

CITY OF OAKWOOD  
COUNCIL AGENDA  
AUGUST 5, 2019

7:30 P.M.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. MINUTES OF JULY 15 REGULAR SESSION, WORK SESSION & EXECUTIVE SESSION

V. STATUS REPORTS

- Proclamation recognizing September as “Prostate Cancer Awareness Month”, Mayor Duncan
- Proclamation recognizing September as “National Suicide Prevention Awareness Month”, Mayor Duncan

VI. VISITORS

VII. LEGISLATION

- A Resolution and Public Hearing to review a request submitted by Hills Developers, Inc. for an amendment to the Sugar Camp/Pointe Oakwood master plan relating to signage for Element Oakwood, Mayor Duncan
- An Ordinance establishing regulations to prohibit the operations of short-term rentals, Vice Mayor Byington
- A Resolution to continue participation in a multi-jurisdictional Hazard Mitigation Plan in conjunction with the Montgomery County Office of Emergency Management, Mayor Duncan
- A Resolution to authorize and direct the Director of Finance to certify certain delinquent charges for cutting noxious weeds to the County Auditor for collection, Mr. Stephens
- A Resolution to authorize the reallocation of the City’s inside millage property tax revenues, Vice Mayor Byington
- A Resolution approving an isolation and quarantine policy for infectious diseases and other public health emergencies, Mayor Duncan
- Resolution approving the Montgomery County Solid Waste Agreement, Mr. Epley

VIII. STAFF REPORT – PUBLIC SAFETY DEPARTMENT

IX. CITY MANAGER’S REPORT

X. COUNCIL COMMENTS

XI. ADJOURN

NEXT REGULAR SESSION SCHEDULED FOR SEPTEMBER 16, 2019

A RESOLUTION

BY: \_\_\_\_\_

NO. \_\_\_\_\_

TO GRANT PARTIAL APPROVAL OF AN AMENDMENT TO THE MASTER PLAN FOR THE SUGAR CAMP AND POINTE OAKWOOD DEVELOPMENT, AFFECTING SIGNAGE FOR THE ELEMENT OAKWOOD CONDOMINIUMS AT 300 AND 310 OLD RIVER TRAIL.

WHEREAS, on April 23, 2007, Council passed a resolution granting approval of the Special Use Applications filed by Oakwood Investment Group (“OIG”) and the Versant Group for a Planned Development of the 36+ acres encompassing Sugar Camp and the surrounding undeveloped land (the “Master Plan”); and

WHEREAS, that original Master Plan provided for the redevelopment of four major buildings in the NCR Sugar Camp campus, to be known as the Sugar Camp Commercial Development; and development of the surrounding undeveloped land as the Pointe Oakwood Residential Development, to include: construction of single-family residences in the southeast portion thereof, with attached residence units near the corner along Far Hills Avenue and West Schantz Avenue; a professional building on the northeast corner; and four mid-rise (4-story) condominium buildings arranged on a private circle just west of the intersection of Pointe Oakwood Way and Old River Trail; and

WHEREAS, since the original Master Plan was approved in 2007, several modifications to the Master Plan were approved by the City, including but not limited to the approval of Element Oakwood (formerly known as The Trails), an 84 unit condominium complex currently being constructed along Old River Trail at the northwest end of the Pointe Oakwood residential development; and

WHEREAS, when the construction of Element Oakwood was approved in 2017, it was understood that the developer would make a separate application for approval of a signage plan when the condominiums were nearing completion; and

WHEREAS, Element Oakwood has submitted Application 19-4 for a special use/Master Plan amendment pertaining to a total of four signs, including:

- One (1) wall-mounted sign on 300 Old River Trail;
- One (1) wall-mounted sign on 310 Old River Trail;
- One (1) monument sign in front of 300 Old River Trail, adjacent to the driveway entrance to Element Oakwood; and
- One (1) monument sign in the landscaping island at the intersection of Old River Trail and Ascent Circle; and

WHEREAS, a duly-noticed public hearing on this matter was held by the Planning Commission on July 3, 2019, and having carefully considered the matter, the Planning Commission determined that three (3) of the four (4) proposed signs are consistent with the recommendations set forth in the 2004 NCR Sugar Camp Subarea Plan Site Development Alternatives and Guidelines, the 2004 Comprehensive Plan and the 1997 Subarea Plan, as well as the special use standards set forth in Section 1004.6 of the Zoning Code, and by a vote of 4-0 with one (1) member recusing himself, the Planning Commission recommended approval of the first three (3) signs but declined to recommend approval of the monument sign at the intersection of Old River Trail and Ascent Circle; and

WHEREAS, on August 5, 2019, Council held a duly-noticed public hearing upon the matter, and heard testimony both for and against Application 19-4, and finds that the Planning Commission’s recommendation is well-taken; and

WHEREAS, Council further finds that three (3) of the four (4) proposed signs are, with conditions imposed below, if any, consistent with the recommendations set forth in the 2004 NCR Sugar Camp Subarea Plan Site Development Alternatives and Guidelines, the 2004 Comprehensive Plan, the 1997 Subarea Plan, and the standards for special uses set forth in Oakwood Zoning Ordinance Section 1004.6, by reason of complementing the architectural styles and building materials in use at the Sugar Camp development; being scaled appropriately for the area; and providing effective identification in a manner that ensures compatibility with the surrounding neighborhood; and that one (1) of the four (4) proposed signs, to wit: the monument

sign proposed for the intersection of Old River Trail and Ascent Circle, is inconsistent therewith because it is an off-premise sign benefitting a single property within the Pointe Oakwood residential development; and

WHEREAS, by a vote of \_\_\_\_\_ with one (1) member recusing himself, Council has voted to adopt the recommendation of the Planning Commission with regard to Application 19-4, with conditions set forth below (if any);

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAKWOOD, STATE OF OHIO, THAT:

## SECTION I.

The foregoing recitations are hereby adopted as Council's findings of fact with regard to the Application 19-4 to amend the Master Plan for the Sugar Camp and Pointe Oakwood developments.

