REGULAR PIQUA CITY COMMISSION MEETING  
TUESDAY, MARCH 19, 2019  
6:00 PM  
COMMISSION CHAMBER – 2nd FLOOR  
201 WEST WATER STREET - PIQUA, OHIO  45356

CALL TO ORDER

THE PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS

PRESENTATION – UPPER VALLEY MEDICAL CENTER - MR. TOM PARKER, PRESIDENT & MR. STEVE STALEY, CHAIRMAN OF THE UVMC BOARD OF DIRECTORS

REGULAR PIQUA CITY COMMISSION MEETING

CONSENT AGENDA

1. APPROVAL OF MINUTES  
   Approval of minutes from the March 5, 2019 Regular City Commission Meeting

2. RES. NO. R-31-19  
   A Resolution reappointing a member to the Golf Advisory Board

3. RES. NO. R-32-19  
   A Resolution appointing a member to the Golf Advisory Board

4. RES. NO. R-33-19  
   A Resolution appointing a member to the Park Board

5. RES. NO. R-34-19  
   A Resolution reappointing a member to the Tree Committee

6. RES. NO. R-35-19  
   A Resolution of Appreciation for the Public Service of Vincent P. Ashcraft as a City Employee

7. RES. NO. R-36-19  
   A Resolution of Appreciation for the Public Service of Mark Spoltman as a member of the Planning Commission

NEW BUSINESS

8. RES. NO. R-37-19  
   A Resolution authorizing the lease of City owned real estate

9. RES. NO. R-38-19  
   A Resolution authorizing the lease of City owned real estate
10. RES. NO. R-39-19
   A Resolution authorizing the City Manager to enter into the Capital Improvement Community Park,
   Recreation/Conservation Project Pass Through Grant Agreement with the Ohio Department of
   Natural Resources (ODNR) for the Piqua Great Miami Trail Bridge Replacement Project

PUBLIC COMMENT
(This is an opportunity for citizens to address the City Commission regarding agenda items, issues, or to
provide information. Comments are requested to be limited to five (5) minutes and specific questions
should be addressed to the City Manager's office).

CITY MANAGER'S REPORT

COMMISSIONERS COMMENT
PIQUA CITY COMMISSION
MINUTES
TUESDAY, MARCH 5, 2019
6:00 P.M.

Piqua City Commission met in the Municipal Government Complex – 201 West Water Street

Mayor Hinds called the meeting to order at 6:00 PM followed by the Pledge of Allegiance.

Roll Call as follows: Present: Mayor Hinds, Commissioners Lee, Short, Martin and Vogt. Absent: None.

CONSENT AGENDA

MINUTES FROM FEBRUARY 19, 2019 REGULAR COMMISSION MEETING
Approval of the minutes from the February 19, 2019 Regular City Commission Meeting.

Commissioner Martin, moved for the approval of the Consent Agenda, motion was seconded by Commissioner Lee.

Motion was carried unanimously, and Mayor Hinds declared the Consent Agenda adopted.

NEW BUSINESS

RES. NO. R-27-19
A Resolution authorizing a purchase order to Century Equipment for the purchase of a Grounds Mower for Echo Hills Golf Course

Cynthia Holtzapple, Assistant City Manager and Finance Director, reported Echo Hills Golf Course, is currently in need of updating their mowing equipment and is requesting approval to purchase a Toro Groundsmaster 4500-D with accessories which will enable their staff to mow the grounds more efficiently and with less maintenance issues. The Golf Course currently owns two Toro Fairway units as well as others previously purchased and have found them to be very reliable mowers.

This specific unit was demoed by the golf superintendent, Kirt Huemmer. The mower is very well built with more steel construction and less hoses, it has coaster wheels that are very durable, and offers a 109* cut width. A leaf mulching kit, an extra set of blades and a set of mulching blades are included with this purchase. Century Equipment through their state bid contract is also providing with a two-year (or 1500 hours) warranty.

Commissioner Martin asked how many hours are normally put on a mower each year. Kirt Huemmer indicated that 400 hours were normally put on each mower. Commissioner Martin also asked what areas of the golf course the mower would be used. Mr. Huemmer reported the mower would be used on the banks around the greens and all the rough areas.

Commissioner Lee, moved for the adoption of Res. No. R-27-19, seconded by Commissioner Lee. Motion carried unanimously.
RES. NO. R-27-19 Adopted

RES. NO. R-28-19
A Resolution authorizing an amendment to the agreement with the Regional Air Pollution Control Agency (RAPCA) for Air Pollution Control Services
Amy Welker, Director of Health and Sanitation, reported since 1983 the City of Piqua has had an agreement with RAPCA for management, technical, and field enforcement of air pollution control regulations. In 2009, the RAPCA agreement was updated to include the Schedule A uniform schedule of fees. This resolution will allow RAPCA to make adjustments to the fee schedule. All entities that would be affected by the changes have been notified.

Commissioner Vogt, moved for the adoption of Res. No. R-28-19, seconded by Commissioner Martin. Motion carried unanimously.
RES. NO. R-28-19 Adopted

RES. NO. R-29-19
A Resolution awarding a contract to Staffco Construction, Inc. for the Municipal Government Complex Lobby Modification project

Bob Graesser, Project Manager, reported on January 24, 2019, three bids were received for the Municipal Government Complex Lobby Modification Project.

The project will consist of improvements to the lobby area of the Municipal Government Complex to make a safer, more efficient area for the public to be able to conduct their business with the Utility Business Office as well as with the Income Tax Department.

Commissioner Martin, moved for the adoption of Res. No. R-29-19, seconded by Commissioner Lee. Motion carried unanimously.
RES. NO. R-29-19 Adopted

RES. NO. R-30-19
A Resolution retaining the services of SSOE Group to provide Professional Consulting and Engineering Services for the Power System

Ed Krieger, Power System Director, reported SSOE is a project delivery firm for architecture, engineering and construction management, with projects in 40 countries. The Power System has utilized SSOE’s Toledo office for several projects over the past few years and have been completely satisfied with their work to date, including engineering and project management services associated with the Piqua Power Plant Waterfront Redevelopment Project and more recently, the Substation #5 Breaker Replacement Project.

During routine Substation testing in 2017, Power Services identified concerns related to Piqua’s oil-filled 69 kV Breakers and recommended the City considering replacement of these aging and service critical assets. More reliable and less-maintenance intensive SF6 and Vacuum alternatives are now available to replace Piqua equipment that has been in service for 30-40 years.

The Power System has developed a three-year program to replace these critical assets and completed the replacement of three (3) – 69 kV Breakers at Piqua’s Substation #5 in 2018. SSOE will provide professional consulting and engineering services related to the replacement of four (4) – 69 kV Breakers at Piqua’s Substation #5 in 2019.

Commissioner Martin, moved for the adoption of Res. No. R-30-19, seconded by Commissioner Lee. Motion carried unanimously.
RES. NO. R-30-19 Adopted

PUBLIC COMMENT
Bill Jaqua of North Sunset Drive, Piqua, wanted to discuss the possibility of the Jaqua family taking over the Fort Piqua Plaza management. The Jaqua family already manages a country club for the City of Clayton. The Jaqua’s are asking for a similar agreement. Commissioner Lee invited Bill to submit a proposal for the management of the Plaza.
Ruth Koon of Park Avenue, Piqua, discussed a suggestion that she sent to the commission and to City Manager Gary Huff, about signs for the City parks. She discussed utilizing Brian Quinter of Quint Signs for the project. This would be a great savings from the way finding signs that were already purchased by the City.

CITY MANAGER'S REPORT
There was no report given.

COMMISSIONERS COMMENTS
Commissioner Lee apologized for missing the last meeting. He thanked Bill Jaqua for his proposal of the Fort Piqua Plaza management and Ruth Koon for her proposal of new signage for the City parks.

Commissioner Short invited everyone to the Kiwanis pancake breakfast on March 9, 2019.

Commissioner Vogt asked that homeowners place numbers on their homes if they are missing in accordance with our City Ordinance.

Mayor Hinds mentioned the St. Patty's Beer Run on March 17, 2019 and invited everyone to attend. Also, the high school musical would be taking place the weekend of the 15th of March. The Run Club at Central Intermediate will begin soon.

Motion was made by Commissioner Vogt, seconded by Commissioner Lee to adjourn from the Regular City Commission meeting at 6:26 P.M. Motion carried unanimously.

PASSED:__________________________

KATHRYN B. HINDS, MAYOR

ATTEST:___________________________

JESSICA MORGAN STEIN
CLERK OF COMMISSION
RESOLUTION NO. R-31-19

A RESOLUTION REAPPOINTING A MEMBER TO THE GOLF ADVISORY BOARD

BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: Gene Hill is hereby reappointed as a member of the Golf Advisory Board for a four-year term to expire on March 1, 2023 or until his successor is confirmed and qualified;

SEC. 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

KATHRYN B. HINDS, MAYOR

PASSED: ____________________________

ATTEST: ____________________________

JESSICA MORGAN STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by ____________________________
seconded by ____________________________ and on roll call the following vote ensued:

Mayor Kathryn B. Hinds __________ Commissioner John Martin __________
Commissioner William Vogt __________ Commissioner Dave Short __________
Commissioner Kris Lee __________

Legislation Date 3/19/2019
RESOLUTION NO. R-32-19

A RESOLUTION APPOINTING A MEMBER TO THE
GOLF ADVISORY BOARD

BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: Eric White is hereby appointed as a member of the Golf Advisory Board for a four-year term to expire on March 1, 2023 or until his successor is confirmed and qualified;

SEC. 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

______________________________
KATHRYN B. HINDS, MAYOR

PASSED: _________________________

ATTEST: _______________________

JESSICA MORGAN STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by ___________________
seconded by ___________________ and on roll call the following vote ensued:

Mayor Kathryn B. Hinds _______ Commissioner John Martin _______
Commissioner William Vogt _______ Commissioner Dave Short _______
Commissioner Kris Lee _______

Legislation Date 3/19/2019
RESOLUTION NO. R-33-19

A RESOLUTION APPOINTING A MEMBER
TO THE PARK BOARD

BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: Eric White is hereby appointed as a member of the Park Board for a five-year term to expire on March 1, 2024 or until his successor is confirmed and qualified;

SEC. 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

KATHRYN B. HINDS, MAYOR

PASSED: 

ATTEST: 
JESSICA STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by and seconded by and on roll call the following vote ensued:

Mayor Kathryn B. Hinds Commissioner John Martin
Commissioner William Vogt Commissioner Dave Short
Commissioner Kris Lee

Legislation Date 3/19/2019
RESOLUTION NO. R-34-19

A RESOLUTION REAPPOINTING A MEMBER
TO THE TREE COMMITTEE

BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: Randi Simon-Serey is hereby reappointed as a member of the Tree Committee for a four year term to expire on March 1, 2023 or until her successor is confirmed and qualified;

SEC. 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

KATHRYN B. HINDS, MAYOR

PASSED: __________________________

ATTEST: __________________________

JESSICA MORGAN STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by ________________
seconded by ________________ and on roll call the following vote ensued:

Mayor Kathryn B. Hinds  ________ Commissioner John Martin  ________
Commissioner William Vogt  ________ Commissioner Dave Short  ________
Commissioner Kris Lee  ________

Legislation Date 3/19/2019
RESOLUTION NO. R-35-19

A RESOLUTION OF APPRECIATION FOR THE
PUBLIC SERVICE OF VINCENT P. ASHCRAFT
AS A CITY EMPLOYEE

WHEREAS, Vincent P. Ashcraft has retired as Assistant Fire Chief with the City of Piqua; and

WHEREAS, his retirement follows 27 years of faithful and dedicated service to the City and its citizens;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, all members elected thereto concurring, that:

SEC. 1: In recognition and appreciation of the public service of Vincent P. Ashcraft as an employee of the City of Piqua, this Commission tenders its unanimous and respectful tribute by this Resolution, which shall be a matter of public and permanent record.

SEC. 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

KATHRYN B. HINDS, MAYOR

PASSED: _______________________

ATTEST: _______________________

JESSICA MORGAN STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by ______________________
seconded by ______________________ and on roll call the following vote ensued:

Mayor Kathryn B. Hinds
Commissioner William Vogt
Commissioner Kris Lee

Commissioner John Martin
Commissioner Dave Short

Legislation Date 3/19/2019
RESOLUTION NO. R-36-19

A RESOLUTION OF APPRECIATION FOR THE
PUBLIC SERVICE OF MARK SPOLTMAN AS A
MEMBER OF THE PLANNING COMMISSION

WHEREAS, Mark Spoltman has served the City of Piqua as a member of the Planning Commission; and

WHEREAS, the City of Piqua wishes to express its appreciation for Mark's 25 years of service on this Board; and

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, all members elected thereto concurring, that:

SEC. 1: In recognition and appreciation of the service rendered by Mark Spoltman as a member of the Planning Commission, this Commission tenders its unanimous and respectful tribute by this Resolution which shall be a matter of public and permanent record.

