



# Public Works Commission

## Application for Financial Assistance

IMPORTANT: Please consult "Instructions for Financial Assistance for Capital Infrastructure Projects" for guidance in completion of this form.

Applicant

Applicant: City of Dayton Subdivision Code: 113-21000

District Number: 4 County: Montgomery Date: 08/29/2022

Contact: Joseph Weinel Phone: (937) 333-4218  
(The individual who will be available during business hours and who can best answer or coordinate the response to questions)

Email: joe.weinel@daytonohio.gov FAX: \_\_\_\_\_

Project

Project Name: Wayne Avenue Widening Zip Code: 45410

Subdivision Type	Project Type	Funding Request Summary	
	<small>(Select single largest component by \$)</small>	<small>(Automatically populates from page 2)</small>	
<u>City</u>	x 1. Road	Total Project Cost:	<u>2,670,000</u> .00
	2. Bridge/Culvert	1. Grant:	<u>830,390</u> .00
	3. Water Supply	2. Loan:	<u>0</u> .00
	4. Wastewater	3. Loan Assistance/ Credit Enhancement:	<u>0</u> .00
	5. Solid Waste		
	6. Stormwater	Funding Requested:	<u>830,390</u> .00

### District Recommendation (To be completed by the District Committee)

Funding Type Requested	SCIP Loan - Rate: _____ % Term: _____ Yrs	Amount: _____ .00
<small>(Select one)</small>		
<input type="checkbox"/> State Capital Improvement Program	RLP Loan - Rate: _____ % Term: _____ Yrs	Amount: _____ .00
<input type="checkbox"/> Local Transportation Improvement Program	Grant:	Amount: _____ .00
<input type="checkbox"/> Revolving Loan Program	LTIP:	Amount: _____ .00
<input type="checkbox"/> Small Government Program	Loan Assistance / Credit Enhancement:	Amount: _____ .00
District SG Priority: _____		

### For OPWC Use Only

STATUS	Grant Amount: _____ .00	Loan Type: <input type="checkbox"/> SCIP <input type="checkbox"/> RLP
Project Number: _____	Loan Amount: _____ .00	Date Construction End: _____
	Total Funding: _____ .00	Date Maturity: _____
Release Date: _____	Local Participation: _____ %	Rate: _____ %
OPWC Approval: _____	OPWC Participation: _____ %	Term: _____ Yrs

# 1.0 Project Financial Information (All Costs Rounded to Nearest Dollar)

## 1.1 Project Estimated Costs

### Engineering Services

Preliminary / Final Design:	<u>80,000</u>	.00	
Construction Administration:	<u>80,000</u>	.00	
Total Engineering Services:	a.)	<u>160,000</u>	.00 <u>7.1</u> %
Right of Way:	b.)	<u>60,000</u>	.00
Construction:	c.)	<u>2,245,000</u>	.00
Permits, Advertising, Legal:	e.)	<u>5,000</u>	.00
Construction Contingencies:	f.)	<u>200,000</u>	.00
Total Estimated Costs:	g.)	<u>2,670,000</u>	.00

## 1.2 Project Financial Resources

### Local Resources

Local In-Kind or Force Account:	a.)	<u>0</u>	.00
Local Revenues:	b.)	<u>0</u>	.00
Other Public Revenues:			
Local / ODOT - Let: <u>Local-Let</u>	d.)	<u>1,839,610</u>	.00
ODOT PID: <u>110257</u>			
OEPA / OWDA:	e.)	<u>0</u>	.00
CDBG:	f.)	<u>0</u>	.00
Other: _____	g.)	<u>0</u>	.00
Subtotal Local Resources:	i.)	<u>1,839,610</u>	.00 <u>68.9</u> %

### OPWC Funds (Check all requested and enter Amount)

Grant: <u>100</u> % of OPWC Funds	j.)	<u>830,390</u>	.00
Loan: <u>0</u> % of OPWC Funds	k.)	<u>0</u>	.00 _____ yrs
Loan Assistance / Credit Enhancement:	l.)	<u>0</u>	.00
Subtotal OPWC Funds:	m.)	<u>830,390</u>	.00 <u>31.1</u> %
Total Financial Resources:	n.)	<u>2,670,000</u>	.00 <u>100</u> %

### 1.3 Availability of Local Funds

Attach a statement signed by the Chief Financial Officer listed in section 5.2 certifying all local resources required for the project will be available on or before the earliest date listed in the Project Schedule section. The OPWC Agreement will not be released until the local resources are certified. Failure to meet local share may result in termination of the project. Applicant needs to provide written confirmation for funds coming from other funding sources.

### 2.0 Repair / Replacement or New / Expansion

2.1 Total Portion of Project New / Expansion: \_\_\_\_\_<sup>0</sup>.00

### 3.0 Project Schedule

3.1 Engineering / Design / Right of Way      Begin Date: 05/01/2020      End Date: 01/31/2024

3.2 Bid Advertisement and Award              Begin Date: 02/01/2024      End Date: 04/01/2024

3.3 Construction                                      Begin Date: 04/01/2024      End Date: 09/30/2024

Construction cannot begin prior to release of executed Project Agreement and issuance of Notice to Proceed. Failure to meet project schedule may result in termination of agreement for approved projects. Modification of dates must be requested in writing by project official of record and approved by the Commission once the Project Agreement has been executed.

### 4.0 Project Information

If the project is multi-jurisdictional, information must be consolidated in this section.

#### 4.1 Useful Life / Cost Estimate / Age of Infrastructure

Project Useful Life: 29 Years      Age: 2001 (Year built or year of last major improvement)

*Attach Registered Professional Engineer's statement, with seal or stamp and signature confirming the project's useful life indicated above and detailed cost estimate.*

#### 4.2 User Information

Road or Bridge:      Current ADT 21900      Year 2018

Water / Wastewater: Based on monthly usage of 4,500 gallons per household; attach current ordinances.

Residential Water Rate      Current \$ 0      Number of households served: \_\_\_\_\_

Residential Wastewater Rate      Current \$ 0      Number of households served: \_\_\_\_\_

Stormwater:    Number of households served: \_\_\_\_\_

### 4.3 Project Description

A: SPECIFIC LOCATION (Supply a written location description that includes the project termini; a map does not replace this requirement.) 2000 character limit.

This project includes the reconstruction and widening of Wayne Avenue from Wyoming Street to Waldo Street.

**B: IDENTIFY THE PROBLEM (Describe the issue to be addressed) 2000 character limit.**

**Excessive accidents rate for rear end and left turn and pavement that has passed its useful life.**

**C: PROJECT SCOPE (Describe the work to be completed) 2000 character limit.**

The project involves reconstructing approximately 1,115 feet of Wayne Avenue. The project also includes widening Wayne Avenue to extend the current 5 lane section approximately 800 feet from where it ends now to Waldo Street. Reconstruction and widening includes new pavement and base, curbs, sidewalks, catch basins, and street lights.

## 5.0 Project Officials

Changes in Project Officials must be submitted in writing from an officer of record.

### 5.1 Chief Executive Officer (Person authorized in legislation to sign project agreements)

Name: Shelley Dickstein  
Title: City Manager  
Address: 101 West Third Street P.O. Box 22  
  
City: Dayton State: OH Zip: 45402  
Phone: 937-333-3600  
FAX:   
E-Mail: shelley.dickstein@daytonohio.gov

### 5.2 Chief Financial Officer (Can not also serve as CEO)

Name: Robbi Stivers  
Title: Director of Finance  
Address: 10 West Third Street  
  
City: Dayton State: OH Zip: 45402  
Phone: 937-333-3576  
FAX: 9373332222  
E-Mail: robbi.stivers@daytonohio.gov

### 5.3 Project Manager

Name: Joseph Weinel  
Title: Chief Engineer  
Address: 101 West Third Street  
  
City: Dayton State: OH Zip: 45402  
Phone: (937) 333-4218  
FAX:   
E-Mail: joe.weinel@daytonohio.gov

## 6.0 Attachments / Completeness review

Confirm in the boxes below that each item listed is attached (Check each box)

x A certified copy of the legislation by the governing body of the applicant authorizing a designated official to sign and submit this application and execute contracts. This Individual should sign under 7.0, Applicant Certification, below.

x A certification signed by the applicant's chief financial officer stating the amount of all local share funds required for the project will be available on or before the dates listed in the Project Schedule section. If the application involves a request for loan (RLP or SCIP), a certification signed by the CFO which identifies a specific revenue source for repaying the loan also must be attached. Both certifications can be accomplished in the same letter.

x A registered professional engineer's detailed cost estimate and useful life statement, as required in 164-1-13, 164-1-14, and 164-1-16 of the Ohio Administrative Code. Estimates shall contain an engineer's seal or stamp and signature.

