Commission.

ADJOURN
Motion: Moved by Ms. Batliner to adjourn the meeting. Mr. Brickey seconded the motion.
Motion passed.

Ms. Sauer advised that the next meeting date is September 12, 2019 at 8 a.m.
I. ROLL CALL- Meeting called to order at 6:03pm

   Officers: Elizabeth Hanavan, President - Lyndsey Pittman, Treasurer - Mica Glaser Jones, Secretary - Mary Huttlinger, Executive Director

   At Large: Rick Pearce, Stefan Wannemacher

   Liaisons: Annie Prytel- Social Media Consultant

II. Approval of the May minutes- Mica motioned, Stefan 2nd, all in favor

III. Treasurer’s Report - Lyndsey went over the budget with the board and answered any questions. Rick motioned to submit the budget to the record. Lyndsey 2nd, all in favor.

IV. Executive Director’s Update
   Mary gave an update on upcoming promotions and events. See attachment 1
   Volunteer Sign Up (Hops in the Hangar, OH Challenge, Chamber Golf Open, Pickleball)
   i. City Council presentation- Tuesday 7pm all board members are welcome to attend and show support.

   Board Business
   ii. Smith Park Meeting - Mary met with Kathy who is with Eclipse and it became clear that there needs to be a sit down between Eclipse, the City, and other entities so everyone is on the same page.
   iii. All American Heroes Weekend- This is a 2 day event for July 5th and 6th. Hometown Heroes on Friday and Family Fun Festival with live music by Griffin House, bounce houses, and activity booths. Stefan motioned to have Annie promote Griffin House (Sat entertainment) and not the entire AAHW, Rick 2nd, all in favor. Lyndsey and Mica abstained due to conflict of interest.

V. Guests
   Michell Cook, Pickleball- Middletown has 16 courts at Lefferson Park. for their upcoming tournament Aug. 1-3rd. Biggest draw is 50+ They are asking for sponsorship from MVB of $500. Lyndsey motioned to sponsor $500, Stefan 2nd, all in favor.

VI. Adjournment - **7:15pm**
Minutes of the Regular Meeting of the
MidPointe Library System Board of Trustees
West Chester Library, Board Room
Tuesday, June 18, 2019, 4:00 p.m.

I Call to Order
Mrs. Anita Shew, President, called the meeting to order at 4:00 p.m.

II Opening Exercise

III Roll Call
The roll was called and the following members were present:

Ms. Frankie Carlson, Mr. Ronnie Choudhary, Mr. Bruce Hughley, Mr. Bill Jones, Mrs. Anita Shew, and Mr. Richard Szopinski.

Those absent: Mr. Keith Wright

Also present were: Mr. Travis Bautz, Library Director; Ms. Cari Hillman, Community Engagement Director; Mrs. Allison Knight, Liberty Branch Manager; Mr. Steve Mayhugh, Facilities Director; Mrs. Brielle Maynor, Public Services Director; Ms. Deborah Preston, Fiscal Officer; Mrs. Kathy Stengel, Human Resources Director; Ms. Emily Vance, Accounting Supervisor; and Mrs. Amy Young, West Chester Branch Manager.

IV Adoption of Agenda
Mr. Jones motioned, seconded by Mr. Szopinski, to approve the agenda as presented.

“Aye” Carlson, Choudhary, Hughley, Jones, Shew, Szopinski
“Nay” None
Motion Approved 19-44

V Public Comment
There were no public comments.

VI Approval of Minutes
Mr. Szopinski motioned, seconded by Mr. Jones, to approve the minutes of the regular board meeting of May 21, 2019.

“Aye” Carlson, Choudhary, Hughley, Jones, Shew, Szopinski
“Nay” None
Motion Approved 19-45

VII Fiscal Officer's Report
Financial Report, Investments, and Donations:
Ms. Preston commented that the report has a new format due to the new SSI software, and will be fine-tuned in the future as the software analytics are utilized. She then reviewed the May 2019 financial report. The board discussed general fund balance guidelines, and the new accounting financial software.

Mr. Hughley motioned, seconded by Mr. Szopinski, to approve the Financial Statement, Investments, and Donations for May 2019 as presented by Ms. Preston.
LED Bids:
Mr. Bautz reported that the facilities plan called for LED lighting upgrades at Middletown, and that when the cost estimates came in they were over $50,000, so the project had to be publicly bid. Bid Express was used to facilitate the bidding process; a pre-construction meeting was held and the bids were due yesterday at noon and opened. The first bid was much higher than the estimate but the other bids more in line with the estimates. The lowest bid was from ESI, Inc., dba Wagner Industrial Electric at a cost of $141,015. The board discussed the project timeline which is 30 days for installation and additional time to receive sample fixtures and bulbs. Mr. Mayhugh added that the Library has worked with this company before. Mrs. Shew read the motion. Mr. Choudhary motioned, seconded by Mr. Hughley, to accept the lowest bidder for the LED Lighting project of ESI, Inc. dba Wagner Industrial Electric at a cost of $141,015 and authorize the Library Director to finalize and execute the necessary documents to commence the project should the necessary legal and financial review of the bid be appropriate.

2020 Budget:
Ms. Preston reported that work on the 2020 Budget had been completed. The finance audit committee met to discuss and review the budget before being presented to the board. After board approval, the budget document will be submitted to the City of Middletown for a public hearing and adoption, and then forwarded to the Butler County Budget Commission for review and certification. Ms. Preston reviewed the document which showed an estimated revenue of $8,709,000; an estimated expenditure of $9,108,580; and then she reviewed each fund. Mr. Bautz discussed the Douglas J. Bean Progress Fund which may be used to fund an early literacy project. Mr. Hughley commented that the report was well organized by fund; that it shows exactly what is happening in each fund; and that the projections are based on a limited amount of history from this year. Ms. Preston commented that work will begin in the 4th quarter to prepare the 2020 appropriation when they have 9 months of expenditures. The board discussed that the new accounting software analytics will help this process; that the financial numbers stay relatively consistent from year to year; and that the biggest increase would potentially be in the capital improvement fund. Mr. Hughley motioned, seconded by Mr. Szopinski, to adopt the 2020 Budget Request and forward to the Middletown City Council and Butler County Auditor.
VIII Director’s Report
Library Use Statistics:
Mr. Bautz reviewed the May 2019 statistics. Overall, circulation was up; original checkouts were relatively flat with a 2% decrease; Liberty had another month of over 10,000 checkouts; LOW had 218% increase; Middletown circulation was up by 35% but checkouts were down by 8%; Monroe circulation was up by 15% overall and checkouts were up by 8%; Trenton circulation was up by 41% and checkouts were up by 4%; West Chester circulation was up by 22% and checkouts were down by 3%; overall checkouts of physical items was up by 2%; AV checkout was down by 8%; patron visits were up by 10%; programs and attendance remain very strong; and overall computer usage was down by 10% with West Chester’s computer usage down by 20%. Mr. Bautz gave a project update at West Chester where the massive CD display cases are being removed and replaced with book shelves. The shelving will be re-oriented breaking up the seating, which will create a better line of sight. The board discussed Orangeboy and the reports and address mapping. The software can group statistics by the type of users for various clusters and provide usage statistics which will allow for customized marketing to those clusters and we can reach out to new card holders to promote and target programming to their interests.

IX Public Services
Mrs. Maynor reported that Middletown branch manager opening has been filled and a retirement celebration is being held on June 24th at 3:00 for retiring manager Stella Tompoulidis. The Middletown basement floor is being refinished, the space is being reconfigured and offices constructed; she met with Library Design to discuss the combined Middletown desks to consolidate to one service point. The lunch program is going well with lunch provided at noon and snacks at 4:00. The Middletown youth supervisor is meeting with the Middletown school superintendent to discuss a pilot program of signing up all 1st graders for library cards. Creekview Elementary had a Shoes for the Shoeless event which we participated in; the Liberty hold lockers are going strong with 80 items already picked up since they opened; the Wayne Township lockers are not yet opened as the bins are not working as anticipated so LOW or Trenton staff is delivering items until the lockers are operational. The bookmobile is participating in summer lunch programs at various parks in the service area. Mr. Bautz met with Monroe school personnel to discuss providing copies of e-books for their classroom use and are looking at piloting a program for that, and he met with Lakota school officials to discuss providing training to their library personnel on how to weed and maintain their collection since they have no librarian to train them. They also discussed the possibility about collaborating and sharing a librarian so the cost of salaries and benefits would be less for both organizations. Mrs. Maynor concluded that the Trenton lunch program is going well and that the planning for the West Chester makerspace is ongoing.

X Community Engagement Report
Ms. Hillman distributed an invitation to board members for the Library on Wheels Depot’s open house on Friday, July 19th from 8:00 – 10:00. She distributed a flyer of community events hi-liting that the bookmobile will be at the City of Middletown Fireworks event on July 3rd; in the Liberty Township Fourth of July Parade; and in the City of Monroe Fourth of July Parade. The West Chester – Liberty Chamber Alliance Business Expo is on July 30th at Lakota West High School and the theme this year is staycation. For a presentation
during the expo, Lakota students will be filming at various sites throughout the community featuring staycation locations and have included the library as one of those locations. The Summer Reading Program is in full swing. The numbers aren’t available yet, but preschool registration has already surpassed last years’ numbers.

XI Personnel
Staffing Updates:
Mr. Choudhary motioned, seconded by Mr. Hughley, to approve the following personnel changes:
Accept the resignation of Anne Howard, effective last day worked of 2/11/2019, Monroe, part time, library specialist, and place on the substitute list;
Accept the resignation of Alexis Bass, effective 5/22/2019, West Chester, part time, library associate;
Accept the resignation of Cindy Rushton, effective 5/24/2019, West Chester, part time, library aide;
Accept the resignation of Barb McNamara, effective 5/24/2019, West Chester, part time, library aide;
Accept the resignation of Marla Scully, effective 5/29/2019, Monroe, part time, library aide;
Accept the resignation of Taylor Starr, effective 5/29/2019, West Chester, part time, library aide;
Accept the resignation of Noel Lemons, effective 5/31/2019, Library on Wheels, part time, library associate;
Accept the resignation of Emily Burch, effective 6/7/2019, West Chester, part time, library aide, and place on the substitute list;
Accept the retirement of Stella Tompoulidis, effective 6/30/2019, Middletown, full time, branch manager;
Approve the employment of Deavon Arnold, effective 4/17/2019, Liberty, part time, library specialist, at pay level three, as a one-for-one replacement;
Approve the employment of Coleen Wunderle, effective 4/24/2019, Library on Wheels, part time, library associate, at pay level two, as a one-for-one replacement;
Approve the employment of Martha Griffin, effective 6/5/2019, Liberty, part time, library specialist, at pay level three, as a one-for-one replacement;
Approve the employment of Mark Minnelli, effective 6/17/2019, West Chester, full time, library specialist floater, at pay level three, as a one-for-one replacement;
Approve the employment of James Davis, effective 6/5/2019, Liberty, part time, library aide, at pay level one;
Approve the promotion of Amy Abernathy, effective 6/30/2019, Middletown, full time, from supervisor to branch manager, to pay level six, as a one-for-one replacement;
Approve the change of Karen Jones, effective 6/2/2019, Middletown, accounting, from temporary full time to regular full time, library specialist, at the same pay level three.

The board discussed the typical movement of personnel.

“Aye” Carlson, Choudhary, Hughley, Jones, Shew, Szopinski
“Nay” None
Motion Approved 19-49
Ms. Hillman, Mr. Mayhugh, Mrs. Maynor, Mrs. Young, Ms. Vance, and Mrs. Knight were excused at 4:50 pm.

XII Executive Session
Mr. Choudhary motioned, seconded by Mr. Hughley, to enter into executive session at 4:51 pm under the authority of O.R.C. 121-22 (g) (1) to consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

“Aye” Carlson, Choudhary, Hughley, Jones, Shew, Szopinski
“Nay” None
Motion Approved 19-50

The board returned to regular session at 5:30 pm.

XIII Board Comments
Ms. Preston mentioned that the property information should be kept confidential.

XIV Adjournment
Mrs. Shew adjourned the meeting at 5:31 p.m.
19-51

_______________________________________
President
_______________________________________
Secretary
I Call to Order
Mrs. Anita Shew, President, called the meeting to order at 4:03 p.m.

II Opening Exercise

III Roll Call
The roll was called and the following members were present:

Ms. Frankie Carlson, Mr. Bruce Hughley, Mrs. Anita Shew, and Mr. Richard Szopinski.

Those absent: Mr. Ronnie Choudhary, Mr. Bill Jones, and Mr. Keith Wright

Also present were: Mrs. Amy Abernathy, Middletown Branch Manager; Mr. Travis Bautz, Library Director; Ms. Cari Hillman, Community Engagement Director; Mrs. Allison Knight, Liberty Branch Manager; Mr. Steve Mayhugh, Facilities Director; Mrs. Brielle Maynor, Public Services Director; Ms. Deborah Preston, Fiscal Officer; Mrs. Kathy Stengel, Human Resources Director; and Mrs. Amy Young, West Chester Branch Manager.

IV Adoption of Agenda
Mr. Szopinski motioned, seconded by Mr. Hughley, to approve the agenda as presented.

“Aye” Carlson, Hughley, Shew, Szopinski
“Nay” None
Motion Approved 19-52

V Public Comment
There were no public comments.

VI Approval of Minutes
Mr. Hughley motioned, seconded by Mr. Szopinski, to approve the minutes of the regular board meeting of June 18, 2019.

“Aye” Carlson, Hughley, Shew, Szopinski
“Nay” None
Motion Approved 19-53

VII Fiscal Officer’s Report
Financial Report, Investments, and Donations:
Ms. Preston reviewed the June 2019 financial report. The board discussed the number of employees attending school and utilizing the tuition reimbursement program.

Ms. Carlson motioned, seconded by Mr. Hughley, to approve the Financial Statement, Investments, and Donations for June 2019 as presented by Ms. Preston.

“Aye” Carlson, Hughley, Shew, Szopinski
“Nay” None
Motion Approved 19-54
VIII  
**Director’s Report**

Library Use Statistics:
Mr. Bautz reviewed the June 2019 statistics. He commented that this is the last month of not having 12 months of auto-renewal statistics since that began in July of 2018. Overall, circulation, which includes auto-renewals, was up by approximately 7%; original checkouts were down slightly; Liberty had over 12,000 checkouts; Library on Wheels (LOW) was down but that is expected during the summer months; Middletown circulation was up by 22%; Monroe circulation was up by 17% overall; Trenton circulation was up by 25%; West Chester circulation was up by 14%; overall checkouts of print materials was up; AV continues to trend downward; patron visits were up by 8%; programs and attendance were up by 43%; overall computer usage was down by 13%; and passports remain strong with 70 processed for the month of June.

Mr. Bautz gave an update on the Orange Boy software which is still gathering data. The latest reporting is interesting as it shows a geography snapshot of 60,000 card holders living in the Liberty Township area where a potential branch could be located. Also, voter demographics can be broken down by precinct which will be helpful during the levy campaign. Ms. Hillman and Mrs. Maynor will be attending a training session to learn what data the software can provide. The software is a subscription that pulls data from our automated system and calendar that gives us information about patron usage by branch, including information about how to contact patrons so we can send them information about new services we have, or an upcoming program that matches their check-out interests.

Mr. Bautz reported that the Middletown Friends of the Library have disbanded as of June 30, 2019. They gave the Library a donation of approximately $7,000 with some stipulations including summer reading support, and refinishing the lion sculpture.

Mr. Bautz commented that there are three board members whose terms expire at the end of this year. Mr. Szopinski’s first term will expire and he can serve another term; Mr. Wright is finishing Mrs. Blache’s term and can serve 2 terms; and Mr. Choudhary will complete his second term and cycle off the board so a replacement will need to be appointed. Those trustees whose term expire this year will need to send an application to the City of Middletown as they make the board appointments. Ms. Carlson’s term will expire at the end of 2020.

Mr. Bautz distributed an updated board roster.

IX  
**Public Services**

Mrs. Maynor reported that Middletown branch manager opening has been filled. Mrs. Amy Abernathy applied for and accepted the promotion to branch manager. The Middletown basement floor refinishing has been completed with office space and cubicle space created for department expansion. Library Design has provided a preliminary plan to combine the Middletown desks to one service point, with the plan to be refined and then the consolidation work scheduled. The summer lunch program is going well at Middletown and Trenton, with 409 families served in June at Middletown, and 238 at Trenton to date. The Middletown youth supervisor met with the Middletown school superintendent to discuss a pilot program to sign up all 1st graders for library cards; to offer e-cards to students; and consider a library presentation at their staff development day about our resources and services. The Liberty hold lockers are being utilized with 156 items already picked up in
June and the lockers are mostly full at all times; the LOW bookmobile will have an automated external defibrillator installed in the near future; Monroe received an automated external defibrillator and Trenton will receive one in the near future; the Wayne Township hold lockers are fully operational as of the first of July; and the Innovation Pointe makerspace renovation at West Chester will begin early August with the computers moved throughout the building and a meeting has been held with one of the building’s original architects to discuss space planning and permits. The shelving and seating will be rearranged in the AV area in early August, and a concrete walkway project around the building has begun. Mrs. Shew asked Mrs. Knight about her observations regarding patron comments. She replied that they are excited about the hold lockers, that they like having a library closer to where the old West Chester Library was located, and the summer reading program is going well.

X Community Engagement Report
Ms. Hillman unveiled the logo for the Innovation Pointe makerspace logo; she mentioned that the Wayne Township hold lockers are being promoted on Library social media pages, that the Edgewood schools have sent out e-mail blasts on their social media, and a direct mail postcard will be sent to 5,955 Wayne Township addresses so every household will receive information about how they can reserve their materials. The Wayne Township newsletter will have information about the lockers and a video will be shown at the August 5th trustee meeting demonstrating how the lockers work. MidPointe is a sponsor of the Middletown Safety Town program and Ms. Hillman shared a photo of a participant. System-wide, the summer reading program is going strong and will end on July 31st. The Library’s bookmobile participated in two parades on July 4th. She distributed a list of the late summer community events that included the West Chester-Liberty Chamber Alliance Business Expo on July 3th, and various back to school events. The LOW open house is on Friday July 19th from 8:00-10:00 and board members are invited. The board discussed marketing materials taken to events and the summer reading program attendance.

XI Personnel
Staffing Updates:
Mr. Szopinski motioned, seconded by Mr. Hughley, to approve the following personnel changes:
Accept the resignation of Wendy Bailey, substitute, effective last day worked of 5/18/2019, West Chester, library associate;
Accept the resignation of Carrie Green, substitute, effective last day worked of 3/5/2019, Middletown, library associate;
Accept the resignation of Coleen Wunderle, effective 7/11/2019, Middletown LOW, part time, library associate;
Accept the resignation of Kylea Taylor, effective 7/12/2019, Middletown, part time, library aide;
Approve the employment of Kaelyn Hopton, effective 6/19/2019, West Chester, part time, library aide, at pay level one;
Approve the employment of Seth Ketchem, effective 7/1/2019, Library on Wheels, part time, library aide, at pay level one;
Approve the employment of Stacey Day, effective 7/3/2019, West Chester, part time, library aide, at pay level one;
Approve the transfer of Annette Squires, effective 6/30/2019, from Trenton to West Chester, part time, library aide, and remain at pay level one.

The board discussed the duties of library aides, and the progress of the LOW hiring.

“Aye” Carlson, Hughley, Shew, Szopinski
“Nay” None
Motion Approved 19-55

Mrs. Abernathy, Ms. Hillman, Mrs. Knight, Mr. Mayhugh, Mrs. Maynor, and Mrs. Young were excused at 4:40 pm.

XII Executive Session
Ms. Carlson motioned, seconded by Mr. Hughley, to enter into executive session at 4:40 pm under the authority of O.R.C. 121-22 (g) (1) to consider the purchase of property for public purposes, or for the sale of property at competitive bidding, if premature disclosure of information would give an unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest.

“Aye” Carlson, Hughley, Shew, Szopinski
“Nay” None
Motion Approved 19-56

The board returned to regular session at 4:58 pm.

XIII Board Comments
Mr. Bautz commented that he was invited to participate on the Middletown Census Committee to help with the census count effort this year, particularly with the bookmobile and outreach. Mr. Szopinski commented that staff are doing a nice job and everything is running smoothly. Ms. Carlson asked about the experience of new Middletown branch manager, Mrs. Amy Abernathy.

XIV Adjournment
Mrs. Shew adjourned the meeting at 5:02 p.m.
19-57

_______________________________________
President

_______________________________________
Secretary
October 1, 2019

TO: Doug Adkins, City Manager
FROM: Susan Cohen, Administrative Services Director
SUBJECT: APPOINTMENT – CORRECTIONS OFFICER

We are recommending the conditional appointment of WADE ADDISON GATES to the position of Corrections Officer in the Department of Public Safety, Division of Police. Mr. Gates was selected from the eligibility list as a result of Civil Service testing procedures. He will fill the vacancy created by the resignation of Danny Gibson.

Mr. Gates will be assigned to Range PO4, Probationary Step, which provides a salary of $1,277.56 biweekly, $33,216.56 annually. The appointment is conditional on the candidate passing the required medical evaluation.

/bg

c: Amy Schenck, Clerk of Council
Rodney Muterspaw, Police Chief
Human Resources
Finance (Payroll)
file

ccmtg10/15/19

CORRECTIONS OFFICER
Authorized Strength – 11
Current Staff Level – 10
October 2, 2019

TO: Doug Adkins, City Manager
FROM: Susan Cohen, Administrative Services Director
SUBJECT: APPOINTMENT – WATER RECLAMATION MANAGER

We are recommending the appointment of GERRY BURRIS to the position of Water Reclamation Manager in the Department of Public Works & Utilities, Division of Wastewater Treatment. Mr. Burris is currently the Wastewater Treatment Plant Manager.

Mr. Burris will be assigned to Salary Range 175, Step G, which provides a salary of $3,215.28 bi-weekly, $83,597.28 annually. The effective date of the appointment is November 1, 2019.

/bg

c: Amy Schenck, Clerk of Council
Scott Tadych, Public Works & Utilities Director
Human Resources
Finance (Payroll)
file

ccmtg10/15/19

WASTEWATER TREATMENT
Authorized Strength: 17
Current Staff Level: 17
October 10, 2019

TO:            Doug Adkins, City Manager
FROM:          Susan Cohen, Administrative Services Director

SUBJECT:       APPOINTMENT – PATROL OFFICER

We are recommending the appointment of BRANDON REAMAN to the position of Patrol Officer in the Department of Public Safety, Division of Police. Mr. Reaman is currently a Reserve Officer in the department. He was selected from the eligibility list as a result of Civil Service testing procedures, and will fill the vacancy created by the appointment of Joseph Lietz to Corrections Officer.

Mr. Reaman will be assigned to Range PO1, Step A, which provides a salary of $1,990.12 biweekly, $51,743.12 annually. His appointment will be effective October 21, 2019.

/bg

c:              Amy Schenck, Clerk of Council
                Rodney Muterspaw, Police Chief
                Human Resources
                Finance (Payroll)
                file

ccmtg10/15/19

POLICE OFFICER
Authorized Strength – 54
Current Staff Level – 53
September 23, 2019

TO: Doug Adkins, City Manager  
FROM: Samantha Zimmerman, Purchasing Agent

**Bid Recommendation, Bid 19-8093-11**

**Hydrofluorosilicic Acid (HFS)**

**PURPOSE**

To recommend the purchase of Hydrofluorosilicic Acid (HFS) from Bonded Chemicals, Inc., of Columbus, Ohio, in the amount of $2.44/gallon for use at the Water Treatment Plant during the 2020 calendar year.