SEC. 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

KATHRYN B. HINDS, MAYOR

PASSED: ______________________

ATTEST: ______________________

JESSICA MORGAN STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by ______________________
seconded by ______________________ and on roll call the following vote ensued:

Mayor Kathryn B. Hinds
Commissioner William Vogt
Commissioner Kris Lee

Commissioner John Martin
Commissioner Dave Short

Legislation Date 3/19/2019
RESOLUTION NO. R-37-19
A RESOLUTION AUTHORIZING THE LEASE OF CITY OWNED REAL ESTATE

WHEREAS, the City of Piqua owns the real estate commonly known as the Fort Piqua Plaza located in the 100 block of W. High Street in the City of Piqua, Miami County, Ohio, and

WHEREAS, the Locktenders, LLC has expressed an interest in leasing the portion of the building consisting of approximately 3,578 square feet known as 110 W. High Street and being shown in the lease agreement included herewith as Exhibit “A”; and

WHEREAS, the City of Piqua facilitated the redevelopment of Fort Piqua Plaza and the creation of the subject tenant space to advance, encourage and promote the economic and commercial development interest of the city; and

WHEREAS, in the sound judgement of the City Manager, executing the lease with Locktenders LCC will be in the best interest of the city; and,

WHEREAS, City of Piqua Code of Ordinances section 34.36 requires this Commission to pass a resolution authorizing the lease of the subject location;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: The City Manager is hereby authorized to lease the portion of the Fort Piqua Plaza building consisting of approximately 3,578 square feet known as 110 W. High Street as stated in the lease agreement included herewith as Exhibit “A”.

SEC. 2 For the reasons indicated herein, and as permitted by Piqua Municipal Code §34.36(C), the lease of the property does not need to be advertised for bids.

SEC. 3. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

KATHRYN B. HINDS, MAYOR

PASSED: ______________________

ATTEST: ______________________
JESSICA MORGAN STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by ______________________
seconded by ______________________ and on roll call the following vote ensued:

Mayor Kathryn B. Hinds  __________ Commissioner John Martin  __________
Commissioner William Vogt  __________ Commissioner Dave Short  __________
Commissioner Kris Lee  __________

Legislation Date 3/19/2019
### Commission Agenda

**Staff Report**

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<th>March 19, 2019</th>
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<td>REPORT TITLE</td>
<td>A RESOLUTION AUTHORIZING THE LEASE OF CITY OWNED REAL ESTATE</td>
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| SUBMITTED BY | Name: Chris Schmiesing, Community and Economic Development Director  
Department: Development Department |
| AGENDA CLASSIFICATION | ☑ Resolution  
☐ Consent  
☐ Ordinance  
☐ Regular |
| APPROVALS/REVIEWS | ☑ City Manager  
☑ Development Director  
☑ Asst. City Manager/Finance  
☑ Law Director |
| BACKGROUND | The proposed lease will allow for Locktenders, LLC to operate a restaurant in the 3,578 square feet of tenant space located at 110 W. High Street in the Fort Piqua Plaza. The agreed upon terms of the lease are $1,500/month for five years, with an option to renew. This is the same lease rate as was extended to the previous tenant. The tenant will hold the liquor license and provide alcohol services in the restaurant and for the Fort Piqua Plaza Banquet Center. Locktenders, LCC ownership team operates Basil’s on Market restaurants located in Troy, Dayton and Mason, Ohio and has numerous years of experience in the restaurant industry. The ownership team has established a reputation for operating highly successful full service restaurants that offer chef inspired food and specialty cocktails in a comfortable setting. |
| BUDGETING AND FINANCIAL IMPACT | Budgeted: $50,000  
Expenditure: $50,000  
Source of Funds: Fort Piqua Plaza  
Narrative: The flooring covering and several pieces of equipment will be replaced, and a new double stack oven will be installed to ready the space for use by the tenant. The tenant will be making additional improvements at their own expense. |
| OPTIONS | 1. Adopt the resolution to authorize the execution of the lease.  
2. Defeat the resolution to object to the execution of the lease. |
| PROJECT TIMELINE | March 19, 2019 – City Commission |
| STAFF RECOMMENDATION | Approve the resolution |
| ATTACHMENTS | Exhibit A – Proposed lease |
LEASE AGREEMENT FOR 110 W. HIGH STREET BETWEEN THE
CITY OF PIQUA AND LOCKTENDERS, LLC

THIS LEASE is made between the City of Piqua, whose mailing address
is 201 W. Water St., Piqua, Ohio 45356 ("Lessor"), and Locktenders, LLC, dba
Locktenders, whose tax mailing address is 110 West High St., Piqua, Ohio
45356 ("Lessee").

TERMS

I. DESCRIPTION OF PROPERTY TO BE LEASED

Lessor leases to Lessee, and Lessee leases from Lessor, on the terms
and conditions set forth in this Lease, that portion of the building known as "Fort
Piqua Plaza" and located in the 100 block of W. High Street in the City of Piqua,
Miami County, Ohio (the "Building") consisting of approximately 3,578 square
feet known as 110 W. High Street and being shown outlined on Exhibit A
attached to this Lease (the "Premises"). The Building is part of the real property
owned by Lessor which is described in Exhibit B attached to this Lease (the
"Property"). Lessor is the owner of the premises.

Lessor additionally grants to Lessee, during the term of this Lease, the
right to use, in common with other Lessees and occupants of the Building all
easements and rights appurtenant to the Property.

II. OCCUPANCY OF PREMISES

This Agreement provides a Lease to Lessee so they may take
occupancy of the Premises and commence with Lessee's Work upon the
execution date of this Agreement.

III. TERM OF LEASE

The Term of this lease shall be for five years, with the right to occupy the
Premises commencing on upon the execution date of this Agreement and
ending on March 31, 2024, or unless sooner terminated as herein provided.
This Lease is renewable at the conclusion of the initial five-year term and each
subsequent five-year term at the option of the Lessor. Upon each renewal of
RESOLUTION EXHIBIT A

the Lease the Lessor may increase the base rent rate by 20%. Lessee must provide 90-days written notice prior to vacation of occupancy.

IV. RENT

Lessee agrees to pay to Lessor without any prior demand therefore a fixed minimum base rent of $85,500, payable in 57 installments of $1,500 per month, with payment due in advance of the first day of each calendar month with the first payment due July 1, 2019. The base rent shall include a prorated amount for property taxes as Lessee shall not be separately responsible for property taxes.

All payments shall be made payable to the City of Piqua and delivered to the City of Piqua, attention Finance Director, 201 W. Water St., Piqua, Ohio 45356.

The Lessor hereby notifies Lessee that the continued operation of this Agreement is based on the rent and utilities being kept current and any past due amounts being paid in full upon receipt of any notice of default. Failure to keep any amount owed current may result in termination of the Lease Agreement or pursuance of any other legal remedy available.

V. UTILITIES AND SERVICES

Lessee shall be responsible upon the receipt of billing for the payment of all charges against the Premises for water, sanitary sewer, natural gas, heat for the appliances and fixtures, electricity and any other utility services furnished to or consumed on the Premises. Water, sewer, gas for the restaurant kitchen, and electric for the water heater are all separately metered for the Premises. Lessee shall contract on its own with a cable, telephone and internet provider. The cost of janitorial service, telephone service, cable and internet is the sole responsibility of the Lessee. Lessee will pay a prorated amount for storm water and space heat (gas) based upon square footage and sanitation as determined by the City of Piqua.

Lessor shall have the right, without being liable to Lessee and without abatement or reduction of rent, to suspend, delay or stop any of the utilities or services provided by Lessor whenever necessary due to emergency, inspection, cleaning, repairs, replacements, alterations, improvements and renewals that are necessary in Lessor's judgment, and whenever necessary due to causes beyond Lessor's control. If the interruption in utilities or services is caused by Lessor's fault or neglect, this Lease shall not terminate and Lessor shall not be
RESOLUTION EXHIBIT A

responsible for damages to Lessee, but the rent shall abate until the utilities or services interrupted due to Lessor's fault or neglect are restored. In any such event, Lessor shall use reasonable diligence to complete repairs promptly so as to minimize any resulting interruptions in utilities or services.

VI. MAINTENANCE

A. JANITORIAL MAINTENANCE

Lessee shall have use of the entrance, lobby and restroom facilities located in the common area of the first floor entering off of the Main Street side of the Building. Lessee shall be responsible for the cleaning of the entrance, lobby and restroom facilities in the identified common area as stated in Section V. Lessee shall be responsible for the maintenance and cleaning of the Premises.

B. MAINTENANCE OF FIXTURES AND PROPERTY

1. Lessor's Repairs. Lessor, at its expense, shall perform all repairs and maintenance and make all replacements as are necessary to keep in good order, condition and repair (i) the roof and all structural elements and portions of the Premises and Building, including structural walls, floors and foundations, (ii) all exterior elements and portions of the Building, (iii) any other exterior improvements located on the Property and (iv) any common utility lines, pipes, conduits, equipment and systems that serve Lessee's space and are also used to serve other parts of the Building; subject, however, to ordinary wear and tear. In addition, Lessor will provide snow removal to the Property at its convenience. Notwithstanding the foregoing, Lessor shall not be obligated to reimburse its Proportionate Share of any of the following: (a) costs reimbursed by insurance; (b) interest and amortization of debt service; (c) non-cash items such as deductions for depreciation or obsolescence; (d) costs associated with leasing the Building and relations with other Lessees; (e) costs incurred in completing, finishing, renovation or otherwise improving space for other Lessees; or (f) expenses constituting capital improvement or capital replacements under generally accepted accounting principles.

2. Lessee's Repairs. Lessee shall, at its expense, perform all repairs and maintenance and make all replacements as are necessary to keep in good order, condition and repair, all portions of the interior of the Premises, including, but not limited to, interior walls, floor coverings, carpeting, finished ceilings, light fixtures, doors and entranceways, glass, windows and all plumbing, sewer,
RESOLUTION EXHIBIT A

electrical, heating and air conditioning facilities and equipment serving only Lessee's space and not used in common with other present or future Lessees of the Building. The regular maintenance of the servicing of the heating, ventilating and air conditioning systems and equipment within the Premises will be contracted through the Lessor and the Lessee shall pay a prorated expense for the maintenance of the Premises based on square footage. Lessee further agrees that it will not cause or permit any damage to the Premises, nor allow the accumulation of waste, boxes, barrels, packages, wastepaper or other trash or any other condition to be considered a nuisance. In addition, Lessee at its expense shall repair, replace or restore all damage to the Premises or the Building caused by the negligent acts or omissions of Lessee or its agents, contractors, employees or invitees, or by a breach by Lessee of its obligations under this Lease.

3. Fire code regulations require a semi-annual cleaning of the hood in the kitchen. The cost of cleaning shall be at the expense of the Lessee as part of the operation of the business. The hood shall be cleaned in accordance with fire code regulations and shall be cleaned at the expiration of this Lease.

4. Prior Approval. Prior to maintenance on any fixture or kitchen appliance that is owned by Lessor, Lessee shall notify Lessor and a plan shall be established as to whether the piece of equipment shall be repaired or replaced based on economics. Both parties shall agree as to whether the appliance is to be repaired or replaced. Should the parties decide that the appliance is to be repaired, the parties shall each pay 50% of the repair costs. The parties shall agree on who will be hired for the repair. Should the parties agree that the appliance be replaced, Lessee shall pay 100% of the cost. All appliances being replaced remain the property of Lessor and Lessee shall not be permitted to use the appliances for any trade-in value. Upon termination of the lease, any appliance replaced by Lessee shall remain the property of Lessee.

C. DAMAGE AND DESTRUCTION

If during the term of this Lease the Premises are so damaged by fire or other casualty as to be rendered untenantable in whole or in substantial part, then either Lessor or Lessee may terminate this Lease effective the date of such casualty. In addition, if the Building is destroyed in whole or in substantial part by casualty (regardless of the extent of the damage to the Premises), or if the insurance proceeds are insufficient to repair the damage to the Building or
Lessor's mortgagee elects to apply any of the proceeds to the mortgage debt, Lessor may terminate this Lease effective the date of such casualty. These elections by Lessor or Lessee shall be made within 30 days after the occurrence of the casualty, or shall be deemed waived. If this Lease is not so terminated, either because the damage does not render the Premises untenable, either in whole or in substantial part or because neither Lessor nor Lessee elects to terminate this Lease pursuant to the preceding provisions, then Lessor shall, with all due diligence, repair and restore the Premises to substantially their original condition (notwithstanding Lessee's Work and any alterations or improvements made by Lessee) within a reasonable period of time after the occurrence of the casualty, dependent on the severity, or within such longer period as may be permitted due to any "Excusable Delay" as defined below. The rent shall be abated in proportion to the unleaseable space until the Premises are restored.

Lessee shall promptly restore Lessee's Work and any other alterations or improvements made by Lessee to substantially restore their condition preceding the casualty, and the rent abatement shall continue until Lessee's completion of such restoration. If the Premises are not so restored by Lessor within 180 days after the occurrence of such casualty, or within any extended period due to Excusable Delays, Lessee may terminate this Lease by giving Lessor written notice. If this Lease is terminated by Lessee or Lessor pursuant to this Section, Lessor shall refund any rent prepaid beyond the effective date of termination. The term "Excusable Delay" shall mean any one or more of the following: labor disputes, fire or other casualty, unusual delay in transportation, adverse weather conditions, unavailability of labor, materials and equipment, and any other causes beyond Lessor's reasonable control.