A cooperative agreement (if the project involves more than one subdivision or district) which identifies the fiscal and administrative responsibilities of each participant.

Farmland Preservation Review - The Governor's Executive Order 98-IV, "Ohio Farmland Protection Policy" requires the Commission to establish guidelines on how it will take protection of productive agricultural and grazing land into account in its funding decision making process. Please include a Farm Land Preservation statement for projects that have an impact on farmland.

Capital Improvements Report. CIR Required by O.R.C. Chapter 164.06 on standard form.

x Supporting Documentation: Materials such as additional project description, photographs, economic impact (temporary and/or full time jobs likely to be created as a result of the project), accident reports, impact on school zones, and other information to assist your district committee in ranking your project. Be sure to include supplements which may be required by your local District Public Works Integrating Committee.

## 7.0 Applicant Certification

The undersigned certifies: (1) he/she is legally authorized to request and accept financial assistance from the Ohio Public Works Commission as identified in the attached legislation; (2) to the best of his/her knowledge and belief, all representations that are part of this application are true and correct; (3) all official documents and commitments of the applicant that are part of this application have been duly authorized by the governing body of the applicant; and, (4) should the requested financial assistance be provided, that in the execution of this project, the applicant will comply with all assurances required by Ohio Law, including those involving Buy Ohio and prevailing wages.

**Applicant certifies that physical construction on the project as defined in the application has NOT begun, and will not begin until a Project Agreement for this project has been executed with the Ohio Public Works Commission. Action to the contrary will result in termination of the agreement and withdrawal of Ohio Public Works Commission funding from the project.**

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Certifying Representative (Printed form, Type or Print Name and Title)

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Original Signature / Date Signed



**CERTIFICATE OF CLERK OF THE COMMISSION**

STATE OF OHIO,  
COUNTY OF MONTGOMERY, SS:  
CITY OF DAYTON.

The undersigned, Clerk of the Commission of said City, hereby certifies that the foregoing is a true and correct copy of Resolution 6659-22  
passed by the Commission of said City August 17, 2022.

In Testimony Whereof, witness my hand and official seal, this 29th  
day of August, 2022.

Regina D Blackshear  
Clerk of the Commission of the City of Dayton, Ohio

BY..... **Mr. Joseph** ..... NO..... **6659-22** .....

**A RESOLUTION**

Approving the Submission of Grant Applications to the District 4 (Montgomery County, Ohio) Public Works Commission Integrating Committee; Authorizing the Acceptance of Grant Awards from the State of Ohio Public Works Commission for the State Issue 1 Program for Public Capital Infrastructure Improvements in an Amount Not to Exceed Three Million Eight Hundred Twenty Thousand Three Hundred Ninety Dollars and Zero Cents (\$3,820,390.00) on Behalf of the City of Dayton.

**WHEREAS**, The voters of Ohio Passed Issue 1 authorizing the State of Ohio to issue bonds for the purpose of financing or assisting local governments in financing Public Infrastructure Capital Improvements; and

**WHEREAS**, The General Assembly passed Amended Substitute House Bill 381 in June of 1989, which among other sections amended Section 164.05 and added Section 164.14 to the Ohio Revised Code, thereby creating a Local Transportation Improvement Fund to be administered through the District Public Works Integrating Committees in a manner similar to the Issue 1 Program, expenditures from said fund being limited to roads, bridges, and other public infrastructure improvements; and

**WHEREAS**, The City of Dayton has been notified that Twelve Million Seven Hundred Ninety-One Thousand Dollars and Zero Cents (\$12,791,000.00) will be available to the jurisdictions within the area covered by the District 4 Public Works Integrating Committee in total for the fiscal year 2024; and

**WHEREAS**, The City's request is based upon an analysis of unmet infrastructure needs and contingent upon an approved grant application submitted to the District 4 Public Works Integrating Committee; and

**WHEREAS**, Participation in these programs requires the availability of matching funds as spelled out in the application to abide by all procedures as noted in the Standing Rules with matching funds of proposed projects not to exceed Seven Million Six Hundred Seventy-Nine Thousand Six Hundred Ten Dollars and Zero Cents (\$7,679,610.00) in order to secure Three Million Eight Hundred Twenty Thousand Three Hundred Ninety Dollars and Zero Cents (\$3,820,390.00) grant funding to cover fiscal year 2024; and

**WHEREAS**, The City of Dayton is located within the area covered by the District 4 Public Works Integrating Committee and is entitled to apply singly or jointly for these funds for necessary infrastructure improvements; and

**WHEREAS**, Section 36.10 of the Revised Code of General Ordinances of the City of Dayton authorizes the City Manager to submit grant applications on behalf of the City of Dayton; now therefore,

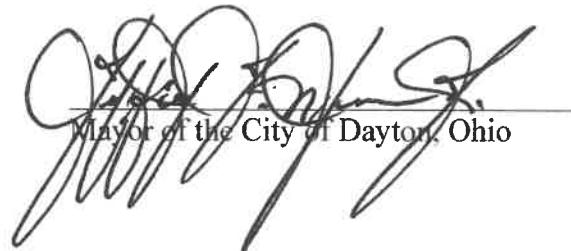
**BE IT RESOLVED BY THE COMMISSION OF THE CITY OF DAYTON:**

**SECTION 1.** That this Commission approves the City Manager's submission of a grant application and supporting documents to the District 4 Public Works Integrating Committee for participation in the State Issue 1 Program for eligible Public Infrastructure Capital Improvements defined as the acquisition, construction, reconstruction, improvement, planning and equipping of roads and bridges, wastewater treatment systems, water supply systems, solid waste disposal facilities, flood control systems, and storm water and sanitary collection, storage, and treatment facilities, including real property, interests in real property, facilities, and equipment related or incidental to those facilities.

**SECTION 2.** That the City Manager is authorized to execute any and all documents and agreements on behalf of the City of Dayton, which are necessary to accept grant awards in an amount not to exceed Three Million Eight Hundred Twenty Thousand Three Hundred Ninety Dollars and Zero Cents (\$3,820,390.00) from the State of Ohio Public Works Commission under the State Issue 1 Program for eligible Public Infrastructure Capital Improvements.

ADOPTED BY THE COMMISSION.. August..17...2022


SIGNED BY THE MAYOR. August..17.....2022

  
\_\_\_\_\_  
Mayor of the City of Dayton, Ohio

ATTEST:

  
\_\_\_\_\_  
Clerk of the Commission


APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

## CERTIFICATION OF LOCAL FUNDS

August 31, 2022

I, Director of Finance of the City of Dayton, hereby certify that the City of Dayton will have the amount of \$1,839,610 in the Wayne Avenue Widening account and that this amount will be used to pay the local share for the Wayne Avenue Widening project when it is required.

  
Robbi Stivers, Director of Finance 8/25/22

CFDA 20.205

## LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

**THIS AGREEMENT** is made by and between the State of Ohio, Department of Transportation, hereinafter referred to as ODOT, 1980 West Broad Street, Columbus, Ohio 43223 and the City of Dayton, hereinafter referred to as the LPA, 101 W. Third Street, P.O. Box 22, Dayton, Ohio 45402.