**BACKGROUND and FINDINGS**

This is a routine purchase that is completed each year for the purchase of approximately 12,686 gallons of HFS to be used at the Water Treatment Plant. HFS is the fluoride that is added to our water prior to distribution.

Bids were taken, with four vendors responding as follows (prices per gallon):

- Bonded Chemicals, Inc. – Columbus, OH $2.44
- Univar Solutions – Cincinnait, OH $2.50
- Brenntag Mid-South, Inc. – Henderson, KY $3.043
- Pencco, Inc. – San Felipe, TX $3.87

**ALTERNATIVES**

The alternative is to not add HFS to the water. HFS is a required chemical, as determined by a vote of the citizens of Middletown.

**FINANCIAL IMPACT**

As with most of our chemicals, this chemical is used on an “as needed” basis (depending on weather, usage, and plant conditions), so there is no way to know exactly how much will be used over the years’ time. We estimate the usage of approximately 12,686 gallons at the Water Treatment Plant throughout the 2020 calendar year ($30,953.84).
RECOMMENDATION

It is recommended the contract be awarded to Bonded Chemicals, Inc., of Columbus, OH, in the amount of $2.44/gallon for the Water Treatment Plant.

EMERGENCY/NON-EMERGENCY

Consent Agenda

cc: Jacob Burton, Finance Director
    Scott Tadych, Public Works & Utilities Director
    Scott Belcher, Water Treatment Manager
September 23, 2019

TO: Doug Adkins, City Manager

FROM: Scott Tadych, Public Works and Utilities Director
Prepared by Rob Nicolls, City Engineer

RECEIVE AND FILE MAINTENANCE AND PERFORMANCE BONDS FOR RENAISSANCE 2 SECTION 4

PURPOSE

To have the City Council receive and file Maintenance and Performance Bonds submitted by Grand Communities, LLC. guaranteeing public improvements constructed as part of Renaissance 2 Section 4 Subdivision.

BACKGROUND and FINDINGS

Section 1206 of the Middletown Codified Ordinances governs subdivision development within the City. Section 1206.02 requires the developer to submit a one year maintenance bond upon final completion of public improvements. Section 1206.02 allows the developer to provide a bond of a recognized surety company in the amount equal to the construction items not completed at the time of the approval of the plat in lieu of completion of all planned improvements. The performance bond covers the survey monumentation not yet completed. The bonds to be received and filed are for Renaissance 2 Section 4.

ALTERNATIVES

None

FINANCIAL IMPACT

None

EMERGENCY/NON-EMERGENCY

Consent Agenda
RECOMMENDATION

Receive and file the Maintenance Bond and Performance Bond, submitted by Grand Communities, LLC for the public improvements in Renaissance 2 Section 4.

ATTACHMENTS

Maintenance Bond for $50,192.96
Performance Bond for $4,800.00
MAINTENANCE BOND

Know All Men By These Presents, That we, Grand Communities, LLC
3940 Olympic Blvd, Suite 400, Erlanger, Kentucky 41018
as Principal, and Berkley Insurance Company, a corporation
organized under the laws of the State of DE with principal place 475 Steamboat Rd
Greenwich, CT 06830, as Surety, are hold and
firmly bound unto City of Middletown, One Donham Plaza, Middletown, OH 45042
(hereinafter called Obligee) in the penal sum Fifty Thousand
One Hundred Ninety-Two and 96/100 ($50,192.96), for
payment of which, well and truly to be made, we do hereby bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these
presents.

DATED this 16th day of September 2019.

WHEREAS, the said Principal has heretofore entered into a Subdividers Contract
with the Obligee above named for certain physical improvements for

Roadway, drainage, sanitary and erosion in Renaissance Section 4 Subdivision
located in City of Middletown, OH

and

WHEREAS, the Principal submits that all work called for under the said
Subdividers Contract has now been completed according to the approved plans and as
a condition of acceptance of the physical improvements offers this bond to said Obligee;

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, That is
said Principal shall, for a period of One (1) years from and after the 16th
day of September 2019, indemnify the Obligee against any loss or
damage directly arising by reason of any defect in the material or workmanship which
may be discovered within the period aforesaid, then this obligation shall be void;
otherwise to be and remain in full force and virtue in law.

PROVIDED, HOWEVER, that in the event of any default on the part of said
Principal, written statement of the particular facts showing such default and the date
hereof shall be delivered facts showing such default and the date thereof shall be
delivered to the Surety by certified mail, at its Home Office in 475 Steamboat Rd
Greenwich, CT 06830 promptly and in any event within thirty (30) days after the Obligee
or his representative shall learn of such default; and that no claim suit, or action by
reason of any default of the Principal shall be brought hereunder after the expiration of
thirty (30) days from the end of the maintenance period as herein set forth.
Grand Communities, LLC
A Kentucky Limited Liability Company
Principal
By:

Its: Todd E. Huss, President

Berkley Insurance Company
Surety
By:

Its: Tiffiany Gobich, Attorney-in-Fact
POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the “Company”), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: Dan E. Ries; Susan A. Yeazell; Tiffany Gobich; or Anne Tierney of USI Insurance Services, LLC of Cincinnati, OH its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exaction of Financial Guaranty Insurance, providing that no single obligation shall exceed Fifty Million and 00/100 U.S. Dollars (U.S.$50,000,000.00), to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 12 day of AUGUST, 2019.

Attest:  
Berkley Insurance Company

(Seal)  
By Ira S. Lederman  
Executive Vice President & Secretary

By Jeffrey M. Hafter  
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)
COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 12 day of AUGUST, 2019, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney, that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 16th day of SEPTEMBER, 2019.

(Seal)

Vincent P. Forte
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS that, Grand Communities, LLC, 3940 Olympic Blvd, Suite 400, Erlanger, KY 41018, as Principal, and Berkley Insurance Company, 475 Steamboat Rd, Greenwich, CT 06830, as Surety, are held and firmly bound unto City of Middletown, One Donham Plaza, Middletown, OH 45042, as Obligee, in the sum of Four Thousand Eight Hundred and 00/100 Dollars ($4,800.00) lawful money of the United States for the payment of which, well and truly be made, we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a “Subdividers Contract” with City of Middletown, OH for Roadway in Renaissance Section 4 Subdivision.

NOW THEREFORE, if the said Principal hereinbefore set forth, shall fully and faithfully perform all the work specified to be done in accordance with plans for Roadway in Renaissance Section 4 Subdivision, on record at City of Middletown, OH, then this obligation shall be void and of no further legal effect; otherwise, this bond shall remain in full force and effect in law; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder, shall in no event exceed the penal amount of this obligation, as herein stated to be the sum of Four Thousand Eight Hundred 00/100 Dollars ($4,800.00) and no more.

SIGNED AND DATED THIS 16th day of September, 2019

Principal: Grand Communities, LLC
A Kentucky Limited Liability Company
By: ____________________________
    Todd E. Huss, President

Surety: Berkley Insurance Company
By: ____________________________
    Tiffiny Gobich, Attorney-in-Fact
POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the “Company”), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: Dan E. Ries; Susan A. Yeazell; Tiffany Gobich; or Anne Tierney of USI Insurance Services, LLC of Cincinnati, OH its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed Fifty Million and 00/100 U.S. Dollars (U.S.$50,000,000.00), to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 12th day of August, 2019.

Attest:

Berkley Insurance Company

By

Ira S. Lederman
Executive Vice President & Secretary

By

Jeffrey M. Hafer
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE “BERKLEY” SECURITY PAPER.

STATE OF CONNECTICUT

COUNTY OF FAIRFIELD

Sworn to before me, a Notary Public in the State of Connecticut, this 12th day of August, 2019, by Ira S. Lederman and Jeffrey M. Hafer who are sworn to me to be the Executive Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

M aria C. R unde r b eak en
Notary Public, State of Connecticut

APRIL 30, 2024

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date. Given under my hand and seal of the Company, this 16th day of September, 2019.

Vincent P. Forte

(Seal)
September 30, 2019

TO: Doug Adkins, City Manager
ATTN: Amy Schenck, Clerk of City Council
FROM: Ashley Combs, Planning Director

SUBJECT: FINAL PLAT – RENAISSANCE II SECTION 4

Request:
Consideration of approval by Fischer Development Company for the Final Plat for Renaissance II Section 4 for a total of 20 single family homes on a total of 5.661 acres. This section is a part of the previously approved Renaissance II subdivision that was approved by the City Planning Commission in June 2015. Planning Commission approved the Final Development Plan Plat at their meeting held on June 14, 2017.

Per the Ohio Revised Code, the process for final plat approval requires filling an application to Planning Commission to make a recommendation to City Council. The Planning Commission recommendation is forwarded to City Council for final consideration.

Planning Commission Recommendation:
The Final Development Plan was recommended for approval by the Planning Commission to City Council with the condition that all Engineering comments be completed. If approved by City Council. A final Mylar of Renaissance II Section 4 will be printed for signatures and then recorded with Warren County.

Other Department Comments:
No comments have been received at this time.

Non-Emergency Item

CC: Jennifer Ekey, Economic Development Director
STAFF REPORT

THE RENAISSANCE II SUBDIVISION, SECTION 4
FINAL DEVELOPMENT PLAN

(Located North East of the Intersection of Union Road and Hendrickson Road/Bigler Road along the proposed Southern Extension of Renaissance Boulevard)

APPLICANT/DEVELOPER:
Fischer Development Company
3940 Olympic Boulevard, Suite 100
Erlanger, Kentucky 41018

ENGINEER:
McGill Smith Punshon, Inc.
3700 Park 42, Suite 190B
Cincinnati, Ohio 45241

REQUEST:
A request for Final Development Plan approval for the Renaissance II Section 4 by applicant Fischer Development Company. This section is a total of 20 single family homes on a total of 5.661 acres. This section is a part of a previously approved Preliminary Development Plan of the Renaissance II subdivision that was approved by Planning Commission in 2015.

BACKGROUND:
The Renaissance II proposes 262 single family lots and is zoned D-1, Low Density Dwelling Residential Zoning District. The Renaissance I & II propose 545 single family homes combined. The most recent amendment for the Renaissance II Preliminary Development Plans was approved by Planning Commission in June 2015. The Preliminary Development Plan for Renaissance II was approved for changes in street alignments, reduction of lot sizes and widths, increases in open space. The homes to be built in Renaissance II were also approved for variances from the minimum housing and architectural standards. The Development Plan for Renaissance II Section 4 contains the same number of building lots as the originally approved proposed Preliminary Development Plans. Please see attached Preliminary Development Plan for Renaissance II Section 4.

The Renaissance II extends Renaissance Boulevard to Hendrickson Road. The Renaissance I & II are under the same homeowners association and will share certain amenities. Fitness trails at the shared open spaces will also link Renaissance subdivisions.

STAFF ANALYSIS:
The Final Development Plan for Renaissance II Section 4 appears to meet the most recently approved Preliminary Development Plan. The Final Development Plan will require City Council approval.

OTHER DEPARTMENT COMMENTS:
The Engineering Department has reviewed and approved the construction drawings subject to comments. There have not been any other comments from City Departments.
ATTACHMENTS:
Application, Final Development Plan, and previously approved Preliminary Plan for Renaissance II Section 4.

FINAL DEVELOPMENT PLAN.

After approval of the preliminary development plan, the applicant may proceed with submission of a final development plan in accordance with the following requirements:

(a) Conformance with Preliminary Development Plan. The final development plan shall conform in all respects to the approved or conditionally approved preliminary development plan, provided, however, that the Planning Commission may authorize minor changes in the preliminary plan as set forth in § 1264.06(a)(1).

(b) Staging of construction. The final development plan may include all or any reasonable acceptable part of the approved preliminary development plan, provided that no details of any final plan shall necessitate revision of portions of the approved preliminary plan located outside of the area to be included within boundaries of the proposed final development plan. If major revision of any portion of the preliminary development plan is required, a revised preliminary plan shall be approved by the Planning Commission before approval is granted on the final plan.

(c) Application and staff guidance. The final plan shall be filed in the same manner as the preliminary plan, as set forth in § 1264.03(a).

(d) Acceptance of application. After the applicant has conferred with the development staff and discussed general details of the final development plan requirements, the plan shall be officially accepted for detailed review, provided that the plan and other necessary accompanying documents comply in all respects to the following requirements:

(1) Construction drawings. The City Engineer shall establish standards for construction of all streets, sidewalks, parking areas, utilities and surface drainage, and no final development plan shall be approved by the Planning Commission until construction drawings showing all required details for the area included in the proposed final development plan have been approved by the City Engineer.

(2) Plan requirements. Each final development plan shall include all items as established in a written policy by the Planning Commission.

(3) Copies submitted. The number of prints required for submission shall be determined by the Director of Planning and Community Development. If the plan or accompanying documents do not comply with the requirements provided in this division, the application for final plan approval shall be refused and the applicant informed as to reasons for rejection.

(e) Staff review. After a final development plan has been officially accepted, the plan shall be reviewed under the same procedure as set forth in § 1264.03(c).

(f) Planning Commission review. It shall be the duty of the Planning Commission to review the plan and determine whether it meets the requirements and criteria of this Zoning Ordinance, that it represents a detailed and precise expansion of the preliminary plan as previously approved and that it complies with all conditions which may have been imposed at the time of approval of the preliminary plan.

(g) Decision on request. If it is found that the final development plan complies in all respects to the criteria set forth in division (f) hereof, the Planning Commission shall approve the plan, and the Secretary of the Commission shall affix his signature and the date thereto attesting to such approval.
(h) **Extent of final approval.** Final development plan approval shall be effective for an unlimited period, provided, however, that there shall not be more than one development plan covering the same site in effect at any time.

(Ord. 4886, passed 12-27-1968)
Approved Preliminary Plan for Renaissance II – Section 4
MOTION ITEM
DATE       September 24, 2019

TO:         Douglas Adkins, City Manager

FROM:       Scott Tadych, Public Works and Utilities Director
            Prepared by Rob Nicolls, City Engineer

Dixie Highway Water Main Replacement

PURPOSE

Authorize the City Manager to enter into a contract with Ford Development Corp. to proceed with the Dixie Highway Water Main Replacement.

BACKGROUND AND FINDINGS

The City is proposing to proceed with the Dixie Highway Water Main Replacement project which consists of replacing the water main on Dixie Highway between Manchester Rd. and Coles Rd. (Central Ave. in Warren County). This section has served its useful life and routinely develops leaks which require costly repairs.

Three contractors submitted a bid for the project. Ford Development Corp. submitted the lowest and best bid.

ALTERNATIVES

None.

FINANCIAL IMPACTS

The lowest bid received for this project on September 11, 2019 was $1,168,152.20 which is 24% lower than the engineer’s estimate and 25% lower than the next bidder.

The project will be funded by the Water Capital Fund (494). These funds are included in the 2019 budget.

EMERGENCY/NON EMERGENCY

Motion Agenda
ATTACHMENTS

Vicinity Map
Bid Tab
## DIXIE HIGHWAY WATER MAIN REPLACEMENT

### BID TABULATION

**LEGAL NOTICE NO. 19-8087**  
**BIDS RECEIVED: September 11, 2019**

<table>
<thead>
<tr>
<th>Contractor’s Name &amp; Address</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Engineer’s Estimate</strong></td>
<td>$1,538,317.10</td>
</tr>
<tr>
<td><strong>Ford Development Corp.</strong></td>
<td>$1,168,152.20</td>
</tr>
</tbody>
</table>
| 11148 Woodward Lane  
Cincinnati, OH 45241                |                   |
| **Performance Site Development**     | $1,557,409.85     |
| 1342 Spangler Road  
Fairborn, OH 45324                  |                   |
| **Majors Enterprises Inc.**          | $1,644,556.00     |
| 6393 Hamilton Lebanon Road  
Monroe, OH 45050                     |                   |

*Ford Development Corp. was the low bid in the amount of $1,168,152.20 which is 24% under the Engineer’s Estimate of $1,538,317.10*
COUNCIL COMMENTS
LEGISLATION
ITEM 1
ORDINANCE NO. O2019-58

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH MIDAS MIDWEST, LLC FOR REPAIRS TO THE BONITA DRIVE AND JACKSON LANE STORM SEWER AND DECLARING AN EMERGENCY.

WHEREAS, the City sought proposals for the Bonita Drive and Jackson Lane Storm Sewer repairs which include applying an internal lining to the deteriorated metal pipes; and

WHEREAS, seven contractors submitted proposals for the project and Midas Midwest, LLC submitted the lowest and best proposal in the amount of $126,050.00; and

WHEREAS, staff recommends approving the contract with Midas Midwest, LLC in an amount not to exceed $138,534.00. This increased amount over the proposal includes a $10,000.00 contingency for potential quantity overruns and $2,484.00 for the performance bond;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Ohio Revised Code, is authorized to enter into a contract with Midas Midwest, LLC for repairs to the Bonita Drive and Jackson Lane storm sewer in accordance with the proposal attached hereto as Exhibit A. The contract shall be in a form acceptable to the Law Director and City Manager.

Section 2

The Finance Director is hereby authorized and directed to pay a sum not to exceed $138,534.00 from the Storm Water Capital Reserve Fund (Fund # 415), which such sum is hereby appropriated to the account of 811 (415.811.54501).

Section 3

City Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 735 of the Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.

Section 4
This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: in order to get the work completed during this construction season, and shall be in full force and effect from the date of its adoption.

Lawrence P. Mulligan, Jr., Mayor

Adopted:_______________

Attest:_________________
   Clerk of City Council
DATE   September 16, 2019
TO:    Douglas Adkins, City Manager
FROM:  Scott Tadych, Public Works and Utilities Director
       Prepared by Rob Nicolls, City Engineer

Bonita Dr. and Jackson Lane Storm Sewer Repairs

PURPOSE

Authorize the City Manager to enter into a contract with Midas Midwest LLC, waive the bidding procedure requirement, and appropriate the funds necessary from the storm sewer capital fund.

BACKGROUND AND FINDINGS

The City is proposing to proceed with the Bonita Dr. and Jackson Lane Storm Sewer Repairs project which consists of repairing the deteriorated metal pipes by applying an internal mortar lining.

Staff advertised a request for proposals and seven contractors provided proposals to perform the repairs. Midas Midwest LLC provided the best proposal.

ALTERNATIVES

Award the work to a different contractor and/or alter the scope of work.

FINANCIAL IMPACTS

The lowest and best proposal received for this project on August 29, 2019 was $126,050.00 to provide a full circumferential liner for the pipe(s). Midas also provided the lowest overall proposal to repair only the invert of the pipes for $108,050; however, staff feels that the full circumferential liner offers the best value.

Staff recommends authorizing the award of a contract to Midas Midwest LLC based on their proposal prices provided and not to exceed $138,534. The additional amount added to the proposal is to cover the cost of the performance bond and potential quantity overruns as shown on the attached Proposal Page spreadsheet.
The project will be funded by the Storm Sewer Capital Fund (415); however, these funds need to be appropriated for this work.

**EMERGENCY/NON EMERGENCY**

Second reading emergency is requested for this work to be able to complete the work this construction season.

**ATTACHMENTS**

Bid Tab
Proposal Page
BONITA DRIVE AND JACKSON LANE STORM SEWER REPAIRS  
LEGAL NOTICE NO. 19-8083  
BIDS RECEIVED: AUGUST 29, 2019

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<th>CONTRACTOR</th>
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<tr>
<td>Midas Midwest LLC</td>
<td>$108,050.00</td>
<td>$126,050.00</td>
</tr>
<tr>
<td>5 Industrial Park Drive</td>
<td>P. O. Box 29</td>
<td>Winchester, IN 47394</td>
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<tr>
<td>IPR Great Lakes</td>
<td>$</td>
<td>$218,200.00</td>
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<tr>
<td>4086 Michigan Avenue</td>
<td></td>
<td></td>
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<tr>
<td>Detroit, MI 48210</td>
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<tr>
<td>Proshot Concrete Inc.</td>
<td>$128,540.00</td>
<td>$230,740.00</td>
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<td>4158 Musgrove Drive</td>
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<td>Municipal &amp; Contractors Sealing Products</td>
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<td>7740 Reinhold Drive</td>
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<td></td>
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<tr>
<td>Cincinnati, OH 45237</td>
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<td>National Gunite</td>
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<td>$</td>
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<tr>
<td>1122 Deloss Street, Suite B</td>
<td></td>
<td></td>
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<tr>
<td>Indianapolis, IN 46203</td>
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<td>Marra Services Inc.</td>
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<td>700 E. 73rd Street</td>
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<td></td>
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<tr>
<td>Cleveland, OH 44103</td>
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<tr>
<td>SMITHCORP, Inc.</td>
<td>$472,000.00</td>
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<td>130 Novner Drive</td>
<td></td>
<td></td>
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<tr>
<td>Cincinnati, OH 45215</td>
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## Proposal Prices

### Bonita Dr. and Jackson Lane Storm Sewer Repairs

#### NOTE:

All blanks shall be filled in. The column "Amount" shall be the product of the Unit Price multiplied by the Quantity. In case of error, the Unit Price shall govern. ODOT No. column refers to Section in the Detailed Specifications which governs this item.

### ODOT Construction and Material Specifications - 2016

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<th>ITEM #</th>
<th>DESCRIPTION</th>
<th>QTY</th>
<th>UNIT</th>
<th>UNIT PRICE</th>
<th>AMOUNT</th>
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**TOTAL** $138,534.00
LEGISLATION
ITEM 2
ORDINANCE NO. O2019-59

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH INSIGHT PIPE CONTRACTING, LLC FOR THE 2019 SANITARY SEWER LINING PART 2 PROJECT AND DECLARING AN EMERGENCY.

WHEREAS, the City sought proposals for the lining of defective sanitary sewer mains on various streets; and

WHEREAS, four contractors submitted proposals for the project and Insight Pipe Contracting, LLC submitted the lowest and best proposal in the amount of $273,989.50; and

WHEREAS, staff recommends approving the contract with Insight Pipe Contracting, LLC in an amount not to exceed $297,169.50. This increased amount over the proposal includes a $20,000.00 contingency for potential quantity overruns and $3,180.00 for the performance bond;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Ohio Revised Code, is authorized to enter into a contract with Insight Pipe Contracting, LLC for the 2019 Sanitary Sewer Lining Part 2 Project in accordance with the proposal attached hereto as Exhibit A. The contract shall be in a form acceptable to the Law Director and City Manager.

Section 2

The Finance Director is hereby authorized and directed to pay a sum not to exceed $297,169.50 from the Sewer Capital Reserve Fund (Fund # 495).

Section 3

City Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 735 of the Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.
Section 4

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: in order to get the work started during this construction season, and shall be in full force and effect from the date of its adoption.

Lawrence P. Mulligan, Jr., Mayor

Adopted:_______________

Attest:__________________

Clerk of City Council

H:\Law\2019 Leg\O Contract with Insight Pipe Contracting
<table>
<thead>
<tr>
<th>ITEM #</th>
<th>DESCRIPTION</th>
<th>QTY</th>
<th>UNIT</th>
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<td>9</td>
<td>CIPP 8” Liner-Aberdeen</td>
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<td>$3,180.00</td>
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**TOTAL** $297,169.50

**NOTE:** All blanks shall be filled in. The column "Amount" shall be the product of the Unit Price multiplied by the Quantity. In case of error, the Unit Price shall govern. ODOT No. column refers to Section in the Detailed Specifications which governs this item.
DATE: September 16, 2019

TO: Douglas Adkins, City Manager

FROM: Scott Tadych, Public Works and Utilities Director
Prepared by Rob Nicolls, City Engineer

PURPOSE

Authorize the City Manager to enter into a contract with Insight Pipe Contracting, LLC and waive the bidding procedure requirement.