D. CONDITION OF PREMISES

Lessee shall throughout the lease term maintain the building and other improvements constituting the Premises and keep them free from waste or nuisance, and shall deliver up the Premises in a clean and sanitary condition at the termination of this lease in good repair and condition, reasonable wear and tear and damage by fire, tornado, or other casualty excepted. In the event Lessee should neglect to reasonably maintain the leased premises, Lessor shall have the right, but not the obligation after written notice has been provided to the Lessee, to cause repairs or corrections to be made, and any reasonable costs therefore shall be payable by Lessee to Lessor as additional rental on the next rental installment date.
E. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

Lessee shall not create any openings in the roof or exterior walls, nor make any alterations, additions or improvements to the leased premises without the prior written consent of Lessor. Consent for nonstructural alterations, additions, or improvements shall not be unreasonably withheld by Lessor. Lessee shall have the right at all times to erect or install shelves, bins, and trade fixtures, provided that Lessee complies with all applicable laws, ordinances, and governmental regulations. Lessee shall have the right to remove at the termination of this lease such items so installed, provided Lessee is not in default; however, Lessee shall, prior to the termination of this lease, repair any damage caused by such removal. All alterations, additions, or improvements made by Lessee shall become the property of Lessor at the termination of this lease; however, the Lessee shall promptly remove, if Lessor so elects, all alterations, additions, and improvements, and any other property placed in the premises by Lessee, and Lessee shall repair any damage caused by such removal.

Lessee shall not permit mechanics’ liens to attach to the Premises or the Property by reason of Lessee’s work, improvements or alterations. Before commencing Lessee’s Work, Lessee shall (a) obtain Lessor’s approval of its plans and specifications; (b) furnish evidence that Lessee has obtained all building, zoning and other governmental permits and approvals necessary for Lessee’s Work; and (c) provide certificates to Lessor evidencing that Lessee has obtained builder’s risk insurance for Lessee’s Work, workers’ compensation insurance as required by law for all contractors and other persons engaged in Lessee’s work, and such other insurance coverages as are required by this Lease, all in form and substance satisfactory to Lessor.

VII. USE OF PREMISES

Lessee will use and occupy the Premises for restaurant purposes, and specifically for Locktenders, and for no other purpose without Lessor’s prior written consent. The restaurant shall maintain minimum hours of operation including Tuesday through Thursday from 11am to 10pm, Friday and Saturday from 11am to 11pm. Monday and Sunday hours will be at the discretion of the Lessee. Lessee shall receive prior written approval from Lessor before any change in the hours of operations. Lessee shall receive prior written approval from Lessor before any change is made that would substantially alter the theme or the decor of the restaurant to ensure that the theme or decor continues to
complement the historical significance of and the intended use of the Building. In connection with its use and occupancy of the Premises, Lessee shall not:

(a) install, use, operate or maintain any machinery or equipment or permit any other activity or conduct within the Premises which (i) produces any discernible vibration or a noise level, which would violate the Piqua Codified Ordinances, as Lessee recognizes that the primary tenant of the Building is a library, or (ii) overload the floors or any other structural portions of the Premises or the Building;

(b) use any part of the roof of the Building for any purpose; or

(c) treat, manufacture, use, store or dispose of hazardous substances, hazardous wastes, petroleum products or other substances regulated under applicable environmental laws, except that Lessee may use, store and dispose of any of the foregoing materials to the extent that (i) the materials and quantities to be used and stored on the Premises and Lessee’s procedures for using, storing and disposing of the same are first approved by Lessor, (ii) Lessee’s use of these materials is merely incidental to Lessee’s primary use and (iii) the use and storage of the materials on the Premises is not prohibited by applicable laws or regulations; or

(d) permit the Premises to be used for any purpose that would render void or cause cancellation of any insurance maintained on the Building by Lessor, or cause an increase in the premiums for such insurance; or

(e) use any other portion of the Building that is not permitted or authorized herein without prior written approval from the Lessor and the tenant, if any, of the other space to be used within the Building; or

(f) expand the use and dimensions of the patio without prior written approval from the City of Piqua.

VIII. LIQUOR PERMIT

No liquor shall be served at the restaurant until a liquor permit is secured through the State of Ohio Department of Commerce Division of Liquor Control. The liquor permit shall be in the name of the restaurant and shall be secured at its own costs. Any required insurance for the serving of beer and liquor is the obligation of the Lessee. Lessee shall be ready and available to serve alcohol in
the restaurant and in the Fort Piqua Plaza Banquet Center located on the fourth floor of the Building. The liquor permit shall be for the restaurant, the patio and the Banquet Center.

As the sole provider of alcoholic beverages and the holder of the liquor permit for the Banquet Center, Lessee shall pay 10% of the gross revenue from all beverage contracts for the Banquet Center. The percentage payment shall be paid to Lessor no later than the fifteenth day of the first calendar month following the calendar month during which the event took place. Any delinquent amount shall be paid immediately upon receipt of a notice of default. As a requirement of being the holder of the liquor permit, Lessee shall hire and be responsible for all bartenders. The Building Oversight Committee ("BOC") shall approve all liquor and alcohol costs that will be sold in the Banquet Center, including set-up fees and service fees.

Because Lessee is the sole provider of alcohol for the Banquet Center, reputation and quality of service is critical to continued success. Lessee shall be ready for service at the contracted time and will not break down the bar prior to the contracted time of the close of the event unless agreed to otherwise by the host of the event. Lessee shall be responsive to request for information regarding the provision of alcohol services in the Banquet Center. Lessee shall ensure bartenders perform duties in a professional manner and dress in black pants with black shoes and white button up shirt with collar. Lessee shall ensure bar service presentation is neat and organized and of a quality befitting of the Banquet Center. Should there be any complaints about the quality of service, presentation of the bar service, or the appearance or conduct of the bartenders, Lessor shall immediately notify Lessee of the complaint and Lessee shall take the necessary steps to immediately correct the issue. Should the quality of service continue to be a problem after Lessee has received notice of the problems, the failure to correct shall be a cause for termination of this Agreement.

IX. SIGNAGE

Lessee shall have the right to erect one sign on the south side of the exterior of the Building parallel to W. High St. and one sign on the east side of the exterior of the Building parallel to N. Main St., such signs being on the exterior of the portion of the Premises being leased. All signs must comply with the City of Piqua Sign Code and any other applicable laws. Lessee shall be responsible for the maintenance of the signage. The design of the signs shall
be approved by the Lessor. Lessee shall remove all signs at the termination of this lease, and shall repair any damage and close any holes caused by such removal.

X. BUILDING OVERSIGHT COMMITTEE ("BOC")

A Building Oversight Committee ("BOC") acts as a mediator and makes recommendations on disputes between or amongst the tenants of the Building. If there is a dispute and/or concern regarding any issue with a tenant, such as noise, odors, signage, etc., the tenant shall notify the other tenant before any other party to resolve the issue. If the issue cannot be resolved, the parties shall proceed to the BOC where the BOC shall mediate the issue.

XI. COMPLIANCE WITH LAWS

Lessee, at its sole expense, shall comply with all present and future laws and regulations applicable to its use and occupancy of the Premises, and shall make any repairs, modifications and additions to the Premises that may be required by any of those laws or regulations. Notwithstanding the above, Lessee shall not be obligated to make, and Lessor shall be solely responsible for, any structural repairs, modifications or additions to the Premises that (a) are not necessitated by negligent or wrongful actions of Lessee or others for whom Lessee is responsible and (b) Lessor would be required to make as the owner of the Building regardless of the specific nature of Lessee's use. Lessor is responsible for any structural alterations of the ingress and egress to the Premises or the Building required for compliance with the Americans with Disabilities Act. Lessee is responsible for the compliance with the Americans with Disabilities Act in regard to the interior of the Premises and all elements of Lessee's Work.

XII. INSURANCE

A. PUBLIC LIABILITY INSURANCE

Lessee shall procure and maintain commercial general liability insurance for the Premises with policy limits of not less than a single limit of $1 million for personal injury or death and property damage per occurrence and $3 million in the aggregate. Lessor and any mortgagee shall be named as additional insureds under this policy with a certificate of insurance stating that Lessee's coverage is primary and non-contributing. The policy shall contain an agreement by the insured that it will not cancel the policy except after thirty days
prior written notice to Lessor and Lessee and that any loss otherwise payable shall be payable notwithstanding any act or negligence of Lessor or Lessee that might, absent such agreement, result in a forfeiture of all or a part of the insurance payment.

In addition to the commercial general liability insurance, there shall be Liquor liability insurance in an amount not less than $1,000,000 per occurrence to cover claims arising out of the serving, consumption, and/or sale of Liquor in, about, or from the Premises or the Building. Such policy(ies) shall be endorsed to cover Lessor, Lessor's officials, employees, agents and volunteers as Additional Insureds.

B. FIRE AND CASUALTY INSURANCE

Lessor shall keep the Building and all other improvements located on the Property insured against loss by fire and all of the risks and perils insured against in a "special form" commercial property insurance policy. During the term of this Lease, Lessee shall procure this insurance with respect to Lessee's Work and all other alterations and improvements installed in the Premises by Lessee, in the amount of their full replacement cost. Lessor may also obtain such additional coverages as it deems appropriate for the Building, including, but not limited to, boiler and machinery and rent loss insurance or endorsements. This insurance shall be written by a company of recognized financial standing that is authorized to do an insurance business in the State of Ohio. The costs incurred by Lessor pursuant to this are referred to as "Insurance Costs." Lessee shall reimburse Lessor for its proportionate share of and any increases in the Insurance Costs.

C. CERTIFICATES

Prior to Lessee occupying the Premises, Lessee shall deliver to Lessor a certificate of the insurance required to be maintained under this section. Lessee shall also deliver to Lessor at least 10 days prior to the expiration date of such policy or of any renewal policy, certificates for the renewal of this insurance. Lessor shall deliver to Lessee a certificate of insurance of any coverage upon receipt.

XIII. INDEMNIFICATION AND HOLD HARMLESS

Lessee shall indemnify and hold Lessor harmless against any and all claims, liabilities, damages or losses, and any attorney's fees and other
incidental expenses, resulting from injury or death of any person or damage to property occurring on or about the Premises or arising in conjunction with the use and occupancy of the Premises by Lessee or others claiming under Lessee, unless the death, injury or damage was sustained as a result of any tortuous or negligent act of Lessor or of its employees, agents or contractors, or by reason of the breach of any of Lessor's obligations under this Lease.

In addition, Lessee shall indemnify and hold Lessor harmless against any claims, liabilities, damages, losses or expenses resulting from the release of hazardous substances, hazardous wastes or petroleum products on or from the Premises or other violations of applicable environmental laws occurring during the term of this Lease. The indemnities contained in this Section shall survive the expiration or termination of this Lease.

In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, covenants to defend such action or proceeding. Lessee shall notify Lessor of any counsel retained for representation and of any change in counsel.

XIV. DEFAULT

A. LESSEE'S DEFAULT

Lessee shall be in default of this Lease if (a) Lessee fails to pay the rent or utilities or 10% of the gross revenue from beverage contracts required to be paid by Lessee within 30 days after the same becomes due and payable under the terms of this Lease; (b) Lessee fails to perform any other duty or obligation imposed by this Lease and the default continues for a period of 30 days after written notice is given to Lessee by Lessor, or for an unreasonable period of time if 30 days is not sufficient time to repair, remedy or correct such default; (c) Lessee is declared insolvent or adjudged bankrupt, or makes a general assignment for the benefit of its creditors; (d) a receiver of any property of Lessee in or upon the Premises is appointed in any action, suit or proceeding by or against Lessee; (e) any action or proceeding under the National Bankruptcy Act is filed by or against Lessee, and such appointment, suit, action or proceeding is not dismissed within sixty days; or (f) the interest of Lessee in the Premises is sold under execution or other legal process.

B. REMEDIES
RESOLUTION EXHIBIT A

In the event of Lessee's default, Lessor shall provide written notice of the
default and the said reason(s) for default. Lessee shall have thirty (30) days
after the date of written notice to cure such default. In the event of Lessee's
default and after the 30 day cure period has expired, Lessor shall have the right
to enter upon the Premises and repossess and enjoy the same as if this Lease
had not been made, and, upon demand by Lessor, Lessee shall surrender
complete and peaceable possession of the Premises. This Lease shall then
terminate at Lessor's option. Whether or not Lessor elects to terminate this
Lease, Lessor may immediately recover from Lessee, and Lessee shall be liable
to Lessor for, all rent due and unpaid up to the time of such reentry. If Lessor
elects to terminate this Lease, Lessor shall be entitled to the damages caused
by Lessee's default, which shall include (a) the costs of reletting the Premises,
(b) the difference between the total amount of rent and other charges that
Lessee agreed to pay for the balance of the term of this Lease and the current
rental rate of the Premises over the same period, and (c) all additional sums to
which Lessor may be entitled under applicable law and the terms of this Lease.
Lessee's obligation to pay rent shall survive any termination of this Lease due to
Lessee's default. If Lessor does not elect to terminate this Lease, Lessor may,
without waiving or postponing any other rights given by law or provided for in
this Lease, relet the Premises on such terms as it deems best, and apply the
proceeds, less all expenses of reletting, to payment of past due rent and the rent
due for the balance of the term and hold Lessee liable for the difference. In no
event shall Lessee be entitled to any excess rents received by Lessor upon
reletting the Premises. The expenses of reletting shall include reasonable
attorneys' fees actually paid in recovering and reletting the Premises; the cost of
all repairs, additions and improvements necessary to prepare the Premises for
reletting; and all brokerage commissions and fees paid with respect to any
reletting. These remedies shall not be deemed exclusive, and Lessor shall have
all other rights and remedies provided in law or equity.