### 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 MOT-Wayne Avenue Widening (hereinafter referred to as the PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

### 2. LEGAL REFERENCES AND COMPLIANCE

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:
  - a. National Transportation Act, Title 23, U.S.C.; 23 CFR 635.105;
  - b. Federal Funding Accountability and Transparency Act of 2006 (FFATA);
  - c. 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
  - d. ODOT Locally Administered Transportation Projects, Manual of Procedures; and
  - e. State of Ohio Department of Transportation Construction and Material Specifications Manual (applicable to dates of PROJECT).
- 2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

### 3. FUNDING

- 3.1 The total cost for the PROJECT is estimated to be \$ 2,650,000 as set forth in Attachment 1. ODOT shall provide to the LPA 75 percent of the eligible costs, up to a **maximum of \$ 1,757,813** in Federal

**MPO-STP** funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the transportation project improvements and construction engineering/inspection activities.

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

#### 4. PROJECT DEVELOPMENT AND DESIGN

- 4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.
- 4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.
- 4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall (option one: follow its own formally written set of local design standards or option two: make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication). Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the PROJECT are current and/or updated. The LPA shall be responsible for periodically contacting the ODOT District LPA Coordinator or through the following Internet website for any changes or updates: [www.dot.state.oh.us/drrc/Pages/default.aspx](http://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](http://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](http://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 LAMP 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 must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed on a daily basis as the items of work are completed and accepted.
- 8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio. ODOT shall pay the Contractor or reimburse the LPA within thirty (30) days of receipt of the approved Contractor's invoice from the LPA.
- 8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of Chapter 1311 of the ORC may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the lien is resolved.
- 8.7 Payment or reimbursement to the LPA shall be submitted to:

Ms. C.LaShea Smith, Director, Department of Finance
101 W. Third Street, P.O. Box 22
Dayton, Ohio 45402

- 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 incorporate this nondiscrimination requirement within all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.

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

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

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

#### **GOOD FAITH EFFORTS (GFEs)**

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

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

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

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

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

ODOT shall utilize the guidance set forth in 49 CFR §26.53 Appendix A in determining whether the 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.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices or other intellectual properties specifically devised for the PROJECT by its consultants or contractors performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultants and contractors shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.
- 11.2 The LPA shall not allow its consultants or contractors to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant or contractor has provided for such use by suitable legal agreement with the owner of such copyright, patent or similar protection. A consultant or contractor making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.
- 11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION: DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such failure or neglect are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or State of Ohio or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement with thirty (30) days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.
- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred, the LPA shall have thirty (30) days from the date of such notification to remedy the default or, if the remedy will take in excess of thirty (30) days to complete, the LPA shall have thirty (30) days to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the thirty (30) days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report

describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.

- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.
- 12.5 This Agreement and obligation of the parties herein may be terminated by either party with thirty days written notice to the other party. In the event of termination, the LPA shall cease work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.3. In the event of termination for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in section 126.30 of the ORC.
- 13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

- 14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Keith Steeber, P.E.	Scott C. Boyer, P.E.
City of Dayton	Ohio Department of Transportation
101 W. Third Street, P.O. Box 22	1001 St. Marys Avenue
Dayton, Ohio 45402	Sidney, Ohio 45365-969
Keith.Steeber@daytonohio.gov	Scott.Boyer@dot.ohio.gov

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: [LPA official must initial the option selected.]

- 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<sup>1</sup>, **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.<sup>2</sup>**
- (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.

- 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.<sup>3</sup>**
- (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.

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- <sup>1</sup> 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.
- <sup>2</sup> [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.
- <sup>3</sup> [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. 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.**<sup>4</sup>

- (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 LTP 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 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

<sup>4</sup> [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.

correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

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

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

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

- 15.5 *Ohio Ethics Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the ORC.
- 15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.7 *Trade:* Pursuant to the federal Export Administration Act and Ohio Revised Code 9.76(B), the LPA and any contractor or sub-contractor shall warrant that they are not boycotting any jurisdiction with whom the United States and the State of Ohio can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

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

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

the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

- 15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either R.C. 153.02 or R.C. 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.12 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.
- 15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile signature on any other party delivered in such a manner as if such signature were an original.

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

<b>LPA: CITY OF DAYTON</b>	<b>STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION</b>
By: <u>[Signature]</u>	By: <u>[Signature]</u>
Title: <u>Deputy City Manager</u>	Jack Marchbanks Director
Date: <u>11/22/19</u>	Date: <u>12/23/2019</u>

APPROVED AS TO FORM  
AND CORRECTNESS:

By: [Signature]  
City Attorney

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO:

Date: October 3, 2018

By Resolution No. 6365-18

APPROVED BY THE COMMISSION  
OF THE CITY OF DAYTON, OHIO

October 3, 2018 Min. Book I-15 Page 0376  
[Signature]  
CLERK OF THE COMMISSION

**Attachment 1**

**PROJECT BUDGET – SOURCES AND USES OF FUNDS**

SOURCES USES	LPA FUNDS			FHWA FUNDS			STATE FUNDS			TOTAL
	Amount	%	SAC	Amount	%	SAC	Amount	%	SAC	
PRELIMINARY DEVELOPMENT										
FINAL DESIGN, CONSTRUCTION PLANS & SPECIFICATIONS	\$ 117,187	100	LNTP							\$ 117,187
ACQUISITION OF RIGHT OF WAY & UTILITY RELOCATION	\$ 25,000	100	LNTP							\$ 25,000
PROJECT CONSTRUCTION COSTS	\$ 585,937	25	LNTP	\$ 1,757,813	75	4TA7				\$ 2,343,750
INSPECTION	\$ 41,017	25	LNTP	\$ 123,046	75	4TA7				\$ 164,063
<b>TOTALS</b>	\$ 851,170			\$ 1,880,859						\$ 2,650,000

**Attachment 2**

MOT-WAYNE AVENUE WIDENING  
COUNTY-ROUTE-SECTION

110257  
PID NUMBER

33474  
AGREEMENT NUMBER

0044781984  
DUNS NUMBER

**DIRECT PAYMENT OF CONTRACTOR**

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

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (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           (INSERT NAME OF LPA)           request that all payments for the Federal/State share of the construction costs of this Agreement performed by           (CONTRACTOR'S NAME)           be paid directly to           (CONTRACTOR'S NAME)          .

VENDOR Name:	<b>Error! Reference source not found.</b>
Oaks Vendor ID:	0000000000
Mailing Address:	<b>Error! Reference source not found.</b>
	<b>Error! Reference source not found.</b>
LPA signature:	

LPA Name:	<b>Error! Reference source not found.</b>
Oaks Vendor ID:	0000000000
Mailing Address:	<b>Error! Reference source not found.</b>
	<b>Error! Reference source not found.</b>
ODOT Approval signature:	