## SECTION II.

Application 19-4, being an application for a special use/Master Plan amendment submitted by Element Oakwood, is hereby approved in part and denied in part, as follows:

- A. The wall-mounted sign proposed for 300 Old River Trail is hereby approved;
- B. The wall-mounted sign proposed for 310 Old River Trail is hereby approved;
- C. The monument sign in front of 300 Old River Trail, adjacent to the driveway entrance to Element Oakwood, is hereby approved; and
- D. The monument sign proposed for the landscaping island at the intersection of Old River Trail and Ascent Circle is hereby denied.

### SECTION III.

The approval herein is granted with the following conditions, if any, which Council has determined are necessary to ensure consistency with the above-referenced city planning documents and special use standards:

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## SECTION IV.

The amendment approved herein remains subject to all determinations, conditions and restrictions set forth in the original plan approval Resolution of April 23, 2007, as amended.

## SECTION V.

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action were in meetings open to the public, if required, in compliance with all legal requirements including Ohio Revised Code, Sec. 121.22.

## SECTION VI.

This Resolution shall be and remain in effect upon its passage.

PASSED BY THE COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_ day of  
\_\_\_\_\_, 2019.

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Mayor William D. Duncan

ATTEST:

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## Clerk of Council

TO THE CLERK:

No publication is required.

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City Attorney Robert F. Jacques

AN ORDINANCE

BY: \_\_\_\_\_

NO. \_\_\_\_\_

ADOPTING NEW SECTION 17-801, *SHORT-TERM RENTALS PROHIBITED*, OF THE PROPERTY MAINTENANCE CODE AND MAKING RELATED AMENDMENTS ELSEWHERE IN THE PROPERTY MAINTENANCE CODE TO PROVIDE FOR THE PROHIBITION OF SHORT-TERM RESIDENTIAL RENTALS THROUGHOUT THE CITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF OAKWOOD, STATE OF OHIO, THAT:

SECTION I.

The title of Chapter 17-EIGHT of the Oakwood Property Maintenance Code is hereby amended to read as follows, with new text in **bold** font and deleted text in ~~strikethrough~~ font:

**CHAPTER 17-EIGHT**  
**RESIDENTIAL RENTALS UNIT INSPECTION**

SECTION II.

New Section 17-801, *Short-Term Rentals Prohibited*, of the Oakwood Property Maintenance Code, is hereby adopted to read as follows:

**Sec. 17-801    SHORT-TERM RENTALS PROHIBITED**

**17-801.1    PURPOSE**

Council of the city of Oakwood has determined that the short-term rental of residential property is inconsistent with the permanence, established character, density, and tranquility of Oakwood's residential neighborhoods and is potentially detrimental to property values. The purpose and intent of this ordinance is to prohibit short-term rentals to protect and preserve these qualities of Oakwood's residential neighborhoods and to provide for the comfort, safety, and welfare of Oakwood residents.

**17-801.2    DEFINITIONS**

- A. “Transient Occupancy” means the right to use, occupy or possess, or the actual use, occupancy or possession, of the following, as defined by the Oakwood Zoning Ordinance: a Dwelling Unit, Single Family Dwelling, Two Family Dwelling, or Multiple-Family Dwelling; or a portion of any of the aforementioned; for a period of twenty five (25) consecutive calendar days or less.
- B. “Transient Rental” means the renting, letting, subletting, leasing or subleasing of the following, as defined by the Oakwood Zoning Ordinance: a Dwelling Unit, Single Family Dwelling, Two Family Dwelling, or Multiple-Family Dwelling; or a portion of any of the aforementioned; for Transient Occupancy use.

**17-801.3    PROHIBITION**

On or after January 1, 2020, no person shall operate, let, list, advertise, or otherwise make available, any residential property in the city of Oakwood for Transient Rental purposes.

**17-801.4    NOTICE OF VIOLATION; TIME FOR PERFORMANCE; APPEALS; VARIANCES; INSPECTIONS AND PENALTIES ARE DEALT WITH IN OTHER SECTIONS OF THIS CODE**

Other matters regarding notice of violation, time for performance, appeals, variances, inspections, penalties, and other aspects of administration are covered in Chapter 17-ONE of this Property Maintenance Code.

### SECTION III.

Existing Section 17-106.1(A) of the Oakwood Property Maintenance Code, which addresses violations of such Code, is hereby amended to read as follows, with new text in **bold** font and deleted text in ~~strikethrough~~ font:

- A. The unlawful acts described in this paragraph A- shall include:
  1. ~~Transfer of legal or equitable ownership of premises or change of tenant without having obtained a pre-sale inspection as required by 17-107.5 and 17-107.11 or without furnishing the proposed new owner a true copy of any conditional certificate of occupancy or other notice of violation and obtaining a signed receipt for it, as required by 17-107.10.~~
  2. ~~Further, these unlawful acts described herein shall also include o Occupancy or use of any premises by a new owner or tenant without that owner having obtained from the code official (or from the previous owner) a valid certificate of occupancy for the premises, as required by 17-107.5.~~
  3. ~~These unlawful acts described herein shall also include the f Failure to timely submit the information required by Section 17-800.4.~~
  4. **Operating, letting, listing, advertising, or otherwise making available, any residential property in the city of Oakwood for Transient Rental purposes, as prohibited by 17-801.3.**

### SECTION IV.

Existing Section 17-106.4 of the Oakwood Property Maintenance Code, which addresses penalties for violations of such Code, is hereby amended to read as follows, with new text in **bold** font and deleted text in ~~strikethrough~~ font:

- A. Whoever commits an unlawful act as described in paragraph A of 17-106.1 shall be guilty of ~~a minor an unclassified~~ misdemeanor.
- B. Whoever commits an unlawful act as described in paragraph B of 17-106.1 shall be guilty of a fourth degree misdemeanor.
- C. Whoever commits an unlawful act as described in paragraph C of 17-106.1 shall be guilty of a third degree misdemeanor.
- D. Whoever commits an unlawful act as described in paragraph D of 17-106.1 shall be guilty of a fourth degree misdemeanor.
- E. Whoever commits an unlawful act as described in paragraph E of 17-106.1 shall be guilty of a third degree misdemeanor.