If there is any dispute by Lessee as to its default, the parties may
participate in non-binding mediation and the parties shall each pay 50% of the
mediator's expenses.

C. RIGHT TO CURE

Without limiting any other remedy available to Lessor by reason of
Lessee's default, in the event Lessee defaults in the performance of any of its
obligations, Lessor may, at its option, but without any obligation so to do, do all
things as it deems necessary and appropriate to cure the default, perform for
Lessee any obligation which Lessee is obligated to perform but has not performed, and expend such sums as may be required. All costs and expenses so incurred by Lessor shall be due and payable to Lessor immediately upon demand, together with interest at the rate of 7% per annum or, if less, the highest legal rate, from the date that the costs and expenses were incurred until the same are paid to Lessor.

XV. OTHER

A. SUBORDINATION AND ATTORNMENT. This Lease and all of Lessee's rights under this Lease are subject to subordination to all mortgages placed on or affecting the Premises and all renewals, modifications, consolidations, replacements, substitutions, additions and extensions of any of those mortgages and any other mortgage now or in the future affecting the Premises or any interest in the Premises (collectively "Mortgages"). In confirmation of this subordination, Lessee promptly shall execute and deliver any subordination agreement that Lessor may request. In the event any proceedings are brought for the foreclosure of any Mortgage, Lessee shall, upon request, attorn to the purchaser or transferee upon foreclosure, and recognize the purchaser or transferee as the Lessor under this Lease to the same extent and effect as the original Lessor. Lessee agrees to execute and deliver upon the request of Lessor, or any purchaser or transferee, any instrument necessary or desirable to evidence this attornment. Lessee waives any right that it may have by law to terminate this Lease or to surrender possession of the Premises by reason of any foreclosure proceeding.

B. QUIET ENJOYMENT. Lessor covenants that it has the full right and authority to make this Lease and that if Lessee pays the rent and performs all of the terms of this Lease, Lessee shall peaceably and quietly enjoy and possess the Premises throughout the term, subject only to the conditions set forth in this Lease.

C. SUCCESSORS AND ASSIGNS. The conditions, covenants and agreements in this Lease to be kept and performed by Lessor and Lessee shall bind and inure to the benefits of their successors and assigns, subject, however, to the conditions herein. Any assignment of this Lease shall have prior written approval by the Lessor.

D. PERSONAL PROPERTY. All trade fixtures, furnishings, equipment and other personal property placed or maintained on the Premises shall be at Lessee's sole risk, and Lessor shall not be liable for any loss or damage to such property from
any cause whatsoever.

E. LIABILITY OF LESSOR. If Lessor fails to perform any of its obligations under this Lease, and, as a consequence of this default, judgment may be satisfied in accordance with law. In no event shall Lessee have the right to levy its execution against any property of Lessor other than its interest in the Property. In the event of the sale or other transfer of Lessor’s interest in the Property, Lessor shall be released from all liability and obligations subsequently accruing under this Lease.

F. WAIVER. No waiver of any condition or covenant of this Lease by either party shall be deemed to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Lease shall be construed to be a waiver on the part of Lessor or any right or remedy in law or otherwise.

G. HOLDING OVER. Any holding over beyond the expiration of the term of this Lease when a renewal option has not been exercised or agreed to shall be construed to be a tenancy from month to month at the same rent as to the terms agreed to herein, and shall otherwise be on the same terms and conditions as provided in this Lease.

H. ENVIRONMENTAL MATTERS. Lessor represents and warrants to Lessee that to the best of Lessor’s knowledge as of the date of this Lease, no toxic, explosive or other dangerous materials or hazardous substances have been concealed within, buried beneath or removed from and stored off-site of the Property, and Lessor shall indemnify Lessee against any and all claims, demands, liabilities, losses and expenses, including consultant fees, court costs and reasonable attorneys’ fees, arising out of any breach of the foregoing warranty.

I. SURRENDER. Upon the expiration or earlier termination of this Lease, Lessee shall surrender to Lessor the Premises in good condition and repair, ordinary wear and tear since the last repair required by this Lease, fire and other casualty or governmental takings excepted.

J. SEVERABILITY. If any provision of this Lease or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.
K. MEMORANDUM OF LEASE. A memorandum of this Lease shall be 
executed and in recordable form in accordance with the provisions of Section 
5301.251 of the Ohio Revised Code.

L. NOTICES. All notices to be given to either party shall be deemed given if 
made in writing and deposited in the United States certified mail, postage 
prepaid, return receipt requested, or if sent by a nationally recognized overnight 
courier service, and addressed to the parties at the following addresses:

Lessor:  
City of Piqua  
Gary Huff  
201 W. Water Street  
Piqua, Ohio 45356

Lessee:  
Locktenders, LLC  
Todd Uhlir  
110 W. High Street  
Piqua, Ohio 45356

Either party may change its notice address by giving notice to the other in the 
foregoing manner.

M. LESSOR’S RESERVED RIGHTS. Without abatement or diminution of rent, 
and in addition to any other rights reserved in this Lease, Lessor reserves the 
following rights:

(a) to change the street address and/or the name of the Building and/or change the 
arrangement and/or location of any exterior elements of the Property; (b) to make 
alterations or improvements to the existing buildings; (c) to use all or part of the 
roof or exterior walls of the Building; and (d) to install, maintain, use, repair or 
replace within the Premises or the Building pipes, ducts, wire, conduits and other 
mechanical equipment serving other parts of the Property. In exercising its rights 
under this Section, Lessor shall use reasonable efforts not to impair or 
unreasonably interfere with Lessee’s business operations, or to minimize any such 
interruptions when necessary.

N. RIGHT OF ENTRY. Lessor shall have the right to enter the Premises at any 
time to examine their condition, to make any repairs and, during the last 6 months 
of the term, to show the Premises to persons interested in purchasing or leasing 
the same. Except where it is impractical to do so, Lessor shall give Lessee at least 
24 hour notice before any entry.

O. ESTOPPEL CERTIFICATE. Within 10 days after any request by Lessor, 
Lessee shall execute an estoppel certificate to evidence (a) the existence or
nonexistence of any default under this Lease by Lessor or Lessee, any amendments to this Lease or prepayments of rentals and (b) such other facts with respect to this Lease as Lessor or any mortgagee may reasonably require.

P. ENTIRE AGREEMENT. This Lease, including all exhibits, contains the entire agreement between the parties and supersedes all prior understandings. No amendments to this Lease shall be valid unless in writing and executed by the party against whom enforcement of the amendment is sought.

Q. CAPTIONS. The captions of this Lease are for convenience of reference only and shall not be considered in the construction of any provisions of this Lease.

R. FORM AND LAW. The laws of the State of Ohio and the City of Piqua shall apply to this Lease and any action that result therefrom. Any legal action that is commenced, shall be commenced in the courts governing Miami County, Ohio.

This LEASE is hereby agreed to and executed this ____ day of _________________ 2019 by the duly authorized agents and/or representatives of the City of Piqua and Locktenders, LLC.

By City of Piqua: 

Gary A. Huff, City Manager

By Locktenders LLC:

Todd Uhler

Witness

Witness

Jeff Finkelstein
Witness

Prepared by Frank J. Patrizio Esq.
RESOLUTION NO. R-38-19
A RESOLUTION AUTHORIZING THE LEASE OF CITY OWNED REAL ESTATE

WHEREAS, the City of Piqua owns the real estate commonly known as the Fort Piqua Plaza located in the 100 block of W. High Street in the City of Piqua, Miami County, Ohio, and

WHEREAS, the Stone Ground Deli, LLC has expressed an interest in leasing the portion of the building consisting of approximately 1,400 square feet known as 122 W. High Street and being shown in the lease agreement included herewith as Exhibit "A"; and

WHEREAS, the City of Piqua facilitated the redevelopment of Fort Piqua Plaza and the creation of the subject tenant space to advance, encourage and promote the economic and commercial development interest of the city; and

WHEREAS, in the sound judgement of the City Manager, executing the lease with Stone Ground Deli, LLC will be in the best interest of the city; and,

WHEREAS, City of Piqua Code of Ordinances section 34.36 requires this Commission to pass a resolution authorizing the lease of the subject location;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: The City Manager is hereby authorized to lease the portion of the Fort Piqua Plaza building consisting of approximately 1,400 square feet known as 122 W. High Street as stated in the lease agreement included herewith as Exhibit "A".

SEC. 2 For the reasons indicated herein, and as permitted by Piqua Municipal Code §34.36(C), the lease of the property does not need to be advertised for bids.

SEC. 3. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: __________________________

ATTEST: __________________________

KATHRYN B. HINDS, MAYOR

JESSICA MORGAN STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by______________
seconded by______________ and on roll call the following vote ensued:

Mayor Kathryn B. Hinds ___________ Commissioner John Martin _________
Commissioner William Vogt ___________ Commissioner Dave Short _________
Commissioner Kris Lee ___________

Legislation Date 3/19/2019
# Commission Agenda
## Staff Report

<table>
<thead>
<tr>
<th>MEETING DATE</th>
<th>March 19, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>REPORT TITLE</td>
<td>A RESOLUTION AUTHORIZING THE LEASE OF CITY OWNED REAL ESTATE</td>
</tr>
<tr>
<td>SUBMITTED BY</td>
<td>Name: Chris Schmiesing, Community and Economic Development Director</td>
</tr>
<tr>
<td></td>
<td>Department: Development Department</td>
</tr>
<tr>
<td>AGENDA CLASSIFICATION</td>
<td>☒ Resolution ☐ Regular</td>
</tr>
<tr>
<td>APPROVALS/REVIEWS</td>
<td>☒ City Manager ☒ Asst. City Manager/Finance</td>
</tr>
<tr>
<td>BACKGROUND</td>
<td>The proposed lease will allow for Stone Ground Deli, LLC to operate a delicatessen in the 1,400 square feet of tenant space located at 122 W. High Street in the Fort Piqua Plaza. The agreed upon terms of the lease are $750/month for five years, with an option to renew. This is the same lease rate as was extended to the previous tenant. Stone Ground Deli, LCC ownership team operates Basils on Market restaurants located in Troy, Dayton and Mason, Ohio and has numerous years of experience in the restaurant industry. The ownership team has established a reputation for operating highly successful full service restaurants. In this location they will offer artisan style deli sandwiches and gourmet sides for dine in or carry out.</td>
</tr>
<tr>
<td>BUDGETING AND FINANCIAL IMPACT</td>
<td>Budgeted: $5,000</td>
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<tr>
<td></td>
<td>Source of Funds: Fort Piqua Plaza</td>
</tr>
<tr>
<td>narrative</td>
<td>The walls need repair and repainting, the space needs a commercial cleaning, and a new sink will need to be installed to ready the space for use by the tenant. The tenant will be supplying equipment and furnishings at their own expense.</td>
</tr>
<tr>
<td>OPTIONS</td>
<td>1. Adopt the resolution to authorize the execution of the lease.</td>
</tr>
<tr>
<td>PROJECT TIMELINE</td>
<td>March 19, 2019 – City Commission</td>
</tr>
<tr>
<td>STAFF RECOMMENDATION</td>
<td>Approve the resolution</td>
</tr>
<tr>
<td>ATTACHMENTS</td>
<td>Exhibit A – Proposed lease</td>
</tr>
</tbody>
</table>
LEASE AGREEMENT FOR 122 W. HIGH STREET BETWEEN THE
CITY OF PIQUA AND STONE GROUND DELI, LLC

THIS LEASE is made between the City of Piqua, whose mailing address
is 201 W. Water St., Piqua, Ohio 45356 ("Lessor"), and Stone Ground Deli,
LLC, dba Stone Ground Deli, whose tax mailing address is 122 West High St.,
Piqua, Ohio 45356 ("Lessee").

TERMS

I. DESCRIPTION OF PROPERTY TO BE LEASED

Lessor leases to Lessee, and Lessee leases from Lessor, on the terms
and conditions set forth in this Lease, that portion of the building known as "Fort
Piqua Plaza" and located in the 100 block of W. High Street in the City of Piqua,
Miami County, Ohio (the "Building") consisting of approximately 1,400 square
feet known as 122 W. High Street and being shown outlined on Exhibit A
attached to this Lease (the "Premises"). The Building is part of the real property
owned by Lessor which is described in Exhibit B attached to this Lease (the
"Property"). Lessor is the owner of the premises.

Lessor additionally grants to Lessee, during the term of this Lease, the
right to use, in common with other Lessees and occupants of the Building all
easements and rights appurtenant to the Property.

II. OCCUPANCY OF PREMISES

This Agreement provides a Lease to Lessee so they may take
occupancy of the Premises and commence with Lessee's Work upon the
execution date of this Agreement.

III. TERM OF LEASE

The Term of this lease shall be for five years, with the right to occupy the
Premises commencing on upon the execution date of this Agreement and
ending on March 31, 2024, or unless sooner terminated as herein provided.
This Lease is renewable at the conclusion of the initial five-year term and each
subsequent five-year term at the option of the Lessor. Upon each renewal of
RESOLUTION EXHIBIT A

the Lease the Lessor may increase the base rent rate by 20%. Lessee must provide 90-days written notice prior to vacation of occupancy.