**Wayne Avenue Widening  
Estimate of Cost**

<u>Item Code</u>	<u>Item Description</u>	<u>UoM</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
201	Clearing and Grubbing	Lump Sum	1	\$25,000.00	\$25,000.00
201	Tree Removed, 6"-18"	Each	10	\$600.00	\$6,000.00
201	Tree Removed, 18"-30"	Each	4	\$1,500.00	\$6,000.00
201	Tree Removed, 30"+	Each	1	\$1,500.00	\$1,500.00
201	Stump Removed, 6"-18"	Each	14	\$200.00	\$2,800.00
201	Stump Removed, 18"-30"	Each	4	\$300.00	\$1,200.00
201	Stump Removed, 30"+	Each	1	\$500.00	\$500.00
202	Curb Removed	L.F.	2,200	\$5.00	\$11,000.00
202	Catch Basin Removed	Each	12	\$500.00	\$6,000.00
202	Pipe Removed	L.F.	26	\$35.00	\$910.00
202	Sidewalk Removed	S.F.	15,000	\$2.00	\$30,000.00
202	Pavement Removed (Asphalt on Concrete)	S.Y.	6,170	\$10.00	\$61,700.00
202	Concrete Driveway Removed	S.F.	3,665	\$2.00	\$7,330.00
202	Concrete Island Removed	S.F.	410	\$2.00	\$820.00
202	Block Wall Removed	L.F.	105	\$12.00	\$1,260.00
202	Bus Shelter Removed	Each	1	\$1,000.00	\$1,000.00
203	Excavation Not Including Embankment Construction	C.Y.	1,750	\$20.00	\$35,000.00
203	Embankment	C.Y.	3,000	\$30.00	\$90,000.00
203	Undercut Excavation	C.Y.	500	\$25.00	\$12,500.00
203	Backfill with # 2 Stone	Ton	675	\$35.00	\$23,625.00
203	Proof Rolling	Hours	2	\$250.00	\$500.00
ODOT 302	Bituminous Aggregate Base (5")	C.Y.	965	\$200.00	\$193,000.00
304	Aggregate Base (6")	C.Y.	1,155	\$60.00	\$69,300.00
407	Non Tracking Tack Coat	Gal	695	\$5.00	\$3,475.00
442	Asphalt Concrete Surface Course, 12.5 mm, Type A (448), PG 70-22M (1.5")	Ton	580	\$150.00	\$87,000.00
442	Asphalt Concrete Intermediate Course, 19 mm, Type A (448), PG 64-28 (1.75")	Ton	675	\$120.00	\$81,000.00
452	Plain Concrete Alley Mouth	S.Y.	25	\$105.00	\$2,625.00
453	Concrete Driveways (MS, 7")	S.F.	2,655	\$10.00	\$26,550.00
608	Concrete Walk	S.F.	18,850	\$6.00	\$113,100.00
608	Concrete Curb Ramp (7")	S.F.	1,250	\$11.00	\$13,750.00
608	Concrete Steps with Rail	S.F.	160	\$250.00	\$40,000.00
609	Barrier Curb	L.F.	2,280	\$25.00	\$57,000.00
610	Cellular Retaining Wall	S.F.	600	\$40.00	\$24,000.00
612	Concrete Median	S.Y.		\$110.00	\$0.00
614	Maintaining Traffic	Lump Sum	1	\$149,857.00	\$149,857.00
623	Construction Layout Stakes	Lump Sum	1	\$30,000.00	\$30,000.00
625	1-3" and 3-4" PVC Conduits Concrete Encased	L.F.	1,355	\$130.00	\$176,150.00
625	3-3" and 3-4" PVC Conduits Concrete Encased	L.F.	1,130	\$160.00	\$180,800.00
625	Trench	L.F.	2,485	\$12.00	\$29,820.00
625	Pullbox, 725.08, 18"	Each	2	\$1,000.00	\$2,000.00
625	17" x 30" x 36" Polymer Concrete Pullbox	Each	2	\$1,500.00	\$3,000.00
625	24" x 36" x 42" Polymer Concrete Pullbox	Each	2	\$2,000.00	\$4,000.00
625	30" x 48" x 36" Polymer Concrete Pullbox	Each	8	\$2,500.00	\$20,000.00
625	Ground Rod	Each	15	\$250.00	\$3,750.00
625	Luminaire	Each	13	\$3,000.00	\$39,000.00
625	Luminaire Arm, 12'	Each	13	\$2,500.00	\$32,500.00
625	Poles, Type IV	Each	14	\$7,000.00	\$98,000.00



**Wayne Avenue Widening  
Estimate of Cost**

<u>Item Code</u>	<u>Item Description</u>	<u>UofM</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
625	Cable Connector Kit, Type II (fused)	Each	26	\$150.00	\$3,900.00
625	Pole Foundation, Type IV	Each	14	\$3,000.00	\$42,000.00
625	No. 2 Circuit Cable	L.F.	7,080	\$6.00	\$42,480.00
625	No. 10 Light Pole and Bracket Cable	L.F.	1,950	\$2.50	\$4,875.00
625	Lighting Control Center	Each	1	\$20,000.00	\$20,000.00
630	Sign, Double Faced Street Name, As Per Plan	Each	4	\$200.00	\$800.00
630	Sign, Flat Sheet, As Per Plan	S.F.	62	\$25.00	\$1,550.00
630	Ground Mounted Support, No. 2 Post, Hardware & Installation	L.F.	120	\$15.00	\$1,800.00
630	Sign Support Assembly Pole Mounted	Each	23	\$75.00	\$1,725.00
630	Removal of Existing Signs and Storage, As Per Plan	Lump Sum	1	\$1,500.00	\$1,500.00
631	Pedestrian Crossing Sign (W11-2-36) L.E.D. border, Solar Powered	Each	2	\$ 3,500.00	\$7,000.00
632	Loop Detector Lead-In Cable, 2 Conductor Shielded, No. 14 AWG	L.F.	1520	\$ 2.00	\$3,040.00
632	Loop Detector Unit	Each	9	\$ 300.00	\$2,700.00
632	Detector Loop	Each	9	\$ 1,300.00	\$11,700.00
632	Vehicular Signal Head, (LED), 3-Section, 12" Lens, 1-Way, As Per Plan	Each	4	\$ 1,000.00	\$4,000.00
632	Vehicular Signal Head, (LED), 5-Section, 12" Lens, 1-Way, As Per Plan	Each	4	\$ 1,500.00	\$6,000.00
632	Pedestrian Signal Head, (LED), Countdown, Type D2	Each	8	\$ 750.00	\$6,000.00
632	Pedestal Foundation	Each	1	\$ 800.00	\$800.00
632	Pedestal, 8'	Each	1	\$ 800.00	\$800.00
632	Pedestrian Pushbutton, As Per Plan	Each	4	\$ 300.00	\$1,200.00
632	Messenger Wire, 7 Strand, 5/16" Diameter w/ Accessories	L.F.	430	\$ 10.00	\$4,300.00
632	Signal Cable, 3 Conductor, No. 14 AWG	L.F.	1060	\$ 1.75	\$1,855.00
632	Signal Cable, 5 Conductor, No. 14 AWG	L.F.	285	\$ 2.00	\$570.00
632	Signal Cable, 7 Conductor, No. 14 AWG	L.F.	160	\$ 2.00	\$320.00
632	Signal Cable, 12 Conductor, No. 14 AWG	L.F.	400	\$ 3.00	\$1,200.00
632	Signal Cable, Misc.: 21 Conductor, No. 14 AWG	L.F.	75	\$ 6.00	\$450.00
632	Signalization, Misc., Junction Box, PVC, 12" x 12", As Per Plan	Each	1	\$ 250.00	\$250.00
632	Signalization, Misc., Junction Box, PVC, 8" x 8", As Per Plan	Each	3	\$ 200.00	\$600.00
632	Power Cable, 1 Conductor, No. 6 AWG	L.F.	80	\$ 2.00	\$160.00
632	Power Service, As Per Plan	Each	1	\$ 2,500.00	\$2,500.00
632	Removal of Traffic Signal Installation, As Per Plan	Each	1	\$ 4,000.00	\$4,000.00

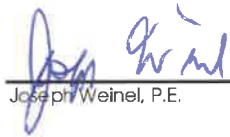
**Wayne Avenue Widening  
Estimate of Cost**