BACKGROUND AND FINDINGS

The City is proposing to proceed with the 2019 Sanitary Sewer Lining Part 2 project which consists of constructing a cured in place liner to defective sanitary sewer mains on various streets.

Staff advertised a request for proposals and four contractors provided proposals to perform the work. Insight Pipe Contracting LLC provided the best proposal.

ALTERNATIVES

Award the work to a different contractor and/or alter the scope of work.

FINANCIAL IMPACTS

The lowest and best proposal received for this project on September 17, 2019 was $273,989.50.

Staff recommends authorizing the award of a contract to Insight Pipe Contracting LLC based on their proposal prices provided and not to exceed $297,169.50. The additional amount added to the proposal is to cover the cost of the performance bond and potential quantity overruns as shown on the attached Proposal Page spreadsheet.

The project will be funded by the Sanitary Sewer Capital Fund (495). These funds are included in the 2019 Capital Improvement budget.
EMERGENCY/NON EMERGENCY

Motion Agenda

ATTACHMENTS

Bid Tab
Proposal Page
## 2019 SANITARY SEWER LINING - PART 2
### LEGAL NOTICE NO. 19-8091
### BIDS RECEIVED: SEPTEMBER 17, 2019

<table>
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<th>CONTRACTOR</th>
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<td>Insight Pipe Contracting, LLC</td>
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<td>Detroit, MI 48210</td>
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<td>Insituform Technologies, LLC</td>
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<td>Granite Inliner</td>
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<td>4143 Weaver Court</td>
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<td>Hilliard, OH 43028</td>
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</table>
### PROPOSAL PRICES

#### 2019 SANITARY SEWER LINING PART 2

**NOTE:** All blanks shall be filled in. The column "Amount" shall be the product of the Unit Price multiplied by the Quantity. In case of error, the Unit Price shall govern. ODOT No. column refers to Section in the Detailed Specifications which governs this item.

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**TOTAL** $297,169.50
LEGISLATION
ITEM 3
ORDINANCE NO. O2019-60

AN ORDINANCE TO ENACT SECTION 660.22 (UNSOLICITED MATERIALS) OF THE MIDDLETOWN CODIFIED ORDINANCES.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio, that:

Section 1

Section 660.22 (Unsolicited Materials) of the Codified Ordinances is hereby enacted to read as set forth in Exhibit “A”, attached hereto and incorporated by reference.

Section 2

This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Lawrence P. Mulligan, Jr., Mayor

1st Reading: October 1, 2019
2nd Reading: 
Adopted: 
Effective: 

Attest: 
Clerk of the City Council
EXHIBIT “A”

MCO §660.22 (Unsolicited Materials)

(A) Definitions. As used in this section:

1. **Front Door.** The street facing entrances to a principal structure. In the event no door faces the street, then any other door of a principal structure nearest to the street shall be considered a front door for the purposes of this section.

2. **Person.** Any person, firm, corporation, limited liability company, association, club, society, or other organization.

3. **Porch.** An exterior appendage to a principal structure leading to a doorway, including any stairway attached thereto.

4. **Premises.** A lot, plot or parcel of land including any structures, driveways or other impervious surfaces thereon.

5. **Principal Structure.** A structure, or combination of structures of primary importance on the premises, and that contains the primary use associated with the premises. The primary use is characterized by identifying the main activity taking place on the premises.

6. **Unsolicited Written Materials.** Any written materials delivered to any premises without the express invitation or permission, in writing or otherwise, by the owner, occupant, or lessee of such premises.

(B) No person shall deliver, place or distribute unsolicited written materials to any premises other than the following locations and in the following manners:

1. On a porch, if one exists, nearest the front door; or

2. So that such materials are securely attached the front door; or

3. Through a mail slot on the front door or principal structure, if one exists, as permitted by the United States Postal Service Domestic Mail Manual, Section 508 Recipient Services, Subsection 3.1.2; or

4. Between the exterior front door, if one exists and is unlocked, and the interior front door; or

5. Where permitted, in a distribution box located on or adjacent to the premises; or
6. Securely attached to a hook or within some other receptacle used for the delivery of non-U.S. Mail packages or materials, attached to the mailbox post for the premises, if it exists; or

7. Personally to the owner, occupant, and/or lessee of the premises.

(C) Notwithstanding subsection (B), an owner, lessee or occupant maintains the right to restrict entry to his or her premises. An entry onto private property under this section remains subject to the provisions of section 642.12 (Trespassing) of the Middletown Codified Ordinances regarding enter onto property with the sign bearing the words “No Peddlers, Solicitors or Canvassers Invited,” or words of similar import.

(D) Organizational Liability. It is the intent of City Council to jointly impose organizational liability under this provision for violation of this section by any officer, agent (including, but not limited to, an independent contractor), or employee of a business or organization while acting on behalf of the business or organization and within the scope of the officer’s, employee’s or agent’s office or employment.

(E) Timestamped, photographic evidence of unsolicited written materials located upon a premises, other than as permitted pursuant to subsection (B), creates a rebuttable presumption that the materials were placed at the premises by the owner, officer, agent (including but not limited to an independent contractor), or employee of the business, product, good, service, or message which is being advertised, promoted, endorsed, or conveyed in such materials. Where the materials are delivered as a package and related to multiple businesses, products, goods, services or messages the presumption shall apply to the identified distributor of the package of materials, if any. Violations of this section is a strict liability offense and the prosecution of an offense under this section is relieved from proof of any other culpable mental state as defined in section 606.02 of the Middletown Codified Ordinances.

(F) The provisions of this section do not apply to the United States Postal Services.

(G) Severability. If any provision, clause, sentences, or paragraph of this section or the application thereof to any person or circumstances shall be held invalid, that invalidation shall not affect the other provisions of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are declared to be severable.

(H) Whoever violates any of the provisions of this section is guilty of a minor misdemeanor on a first offense. Any subsequent offense shall be charged as a third degree misdemeanor if the defendant has previously been convicted individually or under organizational liability. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs or continues. This penalty shall be as provided in Section 698.02 of the Middletown Codified Ordinances depending on the defendant’s status as an individual and/or organization.
DATE: September 11, 2019

TO: Douglas Adkins, City Manager

FROM: Susan Cohen, Administrative Services Director

PURPOSE
The purpose of this staff report is to present the updates to the Middletown Codified Ordinances that will impose penalties for placing unsolicited written materials in certain locations on or around homes.

BACKGROUND AND FINDINGS
Staff regularly hears concerns from citizens that advertising and other unsolicited written materials are placed unsecured at homes or dumped in inappropriate locations. This becomes a nuisance for residents. When left unattended, these materials can blow away or be swept away by inclement weather. The printed materials then frequently collect near sewers or other common areas of streets. This contributes to disrepair, make it more difficult to upkeep streets, and encourages unnecessary blight.

Staff is proposing new MCO Chapter 660.22 to restrict the placement of unsolicited materials to the front porch; attach to front door, through mail slot, in between storm doors and front doors, central distribution boxes located in some neighborhoods, hooks attached to US mail boxes, or personally given to resident of the property. This restriction will prevent materials from being placed in locations that will later become collected in public areas. As a function of law, the restrictions would not apply to the US postal service delivery. Further, this would still allow homeowners to restrict access to their home pursuant to statutes in place to prevent trespassing by posting appropriate signage. Ultimately, the proposed ordinance indicates violations of the ordinance will be a minor misdemeanor offense for a first offense and a misdemeanor of the third degree for subsequent offenses.

ALTERNATIVES
City Council could choose not to enact MCO Chapter 660.22

RECOMMENDATION
It is the recommendation of staff that City Council approve the enactment of MCO Chapter 660.22 in order to help address concerns of the citizens and to promote the upkeep of the community.

EMERGENCY/NON EMERGENCY
Non-emergency
LEGISLATION
ITEM 4
ORDINANCE NO. O2019-61

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A JOB CREATION INCENTIVE GRANT AGREEMENT WITH MIDWEST AMMUNITION, LLC.

WHEREAS, the City has established a Job Creation Incentive Grant (JCIG) Program (Ordinance O2012-11) to encourage the creation of new jobs in the City; and

WHEREAS, Midwest Ammunition, LLC has proposed a project which will result in the relocation of 40 full-time jobs and approximately $1,500,000.00 in new annual payroll to the City, which qualifies for an incentive grant under the City’s JCIG Program;

NOW, THEREFORE, BE IT ORDAINED, by City Council of the City of Middletown, Butler/Warren Counties, Ohio, that:

Section 1

The City Manager is hereby authorized to enter into a Job Creation Incentive Grant Agreement with Midwest Ammunition, LLC, not to exceed a 15% incentive grant for a four (4) year period of eligibility, subject to the terms and conditions of the program and agreement. The agreement shall be in a form and substance substantially similar to Attachment “1”, attached hereto.

Section 2

This ordinance shall take effect and be in force from and after the earliest period allowed by law.

___________________________
Lawrence P. Mulligan, Jr., Mayor

1st Reading: October 1, 2019
2nd Reading: _____________
Adopted: _________________
Effective: ________________

Attest:_________________________
   Clerk of the City Council

H:\law\leg\2019 Leg\O Midwest Ammunition JCIG
JOB CREATION INCENTIVE GRANT AGREEMENT

This agreement is made and entered into by and between the CITY OF MIDDLETOWN, OHIO, an Ohio municipality, with its main offices located at One Donham Plaza, Middletown, Ohio 45042 (hereinafter "the City" or “City of Middletown”) and MIDWEST AMMUNITION, LLC, an Ohio limited liability company, with its main offices located at _________________________, _______________________, Ohio ______ (hereinafter referred to as "Midwest").

WHEREAS, the City of Middletown has encouraged the creation of new jobs in the City by establishing a Job Creation Incentive Grant Program (Ordinance No. O2012-11); and

WHEREAS, Midwest is expanding its operation into the City and will be relocating 40 jobs by the end of the three month job creation period, with $1,500,000.00 in new payroll annually; and

WHEREAS, Midwest has submitted an application (attached as Exhibit A) to the City of Middletown (hereinafter referred to as "Application"); and

WHEREAS, the Economic Development Incentive Team of the City of Middletown has investigated the Application of Midwest and has recommended to the Middletown City Council that Midwest is qualified to receive a Job Creation Incentive Grant (JCIG) and that an agreement for the same should be entered; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, the parties herein agree as follows:

1. Midwest intends to establish a manufacturing facility in the City of Middletown. Midwest is anticipated to relocate 40 jobs to the facility within the three month “job creation period”. New payroll attributable to the 40 new employees is projected to be $1,500,000.00. If Midwest creates the new jobs and payroll attributable to the new employees, it shall receive a JCIG as set forth below, subject to any limitations and conditions set forth in this agreement and Ordinance No. O2012-11. The “job creation period” begins upon all parties executing this agreement.

2. Midwest shall receive an annual grant in an amount equal to 15% of the income tax collected on new payroll attributable to the new employees placed in service during and after the “job creation period”. The grant shall not be payable until one year after the “job creation period” is completed. The grant shall be in an amount equal to a percentage of the income tax collected in each 12 month period following the completion of the “job creation period” and be paid for four years.

3. All grant payments are subject to the availability and appropriation of “non-tax revenues” to fund the grant payments, as set forth in Ordinance No. O2012-11. Annual grant payments will not be made until the City has verified compliance with the grant
requirements. Midwest shall provide to the City any information reasonably required by the City to evaluate Midwest’s compliance with the agreement.

4. Continuation of this agreement is subject to Midwest maintaining the threshold amount of “new payroll attributable to new employees placed during the job creation period”. After execution of this agreement, if the City discovers that such threshold amounts have not been maintained, Midwest shall be deemed to have “materially failed to comply with this agreement.” If Midwest “materially fails to comply with this agreement” or in any other manner fails to perform its obligations hereunder, the City may reduce or eliminate the amount of the grant for that year.

5. Midwest hereby certifies that at the time this agreement is executed that:

(a) it does not owe any delinquent real or tangible personal property taxes to any taxing authority of the State of Ohio, and does not owe any delinquent taxes for which the Developer is liable under Chapters 5733., 5735., 5739., 5741., 5743., 5747., 5753. of the Ohio Revised Code. If such delinquent taxes are owed, the Developer is currently paying the delinquent taxes pursuant to an undertaking enforceable by the State of Ohio or an agent or instrumentality thereof, has filed a petition in bankruptcy under 11 U.S.C.A. 101, et seq., or such a petition has been filed against the Developer. For the purposes of the certification, delinquent taxes are taxes that remain unpaid on the latest day prescribed for payment without penalty under the chapter of the Revised Code governing payment of those taxes.

(b) it does not owe any delinquent income taxes to a political subdivision of the State of Ohio;

(c) it does not owe any money to the State of Ohio or a state agency for the administration or enforcement of any environmental laws of the State; and

(d) it does not owe any other money to the State of Ohio, a state agency or political subdivision of the State of Ohio that is past due, whether the amounts owed are being contested in a court of law or not.

6. Midwest and the City of Middletown acknowledge that this agreement has been approved by formal action of the legislative authority of the City of Middletown as a condition for the agreement to take effect. This agreement takes effect upon the effective date of City Council’s approval and upon the latter date of the signatures of both parties below.

7. The City of Middletown requires that recipients of incentive benefits practice non-discriminating hiring in its operations. By executing this agreement, Midwest is committing to following non-discriminating hiring practices acknowledging that no individual may be denied employment solely on the basis of race, religion, sex, disability, color, national origin, or ancestry.
8. Midwest affirmatively covenants that it has made no false statements to the City in the process of obtaining approval for the JCG. If any representative of Midwest has knowingly made a false statement to the City to obtain the grant, Midwest shall be required to immediately return all benefits received under this agreement and shall be ineligible for any future economic development assistance from the City. Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to Ohio Revised Code §2921.13(A)(4), which is punishable by a fine of not more than $1,000 and/or a term of imprisonment of not more than six months.

9. This agreement is not transferable or assignable without the express, written approval of the City of Middletown.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed on the date below their signatures.

CITY OF MIDDLETOWN

By: __________________________
   Douglas Adkins
   City Manager

Date: ________________________

Approved as to form:

__________________________
Benjamin J. Yoder
Law Director

MIDWEST AMMUNITION, LLC

By: __________________________
   Mark Siefer
   President

Date: ________________________

Approved as to form:

__________________________
Benjamin J. Yoder
Law Director
EXHIBIT "A"

BUSINESS ASSISTANCE: JOB CREATION INCENTIVE GRANT

APPLICATION

DATE 9-16-19

COMPANY MIDWEST AMMUNITION LLC
CONTACT/TITLE MARK SIEFFER / PRESIDENT
ADDRESS 1700 S. UNIVERSITY BLVD

CITY MIDDLETOWN STATE OH ZIP 45042
PHONE (513) 307-9929
FAX ( )
EMAIL MARK@MIDWESTAMMUNITION.COM
WEBSITE WWW.MIDWESTAMMUNITION.COM

PROJECT DESCRIPTION
MANUFACTURING COMPANY WITH
40 PLUS EMPLOYEES. HIGH POTENTIAL
FOR GROWTH WITH PURCHASE OF
NEW BUILDING IN MIDDLETOWN.

City of Middletown
Economic Development
One Donham Plaza
Middletown, OH 45042
(513) 425-7847 (P)
(513) 425-7792 (F)
www.cityofmiddletown.org

Page 2 of 3
APPLICATION CONT.

1. NEW JOBS 40 (15 jobs minimum)
2. JOB CREATION PERIOD 3 months (36 mos. Maximum)
3. NEW PAYROLL 1.5m ($750,000 minimum)
4. OTHER PROJECT INVESTMENT

5. EXISTING JOBS IN MIDDLETOWN 0
6. EXISTING PAYROLL 0
7. ARE THERE OTHER INCENTIVES BEING CONSIDERED? Y (If yes, please note program and approximate values of incentives.)

8. OTHER CONSIDERATIONS

[Signature] 9-16-19

**ECONOMIC DEVELOPMENT INCENTIVE TEAM RECOMMENDATION**

% for ________ years.

City of Middletown
Economic Development
One Donham Plaza
Middletown, OH 45042
(513) 425-7847 (P)
(513) 425-7792 (F)
www.cityofmiddletown.org
DATE: Monday, September 16, 2019

TO: Douglas Adkins, City Manager

FROM: Jennifer Ekey, Economic Development Director
Prepared by: Alaina Geres, Program Manager

PURPOSE
Approval of Job Creation Incentive Grant (JCIG) for Midwest Ammunition.

BACKGROUND AND FINDINGS
Midwest Ammunition currently operating at 4224 Hamilton-Trenton Road in St. Clair Township, Ohio seeks to purchase a new facility for their growing operations.

Midwest Ammunition was founded in late 2014 and produces ammunition. Most of the ammunition they produce is remanufactured brass units obtained from gun ranges, although they do also produce new ammunition.

Midwest Ammunition currently employees 40 FTE at a payroll of $1.5M. With their main customer doubling locations within the next 2 years, Midwest Ammunition sees potential to double their production and employment as well.

The company needs new space as they have outgrown their current location. They seek to purchase a new facility and have looked in Southwest Ohio as well as Richmond, Indiana. They have found space at 1700 S University and are interested in purchasing the property to relocate their operations from St. Clair Township to Middletown. This will be contingent on incentives granted and compliance in zoning and occupancy.

The company’s main customer (a public gun range) has 20 locations currently and are expected to have 50-60 by the end of 2020, which will allow Midwest Ammunition to double their production and employment as well.

ALTERNATIVES
To not approve the JCIG.

FINANCIAL IMPACTS
If Midwest Ammunition chooses to locate in Middletown, there will be an increase in income taxes of $26,250/year based on the current payroll of $1.5M. $3,937 of this would be returned to Midwest Ammunition under the terms of the JCIG for 4 years for a total of $15,748.

EMERGENCY/NON EMERGENCY
Non-emergency.

RECOMMENDATION
Staff recommends approval of the JCIG application.
LEGISLATION

ITEM 5
ORDINANCE NO. O2019-62

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH SMARTBILL LTD. FOR THE PRINTING AND MAILING OF WATER BILLS.

WHEREAS, the City recently requested bids for the mailing of tax bills, similar to water bills, and SmartBill provided the lowest and best bid;

WHEREAS, SmartBill, Ltd. is willing to print and mail the water bills at the same rate as last year $8,800.00 per month plus the cost of bills, envelopes, etc.;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Revised Code shall enter into a contract with SmartBill Ltd. for the printing and mailing of water bills for 2020. The contract shall be substantially similar to Exhibit “A”, attached hereto and approved by the Law Director.

Section 2

For said purposes, the Director of Finance is authorized and directed to expend a sum not to exceed $120,000.00 to be paid equally from the Water and Sewer Funds (Fund # 510 & 520).

Section 3

This Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this Ordinance and the provisions of Chapter 735 of the Revised Code shall not be applicable to the award and execution of the aforesaid contract.

Section 4

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.
Section 5

This ordinance shall be effective at the earliest time permitted by law.

Lawrence P. Mulligan, Jr., Mayor

1st reading: October 1, 2019
2nd reading: __________
Adopted: __________
Effective: __________

Attest: _______________________
       Clerk of the City Council

H:/Law/leg/2019 Leg/O SmartBill – Water Bills 2020
Section 1. **Scope of Production Agreement.** SmartBill agrees to provide to Client the "Services" set forth in Schedule 1 attached hereto and incorporated herein by this reference, and Client agrees that SmartBill shall be Client’s sole and exclusive provider of goods and/or services of the type or nature of the Services during the Term (as defined below). During the Term, Client agrees to furnish all data and documentation requested by SmartBill to perform the Services.

Section 2. **Fees.** Client agrees to pay SmartBill fees for the Services as set forth in Schedule 2-(Which is the same amount as Middletown Bid #12-7395-10), attached hereto and incorporated herein by this reference (“Fees”, which Fees are subject to adjustment as set forth below). SmartBill will invoice Client for the Services provided each month on or before the 15th day of the subsequent month, provided that SmartBill may immediately provide the invoice following the conclusion of each month (“Invoice”). Invoices are due upon receipt, and will be considered past due if not paid in full within thirty (30) days of receipt. In the event invoices are not paid in full within thirty days, SmartBill will discontinue service until invoices are paid in full. A late fee will be assessed on Invoices not paid within thirty (30) days of receipt as set forth in Section 3 below (“Late Fee”). SmartBill will not increase the Fees for a period of twelve (12) months from the Effective Date (“Initial Pricing Period”). In the event that Client terminates this Agreement as permitted herein by providing a termination notification, then Client will be responsible for paying for all Fees accrued and Services rendered between the termination notice date and the termination effective date.

Section 3. **Term.** The term of this Agreement shall commence on the Effective Date and continue for a period of one (1) year. The term of this Agreement shall commence on the Effective Date of January 1, 2020 and continue thru December 31, 2020 (“Term”); provided, however that this Agreement may be terminated in accordance with certain other provisions set forth in this Agreement.

Section 4. **Postage.** Client shall deposit a permanent postage deposit with SmartBill in the amount specified on Schedule 3 (“Postage Deposit”) no later than ten (10) days after the Effective Date. SmartBill may, in its sole discretion, adjust the Postage Deposit amount due to changes in Client’s volume, postage usage, postal rates or payment history, or any other reason deemed appropriate by SmartBill, so long as Client is provided advance written notice of such
adjustment. Upon termination of this Agreement, SmartBill shall return the Postage Deposit to Client after Client has paid for all Services and postage provided to or on the behalf of Client in performance of the Services. If this Agreement is terminated due to a default by Client, upon such a termination SmartBill may apply any of the Postage Deposit or any other Client’s funds that SmartBill holds against any sums that Client owes SmartBill. **IF CLIENT FAILS TO MAINTAIN THE DEPOSIT AT THE REQUIRED LEVELS, OR IF CLIENT FAILS TO TIMELY PAY ALL INVOICES AS SPECIFIED IN SECTION 2, SMARTBILL MAY IMMEDIATELY SUSPEND ITS PERFORMANCE OF ALL ITS DUTIES, SERVICES, AND OBLIGATIONS UNDER THIS AGREEMENT UNTIL THE DEPOSIT IS PROPERLY PAID AND MAINTAINED AND ALL OUTSTANDING INVOICES ARE PAID.**

**Section 5. Expenses.** Client will reimburse SmartBill for all costs and expenses associated with the performance of Services for Client, such as costs and expenses associated with, freight, delivery service and other required supplies in connection with providing the Services (“Expenses”). **This applies only to those costs and expenses not covered in the bid.**

**Section 6. Termination.** Upon breach or default with respect to any term contained herein by a Party, regardless of whether such term is material or not (“Default”), the non-Defaulting Party may send the Defaulting Party a notice of such Default (“Notice of Default”). If such noticed Default remains uncured for thirty (30) days after the Defaulting Party’s receipt of the Notice of Default, this Agreement shall be terminated unless the non-Defaulting Party agrees or specifies otherwise in writing. Examples of Default include, but are not limited to, the: (a) failure of Client to pay for all goods and/or Services as provided in this Agreement; (b) non-Appropriation of funds by [authorizing agent]; (c) any other Default by Client or SmartBill with respect to any term or condition of this Agreement.