IV. RENT

Lessee agrees to pay to Lessor without any prior demand therefore a fixed minimum base rent of $42,750, payable in 57 installments of $750 per month, with payment due in advance of the first day of each calendar month with the first payment due July 1, 2019. The base rent shall include a prorated amount for property taxes as Lessee shall not be separately responsible for property taxes.

All payments shall be made payable to the City of Piqua and delivered to the City of Piqua, attention Finance Director, 201 W. Water St., Piqua, Ohio 45356.

The Lessor hereby notifies Lessee that the continued operation of this Agreement is based on the rent and utilities being kept current and any past due amounts being paid in full upon receipt of any notice of default. Failure to keep any amount owed current may result in termination of the Lease Agreement or pursuance of any other legal remedy available.

V. UTILITIES AND SERVICES

Lessee shall be responsible upon the receipt of billing for the payment of all charges against the Premises for water, sanitary sewer, natural gas, heat for the appliances and fixtures, electricity and any other utility services furnished to or consumed on the Premises. Water, sewer, gas and electric are all separately metered for the Premises. Lessee shall contract on its own with a cable, telephone and internet provider. The cost of janitorial service, telephone service, cable and internet is the sole responsibility of the Lessee. Lessee will pay a prorated amount for storm water and space heat (gas) based upon square footage and sanitation as determined by the City of Piqua.

Lessor shall have the right, without being liable to Lessee and without abatement or reduction of rent, to suspend, delay or stop any of the utilities or services provided by Lessor whenever necessary due to emergency, inspection, cleaning, repairs, replacements, alterations, improvements and renewals that are necessary in Lessor's judgment, and whenever necessary due to causes beyond Lessor's control. If the interruption in utilities or services is caused by
RESOLUTION EXHIBIT A

Lessor's fault or neglect, this Lease shall not terminate and Lessor shall not be responsible for damages to Lessee, but the rent shall abate until the utilities or services interrupted due to Lessor's fault or neglect are restored. In any such event, Lessor shall use reasonable diligence to complete repairs promptly so as to minimize any resulting interruptions in utilities or services.

VI. MAINTENANCE

A. JANITORIAL MAINTENANCE

Lessee shall be responsible for the maintenance and cleaning of the Premises.

B. MAINTENANCE OF FIXTURES AND PROPERTY

1. **Lessor's Repairs.** Lessor, at its expense, shall perform all repairs and maintenance and make all replacements as are necessary to keep in good order, condition and repair (i) the roof and all structural elements and portions of the Premises and Building, including structural walls, floors and foundations, (ii) all exterior elements and portions of the Building, (iii) any other exterior improvements located on the Property and (iv) any common utility lines, pipes, conduits, equipment and systems that serve Lessee's space and are also used to serve other parts of the Building; subject, however, to ordinary wear and tear. In addition, Lessor will provide snow removal to the Property at its convenience. Notwithstanding the foregoing, Lessee shall not be obligated to reimburse its Proportionate Share of any of the following: (a) costs reimbursed by insurance; (b) interest and amortization of debt service; (c) non-cash items such as deductions for depreciation or obsolescence; (d) costs associated with leasing the Building and relations with other Lessees; (e) costs incurred in completing, finishing, renovation or otherwise improving space for other Lessees; or (f) expenses constituting capital improvement or capital replacements under generally accepted accounting principles.

2. **Lessee's Repairs.** Lessee shall, at its expense, perform all repairs and maintenance and make all replacements as are necessary to keep in good order, condition and repair, all portions of the interior of the Premises, including, but not limited to, interior walls, floor coverings, carpeting, finished ceilings, light fixtures, doors and entranceways, glass, windows and all plumbing, sewer, electrical, heating and air conditioning facilities and equipment serving only Lessee's space and not used in common with other present or future Lessees of the Building. The regular maintenance of the servicing of the heating, ventilating
and air conditioning systems and equipment within the Premises will be contracted through the Lessor and the Lessee shall pay a prorated expense for the maintenance of the Premises based on square footage. Lessee further agrees that it will not cause or permit any damage to the Premises, nor allow the accumulation of waste, boxes, barrels, packages, wastepaper or other trash or any other condition to be considered a nuisance. In addition, Lessee at its expense shall repair, replace or restore all damage to the Premises or the Building caused by the negligent acts or omissions of Lessee or its agents, contractors, employees or invitees, or by a breach by Lessee of its obligations under this Lease.

3. Prior Approval. Prior to maintenance on any fixture or kitchen appliance that is owned by Lessor, Lessee shall notify Lessor and a plan shall be established as to whether the piece of equipment shall be repaired or replaced based on economics. Both parties shall agree as to whether the appliance is to be repaired or replaced. Should the parties decide that the appliance is to be repaired, the parties shall each pay 50% of the repair costs. The parties shall agree on who will be hired for the repair. Should the parties agree that the appliance be replaced, Lessee shall pay 100% of the cost. All appliances being replaced remain the property of Lessor and Lessee shall not be permitted to use the appliances for any trade-in value. Upon termination of the lease, any appliance replaced by Lessee shall remain the property of Lessee.

C. DAMAGE AND DESTRUCTION

If during the term of this Lease the Premises are so damaged by fire or other casualty as to be rendered untenantable in whole or in substantial part, then either Lessor or Lessee may terminate this Lease effective the date of such casualty. In addition, if the Building is destroyed in whole or in substantial part by casualty (regardless of the extent of the damage to the Premises), or if the insurance proceeds are insufficient to repair the damage to the Building or Lessor's mortgagee elects to apply any of the proceeds to the mortgage debt, Lessor may terminate this Lease effective the date of such casualty. These elections by Lessor or Lessee shall be made within 30 days after the occurrence of the casualty, or shall be deemed waived. If this Lease is not so terminated, either because the damage does not render the Premises untenantable, either in whole or in substantial part or because neither Lessor nor Lessee elects to terminate this Lease pursuant to the preceding provisions, then Lessor shall, with all due diligence, repair and restore the Premises to substantially their
original condition (notwithstanding Lessee’s Work and any alterations or improvements made by Lessee) within a reasonable period of time after the occurrence of the casualty, dependent on the severity, or within such longer period as may be permitted due to any "Excusable Delay" as defined below. The rent shall be abated in proportion to the unleaseable space until the Premises are restored.

Lessee shall promptly restore Lessee’s Work and any other alterations or improvements made by Lessee to substantially restore their condition preceding the casualty, and the rent abatement shall continue until Lessee’s completion of such restoration. If the Premises are not so restored by Lessor within 180 days after the occurrence of such casualty, or within any extended period due to Excusable Delays, Lessee may terminate this Lease by giving Lessor written notice. If this Lease is terminated by Lessee or Lessor pursuant to this Section, Lessor shall refund any rent prepaid beyond the effective date of termination. The term "Excusable Delay" shall mean any one or more of the following: labor disputes, fire or other casualty, unusual delay in transportation, adverse weather conditions, unavailability of labor, materials and equipment, and any other causes beyond Lessor’s reasonable control.

D. CONDITION OF PREMISES

Lessee shall throughout the lease term maintain the building and other improvements constituting the Premises and keep them free from waste or nuisance, and shall deliver up the Premises in a clean and sanitary condition at the termination of this lease in good repair and condition, reasonable wear and tear and damage by fire, tornado, or other casualty excepted. In the event Lessee should neglect to reasonably maintain the leased premises, Lessor shall have the right, but not the obligation after written notice has been provided to the Lessee, to cause repairs or corrections to be made, and any reasonable costs therefore shall be payable by Lessee to Lessor as additional rental on the next rental installment date.

E. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS

Lessee shall not create any openings in the roof or exterior walls, nor make any alterations, additions or improvements to the leased premises without the prior written consent of Lessor. Consent for nonstructural alterations, additions, or improvements shall not be unreasonably withheld by Lessor. Lessee shall have the right at all times to erect or install shelves, bins, and trade fixtures, provided that Lessee complies with all applicable laws, ordinances, and
RESOLUTION EXHIBIT A

governmental regulations. Lessee shall have the right to remove at the termination of this lease such items so installed, provided Lessee is not in default; however, Lessee shall, prior to the termination of this lease, repair any damage caused by such removal. All alterations, additions, or improvements made by Lessee shall become the property of Lessor at the termination of this lease; however, the Lessee shall promptly remove, if Lessor so elects, all alterations, additions, and improvements, and any other property placed in the premises by Lessee, and Lessee shall repair any damage caused by such removal.

Lessee shall not permit mechanics' liens to attach to the Premises or the Property by reason of Lessee's work, improvements or alterations. Before commencing Lessee's Work, Lessee shall (a) obtain Lessor's approval of its plans and specifications; (b) furnish evidence that Lessee has obtained all building, zoning and other governmental permits and approvals necessary for Lessee's Work; and (c) provide certificates to Lessor evidencing that Lessee has obtained builder's risk insurance for Lessee's Work, workers' compensation insurance as required by law for all contractors and other persons engaged in Lessee's work, and such other insurance coverages as are required by this Lease, all in form and substance satisfactory to Lessor.

VII. USE OF PREMISES

Lessee will use and occupy the Premises for delicatessen purposes, and specifically for Delicatessen, and for no other purpose without Lessor's prior written consent. The delicatessen shall maintain minimum hours of operation including Monday through Friday from 11am to 6pm, Friday. Saturday and Sunday hours will be at the discretion of the Lessee. Lessee shall receive prior written approval from Lessor before any change in the hours of operations. Lessee shall receive prior written approval from Lessor before any change is made that would substantially alter the theme or the decor of the restaurant to ensure that the theme or decor continues to complement the historical significance of and the intended use of the Building. In connection with its use and occupancy of the Premises, Lessee shall not:

(a) install, use, operate or maintain any machinery or equipment or permit any other activity or conduct within the Premises which (i) produces any discernible vibration or a noise level, which would violate the Piqua Codified Ordinances, as Lessee recognizes that the primary tenant of the Building is a library, or (ii) overload the floors or any other
RESOLUTION EXHIBIT A

structural portions of the Premises or the Building;

(b) use any part of the roof of the Building for any purpose; or

(c) treat, manufacture, use, store or dispose of hazardous substances, hazardous wastes, petroleum products or other substances regulated under applicable environmental laws, except that Lessee may use, store and dispose of any of the foregoing materials to the extent that (i) the materials and quantities to be used and stored on the Premises and Lessee's procedures for using, storing and disposing of the same are first approved by Lessor, (ii) Lessee's use of these materials is merely incidental to Lessee's primary use and (iii) the use and storage of the materials on the Premises is not prohibited by applicable laws or regulations; or

(d) permit the Premises to be used for any purpose that would render void or cause cancellation of any insurance maintained on the Building by Lessor, or cause an increase in the premiums for such insurance; or

(e) use any other portion of the Building that is not permitted or authorized herein without prior written approval from the Lessor and the tenant, if any, of the other space to be used within the Building.

VIII. SIGNAGE

Lessee shall have the right to erect one sign on the south side of the exterior of the Building parallel to W. High St., such sign being on the exterior of the portion of the Premises being leased. All signs must comply with the City of Piqua Sign Code and any other applicable laws. Lessee shall be responsible for the maintenance of the signage. The design of the signs shall be approved by the Lessor. Lessee shall remove all signs at the termination of this lease, and shall repair any damage and close any holes caused by such removal.

IX. BUILDING OVERSIGHT COMMITTEE ("BOC")

A Building Oversight Committee ("BOC") acts as a mediator and makes recommendations on disputes between or amongst the tenants of the Building. If there is a dispute and/or concern regarding any issue with a tenant, such as noise, odors, signage, etc., the tenant shall notify the other tenant before any other party to resolve the issue. If the issue cannot be resolved, the parties shall proceed to the BOC where the BOC shall mediate the issue.
X. COMPLIANCE WITH LAWS

Lessee, at its sole expense, shall comply with all present and future laws and regulations applicable to its use and occupancy of the Premises, and shall make any repairs, modifications and additions to the Premises that may be required by any of those laws or regulations. Notwithstanding the above, Lessee shall not be obligated to make, and Lessor shall be solely responsible for, any structural repairs, modifications or additions to the Premises that (a) are not necessitated by negligent or wrongful actions of Lessee or others for whom Lessee is responsible and (b) Lessor would be required to make as the owner of the Building regardless of the specific nature of Lessee’s use. Lessor is responsible for any structural alterations of the ingress and egress to the Premises or the Building required for compliance with the Americans with Disabilities Act. Lessee is responsible for the compliance with the Americans with Disabilities Act in regard to the interior of the Premises and all elements of Lessee’s Work.

XI. INSURANCE

A. PUBLIC LIABILITY INSURANCE

Lessee shall procure and maintain commercial general liability insurance for the Premises with policy limits of not less than a single limit of $1 million for personal injury or death and property damage per occurrence and $3 million in the aggregate. Lessor and any mortgagee shall be named as additional insureds under this policy with a certificate of insurance stating that Lessee's coverage is primary and non-contributing. The policy shall contain an agreement by the insured that it will not cancel the policy except after thirty days prior written notice to Lessor and Lessee and that any loss otherwise payable shall be payable notwithstanding any act or negligence of Lessor or Lessee that might, absent such agreement, result in a forfeiture of all or a part of the insurance payment.