### SECTION V.

It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements including § 121.22, Ohio Revised Code.

PASSED BY COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor William D. Duncan

ATTEST:

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Clerk of Council

TO THE CLERK:

Please publish the foregoing by incorporating the same into the Codified Ordinances of the city.

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City Attorney Robert F. Jacques

A RESOLUTION

BY: \_\_\_\_\_

NO. \_\_\_\_\_

TO CONTINUE PARTICIPATION IN A MULTI-JURISDICTIONAL HAZARD MITIGATION PLAN IN CONJUNCTION WITH THE MONTGOMERY COUNTY OFFICE OF EMERGENCY MANAGEMENT.

WHEREAS, there currently exists between the city of Oakwood, Ohio and the Board of Commissioners of Montgomery County, Ohio, an agreement that the County, through its Office of Emergency Management, shall provide emergency management for the City in conjunction with a countywide coordinated program; and

WHEREAS, through this countywide coordinated program, the Montgomery County Office of Emergency Management has developed the 2019 Montgomery County Natural Hazard Mitigation Plan that includes all hazards to which Montgomery County and its municipalities are susceptible as per Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

WHEREAS, goals, objectives and strategies to mitigate against the hazards that have been identified in the County, including the city of Oakwood, have been developed; and

WHEREAS, mitigation measures for Oakwood and surrounding areas have been analyzed and prioritized; and

WHEREAS, Montgomery County stakeholders have reviewed the 2019 Montgomery County Natural Hazard Mitigation Plan;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAKWOOD, MONTGOMERY COUNTY, OHIO:

**SECTION I.**

The Council of the city of Oakwood hereby adopts the 2019 Montgomery County Natural Hazard Mitigation Plan, as developed by the Montgomery County Office of Emergency Management.

**SECTION II.**

The Clerk of Council is directed to certify a copy of this resolution upon its passage, and to promptly forward the same to the Montgomery County Office of Emergency Management.

**SECTION III.**

This resolution shall take effect upon its passage.

PASSED BY COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor William D. Duncan

ATTEST:

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Clerk of Council

TO THE CLERK:

No publication is required.

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City Attorney Robert F. Jacques

A RESOLUTION

BY: \_\_\_\_\_

NO. \_\_\_\_\_

A RESOLUTION TO AUTHORIZE AND DIRECT THE DIRECTOR OF FINANCE TO CERTIFY CERTAIN DELINQUENT CHARGES FOR CUTTING NOXIOUS WEEDS TO THE COUNTY AUDITOR FOR COLLECTION.

WHEREAS, after notice, as required by law, the owners of the property hereinafter described failed to cut the noxious weeds growing upon such property, and this Council heretofore caused such noxious weeds to be cut and destroyed; and

WHEREAS, such owners have heretofore been notified of the costs incurred in connection therewith with a request for payment and have refused to pay such costs; and

WHEREAS, Section 731.54 of the Ohio Revised Code and Section 551.05 of the Codified Ordinances of the city of Oakwood authorize the City to make written return to the County Auditor of a statement of charges for its services in cutting such noxious weeds and provides further that such amount shall be collected as other taxes and returned to the municipal corporation with the general fund; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAKWOOD, MONTGOMERY COUNTY, OHIO:

SECTION I:

That the charges for cutting noxious weeds as specified in Exhibit A are hereby found and determined to have not been paid and are hereby returned to the County Auditor in accordance with Section 731.54 of the Revised Code and Section 551.05 of the Codified Ordinances of the city of Oakwood.

SECTION II:

That the Director of Finance is hereby authorized and directed to certify such delinquent charges, together with a certified copy of this resolution, to the Auditor of Montgomery County who shall enter the same on the tax duplicate to be collected as other taxes are collected.

SECTION III:

That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

PASSED BY THE COUNCIL OF THE CITY OF OAKWOOD this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor William D. Duncan

ATTEST:

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Clerk of Council

TO THE CLERK:

Publication is not required.

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City Attorney Robert F. Jacques

**EXHIBIT A**  
**CITY OF OAKWOOD**  
**2019 NOXIOUS WEEDS CERTIFICATION**

Parcel ID	Invoice #	Service Address	Outstanding Balance	COUNTY FEE		TOTAL DUE
				5%	\$	
Q71 00213 0004	019-001	175 LOOKOUT DR	\$ 176.05	\$ 8.80	\$	184.85
Q71 00213 0004	019-007	175 LOOKOUT DR	\$ 201.21	\$ 10.06	\$	211.27
Q71 01310 0044	019-003	2205 SHROYER RD	\$ 222.38	\$ 11.12	\$	233.50
Q71 00605 0012	019-011	224 W THRUSTON BLVD	\$ 147.52	\$ 7.38	\$	154.90
Q71 01603 0013	019-014	333 Dixon Ave E	\$ 155.94	\$ 7.80	\$	163.73
Q71 01306 0049	019-006	41 HADLEY AVE	\$ 222.91	\$ 11.15	\$	234.05
Q71 00603 0004	0018-007	410 RUBICON RD	\$ 306.49	\$ 15.32	\$	321.81
Q71 00603 0004	0018-008	410 RUBICON RD	\$ 265.64	\$ 13.28	\$	278.92
Q71 00603 0004	0018-010	410 RUBICON RD	\$ 203.78	\$ 10.19	\$	213.97
Q71 00603 0004	0018-013	410 RUBICON RD	\$ 344.95	\$ 17.25	\$	362.20
Q71 00603 0004	0018-014	410 RUBICON RD	\$ 182.64	\$ 9.13	\$	191.77
Q71 00603 0004	019-009	410 RUBICON RD	\$ 300.58	\$ 15.03	\$	315.61
Q71 01503 0009	0018-0003	413 DELLWOOD AVE	\$ 137.88	\$ 6.89	\$	144.77
Q71 01503 0009	019-017	413 DELLWOOD AVE	\$ 178.84	\$ 8.94	\$	187.78
Q71 01201 0007	019-013	426 PEACH ORCHARD AVE	\$ 159.03	\$ 7.95	\$	166.98
Q71 01310 0050	019-018	437 PEACH ORCHARD AVE	\$ 192.12	\$ 9.61	\$	201.72
Q71 00208 0023	019-002	674 GARDEN RD	\$ 233.18	\$ 11.66	\$	244.84
Q71 00706 0002	0018-009	999 HARMAN AVE	\$ 203.78	\$ 10.19	\$	213.97
			\$ 3,834.91	\$ 191.75	\$	4,026.66