**Section 7. Force Majeure.** Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrence beyond the reasonable control of such Party, including, without limitation, the following: fire, explosion, power failure, flood, earthquake, or other act of god; war, revolution, civil commotion, terrorism, or acts of public enemies; any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts (“**Force Majeure**”). In such Force Majeure, the Party affected shall be excused from such performance, on a day-to-day basis. Likewise, such other Party not directly affected by such Force Majeure shall also be excused from performance of its obligations on a day-to-day basis to the extent such party’s obligations relate to the other Party’s performance interfered with by the Force Majeure.
Section 8. **Confidentiality.** SmartBill agrees that any and all data, reports and documentation supplied by Client or its affiliates or third parties on Client’s behalf that are non-public and confidential shall, subject to the disclosure required for the performance of SmartBill’s obligations hereunder, not be intentionally or recklessly disclosed or otherwise disseminated by SmartBill without the consent of Client.

Section 9. **Indemnification.** To the extent the funds are subsequently available and are properly appropriated and certified for that purpose, the City hereby agrees to hold harmless and to indemnify SmartBill for any and all claims that may arise in connection with Client’s supplying to SmartBill, the data, reports and other documentation necessary to perform SmartBill's duties, services, or obligations under this Agreement, provided that such indemnification shall not extend to any claims that result from the intentional or reckless acts of SmartBill. (We cannot remove this. What we are stating is we will not be held liable if we receive bad data from the City.)

Section 10. **WARRANTIES/DISCLAIMER OF WARRANTIES.** SmartBill shall provide all goods and/or Services in accordance with the terms specifically set forth in Schedule 1. The parties hereto agree that this Agreement is only for the production of those goods and/or Services set forth in Schedule 1. **ALL WARRANTIES NOT EXPRESSLY PROVIDED IN THIS AGREEMENT ARE HEREBY DISCLAIMED.** CLIENT EXPRESSLY ACKNOWLEDGES THAT IT IS NOT RELYING ON ANY OTHER STATEMENT NOT CONTAINED IN THIS AGREEMENT AND THAT THIS WARRANTY CONSTITUTES THE ONLY WARRANTY WITH RESPECT TO THE GOODS AND SERVICES TO BE PROVIDED TO CLIENT. THE STATED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR PARTICULAR PURPOSE.

Section 11. **Limitation of Liability.** The liability of SmartBill with respect to any failure to provide the goods and/or Services as required under this Agreement shall be limited to the Middletown Bid # 12-7395-10.

Initial: Middletown Utilities Department   SmartBill

Section 12. **Governing Law and Jurisdiction.** Except to the extent governed by applicable federal law, this Agreement shall be interpreted under and governed by the laws of the State of Ohio, and any dispute between the Parties, whether arising under this Agreement or from any other aspect of the parties’ relationship, shall be governed by and determined in accordance with the substantive laws of the State of Ohio, regardless of conflicts of laws. The Parties agree that the exclusive venue for disputes between them shall be the Common Pleas Courts of Ohio, and each party hereby waives any objection it might have to the personal
jurisdiction of or venue in such courts and waives any right to file or remove any such action or claim to federal court.

**Section 13. Severability.** If any provision of this Agreement is deemed invalid or unenforceable for any reason whatsoever, such provision will be fully severable; this Agreement shall be construed and enforced as if such invalid, or unenforceable provision were not a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the invalid or unenforceable provision or by its severance from this Agreement.

**Section 14. Waiver; Modification of Agreement.** No waiver, amendment or modification of any of the terms of this Agreement shall be valid unless in writing and signed by authorized representative of both Parties hereto. Failure by either Party to enforce any rights under this Agreement shall not be construed as a waiver of such rights. Further, to the extent that a provision is waived in strict accordance with the above guidelines, no waiver of any provision of this Agreement shall constitute a waiver of any other provision or term not expressly waived in writing and signed by authorized representative of both Parties hereto, nor shall any waiver constitute a continuing waiver unless otherwise provided in writing.

**Section 15. Notice.** All notices must be in writing and if not personally delivered, be sent by facsimile, first class mail, nationally recognized overnight, delivery services or by electronic mail. Mailed notices will be effective on the other Party upon receipt. Notice by personal delivery or delivery service will be effective when delivered. When sent by facsimile or electronic mail, notice will be effective on the day the transmission is received by the recipient provided that (a) a duplicate copy of the notice is promptly given by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Either party may change the address to which notices are to be sent by giving notice of such a change to the other party. Addresses for notice purposes are as follows:

**SmartBill:**
SmartBill, Ltd.
1050 O’Neill Drive
Hebron, OH 43025
Facsimile: 740-928-5438
Email: robh@smartbillcorp.com

**Client:**
City of Middletown
1 Donham Plaza
Middletown, Ohio 45042
Facsimile: 513-425-1828
samz@cityofmiddletown.org
Section 16. **Entire Agreement.** This Agreement and its exhibits and schedules constitute the final, complete, and exclusive statement of the terms of the agreement between the Parties pertaining to the production of goods and Services for Client by SmartBill, and supersede all prior and contemporaneous understandings or agreements of the Parties. **NO PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, NOR IS ANY PARTY RELYING ON ANY REPRESENTATION OR WARRANTY OUTSIDE THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.**

Section 17. **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of all the successors and assigns of the Parties hereto. The Parties hereto execute this Agreement through their duly authorized officers, as of the day and year first written above.

Section 18. **Authority to Bind.** SmartBill and Client warrant that the person executing this Agreement has full and legal authority to execute this Agreement for and on behalf of its respective legal entity it is purporting to bind to the terms of this Agreement, as well as the full legal ability to bind such legal entity to the terms contained in this Agreement.

Section 19. **No Partnership or Joint Venture.** No agency, partnership, joint venture or other relationship is intended hereby, and neither party shall be deemed the agent, servant, employee, partner or joint venturer of the other party. Client and SmartBill shall not, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venturer. In addition, by virtue of this Agreement, there shall not be deemed to have occurred a merger or any joint enterprise between Client and SmartBill.

Section 20. **Cooperation of Parties.** Each party agrees to cooperate in good faith with the other party in all aspects of accomplishing the intent of this Agreement, including but not limited to signing documents and taking other actions as may be reasonably necessary or proper for such purpose.

Section 21. **Headings.** Headings or captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or intent of this Agreement or any of the terms hereof.

Section 22. **Interpretation.** All provisions herein shall be construed in all cases as a whole according to its fair meaning, neither strictly for nor against either Client or SmartBill and without regard for the identity of the party initially preparing the same. Titles and captions are inserted for convenience only and shall not define, limit or construe in any way the scope or intent of this Agreement. References to sections are to sections as numbered in this Agreement unless expressly stated otherwise.
Section 23. **Counterparts.** This Agreement may be signed in multiple counterparts which, when duly delivered and taken together, shall constitute a binding Agreement between all parties.

Section 24. **Exhibits.** All exhibits attached to this Agreement are incorporated herein by reference.

Section 25. **Extension of Performance Deadline if Non-Business Day.** If the date for performance of any obligation of the parties to this agreement falls on a non-Business Day, then the performance of the relevant obligation shall become due on the next Business Day following such date.

Section 26. **Legal Counsel.** Client and SmartBill acknowledge that they have been represented, or have had the opportunity to be represented, by counsel of their own choice. Neither Client nor SmartBill is relying upon any legal advice from the other party’s counsel regarding the subject matter hereof. Both parties acknowledge that they understand the terms and conditions of this Agreement and the terms and conditions of all other documents and agreements executed in connection herewith and that they sign the same freely. Neither Client nor SmartBill shall deny the enforceability of any provision of this agreement or any of the other documents or agreements executed in connection herewith on the basis that it did not have legal counsel.

SMARTBILL, LTD.                                      City of Middletown

By: _________________________   By: ___________________________
Name:  Robin W. Hess  Name: Douglas Adkins
Title:  President           Title:  City Manager

Approved as to form:

By: ____________________________
SCHEDULE 1

SERVICES

For: City of Middletown

SmartBill will provide the following services:

Format Data

- Format Data (Layout and custom design statement to 8.5” x 11”)
- Create Multiple statements per customers instructions
- Create custom message if applicable
- Sort and remove any customer-identified accounts
- Presort data for barcode postage rates
- Create statement PDF files for easy in office viewing and reprinting

Laser Printing

- Laser print documents using up to 1200 X 1200 DPI

Statement Rendering

- Fold and insert documents into a custom business #10 envelope
- Insert a custom #9 return envelope when applicable
- Insert statements and inserts (maximum of two)
- Complete Cass certification reports and delivery to Post Office

Job Accounting

- Account for all records or pages received, printed and rendered
- Recap postage available in the City of Middletown postage account

Inventory Management

- Custom design, order and maintain inventory of paper and envelopes needed for processing statements

Components:

- Supplied by the City of Middletown, purchased through SmartBill as per Middletown Bid # 12-7395-10
- Custom 8.5 X 11 standard form with 1 color preprinted on #24 lb. paper with one horizontal perforation ordered in minimum quantities of 54,000
- #10 dual window envelope ordered in minimum quantities of 54,000
- #9 single window return envelope ordered in minimum quantities of 54,000

Postage:

Postage will be charged back to the City of Middletown. The City of Middletown will maintain two months worth of postage on account at SmartBill. Deposit required prior to startup.
SCHEDULE 2

FEES FOR GOODS AND SERVICES

All prices and services rendered by SmartBill will remain the same as past years for the term of this contract as per the Cities request; beginning January 1, 2020 thru December 31, 2020.
SCHEDULE 3

POSTAGE DEPOSIT

Postage Deposit (Based on (2) two months estimated volume): Postage is already on account.
### GLOSSARY OF TERMS

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Impression</td>
<td>Laser Imaging of one side of one piece of paper. Each physical piece of paper can contain two (2) impressions.</td>
</tr>
<tr>
<td>USPS</td>
<td>United States Postal Service</td>
</tr>
<tr>
<td>Laser Imaging</td>
<td>The process where the application of dry toner (ink) is electro statically applied and bonded to a piece of paper.</td>
</tr>
<tr>
<td>Simplex</td>
<td>Laser Imaging of one (1) side of a piece of paper only.</td>
</tr>
<tr>
<td>Duplex</td>
<td>Laser Imaging of both (2) sides of a piece of paper.</td>
</tr>
<tr>
<td>OE</td>
<td>Outer Envelope - This envelope is used as the carrier mechanism for all information contained in a package to be mailed.</td>
</tr>
<tr>
<td>RE</td>
<td>Reply Envelope - This envelope is usually utilized by a customer to return information/payment requested by an organization.</td>
</tr>
<tr>
<td>Presorting</td>
<td>The act of organizing mail according to the rules and regulations defined by the USPS in order to achieve lower postage rates and increase deliverability of mail.</td>
</tr>
<tr>
<td>Business Day</td>
<td>Any day which the USPS as well as the U.S. Federal Reserve are open for business.</td>
</tr>
<tr>
<td>Holidays observed by the City</td>
<td><strong>New Year’s Day, Martin Luther King Birthday, President’s Day, Good Friday, Memorial Day, July 4, Labor Day, Thanksgiving, Thanksgiving Friday, Christmas Eve and Christmas Day.</strong></td>
</tr>
<tr>
<td>24x7</td>
<td>24 hours a day, 7 days a week.</td>
</tr>
<tr>
<td>Additional Inserts</td>
<td>Any item requested to be placed into the mail container above and beyond (a) the bill and (b) the RE.</td>
</tr>
<tr>
<td>Container</td>
<td>One complete piece of mail packaged into one OE.</td>
</tr>
<tr>
<td>Electronic Transmission</td>
<td>The act of sending data via SmartBill, Ltd. online utility, FTP or Modem.</td>
</tr>
<tr>
<td>Electronic Bill</td>
<td>Data and other information pertaining to one (1) account number and usually in reference to one customer.</td>
</tr>
<tr>
<td>Group</td>
<td>The term used by SmartBill, Ltd. to define how bills are gathered &amp; produced in order to maximize production capabilities. These groups are defined as follows:</td>
</tr>
<tr>
<td></td>
<td>Group A - 1-ounce</td>
</tr>
<tr>
<td></td>
<td>bills</td>
</tr>
<tr>
<td></td>
<td>Group B - 2-ounce</td>
</tr>
<tr>
<td></td>
<td>bills</td>
</tr>
<tr>
<td></td>
<td>Group C - 8 -99-page bills</td>
</tr>
<tr>
<td></td>
<td>Group D - 100 - 499-page bills</td>
</tr>
<tr>
<td></td>
<td>Group E - 500 + page bills</td>
</tr>
<tr>
<td></td>
<td>Group I - International bills</td>
</tr>
<tr>
<td></td>
<td>Group P - Pulls bills (Pulled and returned to PM for further action)</td>
</tr>
<tr>
<td>Suppress or Suppression</td>
<td>Description</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Group X</td>
<td>Hold bills (combined and sent back to client)</td>
</tr>
<tr>
<td>Group Y</td>
<td>Online only bills (suppress from print only)</td>
</tr>
<tr>
<td>Group Z</td>
<td>Suppress all</td>
</tr>
</tbody>
</table>

The act of excluding records or bills (based on client defined criteria) that have been received in the input data stream received from the client.
September 17, 2019

TO: Doug Adkins, City Manager  
FROM: Samantha Zimmerman, Purchasing Agent

PURPOSE

To recommend the extension of the contract for the printing and mailing of water bills to SmartBill, Ltd., of Hebron, Ohio, in the amount of $.13/bill, plus postage.

BACKGROUND and FINDINGS

The City presently mails approximately 21,000 water bills each month. These bills are on a 5 day billing cycle, which means there is a massive mailing of bills every five days. Prior to 2009, the City handled the printing and mailing of all the bills.

In 2009, the City bid this service to find an outside contractor. At that time SmartBill, Ltd., submitted the lowest bid. The implementation of this service allowed us to outsource one of our processes in an effort to save both money and staff time. This has worked well for the City. SmartBill has provided excellent service over the past several years, and is willing to extend the contract through December 31, 2020, at the same price.

The City recently requested bids for the mailing of tax bills and SmartBill came back with the lowest out of nine bids at a difference of only $0.009 compared to the 2012 bid. City Council previously approved that contract at the August 20, 2019 meeting.

ALTERNATIVES

The alternative is to return the service in-house. However, contracting the service out results in reduced postage rates, wear and tear on the City’s mailing equipment, and software maintenance costs, as well as reduced staff time, resulting in significant savings.

FINANCIAL IMPACT

We anticipate an expenditure of approximately $8,800/month for this service through the 2020 contract year, plus an additional $14,000 annually in stock costs (bills, envelopes, etc.). Any postage increases will be absorbed by the City.

RECOMMENDATION

It is recommended the contract be awarded to SmartBill, Ltd., of Hebron, Ohio, in the same amounts as proposed in Bid 09-6989-08.
EMERGENCY/NON EMERGENCY

Non-Emergency

cc: Jacob Burton, Finance Director
    Barbara Bradley, Assistant Finance Director
LEGISLATION
ITEM 6
RESOLUTION NO. R2019-30

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR IMPROVEMENTS TO CENTRAL AVENUE BETWEEN UNIVERSITY BOULEVARD AND VERITY PARKWAY.

BUT CR 609 0.00 Central Ave
PID No. 109468
Agreement No. 33737

WHEREAS, the City (hereinafter “LPA”) has determined the need for improvements to Central Avenue between University Boulevard and Verity Parkway in the City of Middletown, including roadway reconstruction, drainage improvements, replacement of existing traffic signals at two intersections and streetscape improvements; and

WHEREAS, Section 5501.03(C) of the Ohio Revised Code provides that the Director of the Ohio Department of Transportation (ODOT) may coordinate the activities of the Department with other appropriate public authorities and enter into contracts with such authorities as necessary to carry out its duties, powers and functions; and

WHEREAS, the Central Avenue Improvements (hereinafter “the project”) is a transportation activity eligible to receive federal/state funding; and

WHEREAS, the LPA has received funding approval for the project listed above from the ODOT Program Manager having responsibility for the federal/state funds involved; and

WHEREAS, it is the mutual desire of both ODOT and the LPA to have the LPA serve as the responsible lead agency for the administration of the project;

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager is hereby authorized to enter into an agreement with the Ohio Department of Transportation for funding to be used for the Central Avenue Improvements project. The agreement shall be in a form and substance substantially similar to Exhibit “A”, attached hereto.
Section 2

This resolution shall take effect and be in force from and after the earliest period allowed by law.

Lawrence P. Mulligan, Jr., Mayor

1st Reading: October 1, 2019
2nd Reading: ___________
Adopted: ____________
Effective: ____________

Attest: __________________________
Clerk of the City Council

H:\Law\leg\2019_leg\ODOT – Central Avenue Improvements
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 Middletown hereinafter referred to as the LPA, 1 Donham Plaza, Middletown, OH 45042-1932.

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 roadway reconstruction, drainage improvements, replacement of existing traffic signals at two intersections, and streetscape improvements on Central Avenue (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.

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

2. LEGAL REFERENCES AND COMPLIANCE

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


b. Federal Funding Accountability and Transparency Act of 2006 (FFATA);

c. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

d. ODOT Locally Administered Transportation Projects, Manual of Procedures; and

e. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT).

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

3.1 The total cost for the PROJECT is estimated to be **$6,889,714** as set forth in Attachment 1. ODOT shall provide to the LPA 65 percent of the eligible costs, up to a maximum of **$4,185,340** in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

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

4. **PROJECT DEVELOPMENT AND DESIGN**

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

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

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

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

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

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

5. **ENVIRONMENTAL RESPONSIBILITIES**

5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act and related regulations, including the requirements of the National Historic Preservation Act; and for securing all necessary permits.
5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at www.dot.state.oh.us/CONTRACT. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant’s activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.

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

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

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

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

6. **RIGHT OF WAY/ UTILITIES/ RAILROAD COORDINATION**

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

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

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

6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and State rules, policies and guidelines issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions nor shall the LPA hire a sub-consultant for relocation and another sub-consultant for relocation review. Relocation review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
6.5 The LPA shall provide the ODOT District Office with its certification that all right of way property rights necessary for the PROJECT are under the LPA’s control, that all right of way has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA’s Right of Way Certification, as well as evaluate the LPA’s and/or consultant’s performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.

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

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

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

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

7. ADVERTISING, SALE AND AWARD

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

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

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

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

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

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

7.7 In accordance with ORC Section 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100 percent of its contract price as security for the faithful performance of its contract. ODOT shall be named an 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 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 shall submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.

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

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

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

| Douglas Adkins                        |
| City Manager                         |
| 1 Donham Plaza                       |
| Middletown, OH 45042-1932            |
8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT’s written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.

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

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

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

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

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

10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

10.3 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 Contractor has made adequate good faith efforts to meet the goal. ODOT will review the GFE documentation and the LPA’s recommendation and issue a written determination on whether adequate GFEs have been demonstrated by the Contractor.

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

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

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

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

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

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

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

(a) the magnitude and the type of offense;
(b) the degree of the Consultant’s culpability;
(c) any steps taken to rectify the situation;
(d) the Contractor’s record of performance on other projects including, but not limited to:
   (1) annual DBE participation over DBE goals;
   (2) annual DBE participation on projects without goals;
(3) number of complaints ODOT has received from DBEs regarding the Contractor; and,
(4) the number of times the Contractor has been previously sanctioned by ODOT; and,
(e) Whether the Contractor falsified, misrepresented, or withheld information.

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

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

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

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

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

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

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

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

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

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

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

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

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

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

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

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

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

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

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

13. **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:

<table>
<thead>
<tr>
<th>If to the LPA:</th>
<th>If to ODOT:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Douglas Adkins</td>
<td>Tammy K. Campbell, P.E.</td>
</tr>
<tr>
<td>City Manager</td>
<td>District 8 Deputy Director</td>
</tr>
<tr>
<td>1 Donham Plaza</td>
<td>505 South S.R. 741</td>
</tr>
<tr>
<td>Middletown, OH 45042-1932</td>
<td>Lebanon, OH 45036</td>
</tr>
</tbody>
</table>

15. **GENERAL PROVISIONS**

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

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

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

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

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

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

4. Direct labor, plus fringe benefits costs calculated using the LPA’s ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA’s ODOT approved Indirect Cost Rate.  
(A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved federally compliant time-tracking system, and  
(B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, and  
(C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

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

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

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

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

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

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

4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA’s direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.
payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all Applicable Federal Funds. Applicable Federal Funds are those that are identified with the various project phases of this Agreement as a subaward. Applicable Federal Funds include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

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

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

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

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

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

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

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

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

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


15.9 **Debarment.** LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.

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

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

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

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

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

15.15 **Facsimile Signatures:** Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature on any other party delivered in such a manner as if such signature were an original.
The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

<table>
<thead>
<tr>
<th>LPA: CITY OF MIDDLETOWN</th>
<th>STATE OF OHIO DEPARTMENT OF TRANSPORTATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>By: ____________________</td>
<td>By: ____________________</td>
</tr>
<tr>
<td>Douglas Adkins</td>
<td>Jack Marchbanks, Ph.D.</td>
</tr>
<tr>
<td>Title: City Manager</td>
<td>Director</td>
</tr>
<tr>
<td>Date: _________________</td>
<td>Date: ___________________</td>
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</table>
## PROJECT BUDGET - SOURCES AND USES OF FUNDS

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<tr>
<th>USES</th>
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<th>LPA FUNDS</th>
<th>FHWA FUNDS</th>
<th>STATE FUNDS</th>
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<tbody>
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<tr>
<td>ACQUISITION OF RIGHT OF WAY &amp; UTILITY RELOCATION</td>
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<td>$4,185,340</td>
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<td>$6,889,714</td>
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DIRECT PAYMENT OF CONTRACTOR

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

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

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

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<tr>
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<table>
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<th>LPA signature:</th>
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<td>____________________________</td>
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<table>
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<td>____________________________</td>
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</table>
DATE September 18, 2019
TO: Douglas Adkins, City Manager
FROM: Scott Tadych, Public Works and Utilities Director
Prepared by Rob Nicolls, City Engineer

PURPOSE

To authorize the City Manager to enter into a Local Public Agency (LPA) Agreement with the Ohio Department of Transportation (ODOT) for the improvements to Central Ave. between University Blvd. and Verity Parkway.

BACKGROUND and FINDINGS

The City of Middletown has received federal funding to rehabilitate Central Ave. from University Blvd. to Verity Parkway. The project is programmed for construction in 2022.

City staff will design, bid and administer the construction contract under ODOT’s Local Public Agency (LPA) program. The contract agreement stipulates that we agree to follow all federal guidelines.

ALTERNATIVES

None

FINANCIAL IMPACTS

None.

EMERGENCY/NON EMERGENCY

Non Emergency

ATTACHMENTS

Sample Legislation
Vicinity Map
LEGISLATION
ITEM 7
RESOLUTION NO. R2019-31

A RESOLUTION DECLARING THAT OPIATE ABUSE, ADDICTION, MORBIDITY AND MORTALITY IS A SERIOUS PUBLIC HEALTH CRISIS IN THE CITY OF MIDDLETOWN AND IS A PUBLIC NUISANCE AND AUTHORIZING, APPROVING AND RETAINING CERTAIN LAW FIRMS IN LITIGATION AGAINST CONTRIBUTORS OF OPIOID ADDICTION CRISIS INCLUDING BUT NOT LIMITED TO OPIOID MANUFACTURERS AND DISTRIBUTORS AND DECLARING AN EMERGENCY.