In addition to the commercial general liability insurance, there shall be Liquor liability insurance in an amount not less than $1,000,000 per occurrence to cover claims arising out of the serving, consumption, and/or sale of Liquor in, about, or from the Premises or the Building. Such policy(ies) shall be endorsed to cover Lessor, Lessor's officials, employees, agents and volunteers as Additional Insureds.

B. FIRE AND CASUALTY INSURANCE
RESOLUTION EXHIBIT A

Lessor shall keep the Building and all other improvements located on the Property insured against loss by fire and all of the risks and perils insured against in a "special form" commercial property insurance policy. During the term of this Lease, Lessee shall procure this insurance with respect to Lessee's Work and all other alterations and improvements installed in the Premises by Lessee, in the amount of their full replacement cost. Lessor may also obtain such additional coverages as it deems appropriate for the Building, including, but not limited to, boiler and machinery and rent loss insurance or endorsements. This insurance shall be written by a company of recognized financial standing that is authorized to do an insurance business in the State of Ohio. The costs incurred by Lessor pursuant to this are referred to as "Insurance Costs." Lessee shall reimburse Lessor for its proportionate share of and any increases in the Insurance Costs.

C. CERTIFICATES

Prior to Lessee occupying the Premises, Lessee shall deliver to Lessor a certificate of the insurance required to be maintained under this section. Lessee shall also deliver to Lessor at least 10 days prior to the expiration date of such policy or of any renewal policy, certificates for the renewal of this insurance. Lessor shall deliver to Lessee a certificate of insurance of any coverage upon receipt.

XII. INDEMNIFICATION AND HOLD HARMLESS

Lessee shall indemnify and hold Lessor harmless against any and all claims, liabilities, damages or losses, and any attorney's fees and other incidental expenses, resulting from injury or death of any person or damage to property occurring on or about the Premises or arising in conjunction with the use and occupancy of the Premises by Lessee or others claiming under Lessee, unless the death, injury or damage was sustained as a result of any tortuous or negligent act of Lessor or of its employees, agents or contractors, or by reason of the breach of any of Lessor's obligations under this Lease.

In addition, Lessee shall indemnify and hold Lessor harmless against any claims, liabilities, damages, losses or expenses resulting from the release of hazardous substances, hazardous wastes or petroleum products on or from the Premises or other violations of applicable environmental laws occurring during the term of this Lease. The indemnities contained in this Section shall survive the expiration or termination of this Lease.
RESOLUTION EXHIBIT A

In case of any action or proceeding brought against Lessor by reason of any such claim, Lessee, upon notice from Lessor, covenants to defend such action or proceeding. Lessee shall notify Lessor of any counsel retained for representation and of any change in counsel.

XIII. DEFAULT

A. LESSEE’S DEFAULT

Lessee shall be in default of this Lease if (a) Lessee fails to pay the rent or any other amount required to be paid by Lessee within 30 days after the same becomes due and payable under the terms of this Lease; (b) Lessee fails to perform any other duty or obligation imposed by this Lease and the default continues for a period of 30 days after written notice is given to Lessee by Lessor, or for an unreasonable period of time if 30 days is not sufficient time to repair, remedy or correct such default; (c) Lessee is declared insolvent or adjudged bankrupt, or makes a general assignment for the benefit of its creditors; (d) a receiver of any property of Lessee in or upon the Premises is appointed in any action, suit or proceeding by or against Lessee; (e) any action or proceeding under the National Bankruptcy Act is filed by or against Lessee, and such appointment, suit, action or proceeding is not dismissed within sixty days; or (f) the interest of Lessee in the Premises is sold under execution or other legal process.

B. REMEDIES

In the event of Lessee’s default, Lessor shall provide written notice of the default and the said reason(s) for default. Lessee shall have thirty (30) days after the date of written notice to cure such default. In the event of Lessee’s default and after the 30 day cure period has expired, Lessor shall have the right to enter upon the Premises and repossess and enjoy the same as if this Lease had not been made, and, upon demand by Lessor, Lessee shall surrender complete and peaceable possession of the Premises. This Lease shall then terminate at Lessor’s option. Whether or not Lessor elects to terminate this Lease, Lessor may immediately recover from Lessee, and Lessee shall be liable to Lessor for, all rent due and unpaid up to the time of such reentry. If Lessor elects to terminate this Lease, Lessor shall be entitled to the damages caused by Lessee’s default, which shall include (a) the costs of reletting the Premises, (b) the difference between the total amount of rent and other charges that Lessee agreed to pay for the balance of the term of this Lease and the current
rental rate of the Premises over the same period, and (c) all additional sums to which Lessor may be entitled under applicable law and the terms of this Lease. Lessee's obligation to pay rent shall survive any termination of this Lease due to Lessee's default. If Lessor does not elect to terminate this Lease, Lessor may, without waiving or postponing any other rights given it by law or provided for in this Lease, relet the Premises on such terms as it deems best, and apply the proceeds, less all expenses of reletting, to payment of past due rent and the rent due for the balance of the term and hold Lessee liable for the difference. In no event shall Lessee be entitled to any excess rents received by Lessor upon reletting the Premises. The expenses of reletting shall include reasonable attorneys' fees actually paid in recovering and reletting the Premises; the cost of all repairs, additions and improvements necessary to prepare the Premises for reletting; and all brokerage commissions and fees paid with respect to any reletting. These remedies shall not be deemed exclusive, and Lessor shall have all other rights and remedies provided in law or equity.

If there is any dispute by Lessee as to its default, the parties may participate in non-binding mediation and the parties shall each pay 50% of the mediator's expenses.

C. RIGHT TO CURE

Without limiting any other remedy available to Lessor by reason of Lessee's default, in the event Lessee defaults in the performance of any of its obligations, Lessor may, at its option, but without any obligation so to do, do all things as it deems necessary and appropriate to cure the default, perform for Lessee any obligation which Lessee is obligated to perform but has not performed, and expend such sums as may be required. All costs and expenses so incurred by Lessor shall be due and payable to Lessor immediately upon demand, together with interest at the rate of 7% per annum or, if less, the highest legal rate, from the date that the costs and expenses were incurred until the same are paid to Lessor.

XIV. OTHER

A. SUBORDINATION AND ATTORNMENT. This Lease and all of Lessee's rights under this Lease are subject to subordination to all mortgages placed on or affecting the Premises and all renewals, modifications, consolidations, replacements, substitutions, additions and extensions of any of those mortgages and any other mortgage now or in the future affecting the Premises or any interest in the Premises (collectively "Mortgages"). In confirmation of this
subordination, Lessee promptly shall execute and deliver any subordination agreement that Lessor may request. In the event any proceedings are brought for the foreclosure of any Mortgage, Lessee shall, upon request, attorn to the purchaser or transferee upon foreclosure, and recognize the purchaser or transferee as the Lessor under this Lease to the same extent and effect as the original Lessor. Lessee agrees to execute and deliver upon the request of Lessor, or any purchaser or transferee, any instrument necessary or desirable to evidence this attornment. Lessee waives any right that it may have by law to terminate this Lease or to surrender possession of the Premises by reason of any foreclosure proceeding.

B. QUIET ENJOYMENT. Lessor covenants that it has the full right and authority to make this Lease and that if Lessee pays the rent and performs all of the terms of this Lease, Lessee shall peaceably and quietly enjoy and possess the Premises throughout the term, subject only to the conditions set forth in this Lease.

C. SUCCESSORS AND ASSIGNS. The conditions, covenants and agreements in this Lease to be kept and performed by Lessor and Lessee shall bind and inure to the benefits of their successors and assigns, subject, however, to the conditions herein. Any assignment of this Lease shall have prior written approval by the Lessor.

D. PERSONAL PROPERTY. All trade fixtures, furnishings, equipment and other personal property placed or maintained on the Premises shall be at Lessee’s sole risk, and Lessor shall not be liable for any loss or damage to such property from any cause whatsoever.

E. LIABILITY OF LESSOR. If Lessor fails to perform any of its obligations under this Lease, and, as a consequence of this default, judgment may be satisfied in accordance with law. In no event shall Lessee have the right to levy its execution against any property of Lessor other than its interest in the Property. In the event of the sale or other transfer of Lessor’s interest in the Property, Lessor shall be released from all liability and obligations subsequently accruing under this Lease.

F. WAIVER. No waiver of any condition or covenant of this Lease by either party shall be deeded to imply or constitute a further waiver of the same or any other condition or covenant, and nothing contained in this Lease shall be construed to be a waiver on the part of Lessor or any right or remedy in law or otherwise.

G. HOLDING OVER. Any holding over beyond the expiration of the term of this
Lease when a renewal option has not been exercised or agreed to shall be construed to be a tenancy from month to month at the same rent as to the terms agreed to herein, and shall otherwise be on the same terms and conditions as provided in this Lease.

**H. ENVIRONMENTAL MATTERS.** Lessor represents and warrants to Lessee that to the best of Lessor’s knowledge as of the date of this Lease, no toxic, explosive or other dangerous materials or hazardous substances have been concealed within, buried beneath or removed from and stored off-site of the Property, and Lessor shall indemnify Lessee against any and all claims, demands, liabilities, losses and expenses, including consultant fees, court costs and reasonable attorneys’ fees, arising out of any breach of the foregoing warranty.

**I. SURRENDER.** Upon the expiration or earlier termination of this Lease, Lessee shall surrender to Lessor the Premises in good condition and repair, ordinary wear and tear since the last repair required by this Lease, fire and other casualty or governmental takings excepted.

**J. SEVERABILITY.** If any provision of this Lease or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**K. MEMORANDUM OF LEASE.** A memorandum of this Lease shall be executed and in recordable form in accordance with the provisions of Section 5301.251 of the Ohio Revised Code.

**L. NOTICES.** All notices to be given to either party shall be deemed given if made in writing and deposited in the United States certified mail, postage prepaid, return receipt requested, or if sent by a nationally recognized overnight courier service, and addressed to the parties at the following addresses:

**Lessor:**
City of Piqua
Gary Huff
201 W. Water Street
Piqua, Ohio 45356

**Lessee:**
Stone Ground Deli, LLC
Todd Uhlir
122 W. High Street
Piqua, Ohio 45356

Either party may change its notice address by giving notice to the other in the
foregoing manner.

M. LESSOR’S RESERVED RIGHTS. Without abatement or diminution of rent, and in addition to any other rights reserved in this Lease, Lessor reserves the following rights:

(a) to change the street address and/or the name of the Building and/or change the arrangement and/or location of any exterior elements of the Property; (b) to make alterations or improvements to the existing buildings; (c) to use all or part of the roof or exterior walls of the Building; and (d) to install, maintain, use, repair or replace within the Premises or the Building pipes, ducts, wire, conduits and other mechanical equipment serving other parts of the Property. In exercising its rights under this Section, Lessor shall use reasonable efforts not to impair or unreasonably interfere with Lessee’s business operations, or to minimize any such interruptions when necessary.

N. RIGHT OF ENTRY. Lessor shall have the right to enter the Premises at any time to examine their condition, to make any repairs and, during the last 6 months of the term, to show the Premises to persons interested in purchasing or leasing the same. Except where it is impractical to do so, Lessor shall give Lessee at least 24 hour notice before any entry.

O. ESTOPPEL CERTIFICATE. Within 10 days after any request by Lessor, Lessee shall execute an estoppel certificate to evidence (a) the existence or nonexistence of any default under this Lease by Lessor or Lessee, any amendments to this Lease or prepayments of rentals and (b) such other facts with respect to this Lease as Lessor or any mortgagee may reasonably require.

P. ENTIRE AGREEMENT. This Lease, including all exhibits, contains the entire agreement between the parties and supersedes all prior understandings. No amendments to this Lease shall be valid unless in writing and executed by the party against whom enforcement of the amendment is sought.

Q. CAPTIONS. The captions of this Lease are for convenience of reference only and shall not be considered in the construction of any provisions of this Lease.

R. FORM AND LAW. The laws of the State of Ohio and the City of Piqua shall apply to this Lease and any action that result therefrom. Any legal action that is commenced, shall be commenced in the courts governing Miami County, Ohio.
This LEASE is hereby agreed to and executed this ____ day of _________________
2019 by the duly authorized agents and/or representatives of the City of Piqua and
Delicatessen, LLC.

By City of Piqua: 

Gary A. Huff, City Manager

Witness

By Stone Ground Deli, LLC:

Todd Uhlier

Witness

Jeff Finkelstein

Witness

Prepared by Frank J. Patrizio Esq.
RESOLUTION NO. R-39-19

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO THE CAPITAL IMPROVEMENT COMMUNITY PARK, RECREATION/CONSERVATION PROJECT PASS THROUGH GRANT AGREEMENT WITH THE OHIO DEPARTMENT OF NATURAL RESOURCES (ODNR) FOR THE PIQUA GREAT MIAMI TRAIL BRIDGE REPLACEMENT PROJECT

WHEREAS, the General Assembly has made available certain Capital Improvement funding for use by local public agencies; and

WHEREAS, the Piqua Great Miami Trail Bridge Replacement Project is a project that was eligible to receive this funding; and

WHEREAS, the Ohio Department of Natural Resources (ODNR) has been identified as the agency to administer the Parks and Recreation Improvement Fund; and

WHEREAS, the City of Piqua desires to enter into an Agreement with ODNR regarding the Piqua Great Miami Trail Bridge Replacement Project; substantially in the form of Exhibit A attached hereto;

NOW, THEREFORE, BE IT RESOLVED by the Commission of the City of Piqua, Miami County, Ohio, the majority of all members elected thereto concurring, that:

SEC. 1: The City Manager is hereby authorized to execute the Capital Improvement Community Park, Recreation/Conservation Project Pass Through Grant Agreement substantially in the form attached hereto as Exhibit A and all documents, instruments and agreements contemplated thereby and to execute such amendments to the ‘Piqua Great Miami Trail Bridge Replacement Project’ from time to time as contemplated by such Agreement.