<u>Item Code</u>	<u>Item Description</u>	<u>UofM</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
632	Interconnect Misc.: Fiber Optic Cable, 12 SM, As Per Plan	L.F.	30	\$ 5.00	\$150.00
632	Interconnect Misc.: Fiber Optic Cable, 144 SM, As Per Plan	L.F.	1200	\$ 4.00	\$4,800.00
632	Interconnect Misc.: Fiber Optic Splice Enclosure (Under Grade Or Aerial), As Per Plan	Each	2	\$ 1,000.00	\$2,000.00
632	Interconnect Misc.: Fiber Optic Splice Enclosure Trays, As Per Plan	Each	2	\$ 85.00	\$170.00
632	Interconnect Misc.: Fan-Out Kit, 12 Fiber, As Per Plan	Each	2	\$ 125.00	\$250.00
632	Interconnect Misc.: Fiber Optic Connector, Singlemode, As Per Plan	Each	8	\$ 100.00	\$800.00
632	Interconnect Misc.: Fiber Optic Fusion Splices, As Per Plan	Each	104	\$ 75.00	\$7,800.00
632	Interconnect Misc.: Fiber Optic Slack Installation, As Per Plan	Each	4	\$ 300.00	\$1,200.00
632	Interconnect Misc.: Fiber Optic Cable Removed, Aerial	LUMP	1	\$ 5,000.00	\$5,000.00
632	Interconnect Misc.: Reuse of Fiber Optic Cable Removed, Aerial	LUMP	1	\$ 5,000.00	\$5,000.00
632	Interconnect Misc.: Fiber Optic Cable Testing	LUMP	1	\$ 5,000.00	\$5,000.00
633	Cabinet Foundation, As Per Plan	Each	1	\$ 1,400.00	\$1,400.00
633	Uninterruptible Power Supply, As Per Plan	Each	1	\$ 6,000.00	\$6,000.00
633	Controller Unit, Type TS2/A2 With Cabinet, Type TS2, As Per Plan	Each	1	\$ 20,000.00	\$20,000.00
644	Channelizing Line (8"), White	L.F.	200	\$ 2.00	\$400.00
644	Lane Line (4"), White	L.F.	2100	\$ 0.75	\$1,575.00
644	Center Line	L.F.	2100	\$ 1.10	\$2,310.00
644	Transverse Line, Yellow (24")	L.F.	75	\$ 7.50	\$562.50
644	Crosswalk Line (6"), White	L.F.	150	\$ 2.50	\$375.00
644	Stop Line (24"), White	L.F.	38	\$ 6.00	\$228.00
653	Topsoil Furnished and Placed, 4"	C.Y.	140	\$65.00	\$9,100.00
659	Seeding and Mulching	S.Y.	1,225	\$2.50	\$3,062.50
810	Excavation & Backfill for 12" Pipe with Structural Backfill	L.F.	141	\$60.00	\$8,460.00
821	Reinforced Concrete Pipe, 12" Storm	L.F.	141	\$60.00	\$8,460.00
830	Manhole, Type A	Each	3	\$3,000.00	\$9,000.00
830	Manhole Type A Frame and Cover, Including Adjustment to Grade	Each	14	\$1,000.00	\$14,000.00
831	Catch Basin, Type 3	Each	7	\$3,800.00	\$26,600.00
831	Catch Basin, Type 3A	Each	4	\$3,000.00	\$12,000.00
ODOT 832	Storm Water Pollution Prevention Plan	Lump Sum	1	\$10,000.00	\$10,000.00
846	Valve Box Adjusted to Grade	Each	2	\$200.00	\$400.00

**Wayne Avenue Widening  
Estimate of Cost**

<u>Item Code</u>	<u>Item Description</u>	<u>UofM</u>	<u>Quantity</u>	<u>Unit Price</u>	<u>Total</u>
846	Curb Box Relocated	Each	20	\$750.00	\$15,000.00
SPL	Remove Unmarked and Abandoned Structures	Allowance	1	\$30,000.00	\$30,000.00
SPL	Maintain Street Lighting	Allowance	1	\$10,000.00	\$10,000.00
ODOT 832	Erosion Control	Each	1	\$15,000.00	\$15,000.00
	Removed Manhole Top and				
SPL	Replace with Catch Basin Type 3 Top	Each	1	\$4,000.00	\$4,000.00
SPL	Regualted Storage Tank Removal	Each	1	\$20,000.00	\$20,000.00
SPL	Dispose of Contaminated Materials	Ton	1	\$500.00	\$500.00

<b>Construction Costs</b>	\$2,245,000.00
Preliminary Design	\$25,000.00
Final Design	\$55,000.00
Construction Administration	\$80,000.00
Right of Way	\$60,000.00
Permits, Advertising, Legal	\$5,000.00
<u>Construction Contingency</u>	<u>\$200,000.00</u>
	\$2,670,000.00

  
 \_\_\_\_\_  
 Joseph Weinell, P.E.



## Wayne Avenue Widening


### Weighted Useful Life & Design Service Capacity Calculations

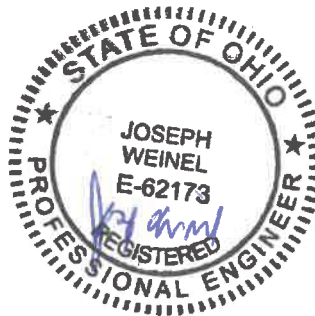
Major Component	Cost (\$1,000)	Portion Repair / Replacement (%)	Repair / Replace Product	Useful Life (Years)	Useful Life Product
Full-depth road construction w/ drainage	1425.625	100	142562.5	25	35640.63
Full-depth road construction w/o drainage				25	
Partial-depth road construction w/ drainage				15	
Partial-depth road construction w/o drainage				15	
Storm Sewers				40	
Sanitary Sewers				40	
Water Lines				40	
Bridge				75	
Pumps, Lift Stations				15	
Sidewalks	143.1	100	14310	25	3577.5
Bike Facility				7	
Street Lights	676.275	100	67627.5	40	27051
<b>Totals</b>	<b>2245</b>		<b>224500</b>		<b>66269.13</b>

Weighted Useful Life: 29.5 Years

Design Service Capacity (Project Application, Section 2.0):

Portion Repair / Replace 100 %  
 Portion New / Expansion %

  
 \_\_\_\_\_  
 Joseph Weinel, P.E.



# OHIO PUBLIC WORKS COMMISSION DISTRICT 4 Round 2022-2023 Supplemental Questionnaire

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**Applicant:** City of Dayton

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**Project Title:** Wayne Avenue Widening

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## Application Summary:

**Briefly describe the project:**

Reconstruction and widening of Wayne Avenue from 4 lanes to 5 from Wyoming Street to Waldo street including new surface and base pavement, sidewalk, curbs, catch basins, and street lighting.

### Priority:

Is this application your priority project? (Circle One)	
Yes <input type="radio"/>	No <input checked="" type="radio"/>

### Generation of Revenue:

Will new user fees or assessments be assessed as part of this project? (Circle One)	
Yes <input type="radio"/>	No <input checked="" type="radio"/>
What will the new user fees or assessments be used for?	

### Additional Funding:

Will OPWC match, in part, a committed grant or loan? (Circle One)	
Yes <input checked="" type="radio"/>	No <input type="radio"/>
If no, was the project submitted to an appropriate agency for funding, but denied due to lack of funding? (Circle One)	
Yes – Appropriate Documentation Attached <input type="radio"/>	No <input type="radio"/>

### Readiness of Project:

Will this project be <u>substantially</u> underway on or before June 1, 2024? (Circle One)	
Yes <input checked="" type="radio"/>	No <input type="radio"/>

### Health & Safety:

<b>Describe the specific health or safety issue being addressed by this project. What deficiency or condition is causing the health or safety issue?</b>
<p>Reconstruction and widening to improve an excessive accident rate. MVRPC has identified this section as a high priority safety section (map attached). In 2018, the City of Dayton performed a safety study which noted that 68% of all crashed were either rear end or left turn and 67% of crashes occurred where the entrances to Kroger and Walgreens are located where the total lanes are reduced to 4. The recommendation from that study was to widen Wayne Avenue to 5 lanes to include a center turn lane (study attached). Additional data has continued to be collected which shows the high number of crashed with the largest type of crash being rear end from 2015-2021 (attached). In addition, the existing Wayne Avenue pavement is in poor shape with extensive deterioration, patches, and cracking (photos attached). PCI's on this section of Wayne Avenue range from 29 (very poor) to 56 (fair) (map attached).</p>