WHEREAS, the City of Middletown is experiencing a serious public health crisis related to opioid abuse, addiction, morbidity and mortality all of which have created a serious public nuisance; and

WHEREAS, the City of Middletown is determined to take action to abate the public health crisis and hold those who helped to create the crisis responsible; and

WHEREAS, the City of Middletown may define, supervise, regulate, prohibit, abate, suppress and prevent all things detrimental to the health, morals, comfort, safety, convenience and welfare of the inhabitants of the City in all nuisances and causes thereof; and

WHEREAS, the City of Middletown may sue and be sued in any court wishes to retain counsel to represent it against those entities who have created this health crisis and public nuisance; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Middletown, Butler/Warren Counties, Ohio:

Section 1

City Council hereby declares that opioid abuse, addiction, morbidity and mortality is a serious health crisis in the City of Middletown and is a public nuisance.

Section 2

City Council hereby authorizes and approves the employment of the law firms identified in the Authority to Represent, attached hereto and incorporated herein as Exhibit “A” (herein referred to as the “Law Firms”) to represent the City of Middletown in potential litigation against contributors of the Opioid addiction crises.

Section 3

City Council hereby authorizes and approves, or confirms authorization and approval, of the Authority to Represent, substantially in the form attached hereto and incorporated herein by reference thereto as Exhibit “A”, and directs the City Manager...
to execute and enter into the Authority to Represent with the Law Firms, setting forth the scope of the work to be performed by the Law Firms, including litigation against contributors to the Opioid addiction crises within the Community and the terms and conditions of the employment of the Law Firms. The Authority to Represent may be amended, after approval of this Resolution, without further action of the City Council of the City of Middletown, with the approval of the City Manager, whose signature on the Authority to Represent shall be evidence of such approval.

**Section 4**

If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

**Section 5**

This resolution is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to permit the City to be represented in the opioid litigation without delay, and shall take effect and be in force from and after its adoption.

______________________________
Lawrence P. Mulligan, Jr., Mayor

Adopted: _______________________

Attest: _______________________
   Clerk of City Council
EXHIBIT “A”

AUTHORITY TO REPRESENT

RE: The City of Middletown (Ohio) civil suit against those legally responsible for the wrongful distribution of prescription opiates and damages caused thereby.

The City of Middletown (hereinafter “CLIENT”) hereby retains the law firm GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP, pursuant to the Ohio Rules of Professional Responsibility and O.R.C. § 305.14, on a contingent fee basis, to pursue all civil remedies against those in the chain of distribution of prescription opiates responsible for the opioid epidemic which is plaguing the City of Middletown (Ohio) including, but not limited to, filing a claim for public nuisance to abate the damages caused thereby. Paul T. Farrell, Jr., Esq. (Ohio #70257) of the law firm GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP shall serve as LEAD COUNSEL. CLIENT authorizes lead counsel to employ and/or associate additional counsel, with consent of CLIENT, to assist LEAD COUNSEL in the just prosecution of the case. CLIENT consents to the participation of the following firms:

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP
419 11th Street
Huntington, West Virginia

LEVIN, PAPANTONIO, THOMAS, MITCHELL, RAFFERTY & PROCTOR, PA
316 South Baylen Street
Pensacola, Florida

BARON & BUDD, PC
3102 Oak Lawn Avenue #1100
Dallas, Texas

HILL PETERSON CARPER BEE & DEITZLER PLLC
500 Tracy Way
Charleston, West Virginia

MCHUGH FULLER LAW GROUP
97 Elias Whiddon Rd
Hattiesburg, Mississippi

POWELL & MAJESTRO, PLLC
405 Capitol Street, Suite P-1200
Charleston, WV 25301

Local Counsel:

SEIF & McNAMEE, LLC
110 E. Emmett Avenue
Waverly, OH

OTHS, HEISER, MILLER, WAIGAND, & CLAGG, LLC
16 East Broadway Street
Wellston, OH

In consideration, CLIENT agrees to pay twenty-five percent (25%) of the total recovery (gross) in favor of the CLIENT as an attorney fee whether the claim is resolved by compromise, settlement, or trial and
The gross recovery shall be calculated on the amount obtained before the deduction of costs and expenses. CLIENT grants Attorneys an interest in a fee based on the gross recovery. If a court awards attorneys’ fees, Attorneys shall receive the "greater of” the gross recovery-based contingent fee or the attorneys' fees awarded. **There is no fee if there is no recovery.**

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP and the other law firms, hereinafter referred to as the “Attorneys,” agree to advance all necessary litigation expenses necessary to prosecute these claims. All such litigation expenses, including the reasonable internal costs of electronically stored information (ESI) and electronic discovery generally or the direct costs incurred from any outside contractor for those services, will be deducted from any recovery after the contingent fee is calculated. **There is no reimbursement of litigation expenses if there is no recovery.**

Should Attorneys enter into a contingency fee agreement related to opioid litigation with any other governmental entity having a similar population to CLIENT that provides for contingency fee percentage that is lower than 25% CLIENT’S contingency fee percentage and/or fees and expenses cap will be lowered to match the contingency fee percentage and/or fees and expenses cap of the governmental entity with the similar population.

The CLIENT acknowledges this fee is reasonable given the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly, the likelihood this employment will preclude other employment by the Attorneys, the fee customarily charged in the locality for similar legal services, the anticipated (contingent) litigation expenses and the anticipated results obtained, the experience, reputation, and ability of the lawyer or lawyers performing the services and the fact that the fee is contingent upon a successful recovery.

This litigation is intended to address a significant problem in the community. The litigation focuses on the manufacturers and wholesale distributors and their role in the diversion of millions of prescription opiates into the illicit market which has resulted in opioid addiction, abuse, morbidity and mortality. There is no easy solution. Many of the facts of the case are locked behind closed doors. The billion dollar industry denies liability. The litigation will be very expensive and the litigation expenses will be advanced by the Attorneys with reimbursement contingent upon a successful recovery. The outcome is uncertain, as is all civil litigation, with compensation contingent upon a successful recovery. Consequently, there must be a clear understanding between the CLIENT and the Attorneys regarding the definition of a “successful recovery.”

The Attorneys intend to present a damage model designed to abate the public health and safety crisis. This damage model may take the form of money damages or equitable remedies (e.g., abatement fund). The purpose of the lawsuit is to seek reimbursement of the costs incurred in the past fighting the opioid epidemic and/or recover the funds necessary to abate the health and safety crisis caused by the unlawful conduct of the manufacturers and wholesale distributors. The CLIENT agrees to compensate the Attorneys, contingent upon prevailing, by paying 25% of any settlement/resolution/judgment, in favor of the CLIENT, whether it takes the form of monetary damages or equitable relief. For instance, if the remedy is in the form of monetary damages, CLIENT agrees to pay 25% of the gross amount to Attorneys as compensation and then reimburse the reasonable litigation expenses. If the remedy is in the form of equitable relief (e.g., abatement fund), CLIENT agrees to pay 25% of the gross value of the equitable relief to the Attorneys as compensation and then reimburse the reasonable litigation expenses. To be clear, Attorneys shall not be paid nor receive reimbursement from public funds. However, any judgment arising from successful prosecution of the case, or any consideration arising from a settlement of the matter, whether monetary or equitable, shall not be considered public funds for purposes of calculating the contingent fee. Under no circumstances shall the CLIENT be obligated to pay any Attorneys fee or any litigation expenses except from moneys expended by defendant(s) pursuant to the resolution of the
CLIENT’s claims. If the defendant(s) expend their own resources to abate the public health and safety crisis in exchange for a release of liability, then the Attorneys will be paid the designated contingent fee from the resources expended by the defendant(s). CLIENT acknowledges this is a necessary condition required by the Attorneys to dedicate their time and invest their resources on a contingent basis to this enormous project. If the defendant(s) negotiate a release of liability, then the Attorneys should be compensated based upon the consideration offered to induce the dismissal of the lawsuit.

The division of fees, expenses and labor between the Attorneys will be decided by private agreement between the law firms and subject to approval by the CLIENT. Any division of fees will be governed by the Ohio Rules of Professional Conduct including: (1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the CLIENT; (2) the CLIENT has given written consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation; (3) except where court approval of the fee division is obtained, the written closing statement in a case involving a contingent fee shall be signed by the CLIENT and each lawyer and shall comply with the terms of Rule 1.5 (e)(2) of the Ohio Rules of Professional Conduct; and (4) the total fee is reasonable.

LEAD COUNSEL shall appoint a contact person to keep the CLIENT reasonably informed about the status of the matter in a manner deemed appropriate by the CLIENT. The CLIENT at all times shall retain the authority to decide the disposition of the case and personally oversee and maintain absolute control of the litigation.

Upon conclusion of this matter, LEAD COUNSEL shall provide the CLIENT with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyers’ fees with a lawyer not in the same firm, as required in Rule 1.5 (e)(3) of the Ohio Rules of Professional Conduct. The closing statement shall be signed by the CLIENT and each attorney among whom the fee is being divided.

Nothing in this Agreement and nothing in the Attorneys’ statement to the CLIENT may be construed as a promise or guarantee about the outcome of this matter. The Attorneys make no such promises or guarantees. Attorneys’ comments about the outcome of this matter are expressions of opinion only and the Attorneys make no guarantee as to the outcome of any litigation, settlement or trial proceedings.

SIGNED, this ______ day of __________________, 2019.

FOR THE CITY OF MIDDLETOWN

_______________________________
By: Douglas Adkins

Its: City Manager

Approved as to form:

_______________________________
Law Director
Accepted:

GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP
419 11th Street
P O Box 2389
Huntington, WV  25724-2389
(304) 525-9115 or (800) 479-0053

By _______________________________  _______________________
  Paul T. Farrell, Jr., Esq.  Date
  Lead Counsel
DATE: September 27, 2019

TO: Douglas Adkins, City Manager

FROM: Susan Cohen, Administrative Services Director

**PURPOSE**

To request a resolution of support and authorization to file suit in the Multi-Jurisdictional Opiate Litigation.

**BACKGROUND AND FINDINGS**

There has been ongoing litigation filed in federal court of the Northern District of Ohio involving numerous government entities from multiple states suing the makers and distributors of opiate narcotics regarding the bad faith creation, distribution and marketing of opiates to citizens. The acts of these parties at least in part leading to the national epidemic of opiate abuse that has plagued cities like Middletown for recent years. The lawsuit alleges that the deceptive practices of these parties was the cause of increased financial obligations of the government agencies in order to address the ravages of opiate addictions on citizens of local governments. Council is well aware of the monetary cost incurred by the Citizens of Middletown in the recent years related to Opiate Abuse, as well as the human cost of the tragedy.

Staff was approached and is recommending joining the litigation by filing suit to attempt to hold the parties accountable for the tragedies that hit families in Middletown during this opiate abuse epidemic. The cities of Hamilton and Fairfield are represented by the same litigation team of GREENE, KETCHUM, FARRELL, BAILEY & TWEEL, LLP of Huntington, West Virginia and local Ohio counsel led by the firm SEIF & McNAMEE, LLC of Waverly Ohio.

Staff is proposing Council pass a resolution in support of the litigation and allowing the city to enter into representation agreement with the law firms representing the Cities and file complaints in the legislation. The legal fees agreements call for payment on contingency. The legal teams will be entitled to 25% of any financial recovery as well as reimbursement for expenses actually paid in furtherance of the litigation. If there is no financial award, the City is not obligated for any payment. This arrangement is typical for a lawsuit of this nature.

**ALTERNATIVES**

Council may choose to not to pass the resolution and approve entering the law suit.
FINANCIAL IMPACTS

No out of pocket costs.

EMERGENCY/NON EMERGENCY

Non-Emergency
LEGISLATION
ITEM 8
ORDINANCE NO. O2019-63

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH THE MOTZ GROUP FOR THE INSTALLATION OF ARTIFICIAL FIELD TURF AT RATHMAN FIELD AND DECLARING AN EMERGENCY.

WHEREAS, Dr. Chris Urso has been working to rehabilitate the baseball field at Rathman Field for the past three years; and

WHEREAS, the majority of the work has been completed, the last major item being the installation of the previously purchased artificial field turf infield; and

WHEREAS, Dr. Urso has secured commitments for donations to be used towards this expenditure; and

WHEREAS, The Motz Group provided a quote which will allow the turf to be installed by November 1, 2019, weather permitting;

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Ohio Revised Code, is authorized to enter into a contract with The Motz Group for the installation of an artificial field turf infield at the baseball field at Rathman Field in accordance with the quote on file with the Public Works & Utilities Director. The contract shall be approved by the City Manager and the Law Director.

Section 2

The Finance Director is hereby authorized and directed to pay a sum not to exceed $48,750.00 from the Capital Improvement Fund (Fund # 220), which such sum is hereby appropriated to the account of 990 (220.990.54550).

Section 3

City Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 735 of the Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.
Section 4

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: in order for the turf installation to occur this fall, and shall be in full force and effect from the date of its adoption.

Lawrence P. Mulligan, Jr., Mayor

Adopted:_______________

Attest: ___________________
       Clerk of City Council
DATE: October 8th, 2019

TO: Doug Adkins, City Manager

FROM: Scott Tadych, Public Works & Utilities Director

RATHMAN PARK FIELD TURF INSTALLATION

PURPOSE
To authorize the City Manager to enter into a contract with The Motz Group for installation of field turf at Rathman Field for $48,750 including waiving the bidding procedure and appropriated the necessary funds.

BACKGROUND AND FINDINGS
The baseball field at Rathman Park is being renovated through the efforts of Dr. Chris Urso over the past three years. The project is nearly complete with one major item remaining – installation of an artificial field turf infield. Artificial field turf materials were purchased through a previous grant from the Middletown Community Foundation. A quote from The Motz Group was obtained to install the turf. Motz has crews available to start the installation the week of 10/14/19 and finishing by 11/1/19 weather permitting.

ALTERNATIVES
Delay the installation of the field turf until spring of 2020.

FINANCIAL IMPACTS
The Motz Group has provided a quote of $48,750 to install the field turf. Dr. Urso has been actively seeking donations for the installation cost and has approximately $35,000 in funds committed to date.

$48,750 must be appropriated to the Capital Improvements Fund (220.990.54550) from the unencumbered Capital Improvements Fund balance. All donations received will be used to reimburse the Capital Improvements Fund.

EMERGENCY/NON EMERGENCY
Emergency legislation is requested to allow Motz to install the turf as soon as possible in order to complete the project before winter.
LEGISLATION
ITEM 9
ORDINANCE NO. O2019-64

AN ORDINANCE AUTHORIZING A LEASE AGREEMENT WITH HISTORIC GOETZ TOWER, LLC FOR OFFICE SPACE IN THE GOETZ TOWER LOCATED AT 1000 CENTRAL AVENUE AND DECLARING AN EMERGENCY.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio, that:

Section 1

The City Manager is hereby authorized to enter into a Lease Agreement for office space at 1000 Central Avenue from Historic Goetz Tower, LLC. The Lease Agreement shall be in a form substantially similar to Attachment “1”, attached hereto.

Section 2

The Finance Director is hereby authorized and directed to pay a sum not to exceed $150,000.00 for year 1 of the lease as follows:

- $75,000.00 Civic Development Improvement Fund (Fund # 249) (249.990.52480)
- $25,100.00 Downtown Improvements Fund (Fund # 481) (481.990.52480).

The remaining $49,900 shall be paid from funds previously encumbered to Historic Goetz Tower, LLC.

The rent and operating expense as defined in the agreement shall be paid as budgeted each year for 2021, 2022, 2023 and 2024.

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<thead>
<tr>
<th>Year</th>
<th>Rent</th>
<th>Operating Expense</th>
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<tr>
<td>Year 2 (2021)</td>
<td>$70,000</td>
<td>Up to $5,000</td>
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<tr>
<td>Year 3 (2022)</td>
<td>$70,000</td>
<td>Up to $7,500</td>
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<tr>
<td>Year 4 (2023)</td>
<td>$70,000</td>
<td>Up to $7,500</td>
</tr>
<tr>
<td>Year 5 (2024)</td>
<td>$70,000</td>
<td>Up to $7,500</td>
</tr>
</tbody>
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Section 3

City Council determines that the procedure to be followed in the execution of the Lease Agreement shall consist solely of the procedure set forth in the ordinance and the provisions of Chapters 721 and 723 of the Ohio Revised Code, to the extent they would be applicable, are specifically waived.

Section 4

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.
Section 5

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: so that the lease agreement can be in place upon the availability of office space later this year, and shall take effect and be in force from and after its adoption.

______________________________
Lawrence P. Mulligan, Jr., Mayor

Adopted:______________________

Attest:_______________________
Clerk of City Council

H:/Law/leg/2019 Leg/O Lease with Historic Goetz Tower, LLC
ATTACHMENT “1”

[DRAFT]

LEASE

FROM

Historic Goetz Tower, LLC
(Landlord)

TO

The City of Middletown
(Tenant)
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LEASE

THIS LEASE, entered into as of this _______ day of ____________ 2019, by and between Historic Goetz Tower, LLC, an Ohio limited liability company ("Landlord"), having an address of P.O. Box 259, Louisville, Ohio 44641, and The City of Middletown, an Ohio Charter City ("Tenant") having an address of 1 Donham Plaza, Middletown, Ohio 45042.

WITNESSETH

1. PREMISES

Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the premises (the "Premises") described as follows:

   Approximately Two Thousand Five Hundred square feet (2,500 sq. ft.) of space as shown on Exhibit “A” (first floor space) and Exhibit “A-1” (lower level storage space) within the Building located at 1000 Central Ave., City of Middletown, County of Butler, State of Ohio.

   The Premises are located in a building (the “Building”) owned by Landlord at 1000 Central Ave., Middletown, Ohio and on real estate more particularly described on Exhibit "A-2" attached hereto (the "Property").

2. TERM

   TO HAVE AND TO HOLD the Premises unto Tenant for a term of five (5) years, commencing on the ____ day of _________________, 2019 (such date being hereinafter called the "Commencement Date"), and expiring at midnight on the fifth anniversary of that date. (the “Original Term”).

3. RENT

   (A) Minimum Rent. Tenant agrees to pay to Landlord, as "Minimum Rent" for the Premises during the Original Term of this Lease, without any deduction or setoff, the sum of Seventy Thousand Dollars ($70,000.00) per annum, payable in equal monthly installments of Five Thousand Eight Hundred Thirty Three and 33/00 Dollars ($5,833.33) each.

   Such Minimum Rent payments shall commence on the Commencement Date set forth above and shall continue to be made and be due and payable on the first day of each month thereafter during the Original Term of this Lease. If the Commencement Date set forth above is not the first day of the month, then Tenant shall pay to Landlord a proportionate amount of the Minimum Rent covering the period of time from the Commencement Date until the first day of the next month, whereupon the Minimum Rent shall commence and continue to be paid as set forth and required herein. The Minimum Rent shall automatically commence and be due and payable, without notice,
on the Commencement Date set forth above, as such may be modified pursuant to the terms of this Lease.

Landlord hereby grants Tenant a ten (10) day grace period on Minimum Rent and all other payments due pursuant to this Lease without late charge. However, each payment not paid to Landlord or Landlord’s designee within the ten (10) day grace period will be subject to an automatic late charge for such late payments in the amount of $75.00 per month for each month a payment is not fully paid. All payments received by Landlord, no matter how identified or described by Tenant, shall first be applied to late fees and interest, second to any other amounts other than Minimum Rent due and owing to Landlord and finally the balance to the Minimum Rent due hereunder. In addition, the provision for payment of a late charge hereunder shall not prevent Landlord from exercising any other rights hereunder arising from Tenant’s failure to timely pay Minimum Rent and other charges due from Tenant to Landlord under this or any other provision of this Lease.

(B) Operating Expenses. In addition to the Minimum Rent set forth above, Tenant shall pay Landlord on the first day of each month, a sum which is equal to one Twelfth (1/12) of Ten (10%) (“Tenant’s Prorated Share”) of that portion of the estimated annual Operating Expenses to be incurred by Landlord with respect to the Property in each calendar year during the term of this Lease. Tenant’s Prorated Share of such Operating Expenses shall be determined by multiplying the Operating Expenses actually incurred by Landlord with respect to the Building in each year times a fraction, the numerator of which is the total leasable square footage of the Premises, as determined above, and the denominator of which is the total leasable square footage (22,834 square feet) in the Building containing the Premises, whether or not occupied. If not definitively established by invoice, the annual Operating Expenses to be allocated to Tenant hereunder shall be estimated based upon such expenses incurred by Landlord during the preceding 12 month period, with reasonable adjustments to be made thereto. In no event will the portion of Operating Expenses allocated to Tenant in any given year exceed $_________.

Each year during the term of this Lease, on or before March 31st, Landlord shall provide to Tenant verification (each, a “Statement”) of the Operating Expenses actually paid by Landlord with respect to the Property during the preceding year. If such Operating Expenses exceed Tenant’s Prorated Share paid to Landlord in the prior year, then Landlord shall invoice Tenant for the difference and Tenant shall pay such sum within 30 days of receipt of such invoice. If the Tenant’s Prorated Share paid to Landlord in the prior year exceeded the actual Operating Expenses paid by Landlord, then Landlord shall, at its election, either refund such excess payment to Tenant within 30 days after delivery of such verification to Tenant, or credit such amount against Tenant’s next monthly payment(s) of Operating Expenses.

Tenant shall have the right, exercisable by delivery of a written notice to Landlord, to review written verification (including, but not limited to, invoices and cancelled checks regarding the Operating Expenses underlying the Statement. If the results of the review shows an overcharge to Tenant of more than five (5%) percent of the actual amount owed by Tenant, Landlord shall pay the reasonable cost of such review.
For the purpose of this Lease, Operating Expenses shall be defined as including real estate taxes and assessments, management and administrative fees and expenses (not to exceed 3% of Minimum Rent), legal and accounting expenses, and all ordinary and reasonable expenses actually incurred and paid by Landlord in connection with the management, maintenance, repair, restoration and replacement of all or any part of the Property and/or the Building, and the operation of the Property, and the Building upon which the Premises is located. Such expenses shall include, but not be limited to the costs of trash removal, landscaping, snow and ice removal, pest control, common utility expenses, all insurance premiums paid by Landlord, and all common area or other assessments paid by Landlord. In no event shall Operating Expenses include: (a) any expenses that may be properly allocated or charged entirely to any other tenant of any other space in the Building other than the Premises; (b) debt service; (c) any capital expenditure; or (d) costs of any modifications to be made to the Property and/or the Building in order to comply with any requirements of applicable laws or regulations governing the same.

All payments due and owing from Tenant to Landlord shall be forwarded to Landlord at P. O. Box 259, Louisville, Ohio 44641.

(C) Security Deposit. Deleted in its entirety.

4. TENANT’S OPTION TO RENEW

Provided Tenant is not in Default at the time of the attempted exercise of the option herein granted, Tenant shall have an option for an additional 10 year term with rate to be determined at time of notice to exercise. In order to exercise its option to renew, Tenant shall give notice to Landlord not less than one hundred eighty (180) days prior to the end of the Original Term. Landlord and Tenant shall then have twenty (20) days to negotiate the Minimum Rent for the renewal term. Landlord shall provide to Tenant, within twenty (20) days of receipt of notice from Tenant, a final proposed Minimum Rent for the renewal term. Tenant shall, on or before the one hundred fiftieth (150th) day prior to the end of the Original Term, accept the proposed Minimum Rent or the option to renew shall automatically lapse and be of no further force or effect. All other terms other than Minimum Rent shall remain unchanged for the renewal term.