SEC 2: This Resolution shall take effect and be in force from and after the earliest period allowed by law.

KATHRYN B. HINDS, MAYOR

PASSED: __________________________

ATTEST: __________________________

JESSICA MORGAN STEIN
CLERK OF COMMISSION

The Motion to adopt the foregoing Resolution was offered by __________________________ seconded by __________________________ and on roll call the following vote ensued:

Mayor Kathryn B. Hinds  ________ Commissioner John Martin  ________
Commissioner William Vogt ________ Commissioner Dave Short ________
Commissioner Kris Lee ________

Legislation Date 3/19/2019
# Commission Agenda
## Staff Report

<table>
<thead>
<tr>
<th>MEETING DATE</th>
<th>March 19, 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>REPORT TITLE</td>
<td>A resolution authorizing the City Manager to enter into the Capital Improvement Community Park, Recreation/Conservation Project Pass Through Grant Agreement with the Ohio Department of Natural Resources (ODNR) for the Piqua Great Miami Trail Bridge Replacement Project.</td>
</tr>
<tr>
<td>SUBMITTED BY</td>
<td>Name &amp; Title: Amy L. Havenar, P.E., City Engineer</td>
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<tr>
<td></td>
<td>Department: Engineering</td>
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<tr>
<td>AGENDA CLASSIFICATION</td>
<td>☑ Consent</td>
</tr>
<tr>
<td>APPROVALS/REVIEWS</td>
<td>☑ City Manager</td>
</tr>
<tr>
<td></td>
<td>☐ Asst. City Manager/Development</td>
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<tr>
<td></td>
<td>☐ Department Director</td>
</tr>
<tr>
<td>BACKGROUND</td>
<td>The City was notified of our award for funding through the General Assembly under the Parks and Recreation Improvement Fund (Fund 7035) last year for the construction of the Great Miami River Trail Bridge. The project will consist of the replacement of the existing, inadequate pedestrian bikeway bridge with a new, ADA accessible bike path bridge over the Great Miami River adjacent to Goodrich Giles Park. The project will also include the construction of a multi-use path from the existing bridge to the newly constructed bridge.</td>
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<tr>
<td>BUDGETING AND</td>
<td>Budgeted $: N/A for this Legislation</td>
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<tr>
<td>FINANCIAL IMPACT</td>
<td>Expenditure $: N/A for this Legislation</td>
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<tr>
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<td>Source of Funds:</td>
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<td></td>
<td>The total cost for the project (including Engineering, Right-of-Way, Environmental and Construction) is estimated to be $1,693,000. The General Assembly has appropriated grant funds in the amount of $300,000 for costs associated with the construction of the GMR Trail Bridge Project. The City has also received $995,760 in Federal funds through the Miami Valley Regional Planning Commission (MVRPC) for the construction and the construction administration.</td>
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<tr>
<td>OPTIONS</td>
<td>1. Approve the resolution to enter into an agreement with ODNR.</td>
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<tr>
<td></td>
<td>2. Deny the resolution and do not proceed with the bridge project and return the grant money back to ODNR.</td>
</tr>
<tr>
<td><strong>PROJECT TIMELINE</strong></td>
<td>The design and environmental is already underway for this project. The construction is scheduled for 2023.</td>
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<td>--------------------------------------------------------------------------------------------------</td>
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<tr>
<td><strong>STAFF RECOMMENDATION</strong></td>
<td>Approve the resolution to allow for the City to enter into an agreement with ODNR for the Great Miami River Trail Bridge Project.</td>
</tr>
<tr>
<td><strong>REASON FOR SELECTING CONSULTANT/COMPANY</strong></td>
<td>N/A</td>
</tr>
<tr>
<td><strong>ATTACHMENTS</strong></td>
<td>Capital Improvement Community Park, Recreation/Conservation Project Pass Through Grant Agreement (Exhibit A)</td>
</tr>
</tbody>
</table>
EXHIBIT A

Capital Improvement Community Park, Recreation/Conservation Project
Pass Through Grant Agreement
Ohio Department of Natural Resources

This Community Recreation/Conservation Project Pass Through Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the State of Ohio, Department of Natural Resources, (hereinafter referred to as "State" or "ODNR"), acting by and through its director, pursuant to Sections 154.17, 154.22 and 1501.01 of the Ohio Revised Code and House Bill No. 529, 132nd General Assembly of the State of Ohio and the City of Piqua, an Ohio political subdivision (hereinafter referred to as "Grantee") acting by and through its authorized representative.

Notices: All notices, demands, requests, consents, approvals and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and shall be deemed to have been properly given when: 1) hand delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email, and shall be respectively addressed as follows:

(a) with respect to ODNR:

Ohio Department of Natural Resources
Office of Real Estate
2045 Morse Road, E2
Columbus, Ohio 43229
Attn: Recreation Services Administrator
Email: mary.fitch@dnr.state.oh.us

(b) with respect to the Project Grantee:

City of Piqua
201 West Water Street
Piqua, OH 45356
Attn: City Engineer
Email: ahavenar@piquaoh.org

Notices shall be deemed given upon receipt thereof, and shall be sent to the addresses appearing above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgement of receipt by the receiving party. The parties designated above shall each have the right to specify as their respective address for purposes of this Agreement any other address upon fifteen (15) days prior written notice thereof, as provided herein, to the other parties listed above. If delivery cannot be made at any address designated for notices, a notice shall be deemed given on the date on which delivery at such address is attempted.

Pursuant to House Bill No. 529, the 132nd General Assembly of the State of Ohio has appropriated funds in the amount of Three Hundred Thousand Dollars ($300,000.00) to make a grant to the Grantee for the costs associated with the construction of a park and recreation or conservation facility in appropriation Item C725E2, more fully described in as 'Piqua Great Miami Trail Bridge Replacement Project', (hereinafter referred to as "Project"). Furthermore, $6,000.00 of the total Project appropriation will be used by the ODNR for the administration of the Project. The Project reference number is MIAM-002C.

The General Assembly has identified the Parks and Recreation Improvement Fund (Fund 7035), created and existing under Section 154.22(F) of the Revised Code, as the fund from which these monies will be disbursed.

Pursuant to ORC Chapter 154 and Article VIII Section 2i of the Ohio Constitution, capital facilities lease-appropriation bonds (the "Bonds") have been or will be issued by the Ohio Treasurer of State (the "Treasurer") for the purpose of paying the "costs of capital facilities" including acquiring,
constructing, reconstructing, rehabilitating, renovating, enlarging and otherwise improving, equipping and furnishing capital facilities for parks and recreation, all as defined and described in ORC Section 154.01(K). A portion of those Bond proceeds will be used by ODNR to provide funding to the Grantee for the Project under this Agreement. Because ODNR is funding the Project with proceeds of those Bonds, ODNR requires that the Grantee make certain representations, warranties and covenants (both affirmative and negative) concerning the Project and use of the grant funds, as more fully described or provided in this Agreement, in order to comply with federal and state laws, regulations and rules relating to those Bonds and the projects funded with proceeds of those Bonds.

NOW, THEREFORE, for the purposes of providing the funds to the Grantee pursuant to House Bill No. 529 of the 132nd General Assembly, the parties hereto covenant and agree as follows:

1. **FUNDING AMOUNT.** ODNR agrees to provide the Grantee Two Hundred Ninety-Four Thousand Dollars ($294,000.00), via qualifying advance and reimbursement, to be used toward the total cost of the Project. Six Thousand Dollars ($6,000.00) of the amount appropriated for the Project will be retained by ODNR to cover administrative cost. In no event shall ODNR’s payment to Grantee exceed Two Hundred Ninety-Four Thousand Dollars ($294,000.00). Funds for this Project have been released by the Controlling Board as of _________, and encumbered by Contract Encumbrance Record Number _________ and are so certified by the Director of Budget and Management on __________. Obligations of the State are subject to the provisions of Section 126.07 of the Ohio Revised Code. Any funds provided under this Agreement that are not spent shall be returned in full to the State.

2. **PROJECT DESCRIPTION.** The Grantee shall use the grant funds for ‘Piqua Great Miami Trail Bridge Replacement Project’, a project to develop recreation facilities in Piqua, OH, all as more fully described in Exhibit A attached hereto.

3. **COMMENCEMENT AND TERMINATION DATES.** This Agreement commences on the date that it is approved by the Director of ODNR (the "Effective Date") and will, unless otherwise earlier terminated as provided herein, expire on the later of: i) 15 years from the date of Project completion (or Project acquisition if the Project is solely real property acquisition); or ii) the date upon which the latest Bond issuance funding or refinancing of the Project is paid in full (the "Term"). Grantee shall complete the Project on or before June 30th, 2020.

4. **NO RESTRICTIONS OF RECORD.** The Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record with respect to the Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the property as described on Exhibit B attached hereto, on which the Project will be located and developed as a public parks and recreation or conservation facility (the "Property"). The Grantee represents that it is the fee simple owner, or has a lease or cooperative use agreement with a term longer than the Term hereof, on the Property and that the only restrictions of record with respect to the Property are (a) any state of facts which an accurate survey might show, (b) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any governmental agencies having jurisdiction over the Property and (c) all matters of record pertaining to the Property, including dedicated public rights-of-way and the items identified on said Exhibit B, 'Boundary Map'.

The Grantee hereby represents and warrants that there are not now, and Grantee shall not cause there to be, any restrictions of record with respect to the Project or Property, including without
limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the Property as a public parks and recreation or conservation facility.

5. **CONSTRUCTION SERVICES.** The Grantee represents that it will contract for all construction services for the Project, and will provide construction administration. The Grantee shall have the full authority to contract with third parties for the design and construction of the Project. The Grantee shall secure all necessary permits and licenses for the Project. The Grantee warrants that it will cause the Project to be constructed or acquired, as applicable, with all reasonable speed and reasonably adhere to any submitted development timeline.

6. **OPERATION, MAINTENANCE, AND UPKEEP.** The Grantee shall be solely responsible for the operation, maintenance, and upkeep of the Project, and shall take all actions reasonably necessary to ensure that the Project is available to the public for the intended parks and recreation or conservation purpose during the Term. Failure to comply with this provision or any other provision of this Agreement may result in demand for repayment of all or a portion of the grant funds paid by ODNR to Grantee under this Agreement. The amount to be repaid will be calculated based on the ratio of (x) the number of months from the event triggering the reimbursement to the final scheduled maturity date of the Bonds over (y) the total number of months that the Bonds are scheduled to be outstanding. Grantee shall not make any grant repayment unless first consulting with ODNR, and ODNR shall not accept any repayment without first obtaining the approval of the Ohio Public Facilities Commission ("OPFC").

7. **REMITTANCES.** If for any reason funds acquired through this Agreement are required to be paid, repaid or remitted to the State of Ohio, they shall be remitted in full by the Grantee within forty-five (45) days of demand to:

   Ohio Treasurer of State  
   30 East Broad Street, 9th Floor  
   Columbus, Ohio 43215

8. **COPY WITH REMITTANCE.** Any such remittance shall include a copy of this Agreement. A copy of the cover letter transmitting the remittance to the Treasurer of State shall be sent simultaneously to ODNR.

9. **CONVEYANCE OF INTEREST IN PROJECT TO ODNR.** As security for the performance of the Grantee’s obligations under this Agreement, the Grantee hereby conveys to ODNR an interest in the Property, consisting of the right to use and occupy the Property and the facilities funded in whole or in part with grant funds under this Agreement upon default of this Agreement by the Grantee. This interest shall be in effect during the Term of this Agreement. The Grantee hereby acknowledges and agrees that ODNR may assign or convey such right to use and occupy such facilities to the OPFC or such other State agency selected by ODNR, and Grantee does hereby consent to such assignment or conveyance. In addition, ODNR has entered into a lease with OPFC relating to the Bonds and the Project; provided that so long as Grantee shall not default under this Agreement, such lease shall not affect the Project or the use thereof. ODNR acknowledges that, absent a default by Grantee, ODNR has no right to use or occupy the Property or Project. ODNR shall have the right during the Term hereof to enter upon the Property during normal business hours for purposes of inspection of the Project for compliance with this Agreement.
10. PROHIBITION AGAINST DISPOSITION. The Grantee shall not dispose of all or any part of the Project funded by ODNR through the Term of this Agreement without the prior written consent of ODNR and OPFC. All notices, demands, requests, consents, approvals and other communications to OPFC shall be addressed as follows:

Ohio Public Facilities Commission
30 East Broad Street, 34th Floor
Columbus, Ohio 43215
Attn: Assistant Secretary

11. WAIVER OF LIABILITY. On and after the date of this Agreement, the Grantee agrees not to seek any determination of liability against ODNR, OPFC, the Treasurer or any department, agency or official of the State in the case of claim or suit arising from the Project including acquisition of property or any future condition, construction, operation, maintenance or use of property or facilities which may be developed in relation to the Project. The Grantee forever releases and waives any and all claims, demands and causes of action it may ever possess or assert against ODNR and its employees, agents, officials and attorneys arising from, or relating to, the Project.