### Addresses District Infrastructure Needs:

<b>Is this project located in more than one community? (Circle One)</b>		
Yes <input type="radio"/>		No <input checked="" type="radio"/>
<b>What percentage of the community will be served by this project? (Circle One)</b>		
Less than 25% <input checked="" type="radio"/>	25% to 40% <input type="radio"/>	More than 40% <input type="radio"/>

### Economic Development

<b>How many jobs are being created as a result of this project?</b>	0
<b>How many jobs will be retained as a result of this project?</b>	0
<b>Why is it necessary to fund this improvement to secure this development?</b>	
N/A	
<b>What type of industry is proposed in this development?</b>	

### Relieve Existing Traffic Congestion:

<b>What is the level of service?</b>	LOS C
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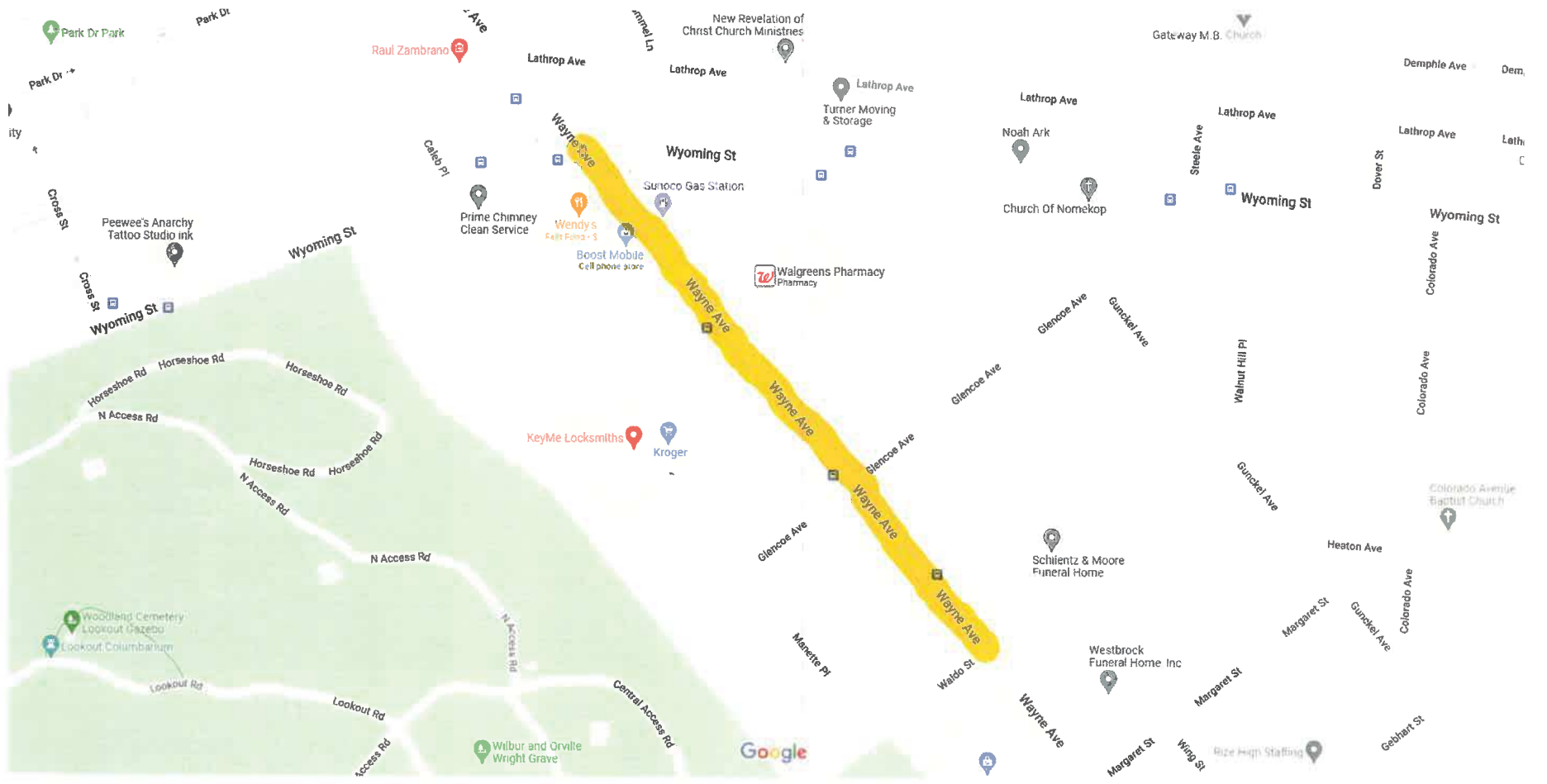
**Other Factors**

**What other factors exist that make this project more important than other like projects?**

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# Wayne Avenue Widening Project Location