5. CONSTRUCTION

(A) Landlord’s Work. Landlord agrees to perform or cause to be performed such work in the construction of the Premises as is set forth as Landlord's Work in Exhibit "B" attached hereto and made a part hereof, such work to be completed substantially in accordance with the specifications set forth in said Exhibit "B". Landlord and Tenant agree that the specifications attached hereto as Exhibit “B” shall include the plans and specifications for the Building and the dimensions of the Premises to be completed by Landlord, which plans and specifications have been reviewed and approved by Landlord and Tenant, as such approvals are evidenced by the initials of the signatories to this Lease thereon. Completion of the Building and the Premises in accordance with such Exhibit “B” plans and specifications shall be hereinafter referred to as the “Landlord’s Work”. Upon the completion of Landlord’s Work to the reasonable satisfaction of Tenant, Landlord shall submit an invoice to Tenant whereupon Tenant shall, within thirty (30) days of receipt of the
invoice, pay to Landlord the sum of Seventy Five Thousand Dollars ($75,000.00) as Tenant’s share of the cost of Landlord’s Work.

Landlord will complete Landlord’s Work in a good and workmanlike manner in accordance with applicable laws, rules, regulations, building codes and zoning codes. Landlord guarantees the workmanship of Landlord’s Work for a period of one (1) year following the date of the Landlord’s Work is substantially complete. This one (1) year warranty of Landlord shall be referred to in this Lease as “Landlord’s Warranty.”

(B) Delivery of Premises. Landlord agrees that Landlord's Work shall be substantially complete on or before the Commencement Date, subject to delays caused by acts of God, government or public enemy, labor disputes, inability to obtain material or labor on reasonable terms, failure of Tenant to perform Tenant's obligations with respect to construction, or other cause beyond the control of Landlord. Under no circumstances shall Landlord be liable for any such delay so caused. Upon substantial completion of Landlord's Work, Landlord shall deliver the Premises to Tenant for the commencement of Tenant's Work. For purposes of this Lease, the Landlord’s Work shall be deemed to be “substantially complete” upon issuance of a certificate of substantial completion by Landlord’s architect, subject only to minor “punch-list” items, as agreed between Landlord and Tenant, which Landlord agrees to use all reasonable diligence to complete. If Landlord fails to tender possession of the Premises on or before the Commencement Date for any reason other than an omission, delay or default caused by Tenant, then the Minimum Rent as defined in Paragraph 3 and all of Tenant’s other payment obligations under this Lease shall abate until the Premises are substantially complete, in addition to all other rights or remedies Tenant may have at law or in equity. The Original Term shall not be extended as a result of Landlord's failure to tender possession on the Commencement Date.

If Tenant has taken possession of the Premises as substantially completed, Landlord agrees that it will diligently carry forward Landlord's Work in the Premises to final completion in accordance with its obligations as required by Subsection 5(A).

(C) Tenant's Work. With the exception of the items specifically enumerated in Exhibit "B" as Landlord's Work, Tenant will, at Tenant's expense perform all work and supply all installations described in Exhibit "C" ("Tenant's Work") if any, and will fully equip the Premises with all trade fixtures, furniture, furnishings, special equipment, and other items necessary for the completion of the Premises and the proper operation of Tenant's business. Tenant will not commence any work until Tenant delivers to Landlord a policy or policies of public liability and property damage insurance naming Landlord as an insured, in limits and with companies acceptable to Landlord and until Tenant has obtained all necessary permits and or approvals and delivered a copy of the same to Landlord. Tenant shall complete all Tenant’s Work in accordance with all applicable laws, rules, regulations and code requirements and shall at all times protect Landlord and the Building, the Premises, and the Property from any mortgages, liens, claims, liability, injury or damage resulting directly or indirectly from the commencement and completion of the Tenant’s Work. Tenant shall ensure the Premises will be kept free from mechanics' or materialmens' liens and that all approved alterations or additions will be fully paid, including but not limited to delivery of no lien certificates and/or payment and performance bonds if necessary. Under no circumstances shall any portion of the Tenant’s Work be subject to any voluntary or involuntary
lien or encumbrance, nor shall any fixtures be leased or otherwise subject to a fixture filing or other encumbrance. During the period that Tenant shall have possession of the Premises for the purpose of completing the Tenant’s Work, although Tenant shall not be responsible for paying Minimum Rent or other charges thereon until the Commencement Date referenced above, Tenant shall be responsible for the Premises and for all utilities and other expenses incurred in connection with the completion of the Tenant’s Work thereon. Landlord shall not be liable for any defect in that part of the Tenant’s Work to be completed by Tenant.

(D) License to Enter Premises. Landlord may, prior to delivery of the Premises as provided for in Subsection 5(B), make the Premises available to Tenant for commencement of Tenant's Work, at Tenant's sole risk, and so long as such work and installations do not interfere with the construction of the Premises or other building improvements by Landlord. Tenant shall perform all of its obligations under this Lease (except its obligations to pay Minimum Rent and other charges) from the date the Premises are so made available to Tenant and will keep the Premises and property free and clear of all mechanics’ liens and other liens.

(E) Acceptance of Premises. Upon completion of the Landlord’s Work and delivery of possession of the Premises to Tenant as set forth herein, Tenant hereby acknowledges that the taking of possession thereof shall be conclusive evidence that the Landlord’s Work has been performed in accordance with the plans and specifications therefor in all material respects and are in all material respects satisfactory and acceptable to Tenant, and in the condition agreed to be put in by Landlord; and Tenant hereby releases Landlord from any and all claims arising from any defect in the condition of the Premises, or the equipment, machinery or fixtures in or serving the Premises, excepting, however: (i) matters covered by the Landlord’s Warranty, (ii) latent defects, (iii) defects covered by manufacturer’s or supplier’s warranties, (iv) defects in the mechanical, electric, plumbing or any other systems within the Building, and (v) those matters listed on a punch list and delivered to Landlord within twenty-one (21) days of Tenant’s taking possession of the Premises. With respect to the Tenant’s Work, Landlord shall not be responsible therefor or in any manner liable for the completion thereof, it being Tenant’s sole remedy to rely upon the representations and warranties of Tenant’s contractors with regard to the Tenant’s Work.

6. COMMON AREAS AND SIGNAGE

(A) Common Areas. Landlord hereby grants to Tenant, and Tenant’s customers, clients and invitees the nonexclusive right to use, in common with all others to whom Landlord has or may hereafter grant rights to use the same, the Common Areas located within the Property. The term "Common Areas" as used in this Lease, will mean the corridors, elevators, stairways, common entrances to the Building, and common restrooms and pedestrian sidewalks. Landlord hereby reserves the following rights with respect to the Common Areas:

(i) To establish reasonable rules and regulations for the use thereof;

(ii) To close all or any portion thereof as may be deemed necessary by Landlord's counsel to prevent a dedication thereof or the accrual of any rights to any person or the public therein;
(iii) To change the layout of such Common Areas, including the right to reasonably add to or subtract from their shape and size, whether by the addition of building improvements or otherwise, and to make installations and/or construct or erect walls, booths therein or thereon and move or remove the same; and

(iv) To operate and manage, equip, light, repair and maintain said Common Areas for their intended purposes in such manner as Landlord will in its reasonable discretion and may from time to time determine, and may from time to time change the size, location, elevation, nature and/or use of any Common Areas.

Notwithstanding the above rights reserved to Landlord, no exercise by Landlord shall have a material adverse impact upon or limit or interfere with: (a) Tenant’s access to the Premises, (b) visibility of the Premises or the Building to the general public, except for Phase II work on the Project on the exterior of the Building, and (c) use and enjoyment of the Premises as contemplated herein. Landlord shall be responsible for trash removal.

(B) Signage. Landlord shall provide Tenant a listing on the building directory to be located in the lobby area or Tenant’s entrance, setting forth the name of the Tenant. Any variations to the standard building sign or changes made to the lobby directory which are agreed upon by Landlord and made at Tenant’s request shall be in keeping with the decor and other signs on the Building, and shall be installed at Tenant’s sole cost and expense and first approved by Landlord in writing. The cost of all Signage located within Tenant’s Premises shall be borne by Tenant and shall be completed in accordance with the specifications for Tenant’s Work referenced on Exhibit C hereof. Tenant shall have the right, at Tenants sole cost and expense, and with Landlord’s prior written consent to install signage on the exterior of the Building in which the Premises is located provided Tenant shall be responsible for all necessary permits and approvals.

7. UTILITIES

Commencing with the date on which Landlord delivers the Premises to Tenant, Tenant will pay for gas, electric current, water and sewer charges charged against the Premises, resulting from Tenant’s consumption of such utilities and services on the Premises. Tenant hereby agrees that it shall at all times reasonably utilize such utilities and shall take such reasonable measures as are necessary to prevent wasteful or excessive use of utility services.

8. USE OF PREMISES BY TENANT

Tenant shall use the Premises only for the operation of business offices thereon and for any and all other general office purposes and for other appurtenant and/or related purposes associated with the operation of a design and architectural firm. Tenant shall not at any time make use of the Premises in such a manner as to increase the casualty or liability insurance coverage thereon as Landlord maintains the same. In the event that any such increase in insurance premiums can be traced to any act or omission of Tenant, or any breach by Tenant of a term or requirement hereof, then Tenant shall be responsible for paying for such increased insurance premiums and related expenses within thirty (30) days of notice from Landlord.
9. PARKING

Landlord has off-site parking available behind the Building which parking shall be made available to Tenant on a non-exclusive basis to be used in common with other tenants in the Building.

10. TENANTS’ COVENANTS WITH RESPECT TO OCCUPANCY

Tenant hereby represents and covenants to Landlord, and agrees to the following:

(A) To occupy the Premises in a safe and careful manner and in material compliance with all laws, ordinances, rules, regulations and orders of any governmental bodies, including but not limited to the association, having jurisdiction over the Premises, and without committing or permitting waste;

(B) To permit no reproduction of sound which is unreasonably audible outside of the Premises or permit odors to be unreasonably dispelled from the Premises;

(C) To place no sign on the exterior of the Premises or on the interior surface of any windows of the Premises without obtaining Landlord's prior written consent, and to maintain in good repair and promptly remove and repair any damage caused by any such permitted signs. Tenant agrees not to display any banners, pennants, searchlights, window signs, balloons, or similar temporary advertising media. Tenant agrees to maintain its signs in a good state of repair and save Landlord harmless from any loss, cost, or damage as a result of the same and will repair any damage which may have been caused by the erection, existence, maintenance or removal of such signs. Upon vacating the Premises, Tenant agrees to remove all signs and repair all damage caused by such removal;

(D) To place no merchandise, sign or other thing of any kind in the vestibule or entry of the Premises or on the sidewalks or other Common Areas adjacent thereto or elsewhere on the exterior of the Premises;

(E) To park Tenant's vehicles and to require all employees, invitees, clients and customers to park only in the parking spaces referenced in paragraph 9 above for the use of Tenant and its employees, or other public parking and specifically not to permit parking by any of them on any common area space;

(F) To be responsible for and contract for and pay for janitorial services to the Leased Premises;

(G) To permit Landlord free access to the Premises at all reasonable times upon 24 hours’ prior (except in the case of emergency which will not permit delay) for the purpose of examining the same to its mortgagees, lenders, potential purchasers, or (within the last one hundred eighty (180) days of the Lease term) potential tenants or making alterations or repairs to the Premises that Landlord may deem reasonably necessary for the safety or preservation thereof;
(H) To adequately heat and cool the Premises;

(I) To permit no lien, notice of intention to file lien or other charges (whether arising out of work of any contractor, mechanic, laborer or material man or any mortgage, conditional sale, security agreement or chattel mortgage or otherwise) which might be or become a lien, encumbrance or charge upon the Premises, the Building, and/or the Property, or any part thereof, or the income therefrom, and to suffer no other matter or thing whereby the estate, right and interest of Landlord in the Premises or any part thereof might be impaired;

(J) To solicit no business in the Common Area, nor distribute handbills or other advertising matter to customers, nor place the same in or on automobiles in the designated Parking Areas;

(K) To comply with all reasonable rules and regulations of which Tenant has prior written notice and which Landlord may from time to time establish for the use and care of the Premises, the Building, and/or the Property, including but not limited to the Common Areas;

(L) To keep any refuse in proper containers in the interior of the Premises until the same is removed and to permit no refuse to accumulate around the exterior of the Premises; to handle and dispose of all rubbish, garbage, and waste in accordance with regulations established by Landlord, and not permit the accumulation (unless in sealed metal containers) or burning of any trash, rubbish, refuse, garbage or waste materials in, on, or about any part of the property or Premises;

(M) To prohibit the Premises to be used in any way which may be a nuisance, annoyance, inconvenience or damage to other tenants or occupants of the Property or of the neighborhood including, without limiting the generality of the foregoing, noise by the playing of any musical instrument or radio or television, or the use of a microphone, loudspeaker, electrical equipment, or utilizing flashing lights or search lights or any other equipment which in the judgment of Landlord might cause disturbance, impairment or interference with the use or enjoyment by any other Tenant in the Property;

(N) To not subject any fixtures, furnishings or equipment in or on the Premises which are affixed to the realty to any mortgages, liens, conditional sales agreements, security interests or encumbrances;

(O) To permit, on or after one hundred eighty (180) days next preceding the expiration of the term of this Lease, upon 24 hours’ prior written notice and only at reasonable times, Landlord or its agents to have the right to show the Premises to potential tenants, and to place notices offering the Premises "To Lease" or "For Sale" on the front of the Building or any part of the Building;

(P) That it will not make any penetrations through the roof, exterior walls or dividing walls of the building without the prior written consent of Landlord, which consent shall not be unreasonably withheld;

(Q) Tenant shall be solely responsible to keep the interior of the Premises in full compliance with all applicable laws, ordinances, rules, and/or regulations governing the same, including but
not being limited to the Americans with Disabilities Act and all regulations and requirements thereof.

11. REPAIRS AND ALTERATIONS

(A) Repairs by Landlord. Landlord shall keep the foundations, roof, and structural portions of the outer walls of the Premises in good repair, except for repairs required thereto by reason of the acts or omissions of Tenant, Tenant's employees, agents, invitees, licensees, or contractors. Tenant shall give Landlord written notice of the necessity for repairs coming to the attention of Tenant following which Landlord will have a reasonable time to undertake and complete such repairs. The provisions of this Subsection 11(A) shall not apply in the case of damage or destruction by fire or other casualty or by Eminent Domain, in which either Section 13 or Section 15 will control the obligations of Landlord with respect thereto. Landlord is further responsible for repair and replacement of the following, as long as Tenant or guests do not cause the need for such repair or replacement: doors providing access to the Premises, exterior windows and frames, the main building heating and air conditioning, electrical, plumbing and sewer systems to their connection to the Premises. Provided that Tenant has performed the service and maintenance as required by Section 11(B) below and has not misused or abused the fixtures, equipment and other items serving only the Leased Premises, Landlord shall be responsible if those items cannot be kept in service with usual and customary maintenance and must be replaced. Notwithstanding the above however, Landlord shall not be responsible for maintaining, repairing or replacing any glass, windows, doors, lighting fixtures, electrical switches, or other fixtures interior improvements which are a part of the Tenant’s Work hereunder, unless such damage or destruction giving rise to such repair or replacement is directly caused by Landlord and is not covered by the insurance to be maintained by Landlord and/or Tenant hereunder. Notwithstanding anything else in this Lease to the contrary, Landlord shall in all events be responsible for repairs, maintenance or replacements pursuant to the Landlord’s Warranty. If Landlord refuses or neglects to complete any repairs promptly and adequately, Tenant may make or complete said repairs and Landlord shall pay the cost thereof to Tenant upon demand, together with the sum of fifteen (15%) percent of said costs for overhead (but only if such repair is performed by Tenant or Tenant’s employees) together with interest at the rate of five percent (5%) per annum from the date demand is made for payment until the date said payment is received in full.

(B) Repairs by Tenant. Except as provided in Subsection 11(A), Tenant shall keep the Premises and every part thereof and any fixtures, facilities or equipment contained therein, in good condition and repair. Except as provided in Subsection 11(A), Tenant shall be solely responsible for all maintenance, repair and replacement of any Tenant's Improvements and the Tenant's Work as the same have been completed on the Premises. Tenant shall be solely responsible for all maintenance and repair of any and all fixtures, equipment and other items servicing only the Premises. Tenant shall also be responsible for any maintenance, repair or replacements to any part of the Premises, the Building or the Property which may become necessary during the term of this Lease if such damaged is caused by the gross negligence of Tenant, Tenant’s guests or visitors, excepting any repairs to items of Landlord's original construction made necessary by reason of damage due to fire or other casualty covered by standard fire and extended coverage insurance. In addition, Tenant shall report to Landlord any required repairs which are the responsibility of Landlord under Subsection 11 (A) above, including, but not limited to, damage to any exterior windows or plate
glass, and the main components of the heating, air conditioning, electrical, plumbing and sewer systems, the exterior doors, window frames and any other damage to the Premises, the Building or the Property which Tenant may discover. If Tenant refuses or neglects to complete any repairs promptly and adequately, Landlord may make or complete said repairs and Tenant shall pay the cost thereof to Landlord upon demand, together with the sum of fifteen (15%) percent of said costs for overhead (but only if such repair is performed by Landlord or Landlord’s employees) together with interest at the rate of ten percent (10%) per annum from the date demand is made for payment until the date said payment is received in full. All items will be inspected and put in good working order by Landlord at time of occupancy. All replacement of lighting within the Premises including but not limited to fixtures, ballasts and bulbs, such as fluorescent or incandescent light bulbs will be the responsibility of the Tenant.

(C) Alterations or Improvements by Tenant. Tenant will not, without Landlord's prior written consent, which consent shall not be unreasonably withheld, make, nor permit to be made, any alterations, additions or improvements to the Premises. Any alterations which may be permitted by Landlord shall be upon the condition that Tenant shall promptly pay all costs, expenses, and charges thereof, will make such alterations and improvements in accordance with all applicable laws, building codes and ordinances, in a good and workmanlike manner, and shall not permit any mechanic's lien or other liens or claims in connection with the making of such alterations, additions, or improvements. Tenant shall promptly repair any damages to the Premises, to the Building, and to the Property, caused by any alterations, additions or improvements to the Premises by Tenant.

(D) Removal of Improvements. All items of Landlord's Work, all heating and air-conditioning equipment, and all alterations, all items of the Tenant's Work, and any additions and other improvements by Tenant shall become the property of Landlord and will not be removed from the Premises. All trade fixtures, furniture, furnishings, and signs installed in the Premises by Tenant and paid for by Tenant shall remain the property of Tenant and, if Tenant is not in Default, may be removed upon the expiration of the term of this Lease; provided that any of such items as are affixed to the Premises and require severance may be removed only if Tenant repairs any damage caused by such removal. If Tenant fails to remove such items from the Premises prior to the expiration or earlier termination of this Lease, all such trade fixtures, furniture, furnishings, and signs will become the property of Landlord unless Landlord elects to require their removal in which case Tenant shall promptly remove same and restore the Premises to its prior condition. Upon termination of this Lease, if Tenant fails to remove all such trade fixtures, furniture, furnishings, and signs within ten (10) days after Landlord elects to require their removal, Landlord will have the right to remove same and sell such trade fixtures, furniture, furnishings, and signs to pay for the cost of removal and balance if any to be paid by Tenant within thirty (30) days of invoice.

Tenant further agrees that all personal property of every kind or description that may at any time be in the Premises shall be at the Tenant's sole risk, or at the risk of those claiming under Tenant. Except as may be required pursuant to Section 11(A) or some other Section of this Lease, Landlord will not be responsible or liable to Tenant for any loss or damage that may be occasioned by the acts or omissions of persons occupying any space adjacent to or adjoining Tenant's Premises, or any part thereof. Neither will Landlord be responsible or liable to Tenant for any loss, damage or
injury resulting to Tenant or its property from roof leaks, water, gas, steam, fire, or the bursting, stoppage, or leaking of sewer pipes, or from the heating or plumbing fixtures, or from electric wires, or from gas or odors, or caused in any manner whatsoever, except to the extent caused by the grossly negligent or willful act of Landlord.

12. INDEMNITY AND INSURANCE

(A) Indemnification. This Section is intentionally deleted.

(B) Public Liability Insurance. Tenant agrees to carry public liability insurance covering the Premises and Tenant's use thereof, together with contractual liability endorsements covering Tenant's obligations set forth in Subsection 11 (A), in companies and in a form satisfactory to Landlord, with minimum limits of One Million and 00/100 Dollars ($1,000,000.00) on account of bodily injuries to or death of one person, Two Million and 00/100 Dollars ($2,000,000.00) on account of bodily injuries to or death of more than one person as a result of any occurrence and Five Hundred Thousand and 00/100 Dollars ($500,000.00) coverage for property damage, and to deposit said policy or policies (or certificates thereof) with Landlord prior to the date of and use or occupancy of the Premises by Tenant; said policy or policies shall name Landlord, Tenant and such other parties as Landlord may from time to time notify Tenant in writing to be named as additional insured, as insured parties under such insurance policy and will bear endorsements to the effect that the insurer agrees to notify Landlord and such other parties designated by Landlord as additional insured not less than thirty (30) days in advance of any modification or cancellation thereof.

(C) Fire and Extended Coverage Insurance. Landlord agrees to carry policies insuring the improvements on the Property against fire and such other perils as are normally covered by extended coverage endorsements in the county where the Premises are located, in an amount equal to at least replacement value of such improvements, together with insurance against such other risks (including loss of rent) and in such reasonable amounts as Landlord deems appropriate. Tenant agrees to notify Landlord in writing on the date of completion regarding the cost of any improvements installed in the Premises during the term of this Lease other than trade fixtures, inventory, furniture, furnishings, signs or personal property of Tenant. Tenants’ failure to advise Landlord regarding the value of said improvements as provide herein shall constitute a waiver of Tenant's right to be reimbursed for said improvements in the event of destruction of the Premises. In the event any of Landlord's policies insure premises or risks other than the Property or the rents therefrom, the statement of the insurer will be conclusive as to the portion of the total premium attributable to the Property. Tenant agrees to carry insurance against fire and such other risks as are, from time to time, included in standard extended coverage endorsements, insuring Tenant's stock-in-trade, trade fixtures, furniture, furnishings, special equipment, floor and wall coverings, and all other items of personal property of Tenant located on or within the Premises, such coverage to be in an amount equal to at least eighty percent (80%) of replacement cost thereof. Prior to the Commencement Date of this Lease, each party shall furnish to the other a certificate evidencing such coverage.

(D) Mutual Waiver of Subrogation. All insurance policies carried by either party covering the Premises, including but not limited to contents, fire, and casualty insurance, shall to the extent
permitted by the policies expressly waive any right on the part of the insurer against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement so long as the same shall be obtainable without extra cost, or if extra shall be charged therefore, so long as the other party pays such extra cost. If cost shall be chargeable therefore, each party shall advise the other thereof and of the amount of extra cost, and the other party, at its election, may pay the same, but shall not be obligated to do so. The failure of any insurance policy to include such waiver clause or endorsement shall not affect the validity of this Lease.