12. INSURANCE. Unless otherwise agreed by ODNR, the Grantee shall maintain, or cause to be maintained, at no cost to the State, commercial general liability insurance and property insurance, including, if applicable, builder's risk insurance, to insure ODNR, OPFC, the Treasurer and the State in an amount and type determined by a qualified risk assessor to be sufficient to cover the full replacement costs of improvements funded, in whole or in part, by the State, and for bodily injury, property damage, personal injury, advertising injury and employer's liability exposures of the Grantee. Unless otherwise agreed by ODNR, such insurance shall remain in force at all times from the Effective Date hereof through the Term of this Agreement.

Instead of providing the general liability and property insurance above, the Grantee may name ODNR, OPFC, the Treasurer and the State as additional insured and/or loss payees, as the coverage requires, under a self-insurance program or joint self-insurance pool created under ORC Sections 2744.08 or 2744.081, respectively, and operated by or on behalf of the Grantee, in order to meet the insurance requirements set forth herein.

13. BONDED AND INSURED EMPLOYEES AND AGENTS. Prior to release of advance funds by ODNR, Grantee will provide ODNR with a document that demonstrates that all employees or agents of Grantee who are responsible for maintaining or disbursing funds acquired through this Agreement will be fully bonded or insured against loss of such funds. The bonding agent or insurer shall be licensed to do business in Ohio. No part of the funds acquired by Grantee through this Agreement shall be spent to obtain that bonding or insurance.

14. PUBLIC FUNDS COMPLIANCE. The Grantee will assure compliance with all applicable federal, state, and local laws and regulations pertaining to handling, management and accountability in relation to public funds. All funds received by Grantee under this Agreement shall be deposited in one or more financial institutions that fully insure, secure or otherwise protect the funds from loss through federal deposit insurance and/or other deposit and/or collateralization strategies that protect the funds against loss. If the Grantee is a political subdivision of the State, grant funds shall be held in compliance with Chapter 135 of the Ohio Revised Code.
15. REPORTS AND RECORDS. The Grantee will keep and make all reports and records associated with the Project funded under this Agreement available to the State Auditor, or the Auditor’s designee, ODNR and OPFC for a period of not less than eighteen (18) years after the date of Project closeout. These reports and records shall include a description of the Project, a detailed overview of the scope of work, and disbursement detail (including amount, date, nature/object of expenditure), and vendor information. The Grantee acknowledges that the Auditor of State and other departments, agencies and officials of the State may audit the Project at any time, including before, during and after completion. The Grantee agrees that any costs of audit by the Auditor of State or any other department, agency or official of the State will be borne exclusively by and paid solely by Grantee, and that the funds provided under this Agreement will not be used by Grantee for payment of any audit expenses for any reason at any time. Grantee will be solely responsible for all costs associated with audit.

16. RESTRICTIONS ON EXPENDITURES. The Grantee affirmatively states that Grantee is fully aware of the restrictions and guidelines for expending funds granted under this Agreement and intends to comply fully with same. Grantee will implement appropriate monitoring controls to ensure that funds acquired through this Agreement are expended in accordance with all applicable laws, rules and requirements.

17. DETERMINATION OF INELIGIBILITY. If it is determined by an audit by the Auditor of State or any department, agency or official of the State or other agency or entity with legal audit authority that any Project expense is ineligible, or not properly documented, the Grantee will repay that amount in full to the State.

18. NO FINDING FOR RECOVERY. The Grantee represents and warrants to the ODNR that it is not subject to a finding for recovery under R.C. 9.24, or that it has taken appropriate remedial steps required under R.C. 9.24 or otherwise qualifies under that section. The Grantee agrees that if this representation or warranty is determined by ODNR to be false, this Agreement shall be void ab initio as between the parties to this Agreement, and any funds paid by the State hereunder immediately shall be repaid in full to the State, or an action for recovery immediately may be commenced by the State for recovery of said funds.

19. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT. The Grantee will comply with the terms of Title II and Title III, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (PL 91-646), Stat. 1894 (1970), and Ohio Revised Code Chapter 163 for all real property acquisitions, and where applicable will assure that these requirements have been complied with for the Project, using funds provided by the legislature in House Bill No. 529 of the 132nd General Assembly.

20. PROJECT NONDISCRIMINATION. The Grantee agrees that any facilities that may be developed now or in the future on the lands comprising the Project will be made available to all persons regardless of race, color, sex, religion, national origin, ancestry, age, military status, handicap or disability on the same terms and conditions.

21. EMPLOYMENT NONDISCRIMINATION. The Grantee shall not discriminate against any employee or applicant for employment, because of race, color, religion, national origin, ancestry, sex, age, military status, handicap or disability. The Grantee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, ancestry, sex, handicap or disability. Such action will include, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of
compensation, and selection for training, including apprenticeship. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notices as may be provided by the State setting forth the provisions of this non-discrimination clause.

22. ODNR RIGHT TO TERMINATE. ODNR reserves the right to terminate this Agreement and to recover any funds distributed by the Grantee to contractors or other payees in violation of the terms of this Agreement if the Grantee is determined by ODNR to be unable to proceed with the Project, or if Grantee violates any of the terms herein.

23. LEGAL, FEDERAL TAX, AND OTHER COMPLIANCE. The Grantee will assure that monies expended under this Agreement are spent in conformity with the intent and purpose of the appropriation, the limitations on use set forth in the bill containing the appropriation, and Chapter 154 of the Ohio Revised Code and all other laws that apply to expenditure of monies by the Grantee. If Grantee is required to submit an annual financial report to the Auditor of State, in accordance with Auditor of State Bulletin 2001-012, then the Grantee shall report the funds it acquires through this Agreement as a separate column identified in a manner consistent with the Project description in appropriation item C725E2. If Grantee is not required to submit the aforementioned report, Grantee shall file an annual detailed expenditure report of all expenditures associated with the Project with the Auditor of State by March 1st every year until all funds provided in this Agreement have been spent. The above reports shall be sent to the address provided in Auditor of State Bulletin 2001-012.

The Grantee agrees to comply with all applicable federal, state and local laws and regulations, in the conduct of the Project and acknowledges that its employees are not employees of ODNR with regard to the application of the Ohio Public Employees Retirement law, Fair Labor Standards Act minimum wage and overtime provisions, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Ohio revenue and tax laws, Ohio Workers' Compensation Act and Ohio unemployment compensation law.

The Grantee agrees to use funds provided under this Agreement in accordance with the Ohio Constitution and any state or federal laws and regulations that may apply. The Grantee shall repay ODNR any funds improperly expended. Additionally, the Grantee agrees to comply with all requirements within its control necessary to preserve the tax status of all tax-exempt or tax-advantaged bonds, the proceeds of which are used to provide the funding to Grantee set forth in this Agreement. Unless otherwise determined by the OPFC, such requirements include, but are not limited to, ensuring that the funds provided under this Agreement finance capital expenditures (as opposed to operating expenses) and are not used to refund or otherwise refinance existing debt of the Grantee. Grantee shall be liable for any payments to the Internal Revenue Service or the U.S. Treasury as penalties or to preserve the tax status of tax-exempt or tax-advantaged bonds, and any other costs, resulting in whole or in part from actions taken by Grantee, including the failure of Grantee to comply with federal income tax laws applicable to such bonds. The Grantee agrees to consult with OPFC if the Grantee is uncertain as to what expenditures are eligible to be financed with funds provided under this Agreement.

24. CONTRIBUTIONS CERTIFICATION. Grantee hereby certifies that neither it nor any of its officers nor the spouse of any such person, has made contributions to the Governor of Ohio in excess of the limitations specified in R.C. § 3517.13.

25. CONSTRUCTION CONTRACT COMPLIANCE. Grantee represents that it will comply with the Executive Order of the Governor of Ohio regarding equal employment and that it will include in any construction contracts for the Project provisions for compliance with the terms and conditions
of the Copeland Anti-Kick Back Act, 18 U.S.C. §874, as the same are supplemented by regulations promulgated by the U.S. Department of Labor in 29 CFR, Part 3.

26. MODIFICATION. This Agreement may be modified if agreed to in writing by both parties.

27. ETHICS CERTIFICATION. The Grantee, by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Grantee understands that failure to comply with Ohio’s ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State.

28. SEVERABILITY. Each provision hereof shall be separate and independent and the breach of any provision by either party hereto shall not discharge or relieve the other party from its obligations to perform each and every covenant to be performed by it hereunder. If any provisions hereof (or the application thereof to any person, firm or corporation or to any circumstances) shall be deemed invalid or unenforceable by any court of competent jurisdiction, the remaining provisions of this Agreement (or the application of such invalid provision to such persons, firms or corporations or circumstances other than those as to which it is invalid or unenforceable), shall not be affected thereby, and said provisions hereof shall be valid and enforceable to the fullest extent permitted by law.

29. MISCELLANEOUS.

a. Controlling Law. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the State of Ohio. Grantee consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.

b. Waiver. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.

c. Successors and Assigns. Neither this Agreement nor any rights, duties or obligations hereunder may be assigned or transferred in whole or in part by Grantee, without the prior written consent of ODNR.

d. Conflict. In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.

e. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.

f. Execution. This Agreement is not binding upon ODNR unless executed in full.

g. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

h. Electronic Signatures. Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chapter 1306. Each party hereto shall be entitled to rely
upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

30. **TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement.

31. **OPEN TRADE:** Pursuant to R.C. § 9.76 (B) the Grantee warrants that the Grantee is not boycotting any jurisdiction with whom the State can enjoy open trade, including Israel, and will not do so during the contract period.

**IN TESTIMONY WHEREOF,** the Grantee and ODNR have caused this Agreement to be executed by their respective duly authorized officers.

**FOR THE GRANTEE:**

CITY OF PIQUA

________________________
Signature

Printed Name: __________________________
Printed Title: __________________________

**FOR THE STATE OF OHIO, ODNR:**

______________________________
Paul R. Baldridge
Chief, Office of Real Estate & Land Management
Ohio Department of Natural Resources

Date: ______________________

**APPROVED BY:**

______________________________
MARY MERTZ, DIRECTOR
Ohio Department of Natural Resources

Date: ______________________
ATTORNEY CERTIFICATION

Community Park, Recreation, or Conservation Project Number: MIAM-002C

I, ____________________________ [name and title], acting as attorney for the City of Piqua ("Grantee"), and for the reliance of the Ohio Department of Natural Resources, do certify that from my examination of the Capital Improvement Community Park Recreation or Conservation Project — Pass Through Grant Agreement (the "Agreement") and my knowledge of Grantee’s organization, that acceptance of the Agreement by Grantee and the execution thereof by the signing officer has been duly authorized and is proper and in accordance with the laws of the State of Ohio. Grantee is a legally constituted public entity with full authority and legal capacity to perform all obligations and terms of the Agreement. Upon signature by the signing officer, the Agreement, in my opinion, is a legal obligation of Grantee in accordance with the terms thereof, and Grantee possesses the legal authority to fully perform all obligations incurred by Grantee in signing this Agreement. Grantee’s acceptance of the Agreement and the signing officer’s execution thereof, _____ has, _____ has not* been authorized by the governing body of Grantee, or has otherwise been authorized by grantee’s charter. (Resolution or Ordinance No. __________, dated __________, 201__).

*If "has not" is checked, please indicate the reason. __________________________________________

________________________________________

____________________
Legal Counsel for Grantee (Signature)

__________________________
Printed Name of Legal Counsel

__________________________
Address

Registration Number
EXHIBIT A

PROJECT INFORMATION PACKAGE

Forms and requested materials (maps, etc.) on pages 3-11 comprise the 'Project Information Package'. Please complete all forms on pages 3-11 and send with all other requested materials on pages 3-11 (only) to the address below. This is the first step in the project coordination process.

Tim Robinson  
ODNR  
Office of Real Estate  
2045 Morse Road, E2  
Columbus, Ohio 43229-6693

☐ BASIC INFORMATION

1. Awarded Project Sponsor: City of Piqua

2. Address, including zip code:  
   201 W. Water Street  
   Piqua, OH 45356

3. Tax Identification Number: 31-6000136

4. Telephone Number: (937) 778-2044

5. Contact Person & Title: Amy Havenar, City Engineer

6. Email: ahavenar@piquaoh.org

7. Telephone Number: (937) 778-2044

8. Brief Description of Project:

   The proposed project is to construct a pedestrian bridge across the Great Miami River and extend the existing Great Miami River Recreational Bike Trail to the new bridge location. The project will improve access and connectivity for recreational use, along with improving the safety of the users of the trail system.

   The current bridge is not ADA-compliant, offers a substandard bridge width for a bicycle facility, a substandard load rating for pedestrian/bicycle bridges, and visible deterioration. The new bridge will be ADA compliant and will safely provide the connectivity that is lacking for users of the Great Miami River Recreational Trail.