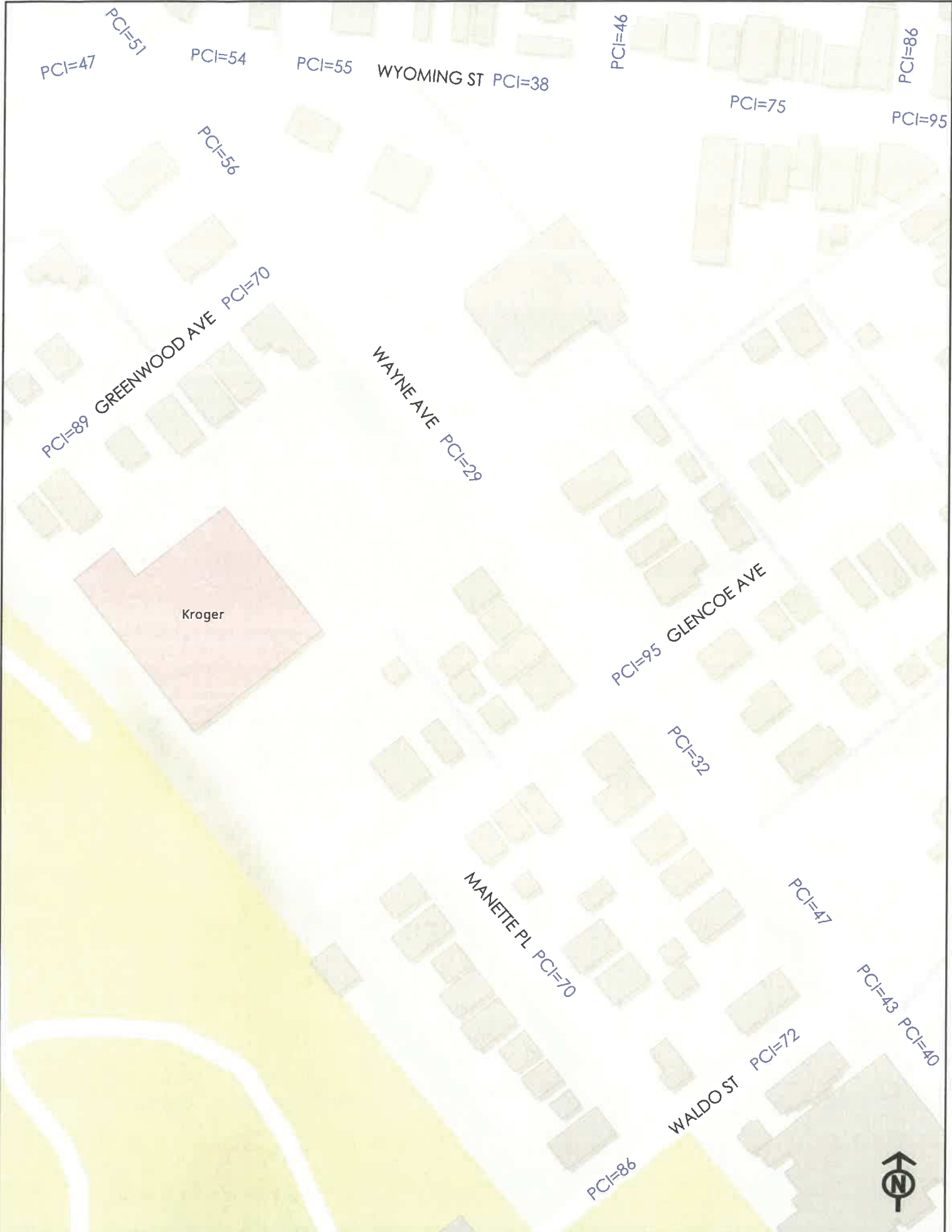
Cracked and broken curb on Wayne Avenue



Cracked, broken, and patched pavement on Wayne Avenue



Cracking with patches on Wayne Avenue



PCI=47

PCI=51

PCI=54

PCI=55

WYOMING ST PCI=38

PCI=46

PCI=86

PCI=75

PCI=95

PCI=56

PCI=89 GREENWOOD AVE PCI=70

WAYNE AVE PCI=29

Kroger

PCI=95 GLENCOE AVE

PCI=32

MANETTE PL PCI=70

PCI=47

PCI=43 PCI=40

WALDO ST PCI=72

PCI=86





## Standard Practice for Roads and Parking Lots Pavement Condition Index Surveys<sup>1</sup>

This standard is issued under the fixed designation D 6433; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon ( $\epsilon$ ) indicates an editorial change since the last revision or reapproval.

### 1. Scope

1.1 This practice covers the determination of roads and parking lots pavement condition through visual surveys using the Pavement Condition Index (PCI) method of quantifying pavement condition.

1.2 The PCI for roads and parking lots was developed by the U.S. Army Corps of Engineers (1, 2).<sup>2</sup> It is further verified and adopted by DOD and APWA.

1.3 The values stated in inch-pound units are to be regarded as the standard. The SI units given in parentheses are for information only.

1.4 *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.* Specific precautionary statements are given in Section 6.

### 2. Terminology

#### 2.1 Definitions of Terms Specific to This Standard:

2.1.1 *additional sample*—a sample unit inspected in addition to the random sample units to include nonrepresentative sample units in the determination of the pavement condition. This includes very poor or excellent samples that are not typical of the section and sample units, which contain an unusual distress such as a utility cut. If a sample unit containing an unusual distress is chosen at random it should be counted as an additional sample unit and another random sample unit should be chosen. If every sample unit is surveyed, then there are no additional sample units.

2.1.2 *asphalt concrete (AC) surface*—aggregate mixture with an asphalt cement binder. This term also refers to surfaces constructed of coal tars and natural tars for purposes of this practice.

2.1.3 *pavement branch*—a branch is an identifiable part of the pavement network that is a single entity and has a distinct function. For example, each roadway or parking area is a separate branch.

2.1.4 *pavement condition index (PCI)*—a numerical rating of the pavement condition that ranges from 0 to 100 with 0 being the worst possible condition and 100 being the best possible condition.

2.1.5 *pavement condition rating*—a verbal description of pavement condition as a function of the PCI value that varies from “failed” to “excellent” as shown in Fig. 1.

2.1.6 *pavement distress*—external indicators of pavement deterioration caused by loading, environmental factors, construction deficiencies, or a combination thereof. Typical distresses are cracks, rutting, and weathering of the pavement surface. Distress types and severity levels detailed in Appendix X1 for AC, and Appendix X2 for PCC pavements must be used to obtain an accurate PCI value.

2.1.7 *pavement sample unit*—a subdivision of a pavement section that has a standard size range: 20 contiguous slabs ( $\pm 8$  slabs if the total number of slabs in the section is not evenly divided by 20 or to accommodate specific field condition) for PCC pavement, and 2500 contiguous square feet,  $\pm 1000$  ft<sup>2</sup> ( $225 \pm 90$  m<sup>2</sup>), if the pavement is not evenly divided by 2500 or to accommodate specific field condition, for AC pavement.

2.1.8 *pavement section*—a contiguous pavement area having uniform construction, maintenance, usage history, and condition. A section should have the same traffic volume and load intensity.

2.1.9 *portland cement concrete (PCC) pavement*—aggregate mixture with portland cement binder including nonreinforced and reinforced jointed pavement.

2.1.10 *random sample*—a sample unit of the pavement section selected for inspection by random sampling techniques, such as a random number table or systematic random procedure.

### 3. Summary of Practice

3.1 The pavement is divided into branches that are divided into sections. Each section is divided into sample units. The type and severity of pavement distress is assessed by visual

<sup>1</sup> This practice is under the jurisdiction of ASTM Committee E17 on Vehicle - Pavement Systems and is the direct responsibility of Subcommittee E17.41 on Pavement Testing, Evaluation, and Management Methods.

Current edition approved Dec. 1, 2007. Published January 2008. Originally approved in 1999. Last previous edition approved in 2003 as D 6433 – 03.

<sup>2</sup> The boldface numbers in parentheses refer to the list of references at the end of this standard.

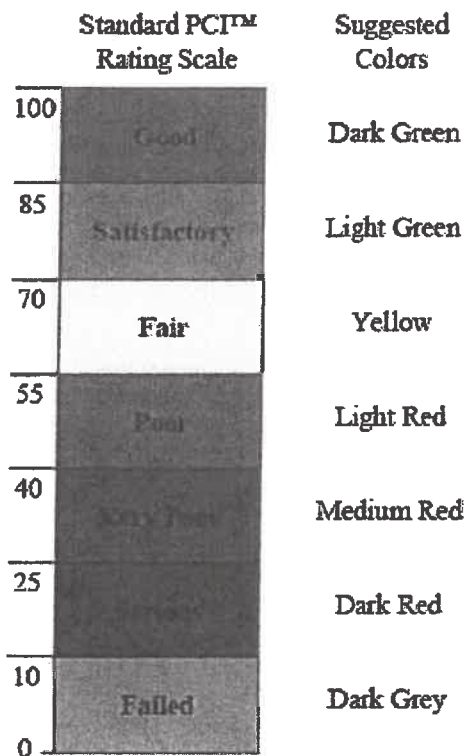


FIG. 1 Pavement Condition Index (PCI), Rating Scale, and Suggested Colors

inspection of the pavement sample units. The quantity of the distress is measured as described in Appendix X1 and Appendix X2. The distress data are used to calculate the PCI for each sample unit. The PCI of the pavement section is determined based on the PCI of the inspected sample units within the section.

#### 4. Significance and Use

4.1 The PCI is a numerical indicator that rates the surface condition of the pavement. The PCI provides a measure of the present condition of the pavement based on the distress observed on the surface of the pavement, which also indicates the structural integrity and surface operational condition (localized roughness and safety). The PCI cannot measure structural capacity nor does it provide direct measurement of skid resistance or roughness. It provides an objective and rational basis for determining maintenance and repair needs and priorities. Continuous monitoring of the PCI is used to establish the rate of pavement deterioration, which permits early identification of major rehabilitation needs. The PCI provides feedback on pavement performance for validation or improvement of current pavement design and maintenance procedures.

#### 5. Apparatus

5.1 *Data Sheets*, or other field recording instruments that record at a minimum the following information: date, location, branch, section, sample unit size, slab number and size, distress types, severity levels, quantities, and names of surveyors. Example data sheets for AC and PCC pavements are shown in Figs. 2 and 3.

5.2 *Hand Odometer Wheel*, that reads to the nearest 0.1 ft (30 mm).

5.3 *Straightedge or String Line*, (AC only), 10 ft (3 m).

5.4 *Scale*, 12 in. (300 mm) that reads to 1/8 in. (3 mm) or better. Additional 12-in. (300 mm) ruler or straightedge is needed to measure faulting in PCC pavements.

5.5 *Layout Plan*, for network to be inspected.