A RESOLUTION

BY: \_\_\_\_\_

NO. \_\_\_\_\_

TO AUTHORIZE THE REALLOCATION OF THE CITY'S INSIDE MILLAGE PROPERTY TAX REVENUES.

WHEREAS, the Ohio Police & Fire Pension Fund ("OPFP") was created by the Ohio General Assembly in 1965 to replace hundreds of individual local police and fire relief funds; and

WHEREAS, many of those individual funds had liabilities exceeding the assets needed to pay future pension benefits to retirees, resulting in a net pension liability owed from public employers to OPFP; and

WHEREAS, so as not to stress the financial capacity of public employers, the General Assembly enacted a payment schedule with a 65 year payoff term, with the first payments due in 1970 and the final payments due in 2035; and

WHEREAS, Oakwood's current remaining pension liability is approximately \$404,166, which continues to incur interest at an average rate of 4.25 percent; and

WHEREAS, Council wishes to satisfy the remaining pension liability early, thereby saving substantial interest charges that would otherwise continue until 2035; and

WHEREAS, the city currently receives 3.58 mills of inside millage property tax revenues, of which 0.3 mills are allocated to debt service on the city's remaining pension liability; and

WHEREAS, Council intends to pay off the remaining pension liability early in two installments, one in 2019 and one in 2020, and wishes to reallocate the 0.3 mills of property tax revenue from the Police Pension Fund to the city's General Fund; and

WHEREAS, in order to reallocate these revenues, the change must be approved by the Montgomery County Budget Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAKWOOD, MONTGOMERY COUNTY, OHIO:

SECTION I.

The Council of the city of Oakwood hereby declares its intention to satisfy the city's remaining pension liability early, including accrued interest, in two (2) installments. The first installment shall be paid in November 2019, subject the adoption of a supplemental appropriation ordinance, and the second and final installment shall be paid in January 2020.

SECTION II.

The Clerk of Council is directed to certify a copy of this resolution upon its passage, and to furnish the same to the Finance Director. Upon receipt thereof, the Finance Director is hereby authorized to submit the same to the Montgomery County Budget Commission for review and approval, and to take such other steps as may be necessary to reallocate 0.3 mills of inside millage property tax revenues from the Police Pension Fund to the city's General Fund.

SECTION III.

This resolution shall take effect upon its passage.

PASSED BY COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor William D. Duncan

ATTEST:

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Clerk of Council

TO THE CLERK:

No publication is required.

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City Attorney Robert F. Jacques

A RESOLUTION

BY: \_\_\_\_\_

NO. \_\_\_\_\_

APPROVING AN ISOLATION AND QUARANTINE POLICY FOR INFECTIOUS DISEASES AND OTHER PUBLIC HEALTH EMERGENCIES, AS ADOPTED BY THE OAKWOOD BOARD OF HEALTH.

WHEREAS, pursuant to Section 3707.04 *et seq.* of the Ohio Revised Code, local boards of health throughout Ohio are authorized to take certain actions in response to public health emergencies requiring isolation and/or quarantine; and

WHEREAS, given that boards of health can only act by the affirmative vote of a quorum of their membership, which may be difficult to schedule and obtain in times of emergency, Section 3707.34 of the Ohio Revised Code further authorizes local boards of health to delegate some or all of that authority to the local Health Commissioner; and

WHEREAS, pursuant to Section 3707.34 of the Revised Code, said delegation is only effective upon the adoption of a Board of Health policy to that effect, which must then be approved by the local legislative authority; and

WHEREAS, on July 23, 2019, the Oakwood Board of Health enacted such a policy by adopting Resolution No. 19-2, which is now before Council for legislative approval; and

WHEREAS, Council has reviewed Oakwood Board of Health Resolution No. 19-2, and finds the same to be in the public interest;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAKWOOD, MONTGOMERY COUNTY, OHIO:

**SECTION I.**

Oakwood Board of Health Resolution No. 19-2, being an “Isolation and Quarantine Policy for Infectious Diseases and Other Public Health Emergencies,” is hereby ratified and approved as required by Section 3707.34(B) of the Ohio Revised Code.

**SECTION II.**

The Clerk of Council is directed to certify a copy of this resolution upon its passage, and to furnish the same to the Oakwood Board of Health to be attached to the official record of its Resolution No. 19-2.

**SECTION III.**

This resolution shall take effect upon its passage.

PASSED BY COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_ day of \_\_\_\_\_, 2019.

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\_\_\_\_\_  
Mayor William D. Duncan

ATTEST:

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\_\_\_\_\_  
Clerk of Council

TO THE CLERK:

No publication is required.

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\_\_\_\_\_  
City Attorney Robert F. Jacques

A RESOLUTION

BY: \_\_\_\_\_

NO. \_\_\_\_\_

APPROVING THE MONTGOMERY COUNTY-INTERMUNICIPAL WASTE SERVICES AGREEMENT.