13. **DAMAGE AND DESTRUCTION**

In the event the Premises are damaged by any peril covered by standard policies of fire and extended coverage insurance to an extent which is less than twenty-five percent (25%) of the cost of replacement of the Premises, the damage shall, except as hereinafter provided, promptly be repaired by Landlord, at Landlord's expense, provided that in no event will Landlord be required to repair or replace Tenant’s stock-in-trade, trade fixtures, furniture, furnishings, equipment or personal property. In so restoring the Premises, Landlord will restore the items or improvements which are listed herein as being part of the Tenant’s Work, provided that Landlord shall be entitled to receive all insurance proceeds allocated to restoration of such Tenant’s Work items. Landlord or Tenant may elect to terminate this Lease by written notice given to the other in the event (a) the Premises are damaged to the extent of twenty-five percent (25%) or more of the cost of replacement of the Premises, or (b) any damage to the Premises occurs during the last year of the term of this Lease. If neither elect to terminate this Lease on or before the date that is ninety (90) days after the event causing the damage, Landlord shall repair and rebuild the Premises and, if applicable, the Building as soon as reasonably practicable. If either party should elect to terminate this Lease hereunder, then Landlord shall be entitled to receive all of Landlord’s insurance proceeds received in connection with and as a result of such damage or destruction. If the casualty, repairing, or rebuilding shall render the Premises un-tenantable, in whole or in part, a proportionate abatement of the Rent will be allowed until the date Landlord completes the repairs or rebuilding. If Landlord is required or elects to repair the Premises, Tenant shall repair or replace its stock-in-trade, trade fixtures, furniture, furnishings, equipment, and personal property in a manner and to at least a condition equal to that prior to its damage or destruction.

14. **ASSIGNING AND SUBLETTING**

Tenant is not authorized to sublet the Premises or any part thereof, assign this Lease, or permit any business to be operated in or from the Premises by any concessionaire or licensee, without in each case obtaining prior written consent of Landlord or except as otherwise permitted by this Section 14. Any merger, consolidation or liquidation of Tenant or any other transfer of this Lease by operation of law shall constitute an assignment of this Lease. Acceptance of rent from, or performance of any other obligation under this Lease by any person other than Tenant will not be deemed to be a waiver of any of the provisions of this Lease nor shall it be deemed to be a consent to the assignment of this Lease, the subletting of the Premises or the operation by a concessionaire or licensee. In the event that the Tenant will seek Landlord’s consent, Tenant shall provide to Landlord the name, address and financial statement together with such other reasonable information as Landlord requires concerning the proposed assignee, sublessee, concessionaire or licensee. No sublease, assignment, or other transfer of this Lease by Tenant will operate to relieve
Tenant from primary liability for the performance of Tenant's obligations under this Lease. Notwithstanding the above, notice to Landlord will not be required in the case of an assignment or sublease by Tenant to a wholly owned subsidiary of Tenant or a company or entity with some common ownership with Tenant, provided that after such assignment or sublease, both Tenant and the assignee and/or subtenant shall thereafter be liable for the payments to be made by Tenant hereunder.

15. **EMINENT DOMAIN**

If the whole of the Premises or so much thereof as to render the balance unusable by Tenant shall be taken under power of eminent domain, this Lease shall automatically terminate as of the day after the date of such condemnation, together with any and all rights and obligations of Landlord and Tenant existing or hereafter arising in or to the same or any part thereof. In the event of a partial taking, which does not result in a termination of the Lease, the Rent shall be apportioned according to the part of the Premises remaining usable by Tenant. Landlord may without any obligation or liability to Tenant stipulate with any condemning authority for a judgment of condemnation without the necessity of a formal suit or judgment of condemnation, and the date of taking under this clause shall then be deemed the date agreed to under the terms of said agreement or stipulation.

In the event the Premises, the Building, and/or the Property or any part thereof shall be taken or condemned either permanently or temporarily for any public or quasi-public use or purpose as set forth above, whether this Lease is terminated thereby or otherwise continues to be in force and effect, the compensation award thereof shall be paid to Landlord and Tenant as their interests shall appear.

16. **DEFAULT**

Tenant shall be in “Default” if (i) Tenant fails to make any payment of Minimum Rent or any other charges within ten (10) days after notice of such failure, (ii) Tenant is in breach of or otherwise fails to perform in accordance with or otherwise satisfy any other of Tenant's obligations hereunder and fails to remedy such default within thirty (30) days after written notice from Landlord (unless the default cannot be remedied within thirty (30) days, in which case Tenant shall be required to commence to remedy such default within thirty (30) days after written notice from Landlord and thereafter diligently pursue correction thereof, in which event the time to remedy such default will be extended to the time reasonably required therefore) provided that the thirty (30) day period may be expanded to ninety (90) days, if Landlord contests the default, (iii) a receiver of any property of Tenant on the Premises is appointed, (iv) Tenant's interest in the Premises is levied upon by legal process, (v) Tenant is adjudged bankrupt and Tenant fails within thirty (30) days to cause the vacation of such appointment, levy or adjudication, or (vi) Tenant files a voluntary petition in bankruptcy, disposes of all or substantially all of its assets in bulk, or makes an assignment for the benefit of its creditors. If Tenant is in Default, then and in any such instance, without further notice to Tenant, Landlord may enter upon the Premises and terminate this Lease. In the event of such termination, the obligations of Landlord hereunder shall cease, without prejudice, however, to the right of Landlord to recover from Tenant any sums due Landlord for Minimum Rent and other charges payable by Tenant hereunder, including reasonable attorneys' fees to the date of such
entry. In addition, Landlord may enter upon the Premises without terminating this Lease and may relet the same in its own name for the account of Tenant for the remainder of the then current term of this Lease, at the highest rent then reasonably obtainable and immediately recover from Tenant any deficiency for the balance of the term between the amount for which the Premises was relet, less all expenses of reletting, including reasonable costs in incurred in making the Premises available and acceptable to rent, and the rent provided hereunder. No failure of Landlord to enforce its right or remedies upon default of Tenant shall prejudice or affect the rights of Landlord upon any subsequent or similar default.

Landlord shall be in default hereunder if Landlord shall fail to perform any of its obligations under this Lease within thirty (30) calendar days after written notice specifying such failure, unless the nature of such failure is such that it constitutes an emergency. In such case Tenant shall have no obligation to send Landlord written notice of the default prior to acting to cure the emergency situation. The thirty (30) day period may be expanded to ninety (90) days if Landlord contests the default.

In addition to any other rights or remedies that Tenant may have against Landlord for Landlord’s default, Tenant may, if such default by Landlord remains uncured after the expiration of the cure period provided for above or if it is an emergency situation, incur any expense reasonably necessary to perform the obligations of Landlord specified in such notice and invoice Landlord for the reasonable cost of curing such default by Landlord, together with copies of Tenant’s paid invoices therefore. If Landlord fails to reimburse Tenant for such reasonable cost within thirty (30) calendar days after receipt of the invoices, then Tenant may deduct such expense from the next installment(s) Minimum Rent becoming due hereunder.

All rights and remedies of the parties herein enumerated will be cumulative, and none shall exclude any other remedies allowed at law or in equity.

17. NOTICES

All notices to be given pursuant to this Lease shall be sufficient if given by personal service, guaranteed overnight delivery service (e.g., Federal Express or United Parcel Service), or, if it is mailed postage prepaid, certified mail, return receipt requested, to the parties hereto at the addresses as set forth above, or to such other address as a party may request in writing. Any time period provided in the giving of any notice hereunder shall commence upon the date of personal service, the day after delivery to the guaranteed overnight delivery service, the date of sending the telex or telegram, or two (2) days after mailing certified or registered mail.

18. MORTGAGE SUBORDINATION

This Lease is and shall at all times, unless Landlord will otherwise elect, be subject and subordinate to all covenants, restrictions, easements and encumbrances now or hereafter affecting the fee title of the Property and other documents and all ground or underlying leases, all façade, conservation or similar easements, mortgages, financing replacement or refinancing in any amounts which may now or hereafter be placed against or affect any or all of the Property or any part of or all of the Building and improvements now or at any time hereafter constituting part of or adjoining the
Property. The aforesaid provision shall be self-operative and no further instrument or document will be required to effectuate said subordination unless otherwise requested. Tenant also agrees that any mortgagee or trustee may elect to have this Lease subordinate to the lien of its mortgage or deed of trust, and upon notification by such mortgagee or trustee to Tenant to that effect, this Lease shall be deemed subordinate in lien to the said mortgage or deed of trust, whether this Lease is dated prior to or subsequent to the date of said mortgage or trust deed. Tenant agrees that if Landlord or any ground or underlying lessor, mortgagee or trustee requests confirmation of such subordination, within ten (10) days after receipt of written request therefore, Tenant shall execute and deliver whatever instruments (including but not limited to a Memorandum of Lease and/or commercially reasonable Non-Disturbance and Attornment Agreement in recordable form) which may be reasonably required for such purposes and to carry out the intent of this Section. As a condition to such subordination and attornment in order to protect Tenant’s possessory rights in the event that the lien of any of the above referenced mortgages, liens and/or financing should be accelerated and foreclosed, such mortgagee or trustee shall agree: not to disturb Tenant’s use and possession of the Premises and the Building at any time; and to cure any defaults of Landlord occurring after the date the Property is transferred in the event its lien is foreclosed.

19. **ESTOPPEL CERTIFICATES**

At any time and from time to time (but in no event more often than twice yearly), Tenant agrees, upon request in writing from Landlord, to execute and deliver to Landlord, for the benefit of such persons as Landlord names in such request, a statement in writing and in form and substance reasonably satisfactory to Landlord certifying to such of the following information as Landlord shall request: (i) that this Lease constitutes the entire agreement between Landlord and Tenant and is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which the Minimum Rent, and other charges hereunder have been paid, and the amount of any security deposited with Landlord and that the square footage is correct; (iii) that the Premises have been completed on or before the date of such letter and that all conditions precedent to the Lease taking effect have been carried out; (iv) that Tenant has accepted possession of the Premises, that the Lease term has commenced, that Tenant is occupying the Premises, that Tenant knows of no default under the Lease by Landlord (if true) and that there are no defaults or offsets which Tenant has against enforcement of this Lease by Landlord (if true); and (v) the actual commencement date of the Lease and the expiration date of the Lease.

20. **QUIET ENJOYMENT**

Landlord hereby covenants and agrees that if Tenant shall perform all the covenants and agreements herein stipulated to be performed on Tenant's part, Tenant shall at all times during the continuance hereof have peaceable quiet enjoyment and possession of the Premises without any hindrance from Landlord or any person or persons lawfully claiming the Premises by through or under Landlord, subject, however, to the terms and conditions of this Lease, the declaration of ownership and other documents, and to any mortgages, ground or underlying leases, deeds, and encumbrances of record to which this Lease is or may be subordinated.

21. **RIGHT OF FIRST OFFER/EXPANSION** *(Deleted in it’s entirety)*
22. MISCELLANEOUS PROVISIONS

(A) Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the rentals herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy provided for in this Lease or available at law or in equity.

(B) Waiver. No waiver of any condition or legal right or remedy shall be implied by the failure of Landlord to declare a forfeiture, or for any other reason, and no waiver of any condition or covenant will be valid unless it is in writing and signed by Landlord. No waiver by Landlord with respect to one or more tenants or occupants of the Property shall constitute a waiver in favor of any other Tenant, nor will the waiver of a breach of any condition be claimed or pleaded to excuse a future breach of the same condition or covenant.

(C) Broker's Commission. Landlord and Tenant hereby each represent and warrant to the other that neither party has dealt with or retained the services of a real estate broker therefore there are no claims for brokers’ commissions for finders’ fees in connection with the execution of this Lease.

(D) No Partnership. Notwithstanding any provision contained herein, as a result of the execution of this Lease, Landlord and Tenant shall not, under any circumstances, be construed as being partners, joint venturers or otherwise affiliated or associated in any manner or for any purpose other than as Landlord and Tenant.

(E) Section Headings. The section headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

(F) Lease Inures to the Benefit of Assignees. This Lease and all of the covenants, provisions, and conditions herein contained shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns respectively, of the parties hereto, provided, however, that no assignment by, from, through, or under Tenant in violation of the provisions hereof will vest in the assignee any right, title, or interest whatever.

(G) Entire Agreement. This Lease and the exhibits attached hereto set forth all the covenants, promises, agreements, conditions, and understandings between Landlord and Tenant concerning the Premises, and there are no covenants, promises agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

(H) Surrender and Holding Over. Tenant will deliver up and surrender to Landlord possession of the Premises upon the expiration of the Lease, or its termination in any way, in as good condition and repair as the same shall be at the commencement of said term (damage by fire and other perils
covered by standard fire and extended coverage insurance and ordinary wear and decay only accepted). Should Tenant remain in possession of the Premises after any termination of this Lease, no tenancy or interest in the Premises shall result there from, but such holding over shall be an unlawful detainer and Tenant will be subject to immediate eviction and removal, and Tenant shall upon demand pay to Landlord, as liquidated damages, a sum equal to one hundred twenty five percent (125%) of the Minimum Rent payable during the calendar month immediately preceding the termination of this Lease for any period during which Tenant shall hold the Premises after the stipulated term of this Lease may have terminated.

(I) **No Option.** The submission of this Lease for examination does not constitute a reservation of or option for the Premises, and will vest no right in either party. This Lease becomes effective as a Lease only upon execution and delivery thereof by the parties hereto.

(J) **Severability.** In the event that any provision or section of this Lease is rendered invalid by the decision of any court or by the enactment of any law, ordinance or regulation, such provision of this Lease shall be deemed to have never been included therein, and the balance of this Lease will continue in effect in accordance with its terms.

(K) **Smoking Policy.** Landlord and Tenant hereby agree and acknowledge that the Premises and the entrance of the Building containing the Premises, shall at all times be smoke free, and no smoking shall be permitted in any part of the Premises.

[SIGNATURE PAGE TO FOLLOW]
IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed, in duplicate, as of the date and year first above written.

LANDLORD: Historic Goetz Tower, LLC      TENANT: The City of Middletown

By: ______________________________________  By: _________________________________
Its: ______________________________________  Douglas Adkins, City Manager

Approved as to form:

________________________________________
Law Director

STATE OF OHIO, COUNTY OF STARK  ) ss:
BEFORE ME, a Notary Public, in and for said County and State, personally appeared Historic Goetz Tower, LLC by ________________________________, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed as officers of the said corporation and the free act and deed of the said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this day of ____________, 2019.

________________________________________
NOTARY PUBLIC

STATE OF OHIO, COUNTY OF BUTLER  ) ss:
BEFORE ME, a Notary Public, in and for said County and State, personally appeared The City of Middletown, Ohio by Douglas Adkins, its City Manager, who acknowledged that they did sign the foregoing instrument, and that the same is their free act and deed as City Manager of said corporation and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this _____ day of ____________, 2019.

________________________________________
NOTARY PUBLIC
DATE October 3, 2019

TO: Douglas Adkins, City Manager

FROM: Susan Cohen, Administrative Services Director

PURPOSE

To request approval of a lease for office space at Goetz Tower between the City and Historic Goetz Tower, LLC.

BACKGROUND AND FINDINGS

City Council authorized a letter of intent to lease first floor space at Goetz Tower for 5 years in Resolution R2016-50 which was approved December 6, 2016. Since that time, there were construction delays due to water damage, but the building redevelopment is now moving forward. City staff and Historic Goetz Tower, LLC have negotiated a proposed lease for Council’s consideration.

Key points include:

- Lease will be in effect for 5 years
- Annual minimum rent not to exceed $70,000 annually, ($5,833.33 monthly)
- Payment of Operating Expenses equal to one twelfth (1/12) of 10% of the portion of the estimated annual Operating Expenses to be incurred by Landlord not to exceed $2 per square foot of leased space in years 1 and 2 of the contract and will not exceed $3 per square foot of leased space in years 3,4,5 of the contract annually.
- City will pay up to $75,000 for Landlord’s improvements to the space
- City pays for its own utility expenses

ALTERNATIVES

Council may choose to not to enter into the agreement.

FINANCIAL IMPACTS

Rent, Operating Expenses, Construction of Space, Furnishing space, Utilities

EMERGENCY/NON EMERGENCY

1st Reading (10/15/19)
2nd Reading Emergency (11/5/19) to have in place by the time the space is expected to be available later this year
LEGISLATION
ITEM 10
ORDINANCE NO. O2019-65

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH AVFUEL FOR THE PURCHASE OF AVIATION FUEL AND DECLARING AN EMERGENCY.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Ohio Revised Code, is hereby authorized to enter into a contract with AvFuel for the purchase of aviation fuel. The contract shall be approved by the City Manager and Law Director.

Section 2

For said purposes the Finance Director is authorized and directed to expend a sum not to exceed $440,000.00 from the Airport Fund (Fund # 525) from the 2020 budget.

Section 3

City Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 735 of the Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.

Section 4

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.

Section 5

This ordinance is declared to be an emergency measure necessary for the immediate preservation of the public health, safety and general welfare, to wit: to permit the City to be prepared for fuel sales as it takes over the Fixed Based Operator duties at the airport on January 1, 2020, and shall take effect and be in force from and after its adoption.

Lawrence P. Mulligan, Jr., Mayor
October 2, 2019

TO: Douglas Adkins, City Manager

FROM: Jennifer Ekey, Economic Development Director
Prepared by Matt Eisenbraun, Economic Development Asst. Director

**PURPOSE**

To authorize the City Manager to enter into a fuel supply contract for Middletown regional Airport

**BACKGROUND AND FINDINGS**

Most airports with flights/operations above a modest threshold have a Fixed Base Operation (FBO) operator on site that is designated as provider of common services and support for based and transient users. Larger airports can have several FBOs with some being part of multi-location chain. Fuel sales are the most common service provided but can range from catering to start-up assistance to overnight storage (hanging).

Avfuel has been the fuel provider at Middletown Regional through the last several designated FBO’s and initiated discussions with the City on future operations in late 2018. The contract with the current FBO is set to expire on December 31, 2019 and was not renewed at the airport’s discretion. The City will assume the role of FBO operator on January 1, 2020.

Avfuel has a number of equipment lease programs, business support packages, and contract sales programs that Middletown Regional will participate in as the market presence of the FBO is established and enlarged. AvFuel is one of the largest aviation fuel supply companies in the industry with a presence at over 600 airports and 21 Corporate branded FBOs.

Contract and lease terms are within the within the industry norms and are similar to other fuel supply contracts held by the City.
FINANCIAL IMPACT

Fuel supply purchases at the airport are represented in the 2020 airport budget and the purchase order will set at an amount of $440,000.

EMERGENCY/NON-EMERGENCY

Second Reading Emergency – this designation would allow for more time to transition POS software and hardware processes and ensure a more complete preparation for January 1, 2020 assumption of operations and purchase of existing on site inventory.

Cc: Law Director
    Finance Director

Attachment: Contract
LEGISLATION
ITEM 11
ORDINANCE NO. O2019-66

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING PURCHASES OF ASPHALT BY THE CITY PURCHASING AGENT IN 2020.

BE IT ORDAINED by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Purchasing Agent is hereby authorized to purchase asphalt at the best prices available as needed for City purposes in 2020. Said purchases may be made without compliance with the provisions of Chapter 735 of the Ohio Revised Code, and said provisions are hereby waived. The procedure for such purchases shall be as established in this ordinance.

Section 2

For purposes of said purchases, the Finance Director is authorized and directed to expend a sum of money not to exceed $350,000.00 from the Auto & Gas Tax Fund (Fund # 210).

Section 3

This ordinance shall take effect and be in force from and after the earliest period allowed by law.

______________________________
Lawrence P. Mulligan, Jr., Mayor

1st Reading: October 15, 2019
2nd Reading:_______________
Adopted:__________________
Effective:__________________

Attest:_________________________
Clerk of City Council
September 23, 2019

TO: Doug Adkins, City Manager
FROM: Samantha Zimmerman, Purchasing Agent

PURPOSE

To request authorization to purchase asphalt for paving projects in 2020 in an amount not to exceed $350,000.

BACKGROUND and FINDINGS

Asphalt is only available from two companies in the Middletown area. Hauling asphalt from outside the area is time-consuming, more costly (considering transportation and labor costs), and inefficient since only limited quantities can be hauled at one time. Asphalt is not available at both plants every day, so the City must purchase the asphalt from wherever it is available on the days it is needed.

ALTERNATIVES

The alternative is to formally bid each project as asphalt is needed, but that is not an acceptable alternative, since this would take too much time, stalling the projects.

FINANCIAL IMPACT

There is $350,000 available in the 2020 budget for various street paving projects.

RECOMMENDATION

It is recommended Council waive the bid procedure and allow asphalt to be purchased at the lowest and most responsive price available as needed for City purposes up to a maximum of $350,000.

EMERGENCY/NON-EMERGENCY

Non-Emergency

cc: Jacob Burton, Finance Director
    Scott Tadych, Public Works & Utilities Director
    Charlie Anderson, Public Works Superintendent
LEGISLATION
ITEM 12
ORDINANCE NO. O2019-67

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT WITH POLYDYNE, INC. FOR THE PURCHASE OF POLYMER FOR USE AT THE WATER RECLAMATION FACILITY FOR THE YEAR 2020.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager, without complying with the procedures of Chapter 735 of the Ohio Revised Code, is hereby authorized to enter into a contract with Polydyne, Inc. for the purchase of polymer for use at the Water Reclamation Facility for the year 2020.

Section 2

For said purposes the Finance Director is authorized and directed to expend a sum not to exceed $152,500.00 from the Sanitary Sewer Fund (Fund # 520).

Section 3

City Council hereby determines that the procedure to be followed in the award and execution of the aforesaid contract shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 735 of the Ohio Revised Code shall not be applicable to the award and execution of the aforesaid contract.

Section 4

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.

Section 5

This ordinance shall take effect and be in force at the earliest time permitted by law.

Lawrence P. Mulligan, Jr., Mayor

1st Reading: ________________
2nd Reading: ________________
Adopted: ________________
Effective: ________________

Attest:  
Clerk of the City Council
September 23, 2019

TO:   Doug Adkins, City Manager
FROM: Samantha Zimmerman, Purchasing Agent

PURPOSE

To request authorization for a contract with Polydyne, Inc., of Atlanta, GA, in an amount not to exceed $152,500 for the polymer needs at the Wastewater Treatment Plant.

BACKGROUND and FINDINGS

Polymer is used at the Wastewater Treatment Plant to separate solids from the water in the dewatering system. The treatment facility utilizes both a centrifuge and a dewatering belt filter press in this dewatering operation. Polymer is the specific chemical that is used at the plant to assist in the process.

The staff at the Wastewater Treatment Plant spent a significant amount of time evaluating the different polymers on the market to find which polymer gives the best results. Polymer is different from the other chemicals used at the plant in that it has to work with our particular sludge characteristics. Through extensive testing, it has been determined that the polymer manufactured by Polydyne produces the best and most desirable results in the dewatering of Middletown’s sludge. For this reason, it is requested that Council approve the waiver of bids for this contract.

ALTERNATIVES

There are no other alternatives. Although there are other polymers on the market, Polydyne is the only company that provides the polymer that is the most effective in our system. The liquid sludge must be dewatered in order to be land-applied.

FINANCIAL IMPACT

We have requested sufficient funding in the 2020 chemical budget to cover the expected expenses for this chemical. The exact amount is not known at this time, since usage of the polymer is dependant upon the conditions at the plant (weather, usage, etc.), but we anticipate spending approximately $152,500 on polymer in 2020.
RECOMMENDATION

It is requested that the bid procedure be waived and a contract be authorized with Polydyne, Inc., of Atlanta, GA, in an amount not to exceed $152,500.