#### 6. Hazards

6.1 Traffic is a hazard as inspectors may walk on the pavement to perform the condition survey.

#### 7. Sampling and Sample Units

7.1 Identify branches of the pavement with different uses such as roadways and parking on the network layout plan.

7.2 Divide each branch into sections based on the pavements design, construction history, traffic, and condition.

7.3 Divide the pavement sections into sample units. If the pavement slabs in PCC have joint spacing greater than 25 ft (8 m) subdivide each slab into imaginary slabs. The imaginary slabs all should be less than or equal to 25 ft (8 m) in length, and the imaginary joints dividing the slabs are assumed to be in perfect condition. This is needed because the deduct values developed for jointed concrete slabs are less than or equal to 25 ft (8 m).

7.4 Individual sample units to be inspected should be marked or identified in a manner to allow inspectors and quality control personnel to easily locate them on the pavement surface. Paint marks along the edge and sketches with locations connected to physical pavement features are acceptable. It is necessary to be able to accurately relocate the sample units to allow verification of current distress data, to examine changes in condition with time of a particular sample unit, and to enable future inspections of the same sample unit if desired.

7.5 Select the sample units to be inspected. The number of sample units to be inspected may vary from the following: all of the sample units in the section, a number of sample units that provides a 95 % confidence level, or a lesser number.

7.5.1 All sample units in the section may be inspected to determine the average PCI of the section. This is usually precluded for routine management purposes by available manpower, funds, and time. Total sampling, however, is desirable for project analysis to help estimate maintenance and repair quantities.

7.5.2 The minimum number of sample units ( $n$ ) that must be surveyed within a given section to obtain a statistically adequate estimate (95 % confidence) of the PCI of the section

## PES Roadways

PES Roadways Maps

Locate an address



Legend About

Priority Rank

- Q5 Multi Modal Passenger
- Q5 Multi Modal Freight
- Q6 Safety
- Q6 Security
- Q7-Q16 Level of Service
- Q9 Pavement Condition Rating
- Q9 Road Bridges
- Q10 Urbanized Areas
- Q12 Minority Population
- Q12 Poverty Population
- Q13 Median Income

**Legend**

**Q6 Safety Priority Rank Intersections**

- High
- Medium
- Low

**Priority Rank Segments**

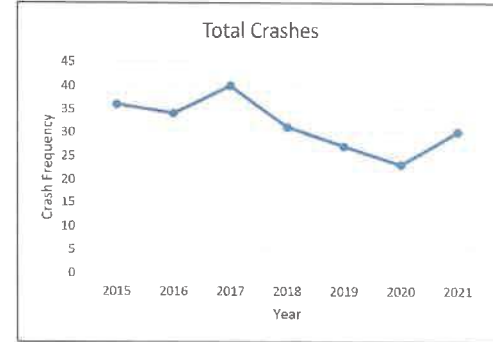
- High
- Medium



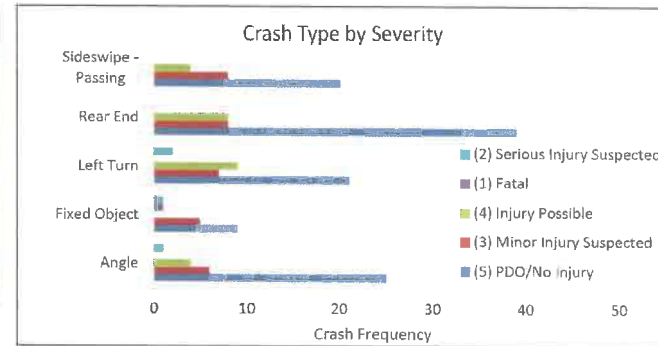
# Wayne Avenue Widening Crash Summary Sheet

Crashes Per Year **31.57** Percent Injury **38.5%** EPDO **3.80**

Year	Total Crashes	Fatalities	Serious Injuries
2015	36	0	4
2016	34	0	2
2017	40	0	0
2018	31	0	0
2019	27	0	0
2020	23	1	0
2021	30	0	0
<b>Grand Total</b>	<b>221</b>	<b>1</b>	<b>6</b>



Total Crashes Crash Type	Injury Level					Grand Total
	(1) Fatal	(2) Serious Injury	(3) Minor Injury	(4) Injury Possible	(5) PDO/No Inj	
Rear End	0	0	8	8	39	55
Left Turn	0	2	7	9	21	39
Angle	0	1	6	4	25	36
Sideswipe - Passing	0	0	8	4	20	32
Fixed Object	1	1	5	0	9	16
Right Turn	0	0	0	1	14	15
Pedestrian	0	1	2	9	0	12
Head On	0	0	2	2	2	6
Pedalcycles	0	0	1	2	0	3
Backing	0	0	0	0	3	3
Parked Vehicle	0	0	0	0	2	2
Other Non-Collision	0	0	0	1	1	2
<b>Grand Total</b>	<b>1</b>	<b>5</b>	<b>39</b>	<b>40</b>	<b>136</b>	<b>221</b>



## **City of Dayton Safety Study – Wayne Avenue 08.41 – 08.64 2018**

### **Location**

Wayne Avenue CR 0085 08.41 – 08.64

### **Purpose**

The purpose of this Study is to review the above referenced section of Wayne Avenue in the City of Dayton, Montgomery County to determine potential countermeasure actions that can be taken to improve traffic safety.

### **Background**

#### **Location**

- The section under study is located in the City of Dayton in Montgomery County
- This location is on Wayne Avenue one mile south of Downtown Dayton, between Wyoming Street and Waldo Street

#### **Functional Classification**

- Principal Arterial

#### **Speed Limit**

- 35 MPH

#### **Lane Geometric Configuration**

- From Wyoming Street for 350 is four 10' travel lanes, a 10' wide left turn land and 6' wide median.
- Remaining is four 10' wide travel lanes

#### **Light Condition**

- The entire corridor has street lighting.

#### **History**

### **Recent and Programmed Projects**

#### **Existing Conditions**

##### **Traffic Count at Greenwood Ave (From MVRPC)**

2010 – 20,600                      2014 – 20,500

##### **Traffic Count at Erie Avenue (just south of study area) (From TMMS)**

2010 – 20,180                      2013 – 20,264                      2014 – 20,406                      2015 – 20,786                      2016 – 21,223

### **Crash Data and Analysis**

#### **Total Crashes by Year**

- 2013 – 10(13.3%)
- 2014 – 11(14.7%)
- 2015 - 19(25.3%)
- 2016 - 14 (18.7%)
- 2017 – 20 (26.7%)

#### **Crash Severity**

- Fatal - 0
- Injury – 30(40%)
- Property Damage Only – 45 (60%)

### **Crash Types**

- Rear End – 30 (40%)
- Left Turn – 21(28%)
- Sideswipe – Passing – 6 (8%)
- Right Turn – 4 (5.3%)

### **Contributing Factor**

- Follow to Closely – 32(42.7%)
- Failure to Yield – 18(24%)
- Failure to Control – 5(6.7%)
- Improper Turn – 4(5.3%)

### **Light Condition**

- Daylight – 56(74.7%)
- Dark-Lighted Roadway – 10(13.3%)
- Dusk – 5(5.3%)

### **Road Condition**

- Dry – 43(57.3%)
- Wet – 31(41.3%)

### **Driver Alcohol**

- No – 74(98.7%)
- Yes – 1(1.3%)

### **Other Trends**

- Majority of crashes occur when volumes are the highest at the AM Peak, noon and the PM Peak – 45(60%)
- 50 (67%) Crashes occurred between log point 8.49 and 8.59 which is where the driveway entrances are for Krogers and Walgreens and where the 5 lane section is reduced to 4 lanes.
- There were four pedestrian crashes between log point 8.59 and 8.69 which corresponds to the intersections of Glencoe Avenue and Waldo Street. All four were injury crashes.

### **Possible Causes**

- No Left Turn lane into Kroger, Walgreens, Glencoe Avenue and Waldo Street
- Downhill grade heading northwest

### **Potential Countermeasures**

- Addition of a turn lane
- Increase pavement friction
- Additional Signage

- Refuge Islands for pedestrian crossing.

**Recommendation**

- Widen Wayne Avenue to a five lane section