WHEREAS, for many years the city of Oakwood has been a member of the Montgomery County Solid Waste District (the "District"), and along with all other member communities, has contracted with the District to receive, process, and transfer all solid waste collected throughout the District; and

WHEREAS, the contract between all member communities and the District has not been materially updated since 1985; and

WHEREAS, all member communities and the District have negotiated a new 20 year contract, which must be approved by each member community's legislative authority before it can be signed by the Montgomery County Commissioners; and

WHEREAS, Council has had an opportunity to review the new contract, and has determined that the same will benefit the public health, safety, welfare, and interest;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF OAKWOOD, MONTGOMERY COUNTY, OHIO:

SECTION I.

The Council of the City of Oakwood hereby approves the Montgomery County-Intermunicipal Waste Services Agreement attached hereto as Exhibit A, and authorizes the City Manager to sign the same.

SECTION II.

The Clerk of Council is directed to certify a copy of this resolution upon its passage, and to promptly forward the same along with a signed copy of Exhibit A to the Solid Waste Advisory Committee of the Montgomery County Solid Waste Management District.

SECTION III.

This resolution shall take effect upon its passage.

PASSED BY THE COUNCIL OF THE CITY OF OAKWOOD, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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Mayor William D. Duncan

ATTEST:

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Clerk of Council

TO THE CLERK:

No publication is required. Please certify and forward a copy as directed in Section II.

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City Attorney Robert F. Jacques

**MONTGOMERY COUNTY-INTERMUNICIPAL WASTE SERVICES AGREEMENT**

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Between the  
**COUNTY OF MONTGOMERY**  
And  
[District Member]

Dated as of \_\_\_\_\_, 2019

## **MONTGOMERY COUNTY-INTERMUNICIPAL WASTE SERVICES AGREEMENT**

### **INTRODUCTION**

This Montgomery County-Intermunicipal Waste Services Agreement (the “Agreement”) is entered as of \_\_\_\_\_, 2019 by the County of Montgomery, Ohio (the “County”), acting by and through its Board of County Commissioners (the “Board”) and on behalf of the Montgomery County Waste District (the “District”), and \_\_\_\_\_, a political subdivision of the State of Ohio and a member of the District (the “District Member”). This Agreement arises in the following context:

The Board and the District Members entered into the previous Waste Delivery and Disposal Agreement in 1985, which was subsequently amended. With the desire to replace the 1985 Waste Delivery and Disposal Agreement, and the intent to be legally bound, the County and District Member agree as follows:

### **ARTICLE I**

#### **PRIOR AGREEMENTS SUPERCEDED**

1.1 This Agreement supersedes the 1985 Waste Delivery and Disposal Agreement, as amended, and all other agreements between the County and the District Member relating to the management of Disposable Solid Waste. Said agreements are hereby terminated as of the Effective Date of this Agreement, which is the date specified in Section 8.1 of this Agreement.

### **ARTICLE II**

#### **DEFINITIONS**

As used in this Agreement, the following terms shall have the meanings set forth below:

***Annual Property Charge*** means the charge established by the Board and assessed annually with respect to the cost of the County’s solid waste management infrastructure and services upon the owner of each lot within the County insofar as the lot currently has, or is in the process of being improved with, at least one permanent, portable, or temporary building.

***Debt Obligations*** means any bond, note, certificate of indebtedness, or other indebtedness of the County issued prior to or subsequent to the date of this Agreement with respect to the Solid Waste Processing and Transfer Facilities, including any obligation or portion thereof issued to refinance or refund any previously issued indebtedness of the County with respect to the Solid Waste Processing and Transfer Facilities.

***Debt Service*** means the required installment payments of the principal amount of Debt Obligations, together with interest on Debt Obligations and any premium.

***Disposable Solid Waste*** means all trash or rubbish ordinarily produced by a family or other household at its private residence, including without limitation single- and multiple-household dwellings as well as waste from any commercial, agricultural or industrial activity conducted on those premises insofar as the waste is similar in composition and quantity to domestic waste from a household, and similar general municipal wastes generated in offices, restaurants, hospitals, retail establishments, and other businesses and industry insofar as such trash, rubbish or waste is similar to household waste and generated from a source within the political boundaries of the County. Disposable Solid Waste includes Yardwaste and White Goods, as defined herein, but excludes Unacceptable Waste and “source separated recyclable materials,” as that term is defined Section 343.01(M)(1) of the Ohio Revised Code, including source separated Yardwaste. Disposable Solid Waste includes other wastes if deemed acceptable by the County under this Agreement.

***District Member*** means each political subdivision, other than the County, that obligates itself to deliver Disposable Solid Waste to the Solid Waste Processing and Transfer Facilities pursuant to this Agreement or another agreement with terms substantially similar to those in this Agreement.

***Financing Requirements*** means, with respect to Debt Obligations, the Debt Service on such obligations as it is due and payable on specified dates and, insofar as they are not otherwise included in Debt Service, each of the following: (a) prorated fees representing financing costs (either initial or ongoing) of the County; and (b) the funding of any reserve, replacement, working capital or similar funds required by any instrument that specifies the County’s duties

with respect to the Debt Obligations. “Financing Requirements” also includes any payments or deposits of funds in addition to operation and maintenance expenses and Debt Service that are required under any indenture or other instrument issued in conjunction with the Debt Obligations.

***Operational Rules*** means the Montgomery County Solid Waste District Operational Rules adopted by the Board, as they may change from time-to-time, for the operation and management of the District including without limitation operation and management of the Solid Waste Processing and Transfer Facilities.

***Solid Waste Management Plan*** means the Plan adopted in accordance with Section 3734.54 *et seq.* of the Ohio Revised Code.

***Solid Waste Processing and Transfer Facilities*** means all facilities, buildings, property, and supporting appurtenances owned, operated, managed, identified, designated or otherwise approved by rule or resolution of the Board, as they may change from time-to-time, for management, processing or other disposition of Disposable Solid Waste, and includes, by way of example and without limitation, such equipment as may be required to transport Disposable Solid Waste to processing and recycling facilities, landfills and other disposal sites, all supporting equipment and appurtenances, combustion equipment and supporting appurtenances, as well as such recovery equipment as may be installed to recover or recycle any materials or energy from Disposable Solid Waste.