EMERGENCY/NON EMERGENCY

Non-Emergency

cc:      Jacob Burton, Director of Finance
        Scott Tadych, Director of Public Works and Utilities
        Gerry Burris, Wastewater Treatment Supervisor
LEGISLATION
ITEM 13
ORDINANCE NO. O2019-68

AN ORDINANCE AMENDING SECTIONS 1037.05 (MOBILE FOOD VENDING; APPLICATION) AND 1037.07 (MOBILE FOOD VENDING; OPERATING RESTRICTIONS) OF THE CODIFIED ORDINANCES.

BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

Section 1037.05 (Mobile Food Vending; Application) of the Codified Ordinances is hereby amended to read in full as set forth in Exhibit “A”, attached hereto, and made a part hereof.

Section 2

Section 1037.07 (Mobile Food Vending; Operating Restrictions) of the Codified Ordinances is hereby amended to read in full as set forth in Exhibit “B”, attached hereto, and made a part hereof.

Section 3

This ordinance shall take effect and be in force from and after the earliest period allowed by law.

Lawrence P. Mulligan, Jr., Mayor

1st Reading: October 15, 2019
2nd Reading:_____________
Adopted:_______________
Effective:______________

Attest:__________________
Clerk of City Council
EXHIBIT “A”

1037.05. MOBILE FOOD VENDING; APPLICATION

Persons desiring to obtain a LMFVP for the operation of a mobile food vending unit in the designated zones shall submit an application on a form to be provided by the City Manager or their designee which shall:

(a) Identify whether the applicant seeks a license for 7 days, 3 months, six months, or twelve months;

(b) Identify the name, mailing address, telephone number, and tax ID number of the applicant;

(c) Identify the name and address of the person authorized to receive notices from the city;

(d) Identify a primary and secondary contact individual who can be contacted in an emergency;

(e) Include proof of liability insurance in an amount not less than $1,000,000.00 and naming the city as an additional insured; and

(f) Include a copy of the applicant's current food service license issued by the board of health.

(g) Include a photograph of the signage for the mobile food vending unit to be reviewed for compliance with signage requirements.

A business owner must apply for and receive a separate LMFVP pursuant to 1037.05 of this Chapter for each mobile food vending unit to be operated in the city.
EXHIBIT “B”

1037.07. MOBILE FOOD VENDING; OPERATING RESTRICTIONS

The City Manager or their designee is authorized to grant a LMFVP for the placement of mobile food vendors subject to the following restrictions:

(a) Mobile food vendors must be actively engaged in vending operations at all times while occupying any space in the designated zones.

(b) Mobile food vendors may operate in the designated zones during the following hours:

   - Sunday –Wednesday 6:00 a.m. to 8:00 p.m.
   - Thursday– Saturday 6:00 a.m. to 12:00am

(c) Mobile food vendors shall not occupy any space in the designated zones outside the hours of operation listed above.

(d) Spaces within the designated zones will be available on a first-come, first-served basis each day. Issuance of a LMFVP under this section does not guarantee access to a particular designated zone, nor does it guarantee that space will be available.

(e) The designated zones are available only to mobile food vendors who have a valid LMFVP issued pursuant to this section.

(f) Mobile food vendors shall keep the area within a 5 foot radius of their unit clear of all litter and debris arising from their operations.

(g) Mobile food vendors shall be responsible for removing all waste generated by the internal operations of their unit. Such waste shall not be placed in city trash receptacles.

(h) Mobile food vendors may not operate in any manner that blocks, obstructs, or restricts the free passage of vehicles or pedestrians in the lawful use of the sidewalks or highways or ingress or egress to the abutting property.

(i) Mobile food vending units shall not exceed thirty-one feet (31') in length or eight feet, five inches (8'5'”) in width.

(j) LMFVP and food service licenses must be kept on the mobile food vending unit at all times and must be available for immediate inspection.

(k) Mobile food vendors shall not park in a way that prevents other trucks from parking in otherwise available spaces.
(l) Mobile food vendors shall place a tarp or other impermeable material under their unit when parked in order to protect the sidewalk or pavement from damage or staining.

(m) Mobile food vendors may set up tables and chairs in the space immediately in front of their units, provided that the tables and chairs do not impede other trucks from parking in otherwise available spaces, and further provided that the tables and chairs are placed:

i. Only on paved surfaces;

ii. In a location that does not block the entrance or exit of any building;

iii. In a location that does not block access to buses at bus stops, fire escapes, sidewalk access doors, traffic or street lighting equipment, utility valve boxes or other utility equipment;

iv. In a location that is not less than 5 feet from any alley, pedestrian crosswalk, driveway, curb cut, curb ramp or fire hydrant, and not less than 4 feet from any bicycle rack; and

v. So that an open area of not less than 4 feet is available for pedestrian traffic around the tables and chairs.

(n) Mobile food vendors may display advertising signage provided it complies with the following:

i. Signage must consist only of the mobile food vendor name and logo and any items sold or available from the mobile food vendor. All other advertising signage is prohibited.

ii. Signage must have a professional appearance and be constructed with appropriate materials.

iii. The name and logo must be permanently affixed to the mobile food vending unit.

(o) Mobile food vendors shall not have access to locations within the designated zones during special events designated by the city pursuant to a special event permit.

(p) In the case of mobile food vending units that are pulled or hauled by separate vehicles, the mobile food vending unit shall be detached from the vehicle by which it was hauled (the "hauling vehicle"). The hauling vehicle shall be parked in a regular, lawful parking space and shall not occupy space in any designated zone.
(q) Mobile food vendors shall not utilize the city's electrical outlets, unless specifically authorized by the city.

(r) Mobile food vendors shall not locate their mobile food vending units any closer than fifty feet (50’) from a structure which includes a food service vendor within a designated zone unless given express permission by all of the individual food service vendors they are within fifty feet of.
September 16, 2019

TO: Doug Adkins, City Manager
FROM: Ashley Combs, Planning Director

SUBJECT: General Ordinance Text Amendments
Chapter 1037: Mobile Food Vending

Request:
A request for text amendments pertaining to the Middletown Code of Ordinances
Chapter 1037: Mobile Food Vending.

Background & Staff Analysis:
Planning staff are in charge of accepting and reviewing applications for mobile food
vending units that request to operate in City of Middletown designated mobile food
vending areas. Staff has run into the issue of the professional appearance of food
vending units on multiple occasions over the last year. Staff proposes text
amendments to assist regulating their appearance when operating in the City. Below
are the proposed additions and deletions and attached is the full Chapter 1037:
Mobile Food Vending.

1037.05. MOBILE FOOD VENDING; APPLICATION
(g) Include a photograph of the signage for the mobile food vending unit.

1037.07. MOBILE FOOD VENDING; OPERATING RESTRICTIONS
Mobile food vendors may display advertising provided it complies with the following:
   1. Advertising must consist consisting only of the mobile food vendor name and logo
      and any items sold or available from the mobile food vendor. All other advertising
      is prohibited.
   2. Advertising must have a professional appearance and be constructed with
      appropriate materials
   3. Advertising the name and logo of the mobile food vendor must be permanently
      affixed to the mobile food vending unit
   4. Photos of the mobile food vending unit(s) must be submitted with permit
      application to be reviewed for compliance with signage requirements.

Non-Emergency Item

Other Department Comments:
No comments have been received at this time.

Attachment:
Middletown Code of Ordinances Chapter 1037: Mobile Food Vending

CC: Jennifer Ekey, Economic Development Director
Chapter 1037: Mobile Food Vending

1037.01. DEFINITIONS.

For purposes of this Chapter, the following words shall have the meanings respectively ascribed to them, unless a different meaning is clearly indicated by the context.

(a) "Mobile Food Vending Unit" shall be defined as a commercially manufactured, motorized or otherwise mobile unit, truck or cart that is readily movable, and from which non-alcoholic beverages and/or ready-to-eat food is cooked, wrapped, packaged, processed or portioned for service, sale or distribution. This definition is intended to include "break-down units".

(b) "Mobile Food Vendor" shall be defined as any person who sells or offers for sale food or beverages from a Mobile Food Vending Unit in any public, private or restricted space.

(c) “Designated Zone” shall include any area established as a “Designated Outdoor Refreshment Area aka DORA” by Middletown City Council and additional areas designated by the City Manager, which shall be maintained on file in the Economic Development Department.

(d) “Local Mobile Food Vending Permit (LMFVP)” is a revocable license issued by the City of Middletown to permit the sale of food or beverages from a Mobile Food Vending Unit within the City of Middletown in Designated Zones.

1037.02. SALE OF FOOD OR BEVERAGES FROM A MOBILE VENDING UNIT

No person or entity shall sell food or beverages from a Mobile Food Vending Unit in a Designated Zone in the City of Middletown without first obtaining a Local Mobile Food Vending Permit (hereinafter LMFVP). Any persons operating a Mobile Food Vending Unit in conjunction with and pursuant to a special events permit issued by the City shall not be required to obtain a LMFVP.

1037.03. MOBILE VENDING SITE LOCATIONS.

The city manager or his designee may, at their sole discretion, designate sites within Designated Zones for mobile food vending and shall identify approved sites on maps and/or by approximate address. Additional sites may be requested in writing by persons interested in vending at specific locations which have not been previously designated for vending of the type proposed in the request. The city manager or his designee shall exercise sole discretion in
determining the appropriateness of the requested location and shall notify the applicant in writing of his decision.

1037.04. MOBILE FOOD VENDING ON PRIVATE PROPERTY

Mobile Food Vending on private property shall be conducted as follows:

(a) No person shall sell food or beverage from a Mobile Food Vending Unit in a residential zoned district.

(b) The sale of food or beverage from a Mobile Food Vending Unity may be conducted without a LMFVP on private property as follows:

ii. On the private property of an existing operating business with the permission of the owner of the private property; or

iii. On private property, with no existing operating business, in a zoning district where outdoor dining is a permitted use, with the permission of the owner of the private property and a proper zoning permit.

(c) The sale of food or beverage from a Mobile Food Vending Unit on private property shall not interfere with traffic or pose a hazard to public safety. If the City determines, in its discretion, that the operation of a Mobile Food Vending Unit on private property is creating a traffic or public safety hazard, the City may refer the vendor to conduct its operation in such a manner to eliminate such hazard or to cease operations.

(d) All Mobile Food Vending Units shall have a valid food service license issued by the Board of Health.

1037.05. MOBILE FOOD VENDING; APPLICATION

Persons desiring to obtain a LMFVP for the operation of a mobile food vending unit in the designated zones shall submit an application on a form to be provided by the city manager or his or her designee which shall:

(a) Identify whether the applicant seeks a license for 7 days, 3 months, six months, or twelve months;
(b) Identify the name, mailing address, telephone number, and tax ID number of the applicant;

(c) Identify the name and address of the person authorized to receive notices from the city;

(d) Identify a primary and secondary contact individual who can be contacted in an emergency;

(e) Include proof of liability insurance in an amount not less than $1,000,000.00 and naming the city as an additional insured; and

(f) Include a copy of the applicant’s current food service license issued by the board of health.

(g) **Include a photograph of the signage for the mobile food vending unit.**

A business owner must apply for and receive a separate LMFVP pursuant to 1037.05 of this Chapter for each mobile food vending unit to be operated in the city.

1037.06. **MOBILE FOOD VENDING; FEES, TERM, TRANSFERABILITY**

(a) A mobile food vendor may apply for a LMFVP that is valid for seven days, three months, six months, or twelve months.

   i. For a twelve-month LMFVP, the fee shall be $500.00. Payment is required prior to issuance of the LMFVP. The LMFVP shall be valid for a one-year period beginning on the date of issuance.

   ii. For a six month LMFVP, the fee shall be $300.00. Payment is required prior to issuance of the LMFVP. The LMFVP shall be valid for a six-month period beginning on the date of issuance.

   iii. For a three-month LMFVP, the fee shall be $200.00. Payment is required prior to issuance of the LMFVP. The LMFVP shall be valid for a three-month period beginning on the date of issuance.

   iv. For a seven day LMFVP, the fee shall be $50. Payment is required prior to issuance of the LMFVP. The LMFVP shall be valid for a seven day period beginning on the date of issuance.
(b) LMFVP for mobile food vendors are non-transferrable and are revocable as provided in this Chapter.

(c) Issuance of a LMFVP for a mobile food vendor pursuant to this ordinance does not create or confer a property interest of any kind.

(d) The city may issue no more than 50 LMFVP at any time.

1037.07. MOBILE FOOD VENDING; OPERATING RESTRICTIONS

The city manager or his or her designee is authorized to grant a LMFVP for the placement of mobile food vendors subject to the following restrictions:

(a) Mobile food vendors must be actively engaged in vending operations at all times while occupying any space in the designated zones.

(b) Mobile food vendors may operate in the designated zones during the following hours:
      Sunday – Wednesday 6:00 a.m. to 8:00 p.m.
      Thursday – Saturday 6:00 a.m. to 12:00am

(c) Mobile food vendors shall not occupy any space in the designated zones outside the hours of operation listed above.

(d) Spaces within the designated zones will be available on a first-come, first-served basis each day. Issuance of a LMFVP under this section does not guarantee access to a particular designated zone, nor does it guarantee that space will be available.

(e) The designated zones are available only to mobile food vendors who have a valid LMFVP issued pursuant to this section.

(f) Mobile food vendors shall keep the area within a 5 foot radius of their unit clear of all litter and debris arising from their operations.

(g) Mobile food vendors shall be responsible for removing all waste generated by the internal operations of their unit. Such waste shall not be placed in city trash receptacles.

(h) Mobile food vendors may not operate in any manner that blocks, obstructs, or restricts the free passage of vehicles or pedestrians in the lawful use of the sidewalks or highways or ingress or egress to the abutting property.
(i) Mobile food vending units shall not exceed thirty-one feet (31') in length or eight feet, five inches (8'5'”) in width.

(j) LMFVP and food service licenses must be kept on the mobile food vending unit at all times and must be available for immediate inspection.

(k) Mobile food vendors shall not park in a way that prevents other trucks from parking in otherwise available spaces.

(l) Mobile food vendors shall place a tarp or other impermeable material under their unit when parked in order to protect the sidewalk or pavement from damage or staining.

(m) Mobile food vendors may set up tables and chairs in the space immediately in front of their units, provided that the tables and chairs do not impede other trucks from parking in otherwise available spaces, and further provided that the tables and chairs are placed:

   i. Only on paved surfaces;

   ii. In a location that does not block the entrance or exit of any building;

   iii. In a location that does not block access to buses at bus stops, fire escapes, sidewalk access doors, traffic or street lighting equipment, utility valve boxes or other utility equipment;

   iv. In a location that is not less than 5 feet from any alley, pedestrian crosswalk, driveway, curb cut, curb ramp or fire hydrant, and not less than 4 feet from any bicycle rack; and

   v. So that an open area of not less than 4 feet is available for pedestrian traffic around the tables and chairs.

(n) Mobile food vendors may display advertising provided it complies with the following:
   i. Advertising must consist consisting only of the mobile food vendor name and logo and any items sold or available from the mobile food vendor. All other advertising is prohibited.

   ii. Advertising must have a professional appearance and be constructed with appropriate materials
iii. Advertising the name and logo of the mobile food vendor must be permanently affixed to the mobile food vending unit

iv. Photos of the mobile food vending unit(s) must be submitted with permit application to be reviewed for compliance with signage requirements.

(o) Mobile food vendors shall not have access to locations within the designated zones during special events designated by the city pursuant to a special event permit.

(p) In the case of mobile food vending units that are pulled or hauled by separate vehicles, the mobile food vending unit shall be detached from the vehicle by which it was hauled (the "hauling vehicle"). The hauling vehicle shall be parked in a regular, lawful parking space and shall not occupy space in any designated zone.

(q) Mobile food vendors shall not utilize the city's electrical outlets, unless specifically authorized by the city.

(r) Mobile food vendors shall not locate their mobile food vending units any closer than fifty feet (50') from a structure which includes a food service vendor within a designated zone unless given express permission by all of the individual food service vendors they are within fifty feet of.

1037.08. MOBILE FOOD VENDING: FINANCIAL STANDING

(a) No mobile food vendor will be granted a LMFVP unless it is in good standing with the City of Middletown. Vendors must abide by all applicable ordinances and regulations of the City of Middletown, including local tax requirements. A LMFVP may be revoked if the individual or business is not fully compliant with any city ordinance or regulation, or fails to make timely payments required thereunder. All revocations shall be done in writing and provided to the vendor. Revocations shall be reviewed and approved by the City Manager.

(b) Following the issuance of a LMFVP, the vendor's name, contact information and federal taxpayer identification number will be forwarded to the City's Income Tax Division. Vendors may contact the Income Tax Division for additional information.

1037.09. MOBILE FOOD VENDING; PENALTIES

Whoever operates a Mobile Food Vending Unit in a Designated Zone without first obtaining a LMFVP or special events permit violates or hereby violates any provision of Section 1037.02 commits a misdemeanor of the second degree. Whoever operates a Mobile Food Vending Unit in violation of any of the operating restrictions of Section 1037.07 commits a
misdemeanor of the fourth degree and is subject to a civil fine not to exceed $250.00. Whoever violates any of the provisions of Section 1037.04 while operating on private property commits a misdemeanor of the fourth degree and is subject to a civil fine not to exceed $250.00.
LEGISLATION
ITEM 14
ORDINANCE NO. O2019-69

AN ORDINANCE ESTABLISHING A PROCEDURE FOR AND AUTHORIZING A CONTRACT FOR THE TRANSFER OF CITY OWNED PROPERTY TO ARTHUR FRASIK, JR.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The City Manager without complying with the procedures of Chapter 721 of the Ohio Revised Code or the procedures set forth in Ord. No. 02002-87 is hereby authorized to enter into an agreement for the transfer of certain real property to Arthur Frasik, Jr.. The Agreement shall be in a form acceptable to the City Manager and Law Director. The properties to be exchanged are generally identified in Exhibit “A”, attached hereto.

Section 2

This Council hereby determines that the procedure to be followed in the transfer of the property shall consist solely of the procedure set forth in this ordinance and the provisions of Chapter 721, Ohio Revised Code and Ord. No. 02002-87, shall not be applicable to the award and execution of the aforesaid contract.

Section 3

The City Council hereby determines that the property to be transferred by the City is not presently needed for any municipal purposes.

Section 4

It is hereby determined that the subject matter of this legislation is not of a general and permanent nature, does not provide for a public improvement, and does not assess a tax or payment.

Section 5

This ordinance shall take effect and be in force at the earliest time permitted by law.

Lawrence P. Mulligan, Jr., Mayor

1st Reading: October 15, 2019
2nd Reading:_________________
Adopted: _________________
Effective: _________________

Attest: ______________________

Clerk of the City Council

H:\Law\leg\2019 Leg\O Land Swap with Art Frasik
Exhibit “A”

The City of Middletown shall transfer the following properties to Arthur Frasik, Jr.:

- **Parcel A**: 2104 Arlington Avenue (Q654100000196)
- **Parcel B**: 625 Wilson Street (Q6542032000023)
- **Parcel C**: 616 Young Street (Q6521003000073)
- **Parcel D**: 2111 Hill Avenue (Q6542032000084)

In exchange for the properties identified above as Parcels A, B, C & D, Arthur Frasik, Jr. shall transfer the following properties to the City of Middletown:

- **Parcel 1**: 1713 Flemming Road (Q6532021000008)
- **Parcel 2**: 1715 Flemming Road (Q6532021000009)
- **Parcel 3**: Unnumbered Flemming (Q6532021000010)
- **Parcel 4**: Unnumbered Wilbraham Road (Q6511024000002)
- **Parcel 5**: Unnumbered Wilbraham Road (Q6511024000001)
DATE: September 28, 2019
TO: Douglas Adkins, City Manager
FROM: Susan Cohen, Administrative Services Director

PURPOSE
To request Council authorize a contract to swap certain lands with Art Frasik

BACKGROUND AND FINDINGS
Staff was approached by Art Frasik about entering into an agreement to exchange land parcels that would be most beneficial for the other party to possess.

Staff examined the location, and value of each property and is recommending entering into a land swap agreement with Mr. Frasik involving the following properties.

Currently in the City possession that would be transferred to Frasik:
1. 2104 Arlington (Parcel Q654100000196)
2. 625 Wilson (Parcel Q6542032000023)
3. 616 Young (Parcel Q6521003000073)
4. 2111 Hill (Parcel Q6542032000084)

Currently in Frasik possession transferred to the City:
1. 1713 Flemming (Parcel Q6532021000008)
2. 1715 Flemming (Parcel Q6532021000009)
3. Unnumbered Flemming (Parcel Q6532021000010)
4. Unnumbered Wilbraham (Parcel Q6511024000002)
5. Unnumbered Wilbraham (Parcel Q6511024000001)

Each of the properties to be acquired by Frasik have no municipal value and are at or near properties currently owned by Frasik that would allow expansion of yards or potential for redevelopment of properties. The properties to be acquired by the city have potential for redevelopment or are in areas that the housing policy could call to be buffer zones around commercial properties.

ALTERNATIVES
Council may choose to not to enter into the agreement. The City would continue to maintain the property until another opportunity developed.
FINANCIAL IMPACTS

None. The properties are similarly situated in value

EMERGENCY/NON EMERGENCY

Non Emergency.
LEGISLATION
ITEM 15
RESOLUTION NO. R2019-32

A RESOLUTION TO MAKE ADJUSTMENTS TO APPROPRIATIONS FOR CURRENT EXPENSES AND OTHER EXPENDITURES OF THE CITY OF MIDDLETOWN, COUNTIES OF BUTLER AND WARREN, STATE OF OHIO, FOR THE PERIOD ENDING DECEMBER 31, 2019. (GENERAL FUND)

BE IT RESOLVED by the City Council of the City of Middletown, Butler/Warren Counties, Ohio that:

Section 1

The following sums are hereby appropriated from the General Fund of the City to accounts of the City for the purposes herein described as follows:

FROM: Unappropriated General Fund (Fund #100) $12,174.05
TO: Accounts of 101 (100.101.54320) $12,174.05
TOTAL GENERAL FUND $12,174.05

Section 2

The Finance Director is hereby authorized to draw his warrants on the City Treasurer for payments from any of the foregoing appropriations upon receiving proper certificates and vouchers therefor, approved by the Board of Officers authorized by law to approve the same, or an ordinance or resolution of the City Council to make expenditures provided that no warrants shall be drawn or paid for salaries or wages except to persons employed by authority of and in accordance with law or ordinance.

Section 3

All legislation inconsistent herewith is hereby repealed.

Section 4

This resolution shall be in full force and effect from and after its adoption as provided by law.

______________________________________________
Lawrence P. Mulligan, Jr., Mayor

1<sup>st</sup> Reading: October 15, 2019
2<sup>nd</sup> Reading:_________
DATE: October 1, 2019

TO: Douglas Adkins, City Manager

FROM: Amy Schenck, Clerk of Council

**Purchase of File Cabinets**

**PURPOSE**

To request authorization to purchase new lateral file cabinets for the City Council Office from Enriching Spaces in an amount not to exceed $12,174.05.

**BACKGROUND AND FINDINGS**

The Clerk of Council is responsible for retaining and archiving the legislation adopted by Council. These documents are permanent records of the City and the old file cabinets are not sufficient to store the current volume of records.

The new file cabinets will allow for the proper storage of the current records and have additional space for future records.

**ALTERNATIVES**

The alternative is to not purchase the file cabinets.

**FINANCIAL IMPACTS**

A supplemental appropriation to 100.101.54320 Office Machinery and Equipment will be necessary for this purchase.

**EMERGENCY/NON EMERGENCY**

This is a non-emergency request