***Tipping Fee*** means the per unit charge or charges (such as a per ton amount) levied by and assessed by the County for Disposable Solid Waste delivered to the Solid Waste Processing and Transfer Facilities.

***Unacceptable Waste*** has the meaning set forth in the Operational Rules.

***White Goods*** means articles of Disposable Solid Waste that may require special handling and management, including stoves, ranges, refrigerators (including refrigerants contained therein such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs)), dishwashers, and other appliances similar to those listed above.

***Yardwaste*** means discarded organic material such as wood chips, branches, leaves, flowers, shrubs, grass and other similar organic material.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES**

3.1 The County represents and warrants to the District Member that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the County's governing body and that the Agreement constitutes a legal, valid and binding obligation of the County in accordance with its terms.

3.2 The District Member represents and warrants to the County that the execution and delivery of this Agreement has been duly authorized by all appropriate actions of the District Member's governing body, is fully consistent with the laws, rules and ordinances of the District Member, and that this Agreement constitutes a legal, valid and binding obligation of the District Member in accordance with its terms.

3.3 The County represents and warrants to the District Member, and the District Member represents and warrants to the County, that to the best of each of their knowledge there is no pending or threatened litigation or government proceeding that would adversely affect the performance of their respective obligations under this Agreement.

### **ARTICLE IV**

#### **OBLIGATIONS OF THE COUNTY**

4.1 The County shall accept or cause to be accepted from the District Member at the Solid Waste Processing and Transfer Facilities all Disposable Solid Waste generated from within the boundaries of the District Member, and shall arrange for environmentally sound and otherwise proper processing, disposal or other management of all of the Disposable Solid Waste that is delivered to the Solid Waste Processing and Transfer Facilities.

4.2 (a) To the extent the District Member's performance under this Agreement results in the District Member or the District incurring liability and associated costs under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601-9675 (commonly known as "Superfund liability"), all such costs, including all expenses of litigation or settlement, shall be treated, subject to Section 4.2(b) hereof, as obligations of the District on the same basis as other obligations of the District under this Agreement.

(b) Pursuant to Ohio Revised Code Section 5705.44, funds for satisfaction of the obligations described in Section 4.2(a) shall be expended only from earnings of the District as currently deposited into Montgomery County Treasury Sub-Fund 559, a sub-fund of Montgomery County Treasury Fund 299, or a successor or substitute fund or sub-fund used for a similar purpose. These obligations shall be limited to earnings of the District that have been deposited in Sub-Fund 559 or successor or substitute fund or sub-fund used for a similar purpose, and the obligations shall not exceed the amount of earnings of the District that have been deposited into the above-referenced fund(s) or sub-fund(s).

4.3 The County shall establish and collect, and from time-to-time revise and update as necessary, Annual Property Charges and Tipping Fees sufficient to recover all of the costs incurred and expenditures made to operate and maintain the Solid Waste Processing and Transfer Facilities. The cost recovered through the Annual Property Charges and Tipping Fees include without limitation: (a) all costs for operation and maintenance for the Solid Waste Processing and Transfer Facilities; (b) the Financing Requirements; (c) and sufficient reserves, as determined by the County in its sole discretion, for future maintenance, repair and replacement of the Solid Waste Processing and Transfer Facilities including all associated equipment and structures.

4.4 The County shall maintain and enforce the Operational Rules.

4.5 The recommendations of the Solid Waste Advisory Committee ("SWAC"), which has been established by various Board resolutions, shall be considered by the County prior to its

adoption of Annual Property Charges and Tipping Fees to which Section 4.3 refers and the Operational Rules to which Section 4.4 refers.

4.6 In the unlikely event that the Solid Waste Processing and Transfer Facilities are not available to receive Disposable Solid Waste, the District Member, as directed by the County, shall undertake reasonable efforts to deliver or cause delivery of such Disposable Solid Waste to an alternative facility (or facilities) designated by the County for waste processing and transportation. In the circumstances described in the preceding sentence, the following shall apply:

- (a) If the District Member collects Disposable Solid Waste generated within the District Member's political boundaries, it shall continue to pay the applicable Tipping Fees and the County shall (i) pay the applicable charges with respect to such alternative facility and (ii) credit a subsequent invoice to the District Member for Tipping Fees with the substantiated amount of unavoidable costs or expenses, if any, the District Member incurred for waste transportation due to use of such alternative facility.
- (b) Alternatively, if the District Member contracts with a commercial hauling company for collection of Disposable Solid Waste generated within the District Member's political boundaries, and use of the alternative facility causes the hauler to incur substantiated and unavoidable costs or expenses that it would not otherwise have incurred, the County will reimburse the District Member insofar as it is contractually obligated to reimburse the hauler for such costs.

## **ARTICLE V**

### **OBLIGATIONS OF DISTRICT MEMBERS**

5.1 The District Member shall deliver or cause to be delivered to the Solid Waste Processing and Transfer Facilities, or other such facilities as the County may designate as set forth in Section 4.6 of this Agreement, all Disposable Solid Waste generated or collected within the District Member's political boundaries. The District Member, however, shall not deliver or

cause the delivery of any Unacceptable Waste or other types of solid waste, refuse or garbage for which delivery to the Solid Waste Processing and Transfer Facilities is prohibited pursuant to the Operational Rules.

5.2 The District Member agrees to pay the Tipping Fees established by the County, which may be modified by the County from time-to-time, for all Disposable Solid Waste delivered to the Solid Waste Processing and Transfer Facilities by or on behalf of the District Member.

5.3 The District Member further agrees to take such steps as are necessary to cause private collectors and haulers of Disposable Solid Waste operating within the District Member's political boundaries to deliver to the Solid Waste Processing and Transfer Facilities, or such other facilities as the County may reasonably designate in the event that the Solid Waste Processing and Transfer Facilities are unavailable, all Disposable Solid Waste the private collectors and haulers collect within the political boundaries of the District Member and to pay the Tipping Fees established by the County, as the Tipping Fees may be modified by the County from time-to-time. The above-stated obligation for delivery of Disposable Solid Waste and payment of the associated Tipping Fees shall be included as a contract term if the District Member contracts with a private hauler or collector for collection of Disposable Solid Waste generated within the District Member's political boundaries. In the event that a District Member does not contract with a private hauler or collector for collection of Disposable Solid Waste, nothing in this Agreement is intended to depart from the restriction in Ohio Revised Code § 343.01(I)(2) on the applicability of designation authority with respect to source separated recyclable materials. Payment of Tipping Fees by a private collector and hauler shall satisfy the obligation of the District Member to pay Tipping Fees as required by Section 5.2.

5.4 If at any time during the term of this Agreement (i) a District Member does not have a fully operative contract with a private hauler or collector for collection of all Disposable Solid Waste generated within the District Member's political boundaries and (ii) the County's Director of Environmental Services (or another County representative with comparable responsibility for administration of this Agreement) advises the District Member that a private

hauler or collector collecting Disposable Solid Waste generated within the District Member's political boundaries is not delivering all such Disposable Solid Waste to the Solid Waste Processing and Transfer Facilities, the District Member shall within 120 days thereafter, unless otherwise agreed to in writing by the County, enter a contract with a private hauler or collector for collection of all Disposable Solid Waste generated within the District Member's political boundaries and delivery of that Disposable Solid Waste to the Solid Waste Processing and Transfer Facilities.

5.5 The County and the District Member expressly recognize that the County is a third party beneficiary of the District Member's agreement with each private hauler or collector for collection of Disposable Solid Waste, and the County is entitled to enforce the delivery requirements of those agreements on the same basis as the District Member as if the County would be a party to the agreements.

## **ARTICLE VI**

### **FORCE MAJEURE**

6.1 For the purposes of this Article VI, the term Force Majeure shall mean any cause beyond the reasonable control of the party whose performance is affected, including without limitation acts of God, war, riot, fire, explosion, wind storm, flooding, labor disputes, military or usurped power, sabotage, inability to obtain or use fuel, power or raw materials, shortage or failure of the usual means of transportation, court injunction, accident or breakdown of machinery or equipment, or action taken by any governmental authority which prevents or hinders performance of the parties' obligations under this Agreement (except insofar as the governmental action in question was taken by the County or the District Member).

6.2 In fulfilling the obligations hereunder, except with regard to the payment of Tipping Fees by the District Member, neither the County nor the District Member shall be liable for delay or failure to perform caused by reason of Force Majeure. The District Member's obligations to deliver Disposable Solid Waste, as required hereunder, and the County's obligations to accept Disposable Solid Waste in accordance with the terms and conditions hereof,

shall be suspended, respectively, for the period of the Force Majeure event and the respective party's time for performance shall be extended accordingly. The obligation to pay Tipping Fees shall not be affected in any way by reason of Force Majeure.

6.3 In the event of any delay in performance caused by Force Majeure, the affected party shall notify the other by telephone within 2 business days of the onset of the Force Majeure event and provide written confirmation within 7 business day of the onset of the Force Majeure event. The telephone notification and written confirmation shall identify: (i) the date on which the Force Majeure event commenced; (ii) its estimated duration; and (iii) its estimated impact, including cost impact, on the party's respective obligations under this Agreement.

6.4 If, due to Force Majeure, either the County or a District Member shall have been excused for a period of time from performance of its obligations under this Agreement and is able to commence or resume performance in accordance with the provisions hereof, the County shall cooperate with the District Member and use its best efforts to accept at the Solid Waste Processing and Transfer Facilities all of the Disposable Solid Waste the District Member accumulated during the period of the excused performance, provided that receipt and processing of the accumulated Disposable Solid Waste at the Solid Waste Processing and Transfer Facilities can be implemented in a manner that is: (i) within the design limitations of the Solid Waste Processing and Transfer Facilities; (ii) efficient, sanitary and consistent with the contractual obligations of the County to others with respect to availability of the Solid Waste Processing and Transfer Facilities; and (iii) is not contrary to or in violation of any permit, law, regulation, ordinance, or order of any federal, state or local authority or agency thereof (except for any law, regulation, ordinance or order of the District Member), or any applicable and legally binding judicial decision or order.

## **ARTICLE VII**

### **DISPUTE RESOLUTION**

7.1 If any dispute arises between the County and the District Member concerning this Agreement, they shall use their best efforts to resolve the dispute by mutual agreement.

7.2 In the event of such claim, controversy or other dispute between the County and the District Member arising out of or relating to this Agreement, representatives of the County and the District Member authorized to resolve the dispute shall meet in person and make a good faith effort to negotiate a settlement of such dispute. Unless otherwise agreed by the parties, the meeting shall take place within 5 business days of the adverse party's receipt from the other party of a written notice of the dispute. If the dispute is not resolved at the meeting, and absent an agreement by both parties to continue the informal dispute resolution process, either party can declare the informal dispute resolution process ended with respect to the matters at issue. No statement, written or oral, made by any representative of either party during the informal dispute resolution process shall be admitted into evidence for any purpose during any subsequent litigation, regardless of whether the litigation is in court or before an arbitrator.

7.3 Notwithstanding the foregoing, the informal process for dispute resolution shall not prevent either party from pursuing limited judicial remedies where immediate action is necessary to prevent irreparable injury.

7.4 Absent informal resolution of a dispute, the County and the District Member can agree to arbitrate any dispute arising out of this Agreement. Unless otherwise agreed in writing, the County and the District Member shall continue to perform their respective obligations under this Agreement during any arbitration proceeding.

7.5 Subject to Sections 7.1 and 7.2, nothing in this Agreement restricts the rights of the County or the District Member to pursue all remedies available at law or equity for protection and enforcement of their respective rights under this Agreement.

7.6 The rights, obligations, and remedies of the parties under this Agreement shall be interpreted and governed in all respects by the laws of the State of Ohio. Any litigation concerning any dispute that arises out of or relates to this Agreement or the breach thereof, whether arising at law or in equity, based upon statutory or common law, or asserting claims based on contract, tort or otherwise, shall be brought and conducted exclusively in a court of the State of Ohio in Montgomery County, Ohio.

**ARTICLE VIII**  
**TERM OF AGREEMENT**

8.1 The term of this Agreement shall commence on the date that it is executed by the Board on behalf of the County (“the Effective Date”) and shall continue until the following, which is referred to below as the “Termination Date”: 20 years from the date that the County executes this Agreement. This Agreement shall continue automatically beyond the Termination Date unless either the County or the District Member elects to terminate this Agreement after having provided to the other not less than one year’s prior written notice of the election.

**ARTICLE IX**  
**NON-WAIVER**

9.1 The waiver by either party of any default or breach of any provision of this Agreement by the other party, regardless of whether the waiver is agreed to in writing or the result of inaction by the non-defaulting (non-breaching) party, shall not operate or be construed to operate as a waiver of any subsequent default or breach or otherwise affect the rights of the waiving party with respect to any subsequent default or subsequent breach of this Agreement.

**ARTICLE X**  
**AMENDMENTS, CHANGES AND MODIFICATIONS**

10.1 This Agreement shall not be amended except in writing signed on behalf of the County and the District Member. No amendment shall become effective except upon the execution of substantially similar amendments by each District Member listed in the resolution of the Board authorizing the execution of this Agreement.

10.2 No amendment to this Agreement shall be effective in the absence of a certificate issued by the appropriate trustees under any indentures securing any Debt Obligations affirming that no covenants in such indentures will be violated by reason of the amendment.

10.3 The Board shall not finance or construct capital improvements, including new or additional facilities to replace or supplement the Solid Waste Processing and Transfer Facilities, prior to submitting to the Financial Advisory Committee (“FAC”) and SWAC the Board’s plans for those capital improvements and requesting recommendations from the FAC and SWAC with respect to the planned capital improvements, which follows the current established procedure as of the Effective Date.

## **ARTICLE XI**

### **NOTICES AND CORRESPONDENCE**

11.1 All notices pertaining to or affecting performance under this Agreement shall be in writing. While email is encouraged, all notifications shall also be delivered in person or sent by certified mail return receipt requested to the parties as shown below:

***For the County:***

Email: \_\_\_\_\_

Postal address: \_\_\_\_\_

Address for hand-delivery: \_\_\_\_\_

***For the District Member:***

Email: \_\_\_\_\_

Postal address: \_\_\_\_\_

Address for hand-delivery: \_\_\_\_\_

The parties are free to change the preceding information by providing notice of the change (or changes) by certified mail. The changes shall become effective 5 days from the other party’s receipt of the notice.

**ARTICLE XII**  
**ASSIGNMENT**

12.1 Except as otherwise provided in this Section 12.1, the rights and obligations of the County or the District Member under this Agreement may be assigned by the County or the District Member. Notwithstanding any such assignment, the County and the District Member, respectively, shall remain liable for all of their obligations under this Agreement except insofar as, and only to the extent that, either may be expressly released of a portion or all of its obligations hereunder by the other party. No assignment hereunder shall be permitted in any case where doing so adversely affects the tax-exempt status of any Debt Obligations or violates any provision of any instrument authorizing or securing any Debt Obligation. In addition, no assignment by a District Member is permitted where such assignment would result in downgrading the credit rating assigned to any Debt Obligations by any nationally recognized credit rating agency.

**ARTICLE XIII**  
**INTEGRATED AGREEMENT**

13.1 This Agreement, including the recitals hereto, constitutes the entire understanding of the parties with respect to the subject matter and supersedes all prior agreements and negotiations. The parties hereby affirm that the terms, conditions and provisions of this Agreement, and any amendments that may be entered in accordance with its terms, conditions and provisions, shall govern the obligations of the parties.

**ARTICLE XIV**  
**BINDING EFFECT**

14.1 This Agreement shall inure to the benefit of and shall be binding upon the County and the District Member and their respective legal successors. Any obligations of the County created by or arising out of this Agreement shall be payable out of revenue received from

payment of Annual Property Charges and Tipping Fees and, in the sole discretion of County, from any other source deemed legal and appropriate by the County. Any obligations of the District Member created by or arising out of this Agreement shall be payable from whatever source is deemed legal and appropriate by the District Member.

**ARTICLE XV**  
**SEVERABILITY**

15.1 In the event that any provision of this Agreement be held invalid, illegal or unenforceable in any respect, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated. With respect to any invalidated provision of this Agreement, the parties hereto shall negotiate and in good faith agree to such amendments, modifications or supplements to this Agreement and shall, to the maximum extent practicable, implement and give effect to the intentions of the parties herein.

**ARTICLE XVI**  
**COUNTERPARTS**

16.1 This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which collectively shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have hereunto set their hands on this \_\_\_\_ day of \_\_\_\_\_, 2019

BOARD OF COMMISSIONERS OF MONTGOMERY COUNTY, OHIO

\_\_\_\_\_  
Carolyn Rice, County Commissioner

\_\_\_\_\_  
Deborah A. Lieberman, County Commissioner

\_\_\_\_\_  
Judy Dodge, County Commissioner

By \_\_\_\_\_  
Michael Colbert, County Administrator

APPROVED AS TO FORM

Mathias H. Heck, Jr., Prosecuting Attorney

By \_\_\_\_\_  
Assistant Prosecuting Attorney

DISTRICT MEMBER

\_\_\_\_\_  
By: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Title: \_\_\_\_\_

### Certification

This shall certify that the funds required to meet the municipality's (or township's) obligations set forth herein during the fiscal year in which this contract is made or obligation incurred, have been lawfully appropriated for such purpose and are in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrance. Ref. R.C. 5705.41.

(Municipality/Township)

\_\_\_\_\_  
Signature

Title: \_\_\_\_\_

Dated: \_\_\_\_\_